

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Revs. Code,)	
in the Form of an Electric Security Plan.)	
In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority)	

FIRSTENERGY SOLUTIONS CORP.’S POST-HEARING BRIEF

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE MODIFIED ESP IS NOT MORE FAVORABLE THAN THE EXPECTED RESULTS OF AN MRO.	5
A.	The Modified ESP Will Cost Customers Hundreds of Millions of Dollars More Than An MRO.	7
1.	The Modified ESP will cost \$400 million to \$1.3 billion more than the expected results of an MRO.	7
2.	Every other Intervenor witness who performed a quantitative analysis concluded that the Modified ESP will cost substantially more than an MRO.	10
3.	In fact, the Modified ESP includes \$670 million more in costs than the Stipulation ESP, which was rejected by the Commission.	12
B.	Once The Numerous Flaws Are Corrected In Ms. Thomas’ Analysis, AEP Ohio’s Own Price Test Confirms That The Modified ESP Will Cost More Than An MRO.	14
1.	Ms. Thomas understated the price of the Modified ESP by failing to include significant costs, including those that the Commission has determined must be included.	14
2.	Ms. Thomas overstated the price of the CBP component in the MRO by using a cost-based capacity rate instead of the market- based rate.	16
a.	Ohio law requires a market-based price for capacity in the MRO CBP.	17
b.	RPM pricing is the market price for capacity in PJM, including AEP Ohio’s zone.	18
c.	AEP Ohio’s \$355/MW-day price also is inappropriate because cost-based pricing would not be available through PJM for capacity provided for an MRO CBP.	19
d.	There is no other reasonable basis on which to use an above- market price for capacity in the estimate of the MRO CBP.	20
3.	When corrected, Ms. Thomas’ MRO Price Test confirms that the Modified ESP would cost more than an MRO and, thus, is not a benefit to customers.	21

4.	The Modified ESP fails the statutory test even if other capacity prices are used in the MRO CBP.....	24
C.	The Arbitrary Above-Market Capacity Prices For CRES Providers Do Not Constitute A Benefit Of The Modified ESP.....	25
1.	The Commission already has held that the “capacity discount” cannot be said to be a (quantitative or qualitative) benefit of an ESP.	25
2.	Even if “discounted” capacity prices were a benefit of the Modified ESP, the alleged “value” of that benefit is wholly based on what AEP Ohio believes it is entitled to charge.	26
3.	The changing assumptions underlying AEP Ohio’s presentations – particularly with regard to its shopping assumptions – raise questions.	28
D.	The Modified ESP Is Not Qualitatively More Favorable Because AEP Ohio’s Claimed “Benefits” Are Not Benefits Of The Modified ESP.	33
1.	The “transition” to market and the limited CBPs proposed in the Modified ESP are not “benefits.”.....	33
a.	The Modified ESP’s timeline for “transition” is not more favorable than could occur under an MRO or a properly designed ESP and, in any case, will occur regardless of the Modified ESP.	33
b.	The proposed CBPs are not more favorable.....	35
2.	The Modified ESP’s base generation charges for SSO customers do not provide any benefits.	37
3.	The Modified ESP does not provide for “certainty,” “transparency,” or “stability.”	38
4.	The elimination of non-existent riders is not a benefit.....	39
5.	The Modified ESP does not provide for reliability because the available resources already are sufficient and reliable.	40
III.	THE PROPOSED TWO-TIERED CAPACITY PRICES FOR SHOPPING CUSTOMERS ARE UNSUPPORTED AND IMPROPER.....	41
A.	RPM-based Prices Are The Appropriate Prices For Capacity.	42

1.	Everyone except AEP Ohio agrees that RPM pricing, which is used in every other jurisdiction, is the proper pricing mechanism for shopping customers.....	42
2.	Ohio’s competitive market requires market prices for capacity.....	43
3.	AEP Ohio has no “right” to embedded cost-based capacity pricing.	45
a.	In a competitive market, the <i>market</i> sets the price, not the seller.	45
b.	AEP Ohio’s voluntary FRR status does not allow it to recover its fully embedded costs.	46
4.	Embedded-cost recovery, which underlies AEP Ohio’s request for the above-market tiered capacity pricing, is uneconomic and contradicts the express purpose of RPM.	49
a.	The RPM is working well to assure reliability.	51
b.	RPM prices do not subsidize CRES providers.	55
5.	Above-market capacity prices are unfair because CRES providers are captive to AEP Ohio’s market power for capacity.	55
6.	AEP Ohio waived its right to recover stranded costs.	57
7.	Even if cost-based recovery was appropriate, AEP Ohio’s “costs” are substantially lower than both of the proposed two-tiered prices.	59
a.	AEP Ohio’s avoidable cost rate is far lower than even the Tier 1 \$146/MW-day price.....	59
b.	AEP Ohio’s “embedded” costs also are significantly lower than the Tier 1 \$146/MW-day price.	60
B.	The Above-Market Prices Would Harm Customers And The Economy.	61
C.	The Above-Market Prices Are Anti-Competitive.	63
1.	Competition benefits customers and the State.....	63
2.	The above-market capacity prices will limit competition, as AEP Ohio has admitted.	64
3.	The “Detailed Implementation Plan” will confuse retail customers.	71
4.	The Modified ESP improperly limits governmental aggregation.	74

5.	Other provisions of the Modified ESP and existing AEP Ohio policies and practices further infringe on competition, in violation of state policy.	76
D.	The Two-Tiered Prices Are Discriminatory.	80
E.	The Above-Market Prices Represent Improper Subsidies to AEP Ohio and Unlawful Cross-Subsidies to AEP GenCo.	84
F.	AEP Ohio’s “Alternative” Proposal For Capacity Pricing Would Impose Even Greater Charges On CRES Providers.	86
IV.	THE MODIFIED ESP INCLUDES PROVISIONS THAT ARE NOT AUTHORIZED BY OHIO LAW.	87
A.	The GRR Cannot Be Approved.	87
1.	The GRR is not authorized by R.C. § 4928.143(B)(2)(c) because the costs associated with renewable projects must (and should) be bypassable pursuant to R.C. § 4928.64(E).	87
a.	Ohio law does not authorize nonbypassable cost recovery for compliance with renewable energy benchmarks.	87
b.	AEP Ohio admits that the GRR is intended solely to meet Ohio’s renewable energy benchmarks.	89
c.	Even though there is no justification for approving the GRR, AEP Ohio can still seek bypassable cost recovery for Turning Point.	90
2.	AEP Ohio has provided no evidence to justify the GRR and the Commission must consider this “term and condition” of the Modified ESP in this proceeding.	90
3.	The evidence establishes that the Turning Point Solar project does not, in any event, satisfy the requirements of R.C. § 4928.143(B)(2)(c).	92
a.	The Turning Point Solar project was not competitively sourced.	92
b.	There is no need for additional generation.	93
B.	The RSR Cannot Be Approved.	94
1.	R.C. § 4928.143(B)(2) does not authorize the RSR.	94
2.	The RSR is an anti-competitive subsidy, which violates state policy.	95

3.	The value of the RSR is improper and arbitrary.....	98
a.	The RSR provides an unwarranted guarantee to AEP Ohio.....	98
b.	The proposed calculation of the RSR is flawed.	99
c.	The \$3/MWh credit is arbitrary and unsupported.	100
C.	The Energy and Capacity Charges To Be Paid To AEP GenCo Cannot Be Approved.....	102
1.	AEP GenCo’s charges to AEP Ohio for purchased power are subject to prudence requirements of R.C. § 4928.143(B)(2)(a).	102
2.	The above-market capacity prices that will be charged by AEP GenCo are not prudent.....	102
3.	The agreement between AEP Ohio and AEP GenCo would fail FERC’s EDGAR standards, which prevent abuse of market power.	105
D.	The Pool Modification Provision Cannot Be Approved.	106
1.	There is no provision of R.C. § 4928.143(B)(2) that authorizes a pool modification provision.	106
2.	AEP Ohio has provided insufficient details or estimates on which the Commission could assess this “term and condition” of the Modified ESP.	107
3.	The pool modification provision also would serve as an improper cross-subsidy for AEP Ohio’s competitive generation affiliate.	108
V.	THE MODIFIED ESP WOULD PROVIDE AN ILLEGAL AND EXCESSIVE “TRANSITION” TO THE COMPETITIVE MARKET - WELL BEYOND THAT PROVIDED FOR BY LAW OR PROVIDED TO OTHER OHIO EDUS.	110
A.	Ohio Law Does Not Allow For AEP Ohio To Receive Any Guaranteed Revenue For Its Competitive Generation Business.	110
B.	AEP Ohio Will Not Suffer “Substantial Financial Harm” Under RPM Prices For Capacity.....	113
C.	The Above-Market Revenue Will Subsidize AEP Ohio And Its Affiliates While The Modified ESP Limits Competition.....	116
D.	AEP Ohio Can Hold A CBP Now.....	117

E.	In Comparison, The FEOUs’ and DEO’s Transitions Were Much More Limited.	119
VI.	CONCLUSION	121

I. INTRODUCTION

AEP Ohio's proposed electric security plan (the "Modified ESP") is not more favorable than the expected results of a market-rate offer ("MRO"). The Modified ESP will cost retail customers hundreds of millions of dollars more than an MRO. The Modified ESP also provides no other benefits that would make the Modified ESP more favorable than the options and service that would be freely available to customers under an MRO. Most notably, the Modified ESP would:

- Require SSO customers to pay above-market prices for generation service and, at the same time, impose above-market prices for capacity on shopping customers – thereby making the above-market SSO generation rates effectively nonbypassable;
- Guarantee AEP Ohio and its competitive generation affiliate \$929 million annually in non-fuel generation revenues collected in a new nonbypassable generation charge; and
- Delay the use of a competitive bid process to procure supply for SSO customers, which process has successfully benefited other Ohio customers and which AEP Ohio is capable of providing to its customers now.

AEP Ohio uses unilateral, *above-market* capacity prices to project the prices that would result under a *market* rate offer and ignores the significant costs associated with proposed riders to tilt the comparison in favor of the Modified ESP. AEP Ohio has failed to propose an SSO that is quantitatively or qualitatively "more favorable" than an MRO and, thus, the Modified ESP should be rejected.

Because the Modified ESP cannot satisfy the statutory test that it must pass to be approved, AEP Ohio has tried to shift the focus. AEP Ohio's Application and its witnesses' testimony suggests that it believes the focus should be on its investors' well-being. AEP Ohio seeks guaranteed generation-related revenues over the next three years at above-market prices and, in exchange, it promises to transition to competitive market pricing beginning June 1, 2015. But R.C. § 4928.143 does not authorize horse trades. The General Assembly created the "more

favorable in the aggregate” test set forth in R.C. § 4928.143 to ensure that utilities make available a nondiscriminatory, reasonably priced standard service offer (“SSO”) for electric generation service that is more favorable to customers. If such an SSO is not proposed, then the Commission must reject it.

AEP Ohio’s attempt to focus the Commission’s attention on AEP Ohio rather than customers is, in any event, a smokescreen. The repeated references to “substantial financial harm” are not supported by any reasonable evidence. To the contrary, the record evidence establishes that AEP Ohio is financially stable, continues to earn double-digit returns, and has distributed tens of millions of dollars in dividends to its corporate parent, all during a period of alleged “substantial financial harm.” This at a time while the state’s economy and its customers have suffered through a recession.

AEP Ohio further alleges that its competitive generation affiliate, which will hold all generation assets after corporate separation on or about January 1, 2014, will suffer “substantial financial harm,” but this ignores the fact that the General Assembly established a competitive market for electric generation service. AEP Ohio is not entitled to guaranteed generation revenue or a guaranteed customer base for its generation affiliate. The affiliate must “win” its generation customers and revenue by providing a service that customers value more than other available competitive options. The generation affiliate cannot be cross-subsidized by AEP Ohio as proposed in the Modified ESP.

AEP Ohio’s claims of financial harm and its overall presentation of the Modified ESP indeed reflect a not-so-subtle sleight of hand. AEP Ohio presents its limited financial data and information on a total-company basis, thereby ignoring the existing functional separation required by Ohio law. But AEP Ohio should be operating – at a minimum – as two functionally

separate entities: a regulated distribution (or “wires”) utility business and an unregulated competitive generation business. The Commission has the authority to protect the “financial integrity” of AEP Ohio’s utility “wires” function only, not the generation function. AEP Ohio’s data do not recognize this distinction. In addition, its data are based on assumptions and projections that lack foundation. The record evidence establishes that AEP Ohio has, for example, inflated its projection of the amount of shopping that will occur in its service territory to (unsuccessfully) portray financial losses and to further exaggerate the fictitious benefits that AEP Ohio claims due to “discounted” capacity offered to CRES providers.

The competitive market undeniably benefits customers by placing the risks and incentives on generation suppliers to decrease their costs, improve their operating efficiency and, thereby, promote lower prices. The Modified ESP’s anti-competitive provisions, therefore, represent some of the least favorable aspects of AEP Ohio’s proposed SSO. The Modified ESP denies SSO customers the full benefits of a competitively bid SSO until June 2015 for no good reason other than to subsidize AEP Ohio’s own generation operations (and its supposedly separate generation affiliate after corporate separation is completed). AEP Ohio proposes to use an energy-only wholesale auction for SSO service for the last five months of the Modified ESP (January-May 2015). However, because AEP Ohio also proposes to charge above-market capacity prices, the energy-only auction would not benefit SSO customers.

AEP Ohio’s proposed above-market capacity prices exemplify the inappropriate protections that AEP Ohio seeks to insulate itself from the competitive market. While the undisputed market price for capacity averages \$69/MW-day over the proposed term of the Modified ESP, AEP Ohio seeks to abuse its monopoly power over capacity to charge CRES providers two different prices. The lowest, tier-1 price of \$146/MW-day is more than double the

average market price; the higher, tier-2 price of \$255/MW-day is almost four times the average. Shopping customers, who would feel the brunt of these price increases, are entitled to receive capacity priced through PJM Interconnection, LLC's ("PJM") Reliability Pricing Model ("RPM"). The RPM has successfully provided the appropriate price signals to stimulate the needed capacity that will assure reliability at the lowest cost. No other "markup" is required to assure reliability in the region, and there is nothing unique about AEP Ohio's capacity that requires special treatment. RPM prices are used to price capacity in all other Ohio EDUs' service territories and in all other PJM regions. AEP Ohio has sufficient capacity, and its net avoidable costs (which are all that AEP Ohio should expect to recover in a competitive market) are far lower than the RPM prices. There is no legal, policy or economic reason to allow AEP Ohio, uniquely among all other generation suppliers in PJM, to charge shopping customers above-market prices for capacity. AEP Ohio would experience positive cash flows under RPM prices for capacity, and its customers would be able to enjoy the benefits of the competitive market.

AEP Ohio's smokescreen of "financial harm" lacks evidentiary support and is an improper basis on which to judge the Modified ESP. The Commission is required by Ohio law to ensure that the Modified ESP is more favorable to customers than the expected results of an MRO. The Modified ESP is not. The Commission also is obligated by Ohio law to promote the competitive market and to ensure that AEP Ohio's customers have access to a nondiscriminatory, reasonably priced SSO. The Modified ESP accomplishes neither goal. Thus, the Modified ESP should be rejected in its entirety or, at minimum, should be significantly modified to bring it into compliance with the statutory test and advance state policy by including the following provisions:

- AEP Ohio should institute a CBP to procure 100% of its SSO load through an energy-only auction for service beginning June 1, 2013, with capacity provided at RPM prices.¹
- The Commission should eliminate the two-tiered capacity pricing structure and require RPM-based prices for all capacity provided to CRES providers.²
- The Commission should eliminate the Retail Stability Rider (“RSR”).
- The Commission should eliminate the Generation Resource Rider (“GRR”) or, at a minimum, modify the GRR to be bypassable.³
- The Commission should remove the minimum stays and modify AEP Ohio’s switch fee.⁴

II. THE MODIFIED ESP IS NOT MORE FAVORABLE THAN THE EXPECTED RESULTS OF AN MRO.

Pursuant to R.C. § 4928.143(C)(1), the Commission can only approve, or approve and modify, a proposed ESP “if it finds that *the electric security plan* so approved, *including its pricing and all other terms and conditions*, including any deferrals and any future recovery of deferrals, *is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code* [in an MRO].”⁵ The Commission has determined that both quantitative and qualitative factors may be considered in determining whether a proposed ESP satisfies the “more favorable in the aggregate” test (the “ESP v. MRO Test”).⁶ However, the presence of both quantitative and qualitative benefits will “ensure that, in

¹ See Direct Testimony of Tony C. Banks on behalf of FirstEnergy Solutions Corp. (“Banks Direct”), pp. 20-21.

² See Direct Testimony of Michael M. Schnitzer on behalf of FirstEnergy Solutions Corp. (“Schnitzer Direct”), pp. 48-49.

³ See Banks Direct, p. 29.

⁴ See Banks Direct, pp. 31-32.

⁵ R.C. § 4928.143(C)(1) (emphasis added).

⁶ Case Nos. 11-346-EL-SSO *et al.*, Opinion and Order, Dec. 14, 2011 (the “Stipulation ESP Order”), at p. 32.

the aggregate, [a] proposed ESP is more favorable.”⁷ AEP Ohio bears the burden of proof to establish that its proposed Modified ESP satisfies the statutory ESP v. MRO Test.⁸

AEP Ohio witness Thomas’ ESP v. MRO Test included three steps: (1) a comparison of the prices of the Modified ESP with her estimate of MRO pricing; (2) the addition of the “benefit” of “discounted” capacity pricing and the cost of the RSR to her MRO price estimate to derive the total quantifiable benefits of the Modified ESP; and (3) consideration of other non-quantifiable “benefits.”⁹ Remarkably, Ms. Thomas confessed that she did not even look at the Commission’s Stipulation ESP Order in preparing her testimony for the Modified ESP.¹⁰ As a result, her testimony evidences a purposeful ignorance of the appropriate methodologies to use in determining whether the Modified ESP is more favorable in the aggregate than the expected results of an MRO.

Although the Commission in the Stipulation ESP Order noted “several material flaws” in Ms. Thomas’ previous testimony,¹¹ she failed to correct these material flaws in her updated analysis in support of the Modified ESP. She continued to understate the price of the Modified ESP by failing to include significant costs, such as the costs of the RSR and GRR (*see* Section II.B.1, below). She continued to overstate the expected market price results of an MRO by using non-market pricing for the CBP component (*see* Section II.B.2., below).¹² She inflated the claimed “benefit” of the Modified ESP pricing by irrationally assuming that 100% of the retail

⁷ Stipulation ESP Order, at p. 32.

⁸ R.C. § 4928.143(C)(1); *In re Ohio Edison Company*, Case No. 10-388-EL-SSO, ¶14 (May 13, 2010) (noting that the party proposing an ESP has the burden of proof).

⁹ Direct Testimony of Laura J. Thomas on behalf of AEP Ohio (“Thomas Direct”), pp. 3-23 and Ex. LJT-1.

¹⁰ Hearing Transcript (“Tr.”) Vol. IV, p. 1265.

¹¹ Stipulation ESP Order, pp. 30-31.

¹² Indeed, Ms. Thomas’ use of the terms “Competitive Benchmark Price” and “Market Rate Offer” are misleading, since she admittedly does not base her estimates on competitive market prices for capacity.

load will receive that benefit as SSO customers while also assuming that 68% of the retail load simultaneously will receive the “benefit” of discounted capacity as shopping customers (*see* Section II.B.3., below). She continued to bolster her above-market ESP price with an illusory “benefit” of “discounted” capacity (*see* Section II.C., below).¹³ If any of several corrections are made, AEP Ohio’s own analysis establishes that the Modified ESP is less favorable than the expected results of an MRO.

AEP Ohio has failed to meet its burden of proof. First, the Modified ESP is quantitatively far more costly to customers than the expected results of an MRO. Second, the alleged qualitative “benefits” of the Modified ESP are not actual benefits to AEP Ohio customers. Third, even if, *arguendo*, these alleged qualitative benefits were benefits to AEP Ohio customers, they would not ameliorate the inordinate above-market costs of the Modified ESP.

A. The Modified ESP Will Cost Customers Hundreds of Millions of Dollars More Than An MRO.

1. The Modified ESP will cost \$400 million to \$1.3 billion more than the expected results of an MRO.

FirstEnergy Solutions Corp. (“FES”) witness Schnitzer performed a thorough and reasoned calculation of the expected costs of AEP Ohio’s Modified ESP as well as the expected costs of an MRO during the same time frame.¹⁴ Mr. Schnitzer’s analysis incorporated the Commission’s direction from the Stipulation ESP Order¹⁵ and AEP Ohio’s own data and

¹³ Thomas Direct, Ex. LJT-1, page 1 of 3. *See* Stipulation ESP Order, pp. 30-31 (“Third, we believe the Signatory Parties and AEP-Ohio cannot claim the discounted capacity price to CRES providers as a benefit.”).

¹⁴ *See* Schnitzer Direct, pp. 9-41.

¹⁵ *See* Stipulation ESP Order, p. 30-32 (reaching determination of the factors to be considered in the ESP v. MRO price test).

projections. It confirms that the Modified ESP will impose substantially higher costs of \$400 million to \$1.3 billion more than would result under an MRO.¹⁶

To calculate the price of the Modified ESP, Mr. Schnitzer added AEP Ohio's calculation of the proposed base generation price, including AEP Ohio's "proposed" fuel costs,¹⁷ to AEP Ohio's projections of the charges that would be included in the Modified ESP's new RSR and the costs expected for the Turning Point Solar project, which would be recovered through the Modified ESP's GRR.¹⁸ Mr. Schnitzer's calculation results in an average \$64.87/MWh price for the Modified ESP over the three-year term.¹⁹

On the MRO side and to account for the blending process that would be required by R.C. § 4928.142, Mr. Schnitzer accepted AEP Ohio's estimate of its legacy ESP price.²⁰ Mr. Schnitzer then prepared an estimate of the price that would result from the CBP required under an MRO.²¹ To calculate the CBP price, Mr. Schnitzer accepted AEP Ohio's projections of most cost components and other modeling assumptions. For the capacity component of the CBP price, however, he used RPM market-based prices. As discussed further herein, RPM prices are the only appropriate price for the capacity in the CBP, as market-based prices (not embedded cost prices) should be used in calculating the competitive market price in the market rate offer.²² Mr. Schnitzer's calculation results, after blending, in an average price for the MRO comparator over the three-year term of the Modified ESP of \$60.56/MWh, which is substantially lower than the

¹⁶ Schnitzer Direct, pp. 36-37.

¹⁷ Schnitzer Direct, pp. 26-27.

¹⁸ Schnitzer Direct, pp. 27-29, Ex. MMS-4.

¹⁹ Schnitzer Direct, Ex. MMS-4.

²⁰ Schnitzer Direct, p. 20.

²¹ Schnitzer Direct, pp. 21-25; *see also* R.C. § 4928.142 (establishing parameters for competitive bid process to acquire SSO load).

²² Schnitzer Direct, p. 21.

\$64.87/MWh Modified ESP price. When combined with the above-market costs of the new, nonbypassable RSR and GRR riders, this will result in approximately \$400 million in costs for customers above those that would be expected to result under an MRO.²³

In order to fully understand the quantitative impact of the Modified ESP, however, the Modified ESP's other costly provisions must be taken into consideration. Most notably, the Modified ESP's proposed two-tiered pricing for capacity provided to CRES providers is estimated to impose an additional \$875 million in charges above RPM-based prices.²⁴ Thus, the combined quantitative impact of the Modified ESP on all of AEP Ohio's connected load would be \$1.3 billion.²⁵ Duke Energy Retail Sales ("DERS") witness North similarly calculated that – including the generation price for SSO customers and the above-market capacity charges to shopping customers – “[i]n all, AEP Ohio is proposing an ESP that is \$1.427 billion more than the [market] MRO alternative for the three-year period.”²⁶ It should be noted that Mr. Schnitzer's ESP cost estimate of \$1.3 billion does not include the potential cost to customers of the pool modification provision, which is another potentially significant term of the Modified ESP.²⁷

²³ Schnitzer Direct, Ex. MMS-4 (noting above-MRO costs for the bypassable generation rate (\$105 million) and the nonbypassable RSR (\$284 million) and GRR (\$8 million)). The portion of the RSR and GRR costs allocable to SSO customers, using 32% of total load according to AEP Ohio's shopping estimates, is approximately \$94 million.

²⁴ Schnitzer Direct, p. 49.

²⁵ Schnitzer Direct, Ex. MMS-4, p. 1.

²⁶ Direct Testimony of Philip North on behalf of Duke Energy Retail Sales ("North Direct"), p. 9, PN-3; Tr. Vol. XII, p. 3319.

²⁷ AEP Ohio has proposed that if its corporate separation plan is amended or denied, it will seek to impose a nonbypassable charge to recover “lost revenues as part of the move to competitive markets.” Nelson Direct, p. 22. While Mr. Schnitzer did not include the pool modification provision in his ESP v. MRO Test, in accordance with the Commission's Stipulation ESP Order, he did estimate that the pool modification provision could result in approximately \$390 million of charges (that would not be imposed under an MRO), based on a methodology used by AEP in another jurisdiction. Schnitzer Direct, pp. 30-31; Tr. Vol. XII, pp. 3246-3247. Because the pool modification provision would not be available to AEP

In sum, setting aside the question of the appropriate capacity price to be charged to CRES providers, the Modified ESP is reasonably and conservatively estimated to cost \$400 million more than the expected results of an MRO. Once the above-market capacity pricing to shopping load is included, the Modified ESP is estimated to cost \$1.3 billion more than an MRO.

2. Every other Intervenor witness who performed a quantitative analysis concluded that the Modified ESP will cost substantially more than an MRO.

A number of other Intervenor witnesses and Staff also calculated the cost of the Modified ESP as compared to the expected costs under an MRO. All of these witnesses agreed that the Modified ESP would cost substantially more than an MRO. For example, Office of Ohio Consumers' Counsel ("OCC") witness Hixon recommended that "the Commission reject the Modified ESP because it fails to meet the statutory test"²⁸ and Industrial Energy Users-Ohio ("IEU") witness Murray calculated that the Modified ESP will cost SSO customers over \$407 million more than the expected results of an MRO.²⁹ DERS witness North calculated that, using RPM-based prices, "the proposed ESP harms customers versus the expected results under the MRO by over \$200 million through the three-year period."³⁰ Then, when the RSR and GRR are

Ohio under an MRO, the pool modification provision's costs should be considered in the ESP v. MRO test. As Mr. Schnitzer described, "[w]hile I recognize that the magnitude of these costs could vary, simply ignoring the potential costs of the PMR altogether biases the comparison in favor of the Modified ESP." Schnitzer Direct, p. 32. R.C. § 4928.143 requires the Commission's consideration of "all terms and conditions of an ESP" and the pool modification provision is a term of the Modified ESP. Including the pool modification provision costs in the Modified ESP would result in excess costs as compared to an MRO of \$800 million to \$1.7 billion. Schnitzer Direct, p. 6.

²⁸ Direct Testimony of Beth E. Hixon on behalf of the Office of the Ohio Consumers' Counsel ("Hixon Direct"), p. 22

²⁹ Direct Testimony of Kevin M. Murray on behalf of Industrial Energy Users-Ohio ("Murray Direct"), p. 70.

³⁰ North Direct, p. 6, PN-1; DERS Ex. 104 (Revised PN-3).

recognized, Mr. North calculated that the Modified ESP would cost almost \$500 million more than the expected results of an MRO.³¹

Staff also found that the Modified ESP will cost more than an MRO: “[U]nder all three . . . quantitative scenarios the [Modified] ESP as proposed by AEP is not more favorable than the blended MRO”³² Staff calculated that the Modified ESP, including only an admittedly “overly simplistic”³³ estimate of the RSR and without the necessary GRR,³⁴ would result in an average rate of \$63.92/MWh over the three-year term, as compared to \$60.51/MWh under an MRO for that same term using RPM-priced capacity.³⁵ Once the additional cost of the last five months of the Modified ESP is included, Mr. Fortney’s analysis shows that the Modified ESP would cost \$624 million more than an MRO.³⁶

Staff witness Fortney similarly concluded that the Modified ESP is less favorable than the expected results of an MRO³⁷ – and his analysis does not incorporate all of the necessary elements, which would make the Modified ESP even less favorable. For example, in his estimate of the Modified ESP price, Mr. Fortney included the RSR, but did not include the GRR

³¹ DERS Ex. 104 (Revised PN-3). Mr. North added his estimated \$923 million cost of the above-market capacity payments to this ESP cost to conclude that the total quantifiable detriment of the Modified ESP was \$1.427 billion. *Id.*

³² Direct Testimony of Robert Fortney on behalf of Staff (“Fortney Direct”), p. 6. Staff witness Fortney did not prepare an estimate of the price differential between January-May 2015, but he acknowledged that, during this five-month period, an MRO using RPM pricing for capacity would be lower than the Modified ESP price, including the \$255/MW-day price, by about \$8/MWh. Tr. Vol. XVI, p. 4608.

³³ Tr. Vol. XVI, p. 4582.

³⁴ Staff witness Fortney did not include the GRR (although he did in connection with his previous analysis of the Stipulation ESP), although he acknowledged that the GRR is not available under an MRO and that including the GRR “would increase the cost of an ESP.” Tr. Vol. XVI, pp. 4604-4605. He also acknowledged that he did not review the Commission’s direction to AEP Ohio to provide the costs associated with the Turning Point Solar project in connection with this proceeding. Tr. Vol. XVI, pp. 4604-4605.

³⁵ Fortney Direct, p. 6 (providing prices in ¢/kWh).

³⁶ Fortney Direct, Att. A (\$466 million); Tr. Vol. XVI, pp. 4608-4610 (\$158 million).

³⁷ Fortney Direct, p. 6.

(which is inconsistent with his presentation of the same analysis in the Stipulation ESP).³⁸ Mr. Fortney also did not include any MRO or ESP estimate for the period of January - May 2015, except for recognition of the RSR revenue over this time period.³⁹ He acknowledged that, if he had, the Modified ESP would cost approximately \$8.00/MWh more than an MRO during that time period, for an additional ~\$158 million in total costs to the Modified ESP.⁴⁰ Thus, the evidence that the Modified ESP is quantitatively (and substantially) less favorable than the expected results of an MRO is consistent and resounding.

3. In fact, the Modified ESP includes \$670 million more in costs than the Stipulation ESP, which was rejected by the Commission.

The Commission determined that the Stipulation ESP, even as modified by the Commission, “d[id] not benefit ratepayers and the public interest” after rehearing, in part due to the well-documented negative impacts of the Stipulation ESP on certain customer groups.⁴¹ It should, thus, raise concerns that AEP Ohio’s new Modified ESP proposal is much more costly than the Stipulation ESP – \$670 million more costly. FES witness Schnitzer testified that the “Modified ESP is in many respects worse for customers than the Stipulation ESP that was ultimately rejected by the Commission.”⁴² The increased costs are found in several provisions of the Modified ESP.

³⁸ See Fortney Direct, p. 3; Tr. Vol. XVI, p. 4588 (Mr. Fortney agreeing that, in the Stipulation ESP, he believed that GRR costs should be included in the ESP v. MRO Test “to the degree that those numbers are known”).

³⁹ Tr. Vol. XVI, pp. 4605-4606. Mr. Schnitzer calculated a \$60.56/MWh for the expected results of an MRO; Mr. Fortney’s calculation was \$60.51/MWh. Mr. Schnitzer calculated a \$64.87/MWh Modified ESP Price; Mr. Fortney’s calculation was \$63.92. Compare Schnitzer Direct, Ex. MMS-4, p. 1 with Fortney Direct, p. 6 (“Staff Blended MRO Attachment A-RPM”).

⁴⁰ Tr. Vol. XVI, pp. 4608-4610.

⁴¹ February 2012 Entry on Rehearing, p. 12; Direct Testimony of Roger R. Geiger on behalf of the National Federation of Independent Business/Ohio (“Geiger Direct”) (NFIB witness Geiger testified about the negative effects felt by small businesses under the Stipulation ESP).

⁴² Schnitzer Direct, p. 37; see also p. 42 (for table summarizing increased costs of Modified ESP).

- *Increased capacity costs for shopping customers: +\$360 million*

While the Stipulation ESP included Tier 1 capacity priced at RPM prices, AEP Ohio proposes to increase the price to a fixed \$146/MW-day charge over the term of the Modified ESP. This increase is responsible for approximately \$250 million in increased costs to shopping customers.⁴³ Governmental aggregation customers will also see approximately \$110 million more in costs: “[D]ue to the increased restrictions on aggregation load’s ability to receive Tier 1 capacity, approximately 7 TWH of load which was eligible for Tier 1 capacity at RPM charges under the Stipulation ESP will receive Tier 2 capacity under the Modified ESP at \$255/MW-day.”⁴⁴

- *New RSR charges for all customers = + \$284 million*

The wholly new proposed, nonbypassable RSR – which should be rejected for the numerous reasons discussed herein – will impose increased costs on all customers, including \$90 million to SSO customers and \$194 million to shopping customers.⁴⁵

- *Increased base generation charges for SSO customers = +\$14 million*

AEP Ohio’s proposal to lower and hold constant the base generation charge “is more than offset” by its proposal to charge SSO customers \$255/MW-day for capacity while holding a CBP for energy provided during the first five months of 2015: “Using the Company’s market price assumptions and models, SSO customers actually would pay more under the Modified ESP than under the earlier Stipulation ESP during the [entire] June 2012 - May 2015 delivery period.”⁴⁶

⁴³ Schnitzer Direct, p. 38.

⁴⁴ Schnitzer Direct, pp. 38-39.

⁴⁵ Schnitzer Direct, pp. 39 (\$100 million to Tier 1 customers, \$95 million to Tier 2 customers), 40, 42 (\$90 million to SSO customers).

⁴⁶ Schnitzer Direct, pp. 40, 42; Tr. Vol. IV, pp. 3265-3266.

- *Elimination of grants and MTR* = +\$10 million

The Modified ESP eliminates grants to the Partnership With Ohio and the Ohio Growth Fund, which the Commission previously found to be one of only three qualitative benefits of the Stipulation ESP.⁴⁷ After applying an offsetting reduction in costs due to elimination of the Market Transition Rider, the “Modified ESP includes additional net costs (or removal of benefits) totaling about \$10 million that would not have been applied under the Stipulation ESP.”⁴⁸

B. Once The Numerous Flaws Are Corrected In Ms. Thomas’ Analysis, AEP Ohio’s Own Price Test Confirms That The Modified ESP Will Cost More Than An MRO.

1. Ms. Thomas understated the price of the Modified ESP by failing to include significant costs, including those that the Commission has determined must be included.

In preparing her estimate of the price of the Modified ESP for her MRO Price Test, Ms. Thomas did not include any costs associated with the RSR or the GRR.⁴⁹ The RSR is a proposed “term and condition” of the Modified ESP that is not available under an MRO.⁵⁰ The rationale for including the RSR in the MRO Price Test (if any rationale other than the statute is necessary) is found in the Commission’s determination that the costs associated with the GRR should be considered, which is equally applicable to the RSR. In the Stipulation ESP Order, the Commission held that “Ms. Thomas erred by failing to include a cost for the GRR in her price comparison” because it is “reasonable” to include the projected costs included in AEP Ohio’s

⁴⁷ Tr. Vol. IV, p. 1315 (AEP Ohio witness Thomas confirming that such grants were eliminated in the Modified ESP proposal); Stipulation ESP Order, p. 32 (identifying such grants as benefits of the Stipulation ESP after eliminating the proposed pre-conditions).

⁴⁸ Schnitzer Direct, p. 41.

⁴⁹ See Thomas Direct, Ex. LJT-1. Ms. Thomas relegated the RSR cost to a separate schedule of quantifiable “benefits.”

⁵⁰ See R.C. § 4928.142. Staff agreed in that it included the RSR in Mr. Fortney’s analysis. Fortney Direct, p. 3.

own presentation and because AEP Ohio has claimed the rider as a benefit.⁵¹ As it does again with the GRR, AEP Ohio claims the RSR is a “benefit” of the Modified ESP,⁵² and so its costs must be included in the MRO Price Test. AEP Ohio’s own estimate of the cost of the RSR, however, exceeds even Ms. Thomas’ calculation of the difference between the Modified ESP price and the MRO price.⁵³ Indeed, Ms. Thomas admitted that if the RSR alone was included in her MRO Price Test, the Modified ESP would fail the test.⁵⁴

Despite the Commission’s clear direction regarding the costs of the GRR, Ms. Thomas claims that she did not include the GRR costs because she believed, based on advice of counsel, that the GRR would be recoverable through an ESP or an MRO.⁵⁵ However, there is no provision under R.C. § 4928.142 that would allow for the recovery of such costs on a nonbypassable basis.⁵⁶ On cross-examination, Ms. Thomas testified “I don’t recall” whether the Commission found her failure to include the GRR under her MRO Price Test for the Stipulation ESP was an error.⁵⁷ Of course, the Commission even more recently affirmed the importance of including such costs in AEP Ohio’s presentation of the Modified ESP, when it ordered AEP Ohio to supplement its application with such cost information.⁵⁸ Mr. Schnitzer’s estimated

⁵¹ Stipulation ESP Order, p. 30.

⁵² See Supplemental Direct Testimony of Selwyn J. Dias on behalf of AEP Ohio (“Dias Supplemental Direct”), pp. 3-4 (alleged “benefits” of the RSR); *see also* Dias Direct, pp. 13-14 (“benefits” of the GRR).

⁵³ Schnitzer Direct, p. 17 (“Ms. Thomas claims that the Modified ESP Price is more favorable than the expected price under an MRO by \$256 million before accounting for the RSR (which, according to the Company’s estimates, is expected to cost \$284 million).”).

⁵⁴ Tr. Vol. IV, p. 1296.

⁵⁵ Tr. Vol. IV, pp. 1310-1311.

⁵⁶ Staff witness Fortney agreed the GRR is not available under an MRO. Tr. Vol. XVI, pp. 4604-4605.

⁵⁷ Tr. Vol. IV, p. 1311.

⁵⁸ Entry, Apr. 25, 2012 at ¶ 5 (“As we established in our December 14, 2011, Opinion and Order, we believed the inclusion of projected Turning Point solar project costs were an important consideration in the statutory test under Section 4928.143, Revised Code. Further, AEP-Ohio provided such project costs

\$64.87/MWh Modified ESP price corrects for both of these errors by including the costs of the RSR and the GRR.

2. Ms. Thomas overstated the price of the CBP component in the MRO by using a cost-based capacity rate instead of the market-based rate.

Ms. Thomas significantly overstated the price of the CBP component in the MRO price, which she then compares to the Modified ESP price in her MRO Price Test. A fatal flaw with Ms. Thomas' estimate of the CBP component in the MRO price is her use of the significantly above-market \$355/MW-day capacity price⁵⁹ in the estimate of the price that would result from the wholesale CBP under an MRO.⁶⁰ There are myriad reasons as to why this is an inaccurate and improper calculation – including the law, policy, and common sense. Notably, all of the intervenor witnesses, including Staff, agree that AEP Ohio erred by including its claimed capacity costs in what is supposed to be a market-based price. Staff witness Choueiki testified that “it is not” reasonable to use a cost-based capacity component charge in developing an estimate of the MRO.⁶¹ Duke witness North testified: “[C]urrent market prices must be used for capacity and not the significantly higher costs that AEP Ohio seeks to impose on shopping customers. An MRO, by definition, is based upon competitive bid prices or market rates.”⁶² If this one correction is made to Ms. Thomas' analysis, her estimate of the CBP component of the

in the previous evidentiary hearing in this case. . . . Therefore, while we stress that the Commission is not predetermining or prejudging the merits of AEP-Ohio's modified application, having information related to any projected rate impacts by customer class, as well as any projected costs that are currently known to be associated with the creation of the Turning Point facility available for the Commission's consideration, is not only necessary for our consideration of the modified application, but is also in the public interest.”).

⁵⁹ Ms. Thomas actually prepares two MRO Price Tests, using two different above-market capacity pricing structures for capacity in the CBP. *See* Thomas Direct, Exs. LJT-1 (\$355/MW-day) and LJT-5 (blending of \$355/MW-day, \$146/MW-day, and \$255/MW-day); *see also* Schnitzer Direct, p. 21. Ms. Thomas testified that the Commission should rely on the MRO Price Test using the \$355/MW-day capacity price, as reflected by Ex. LJT-1. Thomas Direct, p. 22.

⁶⁰ *See* R.C. § 4928.142.

⁶¹ Direct Testimony of Hisham Choueiki on behalf of Staff (“Choueiki Direct”), p. 5.

⁶² North Direct, p. 4.

MRO would drastically decrease from \$71.60/MWh to \$50.96/MWh.⁶³ In fact, Staff witness Johnson found that AEP Ohio’s calculation of the MRO CBP was a reasonable prediction of other recent auctions in Ohio “*so long as the appropriate transparent market values are used . . . for the Capacity components.*”⁶⁴ When this correction is made to Ms. Thomas’s calculation, the Modified ESP cost (even if the other errors in her analysis are left uncorrected) is substantially higher than the expected results of an MRO.⁶⁵

a. Ohio law requires a market-based price for capacity in the MRO CBP.

The statutory ESP v. MRO Test set forth in R.C. § 4928.143(C)(1) provides that a proposed ESP must be compared to (and more favorable than) the “expected results that would otherwise apply under section 4928.142 of the Revised Code.” Section 4928.142 details the parameters of an SSO provided through an MRO, including that “[t]he market-rate offer shall be determined through a competitive bidding process.”⁶⁶ The statute specifically provides that under the MRO:

All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the [SSO], including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, shall be timely recovered through the [SSO] price⁶⁷

⁶³ Schnitzer Direct, p. 24. The change to market-based pricing would also decrease her estimate under Ex. LJT-5, from \$63.80/MWh to \$50.96/MWh. *Id.*

⁶⁴ Direct Testimony of Daniel R. Johnson on behalf of Staff (“Johnson Direct”), p. 26 (emphasis added)

⁶⁵ *See* Thomas Direct, Ex. LJT-1 (the two blended components of the MRO price – Ms. Thomas’ \$62.17/MWh “generation service price” and the corrected \$50.96/MWh “expected bid price” – are substantially lower than her estimated \$63.62/MWh average Proposed ESP Price).

⁶⁶ R.C. § 4928.142(A)(1).

⁶⁷ R.C. § 4928.142(C)(3) (emphasis added).

Thus, the statutory test for an ESP requires that it be compared to an MRO that includes competitive market-based pricing for the procurement of SSO supply, “including the costs of energy and capacity.” AEP Ohio’s \$355/MW-day price is purportedly based on its fully embedded costs; it does not reflect a competitive market-based price. Thus, RPM pricing must be used to test the Modified ESP against the expected results of an MRO.

b. RPM pricing is the market price for capacity in PJM, including AEP Ohio’s zone.

AEP Ohio may seek to challenge the use of RPM prices for capacity under an MRO by arguing that the RPM price is not a “market” price. However, the record evidence – including the testimony of both AEP Ohio’s and FES’ witnesses – establishes that the RPM price is not only a market price, but a market price that is successfully working to provide the appropriate incentives for ensuring adequate reliability (as discussed further below). As Staff witness Johnson summarized, “[t]he market price of capacity is set by means of capacity auctions that are administered by PJM.”⁶⁸ FES witness Stoddard further explained:

The appropriate capacity price [for an MRO] is the RPM RTO auction price. This is the rate at which the vast majority of capacity supply resources in PJM will be paid, and it is the reference price in general use for bilateral capacity trades. The RPM RTO price is the result of a market mechanism that has been found to be just and reasonable by the FERC, and the operation of this mechanism is carefully monitored to ensure that the resulting price has not been distorted by market power or other non-competitive influences.

. . . AEP Ohio instead holds out as “market” a rate for capacity that is based on an estimate of the full embedded costs of the capacity resources. . . . This rate is inconsistent with capacity prices set in a competitive wholesale market. In offering into a capacity *market*, competitive suppliers would base their offer prices on the costs that they could avoid by mothballing or retiring a resource. In addition, any earnings expected from the capacity resources from the sale of

⁶⁸ Johnson Direct, p. 6.

energy and other services should reduce the capacity price. This is the approach specified in the PJM tariff Thus, capacity price in the MRO should not be based on AEP Ohio's embedded costs, but rather on the outcome of this market process: the RPM RTO capacity price.⁶⁹

AEP Ohio witness Graves acknowledged that the FERC generally regards the RPM process as a market-based process: "*They're no doubt aware that it has administrative elements but certainly it is market-like in design and intent.*"⁷⁰ He also testified that the FERC has indicated that, in comparison to cost-based regulation, the RPM process is just and reasonable.⁷¹ Further, R.C. § 4928.142 anticipates the use of RTO pricing under an MRO in that it requires that the utility "belong[] to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or [that] there otherwise is comparable and nondiscriminatory access to the electric transmission grid."⁷² Thus, PJM's RPM pricing is the market price for capacity under an MRO.

- c. AEP Ohio's \$355/MW-day price also is inappropriate because cost-based pricing would not be available through PJM for capacity provided for an MRO CBP.

AEP Ohio has consistently blurred the distinction between the pricing for capacity used in an MRO and the pricing for capacity provided to CRES providers. They are two separate and distinct issues. The Commission's consideration of the state compensation mechanism (in Case No. 10-2929-EL-UNC) and of AEP Ohio's proposed two-tiered capacity pricing in this Modified ESP proceeding is irrelevant to the price of capacity to be included in the CBP component of the MRO for the quantitative ESP v. MRO Test. As FES witness Stoddard explained, "[T]he state

⁶⁹ Direct Testimony of Robert Stoddard on behalf of FirstEnergy Solutions Corp. ("Stoddard Direct"), pp. 5-6.

⁷⁰ Tr. Vol. III, p. 766 (emphasis added).

⁷¹ Tr. Vol. III, p. 766, 827.

⁷² R.C. § 4928.142(B)(1).

compensation mechanism describes how shopping customers are charged, it does not say anything about how nonshopping customers are charged.”⁷³ As IEU witness Murray testified, “Ms. Thomas fails to recognize that under an MRO, which provides for generation prices to be established pursuant to a CBP, the CBP bidders are engaged in a wholesale transaction to provide generation service to the EDU responsible for providing the SSO, and the EDU remains the LSE under PJM’s tariff. Thus, the state compensation mechanism reflected in PJM’s tariff would not be applicable to bidders in an MRO CBP.”⁷⁴ AEP Ohio witness Graves acknowledged that under an SSO CBP, the winning bidders would not be retail LSEs and the Reliability Assurance Agreement’s (“RAA”) provisions for a state compensation mechanism relate to the charge to retail LSEs.⁷⁵ Therefore, Mr. Graves agreed, a winning bidder in an SSO CBP would not necessarily be subject to a charge under the state compensation mechanism because those winning bidders would not be retail LSEs.⁷⁶ AEP Ohio’s use of \$355/MW-day as the capacity price for the CBP component of an MRO is improper and lacks any foundation.

d. There is no other reasonable basis on which to use an above-market price for capacity in the estimate of the MRO CBP.

Ms. Thomas’ justification for her use of above-market capacity prices in the CBP is neither reasonable nor credible. She testified simply that it is appropriate to use the \$355/MW-day price in the CBP because it is the purported cost of AEP Ohio’s FRR obligation (although she also testified “I don’t know the details of the FRR”).⁷⁷ As set forth above, AEP Ohio’s FRR obligation and the RAA’s provisions for a state compensation mechanism or generally for

⁷³ Tr. Vol. VI, p. 1771 (emphasis added).

⁷⁴ Murray Direct, p. 63.

⁷⁵ Tr. Vol. III, pp. 792-793.

⁷⁶ Tr. Vol. III, p. 793.

⁷⁷ Tr. Vol. IV, pp. 1281, 1286, 1288.

capacity charges to retail LSEs are wholly separate and distinct from the capacity prices applicable to wholesale suppliers in a “market-rate offer” SSO CBP. AEP Ohio’s position on this issue comes down to “because I said so.” For example, Ms. Thomas testified that the above-market capacity prices should be included even if the Commission held that AEP Ohio’s costs were not \$355/MW-day.⁷⁸ AEP Ohio’s position on this issue also is inconsistent with previous presentations that it has made to the Commission. Ms. Thomas acknowledged that in submitting its first ESP application, when AEP Ohio also was an FRR entity, AEP Ohio used RPM prices for the competitive benchmark price.⁷⁹ Thus, AEP Ohio cannot credibly claim that it must charge cost-based capacity prices to wholesale suppliers simply because AEP Ohio is an FRR entity.

3. When corrected, Ms. Thomas’ MRO Price Test confirms that the Modified ESP would cost more than an MRO and, thus, is not a benefit to customers.

As described above, Ms. Thomas’s calculation that the Modified ESP price is more favorable than the expected MRO price contains significant errors. When the price components are corrected, as reflected by Mr. Schnitzer’s analysis, the Modified ESP’s cost will exceed that of an MRO – by at least \$400 million and as much as \$1.3 billion.⁸⁰

⁷⁸ Tr. Vol. IV, pp. 1282, 1283.

⁷⁹ Tr. Vol. IV, p. 1290; *see also* Schnitzer Direct, p. 22.

⁸⁰ Schnitzer Direct, p. 20 and Ex. MMS-4.

		Ms. Thomas' Calculation ⁸¹	Corrections	Result ⁸²
ESP	Modified ESP Price	\$63.62	↑RSR (\$1.96) ↑GRR (\$0.06) ⁸³	\$64.87
MRO	Expected Bid Price	\$71.60	↓RPM pricing for capacity (\$20.63) ⁸⁴	\$50.96
	Generation Service Price	\$62.17	n/a	\$62.17
	Blended MRO Price	\$65.39	↓Blending of corrected Prices (\$4.83)	\$60.56

In addition to Ms. Thomas's errors in calculating the difference between the price of the Modified ESP and an MRO, her use of load figures to convert the price difference to total dollar differences between the ESP and an MRO is also wrong. Specifically, Ms. Thomas' MRO Price Test concluded that the Modified ESP provided a quantifiable benefit of \$256 million.⁸⁵ Ms. Thomas calculated this by subtracting her Modified ESP price from her MRO price and multiplying the difference by AEP Ohio's total connected load.⁸⁶ By using the total connected load, Ms. Thomas inflated the benefit of the purportedly lower Modified ESP price because she included the load of shopping customers who would not pay the Modified ESP price. Ms. Thomas' use of the total connected load is wholly inconsistent with AEP Ohio's assumption that

⁸¹ Thomas Direct, Ex. LJT-1, p. 2.

⁸² Schnitzer Direct, Ex. MMS-4.

⁸³ Mr. Schnitzer made an additional correction to Ms. Thomas' Modified ESP Price. Ms. Thomas incorrectly used a higher \$355/MW-day capacity price in connection with the proposed January-May 2015 energy-only auction, whereas AEP Ohio proposes to charge \$255/MW-day to SSO customers for capacity in connection with this auction. Schnitzer Direct, p. 18. This correction lowers Ms. Thomas's estimate of the Modified ESP Price.

⁸⁴ Schnitzer Direct, Ex. MMS-2.

⁸⁵ Thomas Direct, Ex. LJT-1, p. 1.

⁸⁶ Tr. Vol. IV, p. 1267.

more than half of AEP Ohio's connected load would shop under the Modified ESP. She explained that she used the total connected load purportedly "because every customer can take SSO service."⁸⁷ But, as she admitted, a customer cannot be a shopping customer and a non-shopping customer at the same time⁸⁸ and a non-shopping customer would not be paying both a CRES provider and the Modified ESP price.⁸⁹

Ms. Thomas's use of the total connected load to calculate a \$256 million "benefit" thus double-counts the claimed benefits. She assumes that every AEP Ohio customer receives a "benefit" of the Modified ESP price, but also adds a benefit for "discounted capacity" that would be received only by CRES providers serving shopping customers. (The latter alleged benefit was calculated by AEP Ohio witness Allen and provided to Ms. Thomas, and it assumes that 68% of customer load in AEP Ohio's service area will be shopping.) Ms. Thomas has "double-counted" the alleged benefit (shown in Exhibit LJT-1, page 1) by assuming that customers can receive at the same time AEP Ohio's claimed "benefit" of lower SSO prices (assuming no shopping) and "discounted capacity" (assuming significant shopping). A shopping customer cannot receive the alleged benefit of "discounted, tiered capacity pricing for CRES providers," and at the same time, receive the alleged benefit of a lower SSO price.⁹⁰ Ms. Thomas acknowledged that if she had applied Mr. Allen's shopping assumptions to the MRO Price Test, her quantified "benefit" would be in the "ballpark" of \$82 million, as opposed to her calculation of \$256 million.⁹¹

⁸⁷ Tr. Vol. IV, p. 1267.

⁸⁸ Tr. Vol. IV, p. 1263.

⁸⁹ Tr. Vol. IV, pp. 1264, 1268-1269.

⁹⁰ Schnitzer Direct, pp. 33-34.

⁹¹ Tr. Vol. IV, p. 1271 (also acknowledging that the reduction for shopping customers as applied to her Alternative MRO Price Test calculation would reduce the purported benefit of \$81 million to "in the ballpark" of \$26 million); Schnitzer Direct, pp. 33-34 (calculating a \$80 million "benefit" using Thomas's

4. The Modified ESP fails the statutory test even if other capacity prices are used in the MRO CBP.

As set forth above, RPM pricing is the only appropriate pricing to use in estimating the CBP component in the MRO Price. FES witness Schnitzer showed that, regardless of the applicable capacity charges to CRES providers serving shopping customers, the Modified ESP price would not be more favorable than the MRO price but would, instead, impose additional costs of \$400 million up to \$1.3 billion on all of AEP Ohio's customers.⁹² Mr. Schnitzer's analysis correctly uses RPM prices in estimating the CBP component in the MRO price.

However, even if another capacity price is assumed in the CBP component of the MRO price, the Modified ESP is still less favorable. For example, Ms. Thomas acknowledged, as she must, that using a capacity price of \$146/MW-day in the CBP would reflect a lower "benefit" as compared to the Modified ESP price.⁹³ Staff witness Fortney calculated that using either \$146/MW-day or \$255/MW-day for capacity in the CBP price still results in the Modified ESP being less favorable than the MRO price.⁹⁴ At \$146/MW-day, Mr. Fortney calculated that the Modified ESP would cost \$2.40/MWh more than an MRO.⁹⁵ At \$255/MW-day, Mr. Fortney calculated that the Modified ESP would cost \$1.12/MWh more than an MRO.⁹⁶ Thus, AEP Ohio cannot use the capacity price used in the MRO CBP to justify the Modified ESP. The Modified ESP remains less favorable.

erroneous Modified ESP Price); *see also* Thomas Direct, Ex. LJT-1, LJT-5 (providing alternative MRO price test).

⁹² Schnitzer Direct, p. 36, Ex. MMS-4.

⁹³ Tr. Vol. IV, p. 1295.

⁹⁴ Fortney Direct, p. 6.

⁹⁵ Fortney Direct, p. 6 (ESP = \$63.92/MWh; MRO = \$61.52/MWh).

⁹⁶ Fortney Direct, p. 6 (ESP = \$63.92/MWh; MRO = \$62.80/MWh).

C. The Arbitrary Above-Market Capacity Prices For CRES Providers Do Not Constitute A Benefit Of The Modified ESP.

To try to bolster its support of the Modified ESP, AEP Ohio quantifies other terms and conditions of the Modified ESP as purported benefits.⁹⁷ “Discounted” capacity is the largest such quantified “benefit.”⁹⁸ Ms. Thomas calculates that the Modified ESP is quantitatively more favorable than an MRO by \$960 million.⁹⁹ This calculation includes Mr. Allen’s \$989 million estimate of the “discounted, tiered capacity.”¹⁰⁰ Thus, without this “discounted” capacity estimate, the Modified ESP would be less favorable than the expected results of an MRO, even under AEP Ohio’s own calculations.¹⁰¹ Specifically, without this “capacity discount” and without making any other corrections to Ms. Thomas’ flawed calculation of the MRO Price Test, AEP Ohio would find that the Modified ESP costs \$28 million more than the expected results of an MRO.¹⁰² Regardless, the “capacity discount” should not be included and is inappropriate for a number of reasons, not the least of which is the Commission’s previous decision in the Stipulation ESP Order.

1. The Commission already has held that the “capacity discount” cannot be said to be a (quantitative or qualitative) benefit of an ESP.

In response to AEP Ohio’s similar Stipulation ESP proposal and its calculation of a benefit for “discounted capacity,” the Commission held that:

... 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

⁹⁷ See Thomas Direct, Ex. LJT-1, p. 1.

⁹⁸ Tr. Vol. IV, p. 1261 (Thomas).

⁹⁹ Thomas Direct, p. 4, Ex. LJT-1, p. 1.

¹⁰⁰ Thomas Direct, Ex. LJT-1, p. 1.

¹⁰¹ Tr. Vol. IV, p. 1264.

¹⁰² Schnitzer Direct, p. 12, 15.

was never certain and, therefore, it cannot be considered as either a benefit or meaningful number for the purposes of conducting the statutory test.¹⁰³

Ms. Thomas acknowledged that neither the Commission nor the FERC have ever approved the \$355/MW-day capacity price.¹⁰⁴ Therefore, based on the Commission's holding, the "discounted capacity" cannot be considered a benefit of the Modified ESP – nor should it, on any common sense level. Rather, the Modified ESP represents an incremental cost since it assumes above-market capacity charges to CRES suppliers in excess of those approved by the Commission.¹⁰⁵

2. Even if "discounted" capacity prices were a benefit of the Modified ESP, the alleged "value" of that benefit is wholly based on what AEP Ohio believes it is entitled to charge.

There can be no dispute that the amount of the capacity charge "discount" – the difference between AEP Ohio's asserted entitlement to charge a \$355/MW-day capacity price and the two tiered capacity prices – is arbitrary and overstated. In fact, Mr. Allen admitted that the amount of the discount is arbitrary.¹⁰⁶ Further, the "discount" is based solely on AEP Ohio's unsupported belief that it is entitled to charge \$355/MW-day for capacity and the values that it unilaterally chose to use for the two tiers.¹⁰⁷ Logically, if the amount AEP Ohio was authorized to charge CRES providers was different than \$355/MW-day, so would the amount of the

¹⁰³ Stipulation ESP Order, pp. 30-31.

¹⁰⁴ Tr. Vol. IV, pp. 1285-1286.

¹⁰⁵ Schnitzer Direct, pp. 14-15.

¹⁰⁶ Tr. Vol. V, pp. 1407-1408.

¹⁰⁷ See Tr. Vol. V, p. 1367 (AEP Ohio witness Allen: "Yes, because that's AEP's cost of capacity."). Only if the Commission and FERC find that AEP Ohio's costs are something other than \$355/MW-day and all of AEP Ohio's appeals and federal court remedies are exhausted does AEP Ohio witness Allen believe that the "benefit" of the "discounted" capacity could be reduced. Tr. Vol. V, p. 1369. Mr. Powers further testified that he believes that "AEP has a contractual obligation for FRR, \$355 per megawatt-day is the cost of capacity so that 146 and 255 is a discount to that." Tr. Vol. I, p. 332. As discussed herein, AEP Ohio has no such entitlement and no such "contractual obligation."

“discount.” As Mr. Dias acknowledged, “if the Commission imposes a capacity price that is less than what we have proposed in our modified ESP, th[ere] would not be a discount.”¹⁰⁸ At the same time, if AEP Ohio chose to assign a different price for the two tiers proposed in the Modified ESP, the amount of the “discount” also would change. Thus, AEP Ohio’s calculated “capacity discount” is an arbitrary calculation designed to try to cover the unfavorable flaws of the Modified ESP.

Moreover, Mr. Powers acknowledged that a significant part of the cost recovered through the proposed RSR is the difference between the \$355/MW-day price and the “discounted” rates proposed in the Modified ESP.¹⁰⁹ It cannot be said to be a discount when AEP Ohio is recovering the discount through separate charges. As IEU witness Murray testified:

[AEP Ohio’s] latest claim that “discounted” capacity pricing is a benefit under the Modified ESP is even more ludicrous when the effects of the RSR are recognized for purposes of conducting the MRO versus ESP analysis. . . . [U]nder AEP-Ohio’s proposal any change in the level of capacity pricing up or down will translate into a dollar for dollar change in the level of the RSR. . . . Thus, the RSR is designed to act [as] a backstop to guarantee AEP-Ohio a target level of generation revenue irrespective of what level of capacity pricing may ultimately be approved.¹¹⁰

Second, the load to which this “discount” is applied also is overstated. To calculate the \$989 million value, Mr. Allen applied the (overstated) “discount” to the load resulting from his shopping assumptions,¹¹¹ which are suspect, as discussed below. Indeed, AEP Ohio witnesses acknowledged that AEP Ohio has an incentive to overstate its shopping load to improve the purported discount: The \$989 million “benefit” would be lower if the shopping assumptions

¹⁰⁸ Tr. Vol. VI, p. 1967.

¹⁰⁹ Tr. Vol. II, pp. 406-407.

¹¹⁰ Murray Direct, p. 53.

¹¹¹ Tr. Vol. IV, p. 1261.

were lower.¹¹² In sum, AEP Ohio's calculation of the "discounted capacity" benefit of the Modified ESP is unsupported, arbitrary, and incorrect – and should be ignored for the purposes of the Commission's review of the Modified ESP. "In total, AEP Ohio's SSO and non-SSO customers will be forced to pay almost \$1.6 billion in excess of market prices for capacity under the Modified ESP. That is a cost to all AEP Ohio customers, not a benefit."¹¹³

3. The changing assumptions underlying AEP Ohio's presentations – particularly with regard to its shopping assumptions – raise questions.

Through the course of this proceeding, questions were raised about the accuracy and/or propriety of AEP Ohio assumptions and data that form the basis of its presentation of the Modified ESP. AEP Ohio failed to prepare certain analyses that are important considerations for the Commission in reviewing the Modified ESP proposal. For example, it was not until the Commission ordered AEP Ohio to do so that AEP Ohio provided any analysis of the potential costs of the Turning Point Solar project to be included in the GRR, despite the fact that it previously prepared estimates in connection with the Stipulation ESP.¹¹⁴ Ms. Thomas did not perform a calculation of the MRO Price Test using a CBP that included RPM-based capacity prices.¹¹⁵ She had performed such a calculation in connection with the Stipulation ESP proposal, although she "didn't save it."¹¹⁶ Ms. Thomas also did not perform any comparison with CBP

¹¹² Tr. Vol. IV, p. 1262 (AEP Ohio witness Thomas); Tr. Vol. V, p. 1370 (AEP Ohio witness Allen).

¹¹³ Direct Testimony of Jonathan A. Lesser on behalf of FirstEnergy Solutions Corp. ("Lesser Direct"), p. 13.

¹¹⁴ See AEP Ohio "Commission-Ordered Testimony" filed May 2, 2012.

¹¹⁵ Tr. Vol. IV, p. 1293.

¹¹⁶ Tr. Vol. IV, p. 1294. While Mr. Schnitzer accepted the current fuel factor in his calculation of the MRO Price Test, in accordance with the Commission's direction in the Stipulation ESP Order (p. 31), Ms. Thomas' inconsistent approach to accounting for fuel costs illustrates another questionable use of data to slant AEP Ohio's presentation of the impact of its proposed Modified ESP. Ms. Thomas kept the fuel factor constant throughout the term of her MRO Price test, but acknowledged that it is unlikely that the fuel factor actually will be constant and that she did not hold other components, such as energy prices, constant. Tr. Vol. IV, pp. 1299-1300. In addition, she used current fuel factors on the MRO side and the

outcomes in Ohio or other PJM territories, which could provide important context for the impact of the Modified ESP.¹¹⁷ In addition, the exhibits estimating rate and rate impacts do not include any illustration of the potential impact of the pool modification rider.¹¹⁸

The most striking example is AEP Ohio's projection of the shopping it purportedly believes will occur in its service territory over the term of the Modified ESP. This projection is fundamental to many of AEP Ohio's quantitative analyses, including the ESP v. MRO Test and the projected impact of the proposed RSR. Mr. Allen testified that he "ha[s] assumed customer switching increases to 65% of load for residential customers, 80% of load for commercial customers, and 90% of load for industrial customers (excluding a single large customer) by the end of 2012 and remains at those levels through May of 2015."¹¹⁹ These "assum[ptions]" represent a drastic increase in AEP Ohio's switch rates, which historically have been the lowest of all EDUs in the state.¹²⁰

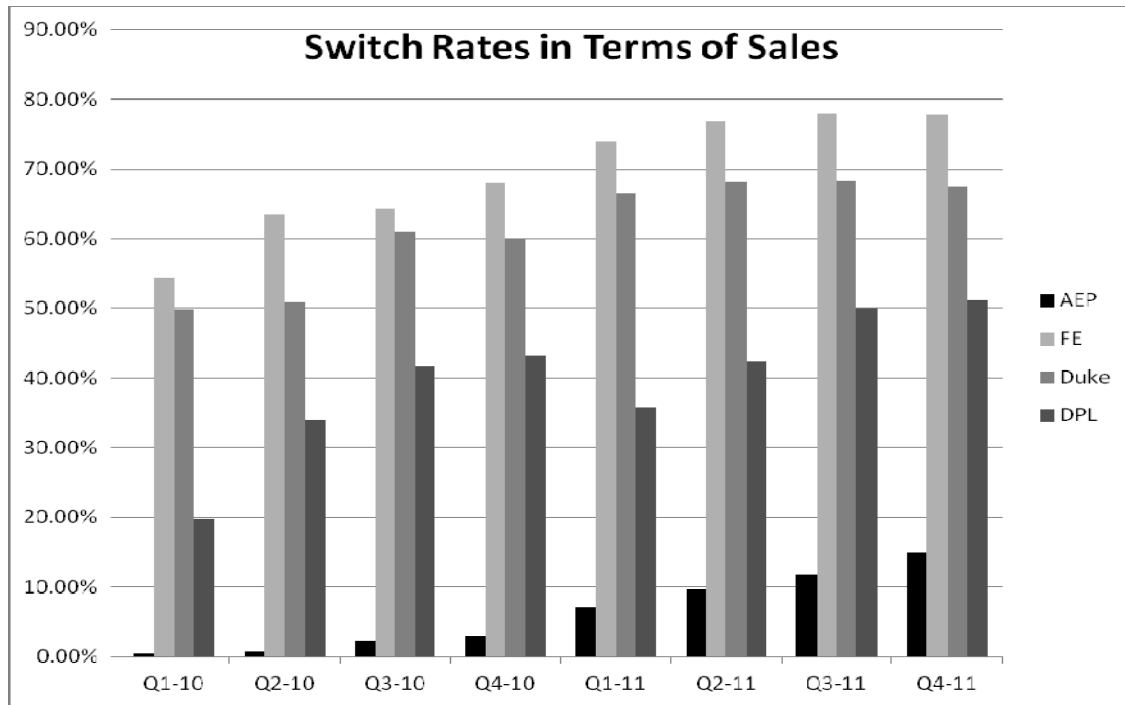
proposed fuel factors, which are different and lower, on the ESP side. Tr. Vol. IV, p. 1305, 1308-1310. If she used the proposed fuel factors (prepared by Mr. Roush) for the MRO price, the MRO would be lower than what she calculated. Tr. Vol. IV, p. 1305.

¹¹⁷ Tr. Vol. IV, p. 1342.

¹¹⁸ Tr. Vol. IV, p. 1111.

¹¹⁹ Direct Testimony of William A. Allen on behalf of AEP Ohio ("Allen Direct"), p. 5.

¹²⁰ See Banks Testimony, pp. 14-15.



Even the updated statistics provided in Mr. Allen’s rebuttal testimony reflect that AEP Ohio’s shopping rates remain the lowest in the state; in fact, AEP Ohio’s switch rates are 40% lower than the average of all of the other EDUs on a total company basis.¹²¹ His updated statistics also rebut his inflated shopping assumptions by year-end 2012. The minimal increase in shopping seen since March 2012 reflect that the switch rates are already below his forecasted values.¹²²

Indeed, Mr. Allen’s assumptions lack any analytical support. Mr. Allen’s assumptions are not drawn on experience or expertise; he has never worked for a CRES provider and does not have regular dealings with AEP Retail.¹²³ Mr. Allen instead testified that he based his assumption in part on the Commission’s shopping statistics.¹²⁴ The statistics do not rationally

¹²¹ Tr. Vol. XVII, pp. 4827-4828.

¹²² Tr. Vol. XVII, pp. 4836-4840, FES Ex. 120.

¹²³ Tr. Vol. V, p. 1371.

¹²⁴ Tr. Vol. V, p. 1373.

support his assumptions, however, as can be seen with respect to Mr. Allen's assumption that 65% of AEP Ohio's residential load will shop by the end of the year. The Commission's statistics reflect that Mr. Allen's assumption of 65% residential shopping would be higher than the average of the EDUs in Ohio.¹²⁵ Mr. Allen tried to compare his residential shopping assumption to the higher shopping rates seen in the FirstEnergy Ohio utilities' territories, but he acknowledged that 90% of the FirstEnergy Ohio territories' residential shopping is associated with governmental aggregation and that only 48% percent of his assumed residential shopping in AEP Ohio's territory is associated with governmental aggregation.¹²⁶ Further, he acknowledged that there are no large-scale governmental aggregation organizations such as NOPEC and NOAC that are active in AEP Ohio's service territory.¹²⁷ At the same time, AEP Ohio witness Roush acknowledged that the rates provided in his "Summary of Proposed ESP Rate Increases" are based on an assumed switch rate of 10-15%.¹²⁸

The explanation for these changing presentations is evident when one considers the impact of the data. AEP Ohio's inflated switching statistics, among other things, increases the purported benefit of the "discounted capacity" (as discussed above), suggests a wholly disputed pro-competitive impact and lowers its forecasted ROE (as discussed below).¹²⁹ Schools witness Frye testified to another self-serving impact of AEP Ohio's distortion of the shopping assumptions: "This aggressive switching projection [in the Modified ESP] becomes suspect when considering AEP-Ohio's Motion for Relief filed in Case No. 10-2929-EL-UNC on March

¹²⁵ Tr. Vol. V, p. 1373.

¹²⁶ Tr. Vol. V, pp. 1375, 1378-1379.

¹²⁷ Tr. Vol. V, p. 1392.

¹²⁸ Tr. Vol. IV, p. 1069.

¹²⁹ See Direct Testimony of Oliver J. Sever on behalf of AEP Ohio ("Sever Direct"), Ex. OJS-2; Tr. Vol. III, p. 903.

30, 2012,” in which AEP Ohio “urged the Commission to adopt, on an interim basis, the two-tiered capacity charge proposed in this case to stop customers from leaving the standard service offer.”¹³⁰ Thus, on the one hand, AEP Ohio asked for above-market capacity prices to stop shopping and, on the other, AEP Ohio now represents to the Commission that with those same above-market capacity prices its shopping will drastically increase in the next six months to the highest levels in the state. The Modified ESP’s 65%/80%/90% switching assumptions also are vastly different than AEP’s assumption of *a 24% switch rate under RPM-based capacity prices* in its “Japan Road Show” presentation to foreign investors just one month before its Modified ESP testimony was filed.¹³¹

The Commission’s ability to assess the impact of the Modified ESP is limited when the data and assumptions presented to it are questionable, as the Commission noted in its Entry on Rehearing.¹³² Here, a number of AEP Ohio’s core assumptions behind the Modified ESP are questionable. A closer examination of those core assumptions dispels any quantitative benefit of the Modified ESP. To the contrary, the Modified ESP will cost AEP Ohio’s customers \$400 million to \$1.3 billion more than the expected results of an MRO.

¹³⁰ Direct Testimony of Mark Frye on behalf of the Schools Coalition (“Frye Direct”), p. 11 (emphasis added) *citing* AEP Ohio’s Motion for Relief, Case No. 10-2929-EL-UNC, filed Mar. 30, 2012, at p. 2.

¹³¹ Tr. Vol. III, p. 903; FES Exs. 108, 109. To the extent AEP Ohio seeks to minimize such a comparison by arguing that the “Japan Road Show” was prepared before the Commission rejected the Stipulation ESP, that argument further lacks credibility. The Stipulation assumed two tiers, with one tier being RPM pricing – pricing lower than AEP Ohio proposes now. Thus, if the “Japan Road Show” envisioned the implementation of the Stipulation ESP, AEP would have assumed only 24% switching at *lower capacity prices*.

¹³² March 2012 Entry, p. 11 (noting that “the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts” and that “the actual impacts suffered . . . appear to have vastly exceeded AEP-Ohio’s representations at hearing”).

D. The Modified ESP Is Not Qualitatively More Favorable Because AEP Ohio's Claimed "Benefits" Are Not Benefits Of The Modified ESP.

1. The "transition" to market and the limited CBPs proposed in the Modified ESP are not "benefits."

- a. The Modified ESP's timeline for "transition" is not more favorable than could occur under an MRO or a properly designed ESP and, in any case, will occur regardless of the Modified ESP.

The evidence established in this proceeding confirms that the Modified ESP does not provide a transition to market that could be considered a "benefit" of the Modified ESP. Recognizing the Commission's previous views on the potential benefits of a transition to market, the facts have changed since the Commission's consideration of the Stipulation ESP. The record evidence reflects that the components of AEP Ohio's transition to the competitive market will occur regardless of the terms of the Modified ESP. Consider that:

- The AEP East pool members already have filed notice to terminate the pool and AEP's COO acknowledged that termination of the Pool Agreement will occur regardless of what form the Modified ESP takes.¹³³
- AEP Ohio already has filed for approval of its corporate separation in a separate proceeding pursuant to which all generating assets will be transferred to AEP Generation Resources ("AEP GenCo").¹³⁴
- AEP Ohio already has provided its notice to PJM to terminate its FRR election and will be an RPM entity as of June 1, 2015 for at least five years – and AEP GenCo will receive RPM pricing for its capacity – regardless of the results of this proceeding.¹³⁵

Staff witness Fortney acknowledged that the three qualitative benefits he ascribes to the Modified ESP, including the transition to market more quickly than an MRO, are all uncertain:

¹³³ Tr. Vol. I, p. 224.

¹³⁴ See Case No. 12-1126-EL-UNC.

¹³⁵ Tr. Vol. II, pp. 399-400, 421 (AEP Ohio witness Powers).

“I think it’s fair to say there are a lot of unknowns.”¹³⁶ Mr. Fortney also admitted that it would be “Staff’s preference” for AEP Ohio to transition to full market pricing before June 1, 2015.¹³⁷

AEP Ohio, in fact, can and should make the transition before the end of the Modified ESP. Although AEP Ohio’s current plan is to achieve corporate separation by January 1, 2014, corporate separation could occur earlier than this date.¹³⁸ Indeed, in a filing in February 2012, AEP asked the FERC to allow it to achieve corporate separation and pool termination in the first quarter of 2013.¹³⁹ As discussed below, neither AEP Ohio’s FRR status nor its membership in the AEP Pool Agreement preclude AEP Ohio from using a CBP now to supply its SSO customer load. AEP Ohio witness Powers, in fact, admitted that AEP Ohio could hold an energy-only auction prior to corporate separation and pool termination.¹⁴⁰ Mr. Dias acknowledged that “I do know that other EDUs have gone faster.”¹⁴¹ An energy-only auction, if combined with market-based RPM capacity pricing, would allow SSO customers to benefit from market rates and provide the proper price signals for competitive markets to develop in AEP Ohio’s service area.

Moreover, the Commission has recognized that it can implement a transition to a fully market-based SSO under an MRO at the start of the second year of an MRO.¹⁴² Thus, the

¹³⁶ Tr. Vol. XVI, p. 4614.

¹³⁷ Tr. Vol. XVI, p. 4615.

¹³⁸ Direct Testimony of Philip J. Nelson on behalf of AEP Ohio (“Nelson Direct”), p. 6; Tr. Vol. II, pp. 504-505.

¹³⁹ Tr. Vol. II, pp. 504-505 (AEP Ohio witness Nelson).

¹⁴⁰ Tr. Vol. I, p. 233.

¹⁴¹ Tr. Vol. VI, pp. 1960-1961.

¹⁴² *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order, Feb. 23, 2011, p. 17 (holding that the Commission can consider adjustments to the blending percentages in year two of an MRO).

Modified ESP's delay in implementing a fully market-based SSO for three more years cannot be said to more favorably transition AEP Ohio to the competitive market.

b. The proposed CBPs are not more favorable.

AEP Ohio cannot rely on the auction-based CBP components of the Modified ESP to illustrate a more favorable transition to market before June 2015. CBPs, and specifically the use of staggered auctions with a slice-of-system product, generally benefit customers because suppliers can “mitigate their costs and reduce their financial risks, which then leads to lower prices” and because customers “are better protected from market price fluctuations.”¹⁴³ This leads to a lower priced SSO offering, as well as a lower benchmark that competitive suppliers must meet.¹⁴⁴ However, AEP Ohio's proposed CBPs are not more favorable for a number of reasons.

i. *The proposed CBPs are undefined.*

AEP Ohio proposes to conduct two CBPs during the term of the Modified ESP: (1) a 100% energy-only CBP for service rendered in the last five months of the Modified ESP (January - May 2015); and (2) a 5% energy-only CBP “beginning six months after final orders are both issued adopting the ESP as proposed and the corporate separation plan as filed.”¹⁴⁵ However, the components are undefined, including apparently, the price that would be charged for capacity under the 5% energy-only proposal.¹⁴⁶ As FES witness Banks explained, “AEP Ohio has provided no explanation or detail as to how the CBP would be structured. I cannot say,

¹⁴³ Banks Direct, p. 21.

¹⁴⁴ Banks Direct, p. 21.

¹⁴⁵ Direct Testimony of Robert P. Powers on behalf of AEP Ohio (“Powers Direct”), pp. 20-21.

¹⁴⁶ Lesser Direct, pp. 47-38; Tr. Vol. II, pp. 538-539 (AEP Ohio witness Nelson acknowledged that AEP Ohio identified the \$255/MW-day price would be applicable in discovery, but testified that “I’m not sure if it’s in error. . . . so I can’t answer whether that’s the right answer here.”).

therefore, whether the proposed CBP structure will maximize the benefits of a competitive process for customers.”¹⁴⁷

ii. The proposed CBPs are unnecessarily conditional.

Both proposed CBPs are also inappropriately conditional and cannot be considered to be “benefits” given that they may not happen at all. AEP Ohio has made the 100% energy-only CBP proposed for January - May 2015 contingent on termination of the AEP Pool Agreement and approval of corporate separation.¹⁴⁸ As FES witness Frame testified, neither is necessary. AEP Ohio has admitted that the Pool Agreement does not explicitly preclude a CBP and “the AEP Pool Agreement specifically contemplates that individual Members can make purchases from external suppliers. Using an auction arrangement would represent one form of such an external purchase.”¹⁴⁹ Mr. Frame further noted that AEP Ohio’s ability to offer the 5% slice-of-system offer prior to termination of the pool “seems to provide clear agreement by AEP Ohio that the AEP Pool Agreement would not prevent the implementation of an auction to acquire supplies to meet its SSO load obligations while the agreement is in effect.”¹⁵⁰

AEP Ohio similarly conditions the 5% energy-only auction on approval of the Modified ESP “as proposed” and corporate separation,¹⁵¹ which is not a requirement for a CBP as discussed above. AEP Ohio also conditions the 5% CBP “based on the express condition of financially being made whole.”¹⁵² Such a condition is improper given that generation service is competitive and, thus, “AEP Ohio is not entitled to be ‘made whole’ – a safety net that is not

¹⁴⁷ Banks Direct, p. 18 (re 100% CBP), 18-19 (re 5% CBP). *See also* Lesser Direct, pp. 47-48.

¹⁴⁸ Powers Direct, pp. 19-20.

¹⁴⁹ Direct Testimony of Rodney Frame on behalf of FirstEnergy Solutions Corp. (“Frame Direct”), p. 19.

¹⁵⁰ Frame Direct, p. 20.

¹⁵¹ Powers Direct, p. 21.

¹⁵² Powers Direct, pp. 20-21.

available to any other participant in the wholesale markets.”¹⁵³ “In short, without any of the details surrounding what AEP Ohio may demand from customers to make itself ‘whole’ (and without any of the details regarding the CBP structure itself), the Commission cannot approve this provision of the Modified ESP.”¹⁵⁴

As described in further detail below, AEP Ohio has the legal and contractual ability to implement a 100% CBP now. Thus, the Modified ESP’s conditional and limited CBP offers are not “benefits.”

2. The Modified ESP’s base generation charges for SSO customers do not provide any benefits.

AEP Ohio claims that the Modified ESP benefits SSO customers by implementing “modest” rate increases and freezing rates over the three-year term.¹⁵⁵ AEP Ohio also claims that the Modified ESP benefits SSO customers by implementing proposed energy-only auctions for SSO load beginning January 2015, and an earlier conditional and admittedly “*de minimis*”¹⁵⁶ 5% slice of system auction.¹⁵⁷ However, the record evidence establishes that the net effect of these two “benefits” is actually increased costs to SSO customers as compared to the Stipulation ESP. AEP Ohio intends to maintain its above-market capacity pricing for SSO customers which, when combined with market energy prices, would result in a higher price for customers. “[T]his change [to slightly lower and hold constant the base generation rate] is more than offset by the increase in costs due to the Company’s proposal to charge SSO customers \$255/MW-day for capacity when it uses a [CBP] to obtain energy for 100% of retained load beginning January 1,

¹⁵³ Banks Direct, p. 19.

¹⁵⁴ Banks Direct, p. 19.

¹⁵⁵ Direct Testimony of Selwyn J. Dias on behalf of AEP Ohio (“Dias Direct”), pp. 8-10.

¹⁵⁶ Tr. Vol. II, p. 553.

¹⁵⁷ Dias Direct, p. 8.

2015 through May 31, 2015. . . . When considered together, these two effects result in a net cost to SSO customers.”¹⁵⁸ OCC witness Wallach similarly found that pricing energy at market with capacity priced above-market will result in higher prices to customers.¹⁵⁹

3. The Modified ESP does not provide for “certainty,” “transparency,” or “stability.”

AEP Ohio has posited “transparency and certainty in AEP Ohio’s SSO pricing” as a benefit of the Modified ESP.¹⁶⁰ For example, Mr. Powers testified that “there will be no net changes to overall generation based prices for SSO customers during this transition.”¹⁶¹ Staff witness Fortney also testified that a qualitative benefit of the Modified ESP is “rate certainty and stability.”¹⁶² But, these witnesses failed to take into account the numerous variable and uncertain provisions included in the Modified ESP. Mr. Powers acknowledged under cross-examination that the “generation based prices” to which he refers do not include the RSR or the PIRR,¹⁶³ which will increase SSO customers’ generation charges. Mr. Dias similarly acknowledged that components of the proposed generation charges could vary year to year.¹⁶⁴ Mr. Fortney also acknowledged that he was “not sure how any of [the] adjustable components are a result of this particular application” for the Modified ESP.¹⁶⁵ Mr. Roush acknowledged that, while he has

¹⁵⁸ Schnitzer Direct, p. 40.

¹⁵⁹ Tr. Vol. XV, pp. 4078-4079. OCC witness Wallach opposes the two proposed auctions because of this expected price increase, but he believes that auctions in which both energy and capacity are provided at market price would be reasonable. Direct Testimony of Jonathan Wallach on behalf of the Office of Ohio Consumers’ Counsel (“Wallach Direct”), pp. 10-12; Tr. Vol. XV, pp. 4078-4079; 4082-4084. Mr. Wallach agreed that if the January-May 2015 auction was held using RPM prices, it would beat the SSO price. Tr. Vol. XV, p. 4081.

¹⁶⁰ See Dias Direct, p. 5.

¹⁶¹ Powers Direct, p. 16.

¹⁶² Fortney Direct, p. 7.

¹⁶³ Tr. Vol. I, pp. 228-229.

¹⁶⁴ Tr. Vol. VI, pp. 1967-68.

¹⁶⁵ Tr. Vol. XVI, p. 4596.

presented the rate design for the RSR in Exhibit DMR-3, that rate is only known for the first year and a few months “because we’d have to wait till that first year ended, go through the process to get the rates modified. . . .”¹⁶⁶ Moreover, fuel increases are likely during the term of the Modified ESP and that risk would be placed on AEP Ohio’s customers, rather than suppliers, as would occur under a CBP. Thus, the Modified ESP cannot be said to provide transparency, certainty or stability – particularly when several of the variable and uncertain provisions, including the RSR, the GRR, and the proposed pool modification provision, would not be available under an MRO and, therefore, would make the Modified ESP less transparent, certain and stable than the expected results of an MRO.

4. The elimination of non-existent riders is not a benefit.

Mr. Dias testified that AEP Ohio’s “elimination” or decision to “drop[]” its request for certain riders is a benefit of the Modified ESP.¹⁶⁷ Mr. Dias admitted, however, that the MTR and the LFR are not currently in effect.¹⁶⁸ He also included the elimination of the POLR charge, but displayed no understanding that the POLR was rejected by the Supreme Court as a part of AEP Ohio’s current ESP.¹⁶⁹ Further, although he claims as a benefit the folding of the current EICCR into the base G rate, Mr. Dias acknowledged that this would mean that AEP Ohio only bears the same risk as any generation owner (including CRES providers that own generation) bears in a

¹⁶⁶ Tr. Vol. IV, p. 1103-1104. Mr. Roush further acknowledged that the RSR and the DIR could lead to rate fluctuations during the term of the Modified ESP, and that the FAC will not remain constant through December 2014 and, rather, would be adjusted quarterly. Tr. Vol. IV, pp. 1066, 1151.

¹⁶⁷ Dias Direct, p. 9.

¹⁶⁸ Tr. Vol. VI, p. 1969 (also acknowledging that the only time those riders were in effect was the two-month window between the Commission’s December 14, 2011 approval with modifications of the Stipulation ESP and the Commission’s February 23, 2012 rejection of the Stipulation ESP).

¹⁶⁹ Tr. Vol. VI, pp. 2094-2095.

competitive market.¹⁷⁰ The “loss” of non-existent riders is not a benefit, as the Commission confirmed in its Stipulation ESP Order.¹⁷¹

5. The Modified ESP does not provide for reliability because the available resources already are sufficient and reliable.

AEP Ohio witness Dias suggests that a benefit of the Modified ESP is its support for generation investments and its help for “the EDU to address long-term capacity needs by providing the opportunity to build additional generation if needed in the future.”¹⁷² Even putting aside the corporate separation requirements that would be infringed by such a purported “benefit” (as discussed further below), there is no record evidence that establishes that there are any reliability concerns that need to be addressed. To the contrary, the record evidence overwhelmingly establishes (as also discussed further below), that there is sufficient market generation supply into the foreseeable future. Indeed, AEP Ohio witness Powers acknowledged that AEP Ohio has sufficient capacity to meet its obligations between now and June 1, 2015.¹⁷³ After that date, AEP Ohio will rely on PJM to ensure reliability, which already has done so for the 2015/2016 Planning Year at a PJM RTO price of \$136/MW-day.¹⁷⁴

¹⁷⁰ Tr. Vol. VI, pp. 1970-1971.

¹⁷¹ Stipulation ESP Order, p. 30 (holding that “AEP-Ohio wrongly identified the removal of POLR charges as [a] non-quantifiable benefit” because the POLR charges were eliminated in the previous remand proceeding).

¹⁷² Dias Direct, pp. 13-14.

¹⁷³ Tr. Vol. I, pp. 226-227 (and acknowledging that AEP East also has sufficient capacity to meet its obligations through June 1, 2015). *See also* Tr. Vol. II, pp. 564-65 (AEP Ohio witness Nelson confirming that announced plant retirements will not prevent AEP Ohio from meeting its capacity obligations through May 31, 2015); Tr. Vol. VI, pp. 1976-80 (AEP Ohio witness Dias acknowledging that: (a) AEP Ohio is currently “long on capacity in terms of meeting native load”; (b) there is no other generating plant, other than Turning Point, that AEP Ohio intends to bring on line in the next three years; and (c) he was not aware of any plant that has not been approved because of the possibility that AEP Ohio might not recover its embedded costs).

¹⁷⁴ *See* Tr. Vol. II, p. 570; Tr. Vol. VI, pp. 1784-85 and AEP Ohio Ex. 117 (2015-2016 RPM base residual auction results).

None of the qualitative “benefits” put forward by AEP Ohio amount to any real benefits of the Modified ESP. Certainly, these qualitative benefits cannot overcome the high quantitative price of the Modified ESP in any event. The Modified ESP fails the statutory test from every vantage point and should be rejected.

III. THE PROPOSED TWO-TIERED CAPACITY PRICES FOR SHOPPING CUSTOMERS ARE UNSUPPORTED AND IMPROPER.

AEP Ohio’s proposal to charge CRES providers tiered, above-market prices for shopping customers’ capacity is wrong – wrong for customers, wrong for competition, and wrong for the State. The Modified ESP proposes to charge CRES providers even higher prices for capacity than were proposed in the previous Stipulation ESP. All of the capacity charges to CRES providers will be devoid of any connection to the RPM, market-based prices that AEP Ohio charged CRES providers up until January 1, 2012 and that will be available to CRES providers again as of June 1, 2015. No RPM prices will be available to shopping customers because, as acknowledged by AEP Ohio witness Powers, even the \$146 Tier 1 price is (significantly) higher than the 2012/13 and 2013/14 RPM prices.¹⁷⁵ There is no reasonable basis on which to disregard the RPM prices that have successfully guided the market for capacity. AEP Ohio is a competitive generation supplier in Ohio and, as such, is entitled to neither guaranteed above-market revenue nor protection from the beneficial competitive forces that promote lower prices for all customers. Thus, the Modified ESP’s two-tiered capacity pricing structure should be rejected and RPM prices for capacity should be re-instituted.

¹⁷⁵ See Tr. Vol. I, pp. 230, 280; *see also* Tr. Vol. VI, pp. 1962-63 (AEP Ohio witness Dias).

A. RPM-based Prices Are The Appropriate Prices For Capacity.

1. Everyone except AEP Ohio agrees that RPM pricing, which is used in every other jurisdiction, is the proper pricing mechanism for shopping customers.

Witnesses testifying on behalf of Staff, CRES providers, and customers agreed that RPM pricing is the appropriate price for capacity provided by AEP Ohio to CRES providers.¹⁷⁶ “In general, Staff’s position is to charge CRES providers the prevailing RPM rate in the unconstrained region of PJM.”¹⁷⁷ Further, RPM-based prices for capacity are paid by CRES providers in all other Ohio EDUs’ service territories and, in fact, all retail generation providers in all other PJM states pay RPM-based prices for capacity.¹⁷⁸ Staff witness Johnson described that the “PJM capacity auction prices are generally accepted as transparent, readily discoverable by any buyer on the PJM website, and are known three years in advance.”¹⁷⁹ As FES witness Stoddard explained, while the RPM prices may not be known more than three years out:

[T]ypical competitive businesses make investment decisions all the time without knowing with assurance what the prices will be. The important thing in making decisions as a businessman as opposed to a regulated utility is that you have confidence that the market structure can return a fair price, not that you absolutely know for sure that the price you will get in the future will be.¹⁸⁰

¹⁷⁶ See, e.g., Tr. Vol. VIII, p. 2407 (“[T]he Staff recommendation is to charge the prevailing RPM rate to all CRES providers like AEP has done in the past.”); Murray Direct, pp. 40-48; Direct Testimony of Vincent Parisi on behalf of Interstate Gas Supply, Inc. (“Parisi Direct”), p. 5; Frye Direct, pp. 15-16; Direct Testimony of Lane Kollen on behalf of the Ohio Energy Group (“Kollen Direct”), p. 4 (OEG expert witness recommending the use of a three-year average of RPM capacity prices – \$69.20/MW-day – to be applied through the term of the Modified ESP); Tr. Vol. X, p. 2808; Lesser Direct, pp. 13-15.

¹⁷⁷ Choueiki Direct, p. 10. In the alternative, Staff advocates that if the Commission finds the authority to set a cost-based capacity rate, “Staff’s recommendation would then be for AEP-Ohio to charge CRES providers the capacity rate developed by Staff witness Medine – i.e. \$146.41/MW-day.” Choueiki Direct, p. 10.

¹⁷⁸ Stoddard Direct, pp. 27-28; Tr. Vol. III, p. 808 (AEP Ohio witness Graves acknowledging same).

¹⁷⁹ Johnson Direct, p. 6.

¹⁸⁰ Tr. Vol. VI, pp. 1739-1740.

AEP and its various affiliates have benefited from the availability of RPM-priced capacity in these other jurisdictions. AEP's COO Powers admitted that both AEP Retail and AEP's Commercial Operations group have participated in the FirstEnergy Ohio utilities' service territory.¹⁸¹ Two AEP affiliates also were successful participants in the December 2011 DEO auction.¹⁸² Therefore, while enjoying the benefits of RPM prices elsewhere, AEP Ohio seeks to be the only entity in PJM to charge CRES providers prices multiple times in excess of the RPM prices, ultimately penalizing customers that stray from its SSO a price. As set forth herein, there is no basis and no need for such special treatment.

2. Ohio's competitive market requires market prices for capacity.

Ohio law has established a competitive market for electric generation service.¹⁸³ The General Assembly's direction to promote that competitive market is apparent through a number of state policies that the Commission is charged to enforce,¹⁸⁴ including the requirements to:

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

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

¹⁸¹ Tr. Vol. I, p. 225.

¹⁸² Tr. Vol. I, p. 279.

¹⁸³ See R.C. § 4928.03.

¹⁸⁴ R.C. § 4928.06.

Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power¹⁸⁵

This mandate for a competitive market requires that a market price for capacity be charged to providers in that market – and PJM’s RPM sets the capacity market pricing that advances Ohio policies. Even AEP’s COO Powers acknowledged that CRES capacity market prices are those set at RPM prices.¹⁸⁶ The use of RPM prices through the market structure, as the FERC found, “provide[s] important economic advantages to electricity customers in comparison with cost of service regulation” and “keeps prices as low as possible.”¹⁸⁷ Mr. Dias generally agreed that where a regulatory commission has determined that a price is just and reasonable, it would further the state’s policy of promoting reasonably priced retail electric service.¹⁸⁸

AEP Ohio has suggested that the RPM prices are not the “market” price for capacity because AEP Ohio did not participate in the BRAs due to its FRR status. But, this suggestion was refuted by FES witness Stoddard:

Had AEP Ohio participated in the RPM auctions, rather than using the FRR Alternative to meet its RPM obligations, the clearing prices in the market would have been very similar to the prices that actually occurred. AEP Ohio was slightly long capacity throughout this period, as was PJM overall. Therefore, if AEP Ohio had participated in the Base Residual Auctions, the overall supply/demand balance (and, therefore, the clearing prices) would have been largely unchanged.¹⁸⁹

That the RPM price closely reflects the price that would result with AEP’s resources included is supported by the recent BRA results for the 2015/16 planning year – auctions in which AEP

¹⁸⁵ R.C. § 4928.02(B).

¹⁸⁶ Tr. Vol. I, p. 325.

¹⁸⁷ FES Ex. 118 at ¶ 32 (*quoting* 117 FERC ¶ 61,331, Dec. 22 Order, at ¶ 141); *see also* Tr. Vol. II, pp. 766-768 (AEP Ohio witness Graves agreeing with this proposition).

¹⁸⁸ Tr. Vol. VI, p. 1951.

¹⁸⁹ Stoddard Direct, p. 26; *see also* Tr. Vol. XI, pp. 3106-3107 (FES witness Frame similarly testifying).

participated. “[W]here AEP did put its load and generation into RPM, that capacity price turned out to be the exact same capacity price as the rest of market”¹⁹⁰ AEP Ohio’s choice not to participate in the BRAs does not change the fact that the RPM prices are *the* market price for capacity.

3. AEP Ohio has no “right” to embedded cost-based capacity pricing.

One of the major themes of AEP Ohio’s Modified ESP proposal is its belief that it is *entitled* to charge CRES providers a cost-based capacity price. This appears in two forms. First, AEP Ohio characterizes the two-tiered capacity pricing structure as a “discount from what it would otherwise be willing to charge.”¹⁹¹ Second, AEP Ohio portrays its choice to become an FRR entity as some mechanism to skirt the market. Neither is true.

a. In a competitive market, the *market* sets the price, not the seller.

AEP Ohio’s demand for guaranteed recovery of its full embedded costs is, at its root, inappropriate and inconsistent with Ohio’s competitive market for electric generation service. As a competitive generation supplier, AEP Ohio – like any other participant – is subject to the rigors and incentives of the market. In discussing AEP Ohio’s reference to the price it would “otherwise be willing to charge,” FES witness Stoddard explained that “[t]his is the voice of the monopolist speaking; in competitive markets, sellers of a commodity do not have the luxury of dictating what prices they are ‘willing to charge’ their customers.”¹⁹² Instead, the price is set by the market.

AEP Ohio’s customers described this basic economic principle well. “In a competitive marketplace, costs are not seamlessly passed onto customers. Rather, NFIB/Ohio members, and

¹⁹⁰ Tr. Vol. XVI, p. 4481 (FES witness Banks).

¹⁹¹ Dias Direct, p. 10.

¹⁹² Stoddard Direct, p. 35.

small-business owners throughout the state, do not have the luxury of adjusting the market to their costs – they must adjust their costs to the market. That involves cutting costs and eliminating inefficiencies if that individual business wants to survive in the marketplace.”¹⁹³ Lima Refining witness Walters similarly testified regarding the competitive market, “[i]f we were able to set our prices, I would absolutely set them at above cost. *We don’t have that option.*”¹⁹⁴ Nor does AEP Ohio.

b. AEP Ohio’s voluntary FRR status does not allow it to recover its fully embedded costs.

AEP recognizes that “the Ohio companies’ generation assets are not cost-based rate regulated.”¹⁹⁵ However, it relies on its FRR status to justify its request to charge above-market prices for capacity. But, AEP Ohio’s status as an FRR entity is immaterially different than any other generation supplier and, thus, cannot justify any special treatment for its capacity pricing. “FRR is essentially a part of RPM;”¹⁹⁶ it is an alternative method to meet the capacity requirements established by RPM.¹⁹⁷ “Certainly, Ohio Power’s FRR status in no way requires it to provide capacity at a price other than the RPM price. This is demonstrated by Duke Energy Ohio, which is an FRR entity until mid-2015 (too), but nonetheless will provide shopping

¹⁹³ Geiger Direct, p. 7.

¹⁹⁴ Tr. Vol. XV, p. 4203 (emphasis added).

¹⁹⁵ OCC Ex. 104, p. 2 (November 2011 AEP Recoverability Test Memo). Of course, while AEP Ohio may seek to clawback to recover previous “costs,” AEP Ohio has taken the position that customers are not entitled to such equivalent treatment. In response to an inquiry regarding whether retail customers would receive the \$12.5 million in tax reduction that would have been due to AEP Ohio after the time for corporate separation (and, thus, would be enjoyed by AEP GenCo under the Modified ESP), Mr. Mitchell testified: “We have not been a cost-of-service state for several years . . . There is no cost-of-service calculation on the generation rate base, so to speak. So, I mean, ratepayers are paying for product, they’re not paying for assets or for clawbacks or anything like that, it’s just like Hertz renting a car.” Tr. Vol. III, p. 869.

¹⁹⁶ Tr. Vol. X, p. 2931 (Duke witness Jennings).

¹⁹⁷ Tr. Vol. VI, p. 1745 (FES witness Stoddard explaining that FRR “is a subset of the RPM design with the other alternative being to use the auction structures defined in the tariff to secure your capacity obligations”).

customers capacity at RPM prices prior to that time.”¹⁹⁸ FES witness Stoddard further explained:

[T]he obligations placed on AEP Ohio are nearly identical as between their position as an FRR entity and the position of other capacity suppliers and LSEs that meet their requirements through PJM’s auctions. On the load side, LSEs have no capacity responsibilities under RPM other than to pay their bills; CRES providers in AEP Ohio’s service area likewise have no capacity responsibilities. On the supply side, . . . the performance requirements are identical for resources supplied by an FRR entity as on any other capacity supplier. Therefore, the RPM capacity price already includes the costs of carrying these enumerated risks.¹⁹⁹

The only “incremental risk” that FRR entities may bear is to provide additional resources if the reliability requirements are increased, but Mr. Stoddard explained that this change would be known in advance and “is likely to be small.”²⁰⁰ AEP Ohio witness Graves acknowledged that, with respect to existing resources, both an FRR entity and a RPM-participating entity whose resource clears the auction would be subject to penalties if that resource is unavailable to PJM when needed: “Yes. There are penalties for nonperformance, whether you’re FRR or RPM.”²⁰¹ Further, both FRR entities and participants in the BRAs are restricted from reselling resources that already were committed to PJM through either the FRR or the BRA.²⁰² Thus, there is no material difference between a generator’s status as an FRR entity or a BRA participant and no difference that authorizes the generator to charge a significantly above-market price to captive CRES providers.

¹⁹⁸ Direct Testimony of David Fein on behalf of Constellation/Exelon (“Fein Direct”), p. 12.

¹⁹⁹ Stoddard Direct, pp. 25-26.

²⁰⁰ Stoddard Direct, p. 26.

²⁰¹ Tr. Vol. III, p. 791.

²⁰² Tr. Vol. VI, p. 1780.

AEP's COO Powers made reference to a FRR "contract," but he did not know if that was the same thing as the RAA²⁰³ and he acknowledged he was not involved in the FERC stakeholder process to establish the FRR option and was not personally involved managing AEP's FRR plan.²⁰⁴ Mr. Powers also testified that it was his understanding that AEP Ohio was required to provide capacity on a cost-basis under the FRR option.²⁰⁵ But AEP Ohio's expert witness, Frank Graves, agreed that someone who describes the FRR provisions of the RAA as *requiring* a cost-based charge would be incorrect.²⁰⁶

Rather, PJM's RAA establishes specific parameters for FRR entities' prices for capacity provided to retail suppliers – which points to a state compensation mechanism in the first instance, and RPM prices as the default if there is no state compensation mechanism:

In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at [rest-of-pool or "RTO" clearing prices], provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's costs or such other basis shown to be just and reasonable.²⁰⁷

While the RAA does not explicitly limit the state compensation mechanism, "there is an understanding that this is part of a retail deregulation and that the state compensation

²⁰³ Tr. Vol. I, pp. 230-231.

²⁰⁴ Tr. Vol. I, pp. 269-270.

²⁰⁵ Tr. Vol. I, p. 231.

²⁰⁶ Tr. Vol. III, p. 790.

²⁰⁷ Stoddard Direct, pp. 12-13 (quoting the RAA, Schedule 8.1, Section D.8).

mechanisms would be a means of promoting retail competition in the states”²⁰⁸ The RAA – which governs both the FRR and the BRA process – indeed states that it is intended to be implemented in a manner consistent with the development of a robust competitive marketplace.²⁰⁹

The FRR alternative cannot logically allow for the recovery of full embedded costs. If an FRR entity was allowed to impose recovery of its full embedded costs, the RPM would break down.

Had the FRR contemplated a mechanism for any regulated company to get its embedded cost, rather than the market cost, it would have become the exception that swallowed the whole.

Why would any participant choose a market process when they could choose a nonmarket process that could guarantee rates of return. That wasn’t the intention. The intention was to create an RPM process that was by and large driven by the market where we can see market pricing and achieve liquidity.²¹⁰

FES witness Lesser agreed that “[i]f AEP Ohio were correct [that it could recover costs as an FRR entity], there would be no economic incentive for any generator to participate in the PJM RPM. Instead, we would return to the pre-transition model of fully-regulated electric service. This is not the goal of the State of Ohio, or of PJM, within which AEP Ohio operates.”²¹¹

4. Embedded-cost recovery, which underlies AEP Ohio’s request for the above-market tiered capacity pricing, is uneconomic and contradicts the express purpose of RPM.

Embedded costs are not provided for in RPM and are, in any event, an inappropriate market for capacity prices.

²⁰⁸ Tr. Vol. VI, p. 1747.

²⁰⁹ Tr. Vol. II, pp. 641-642, IEU Ex. 114 (RAA).

²¹⁰ Tr. Vol. VI, p. 1795.

²¹¹ Lesser Direct, p. 15.

“Embedded” cost is a concept nowhere to be found in the RPM Tariff or the RAA. In the BRA, existing resources may not include their costs in their offers such as return on and of capital, interest, property taxes, or depreciation. Only the costs explicitly enumerated in the ACR definition may be included. Under the FRR Alternative, nothing in the RAA provides for AEP Ohio or any other FRR Entity to recover its full embedded costs.²¹²

As FES witness Stoddard testified, and Staff witness Choueiki agreed, the goal of PJM’s RPM, whether it is BRA auction process or the FRR alternative, is “to provide appropriate economic signals to capacity suppliers to make available sufficient resources to meet the forecast reliability requirements” at the lowest price.²¹³

[I]n terms of fundamental economic principles, the RPM price is the correct measure of value, both in the short- and long-run. In the short run, the RPM auction price is the “right price” in terms of economic efficiency. It is the closest approximation to the market value of the reliability value of capacity We maximize efficiency by pricing or transferring commodities at their market price, so that there is a rational trade-off between the value captured by utilizing a good versus selling it in the market. In the long run, the RPM is designed to provide the appropriate incentives for the entry of new, cost-efficient resources and the exit of inefficient resources over a suitably long investment horizon; the success of this market design has been well documented, particularly in two reports by [AEP Ohio witness] Mr. Graves’ consultancy, The Brattle Group.²¹⁴

Providing for the recovery of fully embedded costs does not provide the proper economic signal to assure adequate reliability at the lowest price. Mr. Graves acknowledged that in a well-functioning electric power market the value of generating capacity will be nothing more or less, on an individual resource level, than the present value of electric energy it is expected to

²¹² Stoddard Direct, p. 21.

²¹³ Stoddard Direct, p. 8; Tr. Vol. VIII, pp. 2396-2397 (Staff witness Choueiki). Mr. Choueiki also confirmed that all of the provisions of the RAA, “they’re all tied to reliability, that’s why it’s entitled reliability assurance agreement. They’re guaranteeing the reliability under this agreement.” Tr. Vol. VIII, p. 2401.

²¹⁴ Stoddard Direct, pp. 29-30.

produce, net of the production costs – and that this does not refer to or reflect embedded costs.²¹⁵

In fact, Mr. Graves testified that it is not reasonable to rely on an exclusively embedded cost model to identify an economically efficient outcome: “Generally, it’s hard to think of such circumstances where that would be a good idea.”²¹⁶

Rather, the RPM is based on marginal cost. As Mr. Graves explained, under the RPM, “you’re going to tend to bid what is so-called your avoided cost which is some combination of all the annual costs you will have to spend to keep your unit alive in that year and available”²¹⁷ As discussed further below, AEP Ohio’s avoidable costs are significantly lower than its embedded costs and, given the level of these avoidable costs, RPM prices would favorably compensate AEP Ohio for the capacity provided to CRES providers.

a. The RPM is working well to assure reliability.

AEP Ohio suggests that it is entitled to its embedded costs so that it can properly invest in Ohio generation. However, PJM, with its reliance on RPM, has been functioning effectively since 2007 and has brought forward the necessary amount of new capacity.²¹⁸ While Mr. Graves’ direct testimony suggested that RPM may not address “important questions”²¹⁹ related to capacity, FES witness Stoddard dispelled any such thought:

It is simply wrong to suggest that RPM fails to procure the most efficient set of long-term resources to serve the full range of services needed in PJM. To the contrary, RPM – *in combination with other markets* for energy, ancillary services, fuels, renewable energy credits, emissions credits, etc. – has provided and should continue to provide exactly the right set of signals to spur investors to make the most profitable *long-run* decisions. This is how

²¹⁵ Tr. Vol. III, pp. 771-772.

²¹⁶ Tr. Vol. III, pp. 798-799.

²¹⁷ Tr. Vol. III, pp. 838-840.

²¹⁸ Tr. Vol. III, p. 774.

²¹⁹ Direct Testimony of Frank C. Graves on behalf of AEP Ohio (“Graves Direct”), p. 6.

markets work: investors consider all costs, all revenue streams, and relevant risks, then select the projects with the highest risk-adjusted expected return.²²⁰

In fact, Mr. Graves' testimony on cross-examination resoundingly confirmed that he agrees that RPM is working well to develop capacity resources. Mr. Graves testified that the RPM model has produced more than enough resources. "[T]his year we have a 20.6 percent reserve margin in the RPM process they were shooting for 15.4 percent and, as discussed earlier, some 6,000 or so net megawatts were added to the pool even though there were a lot of other retirements. So it just seems to be working quite steadily to bring forth new resources."²²¹ He further testified:

Q. And in the [2015/16 PY] auction there was a record number of new generation offers.

A. Yes.

Q. And there was a record number of new generation sources that cleared.

A. Yes.

Q. There was a record number of demand resource offers.

A. Yes; 19,000 megawatts.

Q. There was a record number of energy efficient resource offers.

A. Correct.

Q. And, indeed, there was a net increase of capacity of about 6,000 megawatts.

A. All together; that's right. Net of retirements and things like that.

Q. Right. So, in other words, there was more capacity offered in even with the retirements.

²²⁰ Stoddard Direct, p. 31.

²²¹ Tr. Vol. III, p. 843.

A. Yes.²²²

Mr. Graves, in fact, testified that he does not expect that there will come a time when RPM will fail in its purpose to ensure sufficient and reliable capacity within PJM,²²³ and that the Commission should not be concerned about attracting capital for investment for facilities to assure reliability for the next three years.²²⁴

Not only has PJM secured sufficient capacity for the foreseeable future, but so too has AEP Ohio. AEP Ohio witness Nelson acknowledged that, even with the retirements planned by June 1, 2015, AEP Ohio has sufficient capacity to meet its obligations through May 31, 2015.²²⁵ “As far as Ohio Power, they’ve been surplus [for energy and capacity] I think as long as I can remember;” “I think I can at least go into the ‘90s, perhaps ‘80s.”²²⁶ AEP Ohio witness Dias also acknowledged that he is not aware of any plants that AEP Ohio may begin constructing during the next three years.²²⁷ Therefore, AEP Ohio cannot attempt to justify its requested above-market capacity prices on the need to assure adequate reliability.

AEP Ohio also cannot justify its \$355/MW-day capacity price based on the recent results of the BRA in the ATSI zone for the 2015/16 planning year. That comparison fails – as confirmed by the testimony of two PJM experts – because the ATSI results are the appropriate market signal for that time period and that zone. First, AEP Ohio’s witness Graves acknowledged that the ATSI zonal price is based on different time periods than AEP Ohio’s

²²² Tr. Vol. III, pp. 776-777.

²²³ Tr. Vol. III, p. 775.

²²⁴ Tr. Vol. III, p. 775.

²²⁵ Tr. Vol. II, pp. 564-565.

²²⁶ Tr. Vol. II, pp. 676-677.

²²⁷ Tr. Vol. VI, pp. 1976-1977.

proposed \$355/MW-day cost-based rate.²²⁸ (He also acknowledged that the ATSI price would be subject to a credit that would reduce the price.²²⁹) Mr. Graves also admitted that RPM is designed to attract resources when there is a constraint or a capacity shortfall by giving a pricing signal; “Yes. The intent is for the price to rise when markets are tight.”²³⁰

That process worked exactly as we would expect in the conditions we saw in ATSI, that we went from a condition where we have ample resources to a condition where resources needed to retire because of regulatory changes, and the price reflected that and the price attracted new efficient resources to the market to serve the need and led to the exit of more costly, inefficient resources from the market.

We have an exchange of resources that could have required expensive retrofits for much more cost-effective demand response. The market worked exactly as desired, but in order to achieve that, the price had to be driven up to a point to bring those new resources into the market to service the reliability needs in that zone.²³¹

No such conditions are present in AEP Ohio’s zone, which cleared in the same auction at the “rest of market” price of \$136/MW-day.²³² The ATSI results are unrelated to the proper price for capacity in AEP Ohio’s zone during the term of the Modified ESP.

In sum, the current RPM model, which is based on bids based on net avoidable costs, is an efficient way of identifying whether or not there is a resource need.²³³ It also produces, as Mr. Graves agreed, a beneficial single clearing price that promotes the lowest cost goal. The single-clearing price is an incentive for suppliers to be efficient and, in a competitive market

²²⁸ Tr. Vol. III, pp. 827-828.

²²⁹ Tr. Vol. III, p. 828.

²³⁰ Tr. Vol. III, p. 831.

²³¹ Tr. Vol. VI, pp. 1796-1797 (FES witness Stoddard).

²³² See Tr. Vol. XVI, p. 4481 (FES witness Banks); AEP Ex. 117 (PJM Auction Results).

²³³ Tr. Vol. III, p. 832.

where sellers are working to minimize their costs, competition will keep prices as low as possible.²³⁴

b. RPM prices do not subsidize CRES providers.

AEP Ohio tries to argue that RPM prices – the prices charged by all other Ohio EDUs and all other PJM LSEs – are inappropriate because those prices subsidize CRES providers. This argument can be readily disregarded, as illustrated by FES witness Lesser’s analogy:

The fact that the market price of capacity may be less than AEP Ohio’s embedded cost of capacity does not mean that AEP Ohio is subsidizing anyone. It means that the market can supply capacity more efficiently than AEP Ohio can. That, of course, is the purpose of markets. If Farmer Jones can grow wheat at a cost less than the market price, but Farmer Smith cannot, then Farmer Jones will supply wheat to the market. Farmer Smith will not. That does not mean Farmer Smith is forced to “subsidize” wheat customers; it means Farmer Smith is not an efficient wheat producer.²³⁵

To the contrary, as discussed further below, the proposed above-market prices represent a subsidy to AEP Ohio and its competitive generation affiliate.

5. Above-market capacity prices are unfair because CRES providers are captive to AEP Ohio’s market power for capacity.

The Modified ESP’s proposed capacity prices are fundamentally unfair because, as described by Staff witness Choueiki, CRES providers are “locked in;”²³⁶ they cannot acquire capacity other than through AEP Ohio during the term of the Modified ESP. AEP Ohio could allow CRES providers to opt out during the term of AEP Ohio’s FRR,²³⁷ but it has not done so. Thus, CRES providers are captive and AEP Ohio now demands an above-market price for capacity. FES witness Lesser explained:

²³⁴ Tr. Vol. III, pp. 767-768.

²³⁵ Lesser, Direct, p. 17.

²³⁶ Tr. Vol. VIII, p. 2448.

²³⁷ Direct Testimony of Kenneth J. Jennings on behalf of Duke Energy Commercial Asset Management, Inc. (“Jennings Direct”), pp. 6-8.

[U]ntil earlier this year, AEP Ohio previously sold capacity to CRES providers at the PJM RPM price. . . . Because AEP Ohio was initially selling at the PJM RPM market price and had not provided notice that it would switch to a much-higher cost-based price, CRES providers were indifferent to relying on AEP Ohio for their capacity requirements. Second, because of the three-year advance notice provision in the RAA, CRES providers must obtain all of their capacity from AEP Ohio through May 31, 2015 CRES providers are captive to AEP Ohio until that time. Thus, it is not CRES providers who are “taking advantage” of AEP Ohio, it is AEP Ohio that has taken advantage of CRES providers through a “bait and switch” approach to capacity pricing.²³⁸

AEP Ohio witness Graves acknowledged that the timeline was such that by May of 2011 a CRES provider looking at the situation would have seen that at least through May of 2015 there would be RPM-based prices for capacity in AEP Ohio’s service territory. As such, he agreed that they had no incentive to change past practice of getting capacity from AEP Ohio.²³⁹ Thus, while CRES providers technically could self-supply, “practically” they had no such option “[b]ecause the decision would have had to have been made three years in advance of the time to serve the customer. And, at that time, there was no reason to think that shopping customers would not get RPM capacity because that’s what AEP had been providing.”²⁴⁰ This significant change in practice will disrupt numerous CRES contracts that are already in place²⁴¹ and the competitive market going forward, as described below.

FES witness Stoddard provided a helpful illustration as to the fundamentally unfair position that AEP Ohio has put CRES providers in while operating in what should be a competitive market:

²³⁸ Lesser Direct, p. 16.

²³⁹ Tr. Vol. III, pp. 787-788.

²⁴⁰ Tr. Vol. XVI, p. 4482 (FES witness Banks).

²⁴¹ As IGS witness Parisi testified, “typically . . . if we know the capacity rate is going to go down, that will be part of our calculation when we price [a fixed-price contract] initially.” Tr. Vol. XV, p. 4258.

A good friend of mine's father is a wheat farmer in Kansas. He can decide whether or not he wants to sell the wheat when the price falls, but he can't go and deliver it to the wholesaler and say here's how much you're going to pay me. That's not how competitive markets work.

When a competitive supplier is thinking about selling its power under contract, it's looking at what its costs will be and it's hoping to achieve a high rate, just like my friend's wheat's hopefully going to sell for a high price, but you can't walk in and say here's my price, take it or leave it, and expect they're going to take it.

. . . [I]f you deviate far from the market prices, they're going to leave it when you put it on the table, if they can. *And that's one of the interesting problems of this case is that the competitive suppliers here actually aren't in the position of walking away.*²⁴²

AEP Ohio's monopolistic proposal to charge two above-market prices for capacity provided for shopping customers is fundamentally unfair and otherwise unsupported.

6. AEP Ohio waived its right to recover stranded costs.

AEP Ohio's proposal to recover its embedded costs also is unjustified because those embedded costs incorporate stranded costs. AEP Ohio has repeatedly acknowledged that it waived the right to recover such stranded costs. Mr. Dias, AEP Ohio's Vice President, Regulatory and Finance, admitted that AEP Ohio decided to forego recovery of stranded costs as a part of its ETP settlement.²⁴³ And, in its 2012 Corporate Separation Plan, AEP Ohio admits that, "[u]nder SB3, all of these generation assets were subjected to market and EDUs therefore were given a temporary opportunity to recover stranded generation investments during a transition period. That transition period is over. EDUs can no longer recover stranded

²⁴² Tr. Vol. VI, pp. 1799-1800 (emphasis added).

²⁴³ Tr. Vol. VI, p. 2146. Shockingly, AEP Ohio witness Powers testified that he was not aware of what costs AEP committed to absorb as part of the transition to a competitive marketplace. Tr. Vol. I, p. 86.

generation investments”²⁴⁴ Thus, it is undisputed that AEP Ohio waived its right to recover stranded costs from ratepayers.²⁴⁵

AEP Ohio witness Graves essentially admitted that the costs AEP Ohio is seeking to recover include stranded costs (and that he was aware that AEP Ohio waived its right to recover stranded costs²⁴⁶). He first testified that AEP Ohio should be allowed to recover its embedded costs because AEP Ohio built or acquired its fleet under criteria that sought to minimize the risk and cost of service over long-term horizons.²⁴⁷ He also later acknowledged that DEO similarly acquired its fleet and CRES providers in DEO’s service territory are charged only RPM prices for capacity.²⁴⁸ While he refused to directly define such cost recovery as stranded costs, he agreed that the definition of stranded costs may be defined as investments made under a cost-of-service regulatory regime that are sunk costs that cannot expect to be recovered from customers under a new competitive regime.²⁴⁹ Thus, Dr. Lesser explained, AEP Ohio cannot recover “capital investments in generating facilities, including its purchase of the Waterford and Darby generating plants, that were made by AEP Ohio after the ETP transition date of January 1, 2001, [which] are to be recovered through the competitive market.”²⁵⁰ The removal of such costs has a drastic impact on AEP Ohio’s purported calculation of its embedded costs, as discussed further below.

²⁴⁴ AEP Ohio Corporate Separation Plan, Case No. 12-1126-EL-UNC, filed Mar. 30, 2012 *quoted in* Lesser Direct, p. 18, fn. 30.

²⁴⁵ *See also* Lesser Direct, Ex. JAL-3 (Dr. Lesser’s testimony from Case No. 10-2929-EL-UNC); Frye Direct, pp. 8-9 (Schools witness Frye also testified that the “recovery of transition costs is no longer permitted.”).

²⁴⁶ Tr. Vol. III, p. 782.

²⁴⁷ Graves Direct, p. 16; Tr. Vol. III, p. 780.

²⁴⁸ Tr. Vol. III, pp. 808-809.

²⁴⁹ Tr. Vol. III, pp. 780-781.

²⁵⁰ Lesser Direct, p. 19.

7. Even if cost-based recovery was appropriate, AEP Ohio's "costs" are substantially lower than both of the proposed two-tiered prices.

- a. AEP Ohio's avoidable cost rate is far lower than even the Tier 1 \$146/MW-day price.

The "costs" that would be appropriate for consideration as to the pricing of AEP Ohio's capacity are the avoidable, "to go" costs used by PJM's independent market monitor to set the parameters for bidders in the BRA process. "Offers from existing resources must be based on the costs that a resource's owner could avoid by retiring or mothballing the resource."²⁵¹ Offers are set at the avoidable cost rate ("ACR"), net of Energy & Ancillary Services Offset plus 10%.²⁵² FES witness Stoddard calculated these costs for AEP Ohio's units; the average ACR, including offsets, across the three-year term of the Modified ESP is (\$46.78)/MW-day.²⁵³

While AEP Ohio may make much of its negative value, Mr. Stoddard explains that, to the contrary, AEP Ohio should be pleased because its low ACR means that any RPM price will result in a positive cash flow for AEP Ohio's assets:

This is an entirely normal outcome and implies that the unit would earn a contribution margin even if it received no capacity payment at all. The net capacity cost will be negative when a resource has positive cash flows – i.e., its operating revenues exceed its operating costs. AEP Ohio more than covers its "to go" costs with net cash flow from the sale and energy and ancillary services (marked to PJM market prices). Thus, any positive capacity price granted in this case will result in a contribution margin towards non-avoidable costs of these resources.²⁵⁴

AEP Ohio's ACR, which reflects the only costs anticipated by the PJM Tariff and the RAA, is far lower than the two tiered prices proposed in the Modified ESP. Accordingly, RPM prices

²⁵¹ Stoddard Direct, p. 15.

²⁵² Stoddard Direct, p. 15.

²⁵³ Stoddard Direct, p. 20.

²⁵⁴ Stoddard Direct, p. 20. FES witness Stoddard also noted that AEP Ohio has sold capacity in some BRAs and that that capacity "must have been priced well below \$355.72/MW-day to clear in the BRA. Stoddard Direct, p. 29.

will provide a substantial benefit to AEP Ohio and are appropriate for pricing capacity to CRES providers.

b. AEP Ohio's "embedded" costs also are significantly lower than the Tier 1 \$146/MW-day price.

If the Commission were to get even further far afield from the proper pricing for capacity – past RPM pricing or the “to go” costs referred to in the RAA – it should be noted that AEP Ohio's embedded costs are not \$355/MW-day, \$255/MW-day, or even \$146/MW-day. Rather, as FES witness Lesser calculated, AEP Ohio's “embedded” costs are \$93.64/MW-day.²⁵⁵ Dr. Lesser's calculation makes four significant and proper adjustments to AEP Ohio's \$355/MW-day calculation, which were explained at length in his testimony in Case No 10-2929-EL-UNC²⁵⁶:

- Removal of post-2000 costs that must be recovered through the competitive market, including the costs associated with the Darby and Waterford plants (recognizing credits for capacity equalization payments associated with those plants);²⁵⁷
- Addition of credits for profits earned by AEP Ohio for off-system capacity and energy sales, the latter of which AEP Ohio wrongly claims for itself;²⁵⁸
- Removal of charges for AEP Ohio's post-2000 capital investments in environmental equipment, which have been recovered through the EICCR by SSO customers,²⁵⁹ and

²⁵⁵ Lesser Direct, pp. 18-25.

²⁵⁶ See Lesser Direct, Ex. JAL-3.

²⁵⁷ Lesser Direct, pp. 19 (“[T]he embedded capacity cost is properly based on pre-2001 generating plant in service only.”), 20-24.

²⁵⁸ Lesser Direct, p. 19 (“[I]f captive customers are required to pay for capacity, they are entitled to all of the profit margins above AEP Ohio's proposed return on its generating capital investment. . . .”).

²⁵⁹ Lesser Direct, p. 20 (“Arguments that, but for these capital investments, AEP Ohio would be unable to operate many of its generating plants, and thus not earning offsetting capacity and energy revenues from off-system sales either to Pool Agreement members or other entities, are incorrect, because AEP Ohio's investments in environmental control equipment is paid for separately.”).

- Removal of pre-2000 stranded costs, the recovery of which AEP Ohio waived through its ETP.²⁶⁰

These improper cost components reflect a significant portion of AEP Ohio's calculation of its embedded costs. Dr. Lesser's \$93.64/MW-day value properly removes these components to focus on the actual embedded costs that AEP Ohio could possibly be allowed to recover under Ohio law.

B. The Above-Market Prices Would Harm Customers And The Economy.

The prices proposed in both tiers are substantially higher than the RPM market prices. The Tier 1 price is more than double the average RPM price over the term of the Modified ESP and the Tier 2 price is almost four times higher than the average RPM price.²⁶¹ Mr. Graves acknowledged that AEP Ohio's proposed capacity prices are higher than RPM prices for the planning years for 2012 through 2014 and, in fact, are "very much so, by 2013 and '14."²⁶²

The proposed prices will impact CRES providers' offerings to customers. As Schools witness Frye recognized:

CRES have relied upon the fact that they would be paying RPM for these [already shopping] customers. When that CRES contracted with the customer it would have anticipated an RPM cost for that customer's capacity of approximately \$146 per MW-day beginning in June 2011, approximately \$20 per MW-day beginning in June 2012, and approximately \$34 per MW-day beginning in June 2013. If the Commission grants the Company's request to charge \$146 per MW-day rather than the RPM going forward, the CRES could trigger a clause in their supply agreement that is commonly called the regulatory provision.²⁶³

²⁶⁰ Lesser Direct, p.

²⁶¹ Lesser Direct, p. 10.

²⁶² Tr. Vol. III, p. 814.

²⁶³ Frye Direct, p. 17.

Termination and regulatory pass-through provisions, which are negotiated with customers, are common practice in the retail electric service market to help CRES providers (and customers) account for unexpected increases in costs.²⁶⁴ Lima Refining witness Walters testified that it's "common sense" that his CRES provider would pass on the increased capacity price: "I can't fathom, again, with the millions of dollars that we're talking about . . . it would be a huge number for our provider to eat, so I don't envision any way that they would eat that."²⁶⁵ Thus, the impact of AEP Ohio's proposed increases in capacity prices would be felt by customers. The impact of the two-tiered pricing scheme is worsened by the fact that both shopping and non-shopping customers will face fewer alternatives to AEP Ohio's SSO because the above-market pricing scheme will limit the ability of competitive suppliers to make attractive offers.

The impact of AEP Ohio's two-tiered capacity pricing would have a broad impact on the economy. While AEP Ohio witness Dias testified on direct that the Modified ESP "enhances the state's effectiveness in the global economy,"²⁶⁶ the opposite is true. Using the well-recognized IMPLAN model, Dr. Lesser has estimated that the above-market capacity costs will result "in an average loss of almost 6,500 Ohio jobs each year during the three years of the Modified ESP."²⁶⁷ The above-market capacity costs directed to non-SSO customers, which Dr. Lesser estimates to be approximately \$766 million, would result in the loss of 3,170 jobs per year -- more than the

²⁶⁴ Tr. Vol. XVI, pp. 4441-4442 (FES witness Banks explaining that regulatory pass-through provisions are common to allow for handling unexpected changes); Parisi Direct, p. 7.

²⁶⁵ Tr. Vol. XV, p. 4201. Mr. Walters testified that the difference between RPM prices and AEP Ohio's proposed two tiered pricing for capacity as applied to Lima Refining would be immense: an additional \$11.3 million for Tier 1 and an additional \$26.8 million for Tier 2. Direct Testimony of the Lima Refining Company on behalf of the OMA Energy Group ("Lima Refining Direct"), p. 4.

²⁶⁶ Dias Direct, p. 4.

²⁶⁷ Lesser Direct, pp. 42 (emphasis added).

total number of employees AEP Ohio has based in Ohio.²⁶⁸ The Modified ESP's negative impact on Ohio's economy far exceeds any purported impact on AEP Ohio. The Commission should consider the effects of the above-market capacity prices on customers and the economy, and reject the Modified ESP's unnecessary proposal for above-market capacity pricing.

C. The Above-Market Prices Are Anti-Competitive.

1. Competition benefits customers and the State.

The benefits of competition are undisputed:

Competition promotes lower prices to customers in the near- and long-term. A competitive market encourages electric suppliers to reduce their costs, while maintaining or increasing production – thereby leading to improved operating performance from existing generating plants. . . .

Competition also shifts risk away from customers and on to investors in competitive suppliers, who instead bear the risk of generation investments Under a market system with effective competition, suppliers have a strong incentive to minimize their costs and make their generation resources more efficient because the suppliers and their shareholders bear the risks of their business decisions.²⁶⁹

Mr. Dias testified that AEP “believe[s] that competitive markets do provide some benefits to customers” and that in a competitive market sellers have incentives to minimize their costs.²⁷⁰ He further acknowledged that customers expect to see lower prices from robust competition.²⁷¹ AEP Ohio witness Graves agreed that competitive markets “can produce

²⁶⁸ Lesser Direct, pp. 42-43 (noting that AEP Ohio has 2,870 employees based in Ohio) and Ex. JAL-2. Further, Ormet witness Coomes also used the IMPLAN model to estimate that 3,117 jobs would be lost and \$238 million would be lost in employee compensation if Ormet, AEP Ohio's largest customer, were to close. Direct Testimony of Paul Coomes on behalf of Ormet Primary Aluminum Corporation (“Coomes Direct”), pp. 2-4. Thus, AEP COO Powers' threat that AEP Ohio could terminate “thousands” of jobs if the Modified ESP is not approved as proposed, is dwarfed by the estimated impact of the Modified ESP on everyone else. See Tr. Vol. I, pp. 257-258.

²⁶⁹ Banks Direct, pp. 5-6.

²⁷⁰ Tr. Vol. VI, p. 1945.

²⁷¹ Tr. Vol. VI, pp. 1946-1947.

advantages to customers as compared to cost-of-service regulation,” including by having “more efficient suppliers and lower prices than would be absent competition.”²⁷² He also agreed that the benefits of competition are as applicable to the RPM model as they are to retail competition. Indeed, Mr. Graves described the competition to lower prices that would result from more suppliers in the market as “*an economic truism*.”²⁷³

Several customer witnesses testified to the savings they have accessed in the competitive market. For example, Schools witness Frye described that schools have saved approximately \$20 million in electricity costs through the competitive market.²⁷⁴ Summitville Tiles witness Johnson also testified that Summitville Tiles received its “market price” from AEP Retail, which was set for a 33-month term at 6.29 cents/kWh in May 2011 – a price below Ms. Thomas’ projected Modified ESP price (corrected or uncorrected).²⁷⁵ These and all other customers who are enjoying, or would like the opportunity to enjoy, the full benefits of the competitive market will be precluded from doing so by the Modified ESP until June 2015.

2. The above-market capacity prices will limit competition, as AEP Ohio has admitted.

Any suggestion that the Modified ESP’s two-tiered “discounted” capacity will benefit the competitive market²⁷⁶ is directly refuted by its executives’ own words, as well as the testimony of numerous Intervenor witnesses. AEP Ohio’s executives have admitted that similar (and lower priced) caps proposed in AEP Ohio’s Stipulation ESP were designed to limit shopping. Richard

²⁷² Tr. Vol. III, p. 767-768.

²⁷³ Tr. Vol. III, p. 816 (emphasis added).

²⁷⁴ Frye Direct, p. 3.

²⁷⁵ Compare Tr. Vol. XV, p. 4221 with Thomas Direct, Ex. LJT-1, p. 1 (average 6.36 cents/kWh over the term of the Modified ESP) and Schnitzer Direct, Ex. MMS-1, p. 1 (Ms. Thomas’ corrected estimate is an average 6.49 cents/kWh over the term of the Modified ESP).

²⁷⁶ See Allen Direct, pp. 8-9; Dias Direct, p. 8.

Munczinski, AEP's Senior VP for Regulatory Services, admitted that: *“Over those [shopping cap] percentages, if you want to shop, you pay the full cost of \$255 per megawatt day. So the thought and the theory is that the shopping will be constrained to the discounted RPM price.”*²⁷⁷ He also stated that AEP Ohio “should see no more shopping than the 20%, 30%, 40% levels that are included in the stipulation.”²⁷⁸ AEP Ohio witness Powers acknowledged that “[t]here was a change of circumstance” leading to its request for above-market capacity prices and “the change of circumstance is for the first time AEP Ohio saw significant customer migration”²⁷⁹ At that time, AEP Ohio “took prompt action” and filed for the \$355/MW-day capacity price, which form the basis for the “discounted” tiers.²⁸⁰ When asked if AEP Ohio has a policy or goal of encouraging shopping, Mr. Allen acknowledged that, “[n]o, I don’t think that’s a corporate goal. AEP likes our customers. We’d love our customers to stay with us.”²⁸¹

Mr. Schnitzer’s analysis confirms that the two-tiered, above-market pricing scheme will constrain shopping at both Tier 1 and Tier 2, and effectively preclude shopping at Tier 2:

The Modified ESP bypassable charges significantly exceed the CRES market cost to serve when RPM capacity prices are available to CRES providers. This “headroom” represents a potential savings opportunity for customers if they could fully access competitive market pricing. Under the Modified ESP, the higher capacity charge would reduce this savings opportunity for customers by approximately \$250 million or \$5/MWH over the three-year period. As shown below, despite the higher Tier 1 capacity charge, headroom would still exist for these customers,

²⁷⁷ Banks Direct, pp. 16-17, Ex. TCB-6 (emphasis added, quoting Mr. Munczinski in AEP Conference Call to Announce Stipulation, Final Transcript, Sept. 7, 2011).

²⁷⁸ Banks Direct, p. 17, Ex. TCB-7.

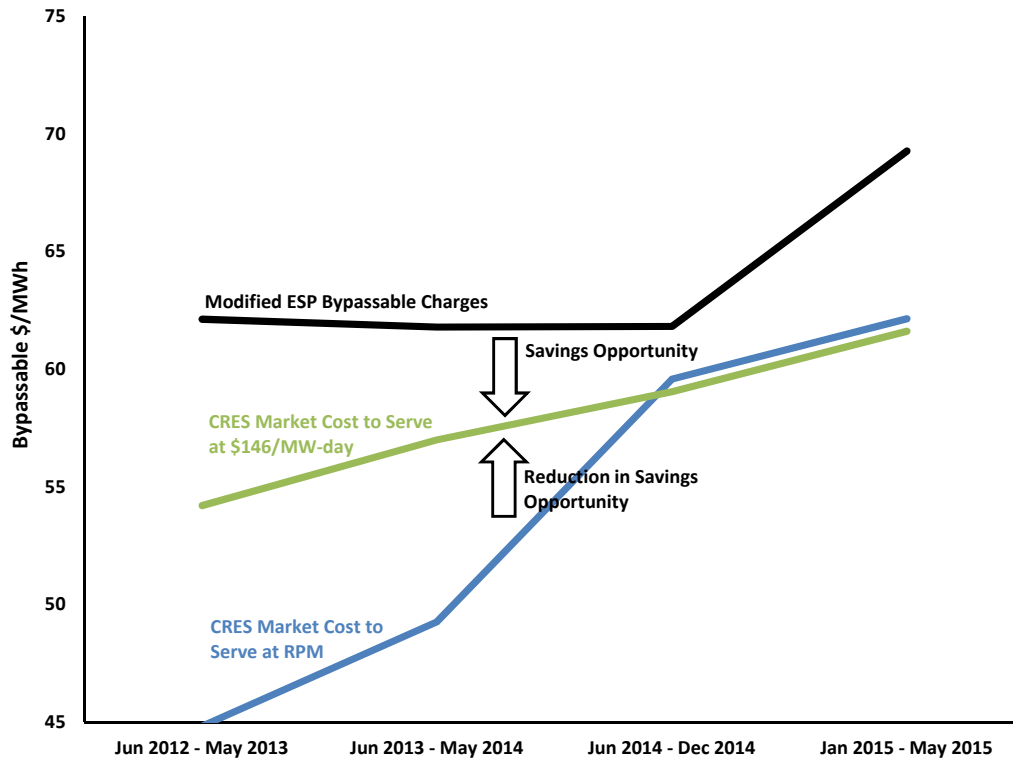
²⁷⁹ Tr. Vol. II, p. 401.

²⁸⁰ Tr. Vol. II, p. 401.

²⁸¹ Tr. Vol. V, p. 1640.

suggesting that Tier 1 customers will still have an opportunity to shop.²⁸²

Customers See a Lower Benefit from Retail Shopping When Tier 1 Capacity Is Charged to CRES Providers



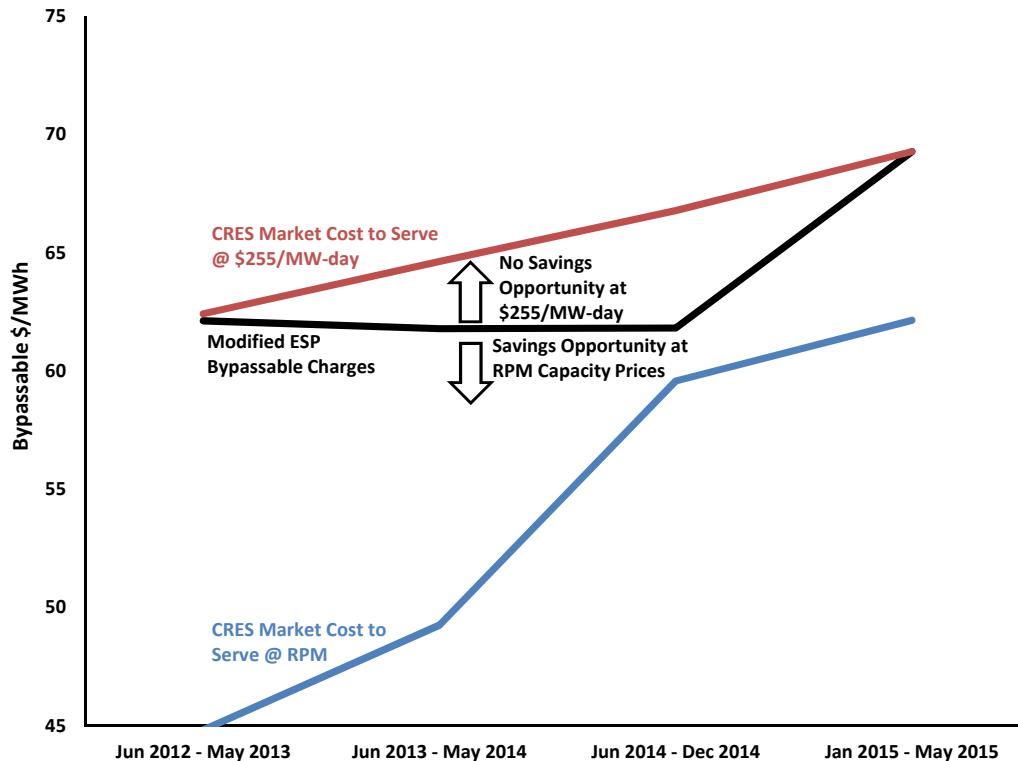
Mr. Schnitzer also confirmed AEP Ohio’s stated goals in implementing the two-tiered pricing – CRES providers will have no headroom under the Tier 2 \$255/MW-day capacity price:

Although the recent decline in market prices has improved the prospects for customer shopping since the Stipulation ESP was initially approved, the Modified ESP Tier 2 capacity charge of \$255/MW-day would result in negative headroom according to AEP Ohio’s price forecasts. Therefore, there is little opportunity for customers to shop with a CRES supplier at the Tier 2 capacity charge because the bypassable generation charges in the Modified ESP are below the costs that a CRES supplier would have to incur

²⁸² Schnitzer Direct, pp. 43-44.

when faced with paying AEP Ohio's above-market \$255 per MW-day capacity charge.²⁸³

The Modified ESP Would Limit Retail Competition When CRES Suppliers Have to Pay AEP Ohio's Above-Market \$255/MW-Day Capacity Charge



Mr. Schnitzer noted that the Modified ESP is likely to limit the opportunity for Tier 2 customers to shop, especially as the headroom becomes more negative over time, and his analysis was performed using the Company's own estimates of bypassable charges versus the competitive market price assuming a \$255/MW-day capacity charge.²⁸⁴ As a result, the Company's projected shopping assumptions are inconsistent with AEP Ohio's underlying Modified ESP Price and market price estimates.

IGS witness Parisi similarly testified that:

Adopting such a high price for capacity [at the Tier 1 level] will make it very difficult for suppliers to offer competitive pricing for

²⁸³ Schnitzer Direct, pp. 45-46.

²⁸⁴ Schnitzer Direct, p. 46.

the entire ESP period. Added to this is the fact that after Tier 1 capacity limits are reached, CRES suppliers must pay an even higher Tier 2 price for capacity. . . . [I]t is logical to conclude that adopting AEP's proposal will severely limit the amount of shopping that occurs in the AEP service territory throughout the ESP period. Further, there could be a longer-term chilling effect on competition, as customers that have already ventured out into the competitive market and selected a supplier and contract could have it taken away as a result of unanticipated higher capacity costs.²⁸⁵

As DERS witness Walz testified, "if, for example, I have uncertainty about the capacity price that I need to charge my customers, that uncertainty and inconsistency across the state in how you price capacity affects my ability to retail to customers [sic] on a consistent basis."²⁸⁶

AEP Ohio's testimony to the contrary is unsupported and illogical. AEP Ohio witness Thomas testified that she believes the two-tiered capacity rates "will lead to increased shopping than there has been previously, yes."²⁸⁷ However, her own testimony and calculations directly undercut such a suggestion. Ms. Thomas prepared the ten elements that she believes are included in a wholesale bid, and she testified that she would expect that *the same components* would generally apply to a CRES provider.²⁸⁸ Thus, based on her Exhibit LJT-1, she believes (and agreed on cross-examination) that a CRES provider would likely charge \$69.36/MWh during planning year 2012/13, which is higher than the ESP price of \$62.12/MWh.²⁸⁹ And in fact, the price that she expects a CRES provider to charge would be higher than the Modified

²⁸⁵ Parisi Direct, p. 6.

²⁸⁶ Tr. Vol. VII, p. 2323.

²⁸⁷ Tr. Vol. IV, p. 1326. To continue her (il)logic, she testified that she believes that the nonbypassable RSR will lead to increased shopping because "the RSR allows the company to offer the balanced package that is offered here and therefore would lead to more shopping." Tr. Vol. IV, pp. 1326-1327.

²⁸⁸ Tr. Vol. IV, pp. 1275-1276.

²⁸⁹ Tr. Vol. IV, p. 1276; Thomas Direct, Ex. LJT-1.

ESP price for 2013/14 planning year.²⁹⁰ Her testimony also was refuted by AEP Ohio witness Graves, who testified that above-market pricing would limit shopping. He acknowledged that there would be more CRES providers serving AEP Ohio customers under RPM capacity prices.²⁹¹ He also agreed that shopping activity would increase under RPM prices; “the CRES providers would have a lower cost and everything else being equal, that has to increase their ability to sell and others’ desire to buy.”²⁹²

Mr. Allen also incorrectly believed that there would be “substantial shopping” regardless of whether capacity was priced at RPM, \$146/MW-day, or \$255/MW-day.²⁹³ But he did not prepare any projection of shopping based on different capacity prices, nor any elasticity study with respect to capacity prices and shopping.²⁹⁴ Instead, his belief was based on his analysis of the competitive benchmark price that Ms. Thomas prepared, as compared to the Modified ESP price, *but with a unique modification solely designed to obtain his desired result.*²⁹⁵ In order to invent headroom where none exists, Mr. Allen excluded two cost-components from Ms. Thomas’s CBP estimate: the retail administrative fee and the transaction risk adder, which total approximately \$8-9/MWh.²⁹⁶ There is absolutely no basis to eliminate these two cost components. Mr. Allen acknowledged that the retail administration cost would be charges on the

²⁹⁰ Tr. Vol. IV, pp. 1277-1278.

²⁹¹ Tr. Vol. III, p. 773.

²⁹² Tr. Vol. III, p. 818. Mr. Graves further admitted that providing capacity at RPM prices “would probably increase the number of CRES providers and increase the number of interested buyers.” Tr. Vol. III, pp. 817-818.

²⁹³ Tr. Vol. V, p. 1400.

²⁹⁴ Tr. Vol. V, pp. 1382-1383, 1385.

²⁹⁵ Tr. Vol. V, p. 1400.

²⁹⁶ Tr. Vol. V, pp. 1400-1401. *See* Thomas Direct, Ex. LJT-2.

CRES providers' books²⁹⁷ and Ms. Thomas acknowledged that both of these cost components would be included in CRES pricing.²⁹⁸ In fact, Ms. Thomas relied on these cost components when performing her MRO Price Test.²⁹⁹ In short, AEP Ohio cannot have it both ways: either these costs exist and there is no headroom, or these costs do not exist and AEP Ohio fails the ESP v. MRO Test by an ever greater amount.

AEP Ohio witness Allen also believes that shopping can occur under a \$255/MW-day capacity price based in part on the 6.8% of the current shopping load that is subject to that price today.³⁰⁰ However, he did not assess what proportion of that load was shopping as of 2011 and he acknowledged that approximately 700 GWh of load was shifted from Tier 1 to Tier 2 as a result of the Commission's subsequent orders on the Stipulation ESP.³⁰¹ Mr. Allen also does not know for that 6.8% of shopping load: (1) what prices CRES providers have charged in their contracts with customers; (2) whether the CRES provider is pricing the contract based on an assumption that the CRES provider will ultimately pay only RPM prices; or (3) whether the CRES provider and the customer have entered into contracts assuming that RPM-based prices will apply in the future, with a reservation of the right to terminate the contract if the Commission approves above-market capacity pricing.³⁰²

To the extent AEP Ohio suggests that CRES providers may not pass on a lower capacity price to customers, such a suggestion is antithetical to the competitive market. Mr. Graves acknowledged that if there is a group of active CRES suppliers with the same cost components,

²⁹⁷ Tr. Vol. V, p. 1401.

²⁹⁸ Tr. Vol. IV, pp. 1275-76.

²⁹⁹ Tr. Vol. IV, pp. 1273-75.

³⁰⁰ Tr. Vol. V, pp. 1386-1387.

³⁰¹ Tr. Vol. V, pp. 1388-1390.

³⁰² Tr. Vol. XVII, pp. 4832-35.

one would expect competition to put a downward pressure on suppliers' margins and that, to keep customers, a CRES provider would be motivated to offer prices lower than its competition if the provider could do so.³⁰³ Mr. Dias also acknowledged where a supplier is getting access to lower-cost capacity in a competitive market and does not pass the savings along to customers, another competitor could come along and offer a lower price reflecting that lower cost.³⁰⁴ As Staff witness Fortney acknowledged, "the higher the capacity charge that AEP charges to a CRES provider, [it] would more than likely force the CRES provider to increase the price of their offer, yes. . . . [T]he next step is if the CRES provider has to offer a higher price, the likelihood of shopping would be reduced."³⁰⁵ The credible record evidence establishes that the Modified ESP's two-tiered, above-market capacity prices alone would significantly limit competition in AEP Ohio's service territory – to the benefit of AEP Ohio rather than customers.³⁰⁶

3. The "Detailed Implementation Plan" will confuse retail customers.

AEP Ohio proposes to divvy up the Tier 1-priced capacity, to the extent the cap is not already exceeded by currently shopping customers, through the process outlined in its "Detailed Implementation Plan" ("DIP").³⁰⁷ However, as FES witness Banks testified, the "DIP process is confusing – and it will continue to confuse customers, discourage retail suppliers from participating in the market, and obscure opportunities for customers to save on their generation

³⁰³ Tr. Vol. III, pp. 769-770.

³⁰⁴ Tr. Vol. VI, p. 1945.

³⁰⁵ Tr. Vol. XVI, p. 4603.

³⁰⁶ As Mr. Schnitzer points out, even if one accepts AEP Ohio's switching assumptions, if AEP Ohio made capacity available to CRES providers at RPM prices for all shopping customers, the lower capacity charges would save shopping customers approximately \$875 million in above-market costs for capacity as compared to the Modified ESP. Schnitzer Direct, p. 48.

³⁰⁷ See Allen Direct, Ex. WAA-3.

service.”³⁰⁸ The DIP process creates uncertainty for both CRES providers and customers, which means that “contracts would likely require contingencies, risk premiums, and language providing for different outcomes,” further creating price uncertainty and dissuading customers from shopping.³⁰⁹ Mr. Allen acknowledged that uncertainty around the capacity price may make it more difficult for some customers to shop.³¹⁰ Indeed, AMG Vanadium, Inc. witness Ed Forshey testified that AMG Vanadium had engaged in negotiations with CRES providers “in an effort to proactively manage the risks” associated with its electricity costs.³¹¹ However, he noted, “the uncertainty created by AEP-Ohio’s various proposals, including the current two-tiered capacity pricing, has made it difficult if not impossible to predict the rates for even a short-term forward period. The result of the uncertainty is that we have not been able to enter into an agreement with a competitive supplier.”³¹² The DIP also should be rejected because too many questions remain as to how the process will be implemented.³¹³

If the two-tiered pricing is implemented, confusion will continue to reign because AEP Ohio proposes that it will not implement the Cap Tracking System – CRES providers’ and customers’ primary means of access to information about the status of the caps – for 60 days after the Modified ESP is approved.³¹⁴ As FES witness Banks testified, a “60-day delay is

³⁰⁸ Banks Direct, p. 7.

³⁰⁹ Banks Direct, pp. 10-11.

³¹⁰ Tr. Vol. V, p. 1528.

³¹¹ Direct Testimony of AMG Vanadium Inc. on behalf of the OMA Energy Group (“AMG Vanadium Direct”), p. 5.

³¹² AMG Vanadium Direct, pp. 5-6.

³¹³ See Banks Direct, p. 12 (“How, if at all, would the caps be affected by an increase in a customer’s load? Where will currently shopping customers fall in the queue? How can CRES providers and/or customers confirm their rights under the procedure?”).

³¹⁴ Allen Direct, Ex. WAA-3, p. 6 (“The CTS shall be fully operational within 60 days of the issuance of an order in this case.”).

particularly unreasonable given that AEP Ohio should have already developed and essentially finalized a nearly identical CTS based on its previous ESP Stipulation.”³¹⁵ Mr. Allen acknowledged that AEP Ohio had an operational CTS by February 12, 2012, which complied with the Commission’s December 14, 2011 Order.³¹⁶ He also acknowledged that the DIP proposed here is simpler in certain respects than the Stipulation ESP’s DIP. For example, there are specific mega-watt hour caps for the tiers (“They’re predetermined in advance”) and as such there is a clearer target.³¹⁷ There is, thus, no reasonable basis on which to delay implementation of the CTS for another 60 days after any order in this proceeding. “Without ready access to the most basic information needed to navigate the DIP process, CRES providers and customers will be further prejudiced.”³¹⁸

The proposed external oversight of the DIP process also is improperly limited. AEP Ohio proposes that the DIP and cap assignments would be prepared internally and subject to Commission staff review, without any formal audit process.³¹⁹ At a minimum, if the two-tiered pricing structure is approved, “the Commission should require AEP Ohio to establish a thorough process for the Commission’s review and audit of the DIP with fair opportunity for other affected parties to participate in and comment on the results of the Commission’s audits.”³²⁰ Such third-party oversight is critical to ensure that transparency and adequate controls are in place to mitigate AEP Ohio’s self interest in limiting shopping and its competitive affiliate’s

³¹⁵ Banks Direct, pp., 7, 11-12.

³¹⁶ Tr. Vol. V, p. 1424.

³¹⁷ Tr. Vol. V, p. 1422.

³¹⁸ Banks Direct, p. 7.

³¹⁹ Banks Direct, pp. 8-9; Tr. Vol. V, p. 1425.

³²⁰ Banks Direct, p. 9.

interest in receiving Tier 1-priced capacity for its customers.³²¹ Mr. Allen testified that AEP Ohio would abide by a Commission order requiring Staff to pick an independent auditor.³²²

4. The Modified ESP improperly limits governmental aggregation.

While the Modified ESP includes a provision that purports to promote governmental aggregation, in fact the Modified ESP again improperly and unnecessarily limits governmental aggregation. First, the Modified ESP's allotment of Tier 1 priced capacity for governmental aggregation participants is only provided for 2012. For the remaining two and a half years, "governmental aggregation and individual customers would be on the same footing."³²³ Second, the Modified ESP's allotment for governmental aggregation participants is limited to those communities who authorized aggregation as of November 2011.³²⁴ "All this does is increase the prices charged to existing governmental aggregation programs by increasing the cost of capacity above market in Tier 1, and further subjects any subsequent programs to the uncertainty of the DIP process and the even higher capacity prices in Tier 2."³²⁵ This limitation also is significant in AEP Ohio's territory, where governmental aggregation has only recently started. It could exclude, for example, those communities that did not become aware of AEP Ohio's intent to charge customers above-market capacity prices until the Stipulation ESP was filed in September 2011. Indeed, the Mayor of the City of Hillsboro, which has not yet reached a decision on governmental aggregation – and would therefore be excluded from the 2012 reservation of Tier 1 priced capacity under the Modified ESP – testified that the City would "like to at least have the

³²¹ Banks Direct, p. 9. Indeed, as demonstrated at the hearing, AEP Ohio had already posted erroneous data about the availability of Tier 1 capacity by using incorrect caps. Tr. Vol. V, pp. 1396-1398; FES Ex. 117.

³²² Tr. Vol. V, p. 1426.

³²³ Tr. Vol. V, p. 1481.

³²⁴ See Banks Direct, pp. 13-14.

³²⁵ Banks Direct, p. 13.

option to become an aggregator of electricity. We want the option to shop for the best rates for our constituency and to aggregate if our City Council so desires.”³²⁶ AEP Ohio witness Allen acknowledged that he did not know if any communities in AEP Ohio’s service territory currently are considering governmental aggregation.³²⁷ He also testified that he does not know and did not study whether a community who became interested in governmental aggregation in September 2011 could have brought a proposed ballot initiative to its residents by the November 2011 election.³²⁸

The Modified ESP’s limited allotment for governmental aggregation also excludes mercantile customers. The Commission previously held that mercantile customers should not be excluded from governmental aggregation, which is consistent with Ohio law’s recognition that mercantile customers can opt-in to an aggregation program.³²⁹ Ignoring the Commission’s direction on this issue, Mr. Allen testified that it is appropriate to exclude mercantile customers from the Modified ESP’s allotment for aggregation because mercantile customers do not participate much in governmental aggregation.³³⁰ However, this testimony is wholly inconsistent with Mr. Allen’s previous representations to this Commission. In February 2012, AEP Ohio filed an Application for Rehearing of the Commission’s January 23, 2012 Order.³³¹ In it, AEP Ohio argued against the Commission’s inclusion of mercantile customers in governmental aggregation, claiming that the impact of including mercantile customers in any provision for

³²⁶ Direct Testimony of Drew Hastings on behalf of the City of Hillsboro, Ohio (“Hastings Direct”), p. 5.

³²⁷ Tr. Vol. V, p. 1410.

³²⁸ Tr. Vol. V, pp. 1410-1411.

³²⁹ Entry, Jan. 23, 2012, ¶ 21 (“The Commission notes that Section 4928.20, Revised Code, permits mercantile customers to voluntarily opt in to an existing government program after it is established, and accordingly, mercantile customers should not be excluded from RPM-priced capacity that may be available to non-mercantile customers in eligible governmental aggregation communities.”).

³³⁰ Tr. Vol. V, p. 1414.

³³¹ See Ohio Power Company Application for Rehearing, filed Feb. 10, 2012.

aggregation would be significant to AEP Ohio, to the tune of approximately \$237-434 million to AEP Ohio.³³² He testified that he is unaware as to whether AEP Ohio informed the Commission that mercantile customers ‘do not participate much in governmental aggregation’ in connection with that filing, when AEP Ohio was seeking to limit their participation.³³³ Kroger witness Higgins “does not propose to alter” AEP Ohio’s proposal to exclude mercantile customers from the limited protection provided for certain governmental aggregation programs for 2012.³³⁴ However, on cross-examination, he admitted that he was unaware that the Commission previously had rejected AEP Ohio’s attempt to limit mercantile customers’ participation in the aggregation protections that the Commission added to the Stipulation ESP.³³⁵ He also acknowledged that if mercantile customers were permitted to obtain Tier 1-priced capacity, it would “directionally” provide an additional benefit.³³⁶ The Modified ESP’s lone provision referencing governmental aggregation does not promote governmental aggregation and improperly excludes certain communities and certain customers from receiving the benefits of governmental aggregation.

5. Other provisions of the Modified ESP and existing AEP Ohio policies and practices further infringe on competition, in violation of state policy.

Through the Modified ESP, AEP Ohio would continue certain tariff provisions and practices that are anti-competitive, which in concert with the two-tiered pricing further limit shopping in AEP Ohio’s service territory. These provisions and practices unfortunately are consistent with AEP Ohio’s stated objectives of limiting shopping. AEP’s former CEO publicly

³³² Tr. Vol. V, p. 1418.

³³³ Tr. Vol. V, pp. 1418-1420.

³³⁴ Direct Testimony of Kevin C. Higgins on behalf of The Kroger Co. (“Higgins Direct”), p. 13.

³³⁵ Tr. Vol. VII, p. 2225.

³³⁶ Tr. Vol. VII, p. 2227.

stated, “I don’t like customers switching in Ohio” and that “there is a concern over the opportunity of customers to shop.”³³⁷ AEP’s CFO also admitted that AEP has instituted “regulatory responses to customers switching” that will continue.³³⁸

For example, in the Modified ESP, AEP Ohio proposes to delay implementing a merged fuel adjustment clause (“FAC”) until 2013, when the PIRR will be implemented.³³⁹ However, rather than counterbalancing each other, as AEP Ohio witness Roush suggests, OPC customers would experience an increase that was 24% greater than CSP customers.³⁴⁰ As a result, OPC customers will experience rate shock in 2013 and, prior to then, it will dissuade competition in OPC’s territory. As FES witness Lesser explained:

Mr. Roush’s proposal allows OPC retail customers to pay artificially low electric prices, which will clearly reduce retail competition in OPC’s service territory. At the same time, CSP customers will be forced to pay higher electric prices It thus appears that AEP Ohio is proposing to “simplify” its rate structure . . . possibly in an attempt to reduce migration of OPC customers to CRES providers.³⁴¹

Other anti-competitive provisions of the Modified ESP include minimum stays and switch fees, which limit customers’ ability to access the competitive market. As DERS witness Walz testified, “the more limitations you remove, the more customers are going to be eligible for

³³⁷ AEP-Q3 2010 American Electric Power Earnings Conference Call, Oct. 19, 2010, Final Transcript; *see also* AEP Ohio’s Response to FES RFA 16-003 (admitting to the CEO’s statement), attached hereto as Exhibit TCB-2; Sanford C. Bernstein & Co. Strategic Decisions Conference, Fireside Chat with Mike Morris, AEP Chairman and CEO, Jun. 1, 2011; *see also* AEP Ohio’s Response to FES RFA 16-005 (admitting to the CEO’s statement), attached hereto as Exhibit TCB-3.

³³⁸ AEP-Q4 2010 American Electric Power Earnings Conference Call, Final Transcript, Jan. 28, 2011); *see also* AEP Ohio’s Response to FES RFA 9-002 and 9-003 (admitting to the CFO’s statement), attached hereto as Exhibits TCB-4(a) and (b).

³³⁹ Direct Testimony of David M. Roush on behalf of AEP Ohio (“Roush Direct”), pp. 5-6.

³⁴⁰ Lesser Direct, p. 45.

³⁴¹ Lesser Direct, p. 46.

choice and the easier it is to communicate to customers about the simplicity of choice and the easier it is for me to deliver those services to customers.”³⁴²

FES witness Banks explained that the Modified ESP would continue until 2015 a 12-month minimum stay for medium and large commercial/industrial customers and a “summer stay” requirement for residential and small commercial customers returning to SSO service.³⁴³

“By implementing these minimum stays, AEP Ohio makes it more difficult for customers to switch, and thereby hinders effective competition and favors its own generation service.”³⁴⁴

RESA witness Ringenbach and IGS witness Parisi similarly testified in opposition to the 12-month minimum stay.³⁴⁵ While AEP Ohio may seek to justify the minimum stay based on fears that customers could “game” the system, Mr. Roush testified that he had not done any review to determine whether seasonal “gaming” is an issue in Ohio or to assess the impact on other Ohio utilities after they eliminated their minimum stays.³⁴⁶

Moreover, AEP Ohio recently announced a new “process”³⁴⁷ by which it will return customers to SSO if they have a 60-day delinquency of more than \$50.³⁴⁸ According to this new directive, “[c]ustomers will not be allowed to select another CRES provider until past due

³⁴² Tr. Vol. VII, p. 2327.

³⁴³ Banks Direct, p. 31 (explaining that the “summer stay” requires residential and small commercial customers returning to SSO service to stay on SSO service through April 15 if the customer received SSO service at any time during the previous May 15 through September 15).

³⁴⁴ Banks Direct, p. 31.

³⁴⁵ Tr. Vol. XIII, pp. 3707-3708; Parisi Direct, pp. 24-25. Constellation/Exelon witness Fein testified that the “Commission should direct Ohio Power to eliminate . . . outdated, flawed tariff and business practice requirements,” including the 90-day notice for large commercial and industrial customers. Fein Direct, p. 31.

³⁴⁶ Tr. Vol. IV, pp. 1119-1120.

³⁴⁷ Tr. Vol. VI, p. 1958.

³⁴⁸ Tr. Vol. VI, p. 1956; FES Ex. 119 (May 16, 2012 Email from OhioChoiceOperations@AEP.com).

amounts are paid.”³⁴⁹ Further, AEP Ohio witness Dias testified that he did not know if these customers would be subject to the summer stay and did not know if these customers could lose their Tier 1 status if they were pulled back onto the SSO.³⁵⁰ This “process,” thus, will preclude the affected customers from shopping and from accessing the benefits of the competitive market. As such, it violates the state’s policy to protect at-risk populations, who are the most likely customers to face payment delinquencies.³⁵¹ While Mr. Dias claimed that the new “process” was the result of a collaborative discussion with CRES providers,³⁵² this claim was refuted by RESA witness Ringenbach, who was unaware of any participation by Direct Energy or any other RESA member.³⁵³

In addition, AEP Ohio imposes a \$10 switch fee that is higher than all other Ohio EDUs.³⁵⁴ AEP Ohio also charges the fee directly to customers, rather allowing CRES providers to pay the fee.³⁵⁵ “The increased fee and the direct billing of that fee to customers have a negative impact on competition by placing additional penalties on customers who shop.”³⁵⁶ RESA witness Ringenbach also testified that AEP Ohio’s switching fee should be reduced or eliminated.³⁵⁷ Mr. Roush admitted that the cost calculation underlying the \$10 switch fee has not been updated since AEP Ohio’s 1999 ETP case and that the system may be more automated than

³⁴⁹ FES Ex. 119 (May 16, 2012 Email from OhioChoiceOperations@AEP.com).

³⁵⁰ Tr. Vol. VI, pp. 1975-1976.

³⁵¹ See R.C. § 4928.02(L).

³⁵² Tr. Vol. VI, p. 1958.

³⁵³ Tr. Vol. XIII, pp. 3693-3694; Supplemental Direct Testimony of Teresa Ringenbach on behalf of Retail Energy Supply Association and Direct Energy (“Ringenbach Supplemental Direct”), pp. 2-3.

³⁵⁴ Banks Direct, p. 31.

³⁵⁵ Banks Direct, p. 31.

³⁵⁶ Banks Direct, p. 31.

³⁵⁷ Direct Testimony of Teresa Ringenbach on behalf of Retail Energy Supply Association and Direct Energy (“Ringenbach Direct”), p. 19.

it was at that time.³⁵⁸ He also acknowledged that customers could be charged when they leave and then when they return.³⁵⁹ The minimum stays and switching fees are additional components of AEP Ohio's electric service that cause confusion and dissuade customers from accessing the benefits of the competitive market, which would be further limited by the Modified ESP.

D. The Two-Tiered Prices Are Discriminatory.

The Modified ESP violates the state's policy to "[e]nsure the availability to consumers of . . . *nondiscriminatory*, and reasonably priced retail electric service."³⁶⁰ The Modified ESP would impose two different prices for the same capacity on similarly situated customers. As FES witness Banks testified, "[s]hopping customers who fall under the cap for Tier 1 will pay one price (\$146/MW-day), while shopping customers who do not receive an allotment will pay approximately 75% more for the exact same capacity service under Tier 2 (\$255/MW-day). This significant discrepancy in capacity pricing is discriminatory and arbitrary."³⁶¹ AEP Ohio witness Powers acknowledged that "customers by way of their CRES providers could see different capacity rates, yes," through the two-tiered system.³⁶² Schools witness Frye agreed that the two-tiered pricing is discriminatory: "Customers subject to Tier 2 pricing will be discriminated against by paying the higher charge for the same service provided to customers in Tier 1, or by being economically precluded from shopping."³⁶³

³⁵⁸ Tr. Vol. IV, pp. 1115, 1201-1203.

³⁵⁹ Tr. Vol. IV, p. 1114.

³⁶⁰ R.C. § 4928.02(A) (emphasis added).

³⁶¹ Banks Direct, p. 8.

³⁶² Tr. Vol. I, p. 221.

³⁶³ Frye Direct, p. 16.

The only difference between customers who fall above or below the Tier 1 cap is when they qualified in the past to appear in the queue.³⁶⁴ AEP Ohio's FRR obligation does not distinguish between shopping and non-shopping load.³⁶⁵ FES witness Stoddard testified: "I reject Mr. Graves' argument that AEP Ohio's generation fleet is providing capacity that is somehow different and worthy of a different, higher valuation. Any such argument misses a central point about capacity: it is a fungible commodity The capacity product from AEP Ohio's generation fleet is not a better or different product [than] the capacity from any other qualified supply resource, so no premium or different price is justified."³⁶⁶ Mr. Dias admitted that other than the price, there is no difference in the capacity sold to one tier of CRES providers versus another tier: "Yeah, . . . it's not like distribution service where you may have a pocket of an area that has a quality of service issue because of the infrastructure or vegetation to a metropolitan area that may not have the same level. *I think of capacity as capacity.*"³⁶⁷ "[T]he cost is the same."³⁶⁸ Staff witness Fortney, too, acknowledged that the capacity provided to customers in both Tiers is the same and the only distinction between the two groups is the "timing" of when they qualified for Tier 1 pricing.³⁶⁹

While the Ohio Supreme Court has upheld differentiated pricing, it has done so only where customers had equal opportunity to access the preferred pricing. As the Supreme Court affirmed in *AK Steel Corp.*, shopping credits offered only to the first group of customers who

³⁶⁴ Tr. Vol. V, pp. 1494-1495.

³⁶⁵ Tr. Vol. II, pp. 539-540 (Nelson).

³⁶⁶ Stoddard Direct, p. 25.

³⁶⁷ Tr. Vol. VI, pp. 1952-1953 (emphasis added).

³⁶⁸ Tr. Vol. VI, p. 1953.

³⁶⁹ Tr. Vol. XVI, p. 4603. OEG witness Kollen testified that he is "not aware of any cost basis for the two-tier pricing differential." Tr. Vol. X, p. 2806.

shopped are not discriminatory because “all customers will have an equal opportunity to take advantage of the shopping incentives.”³⁷⁰ Here, under AEP Ohio’s proposal, customers are not on equal footing in terms of access to Tier 1-priced capacity. The race to access Tier 1 pricing ended before it even began because many customers qualified for Tier 1 pricing simply by shopping with a CRES provider last year. As Summit Ethanol witness Swanson testified, “it is not fair to allow some customers to shop while other customers are prohibited from doing so. . . . The only reason some customers are in Tier 1 is that they negotiated a prior deal.”³⁷¹ Thus, AEP Ohio’s proposal is discriminatory.

To the extent AEP Ohio seeks to justify its discriminatory pricing by comparing it to differences in CRES pricing, such a comparison fails. As Schools witness Frye explained, “[i]n regards to a regulated entity like AEP Ohio, the company’s charging different charges for the same service;” for CRES providers, it’s “a function of the market.”³⁷² CRES pricing is distinguishable because “that’s a market decision in a deregulated market where the . . . profit potential of that individual power supplier is determined based upon what they could sell it at. That’s an open and deregulated marketplace.”³⁷³ In essence, AEP Ohio would be arguing that it could charge kids two different prices for the same school lunch by pointing to the difference in prices between McDonald’s and Wendy’s. Simply because there are different options available in the market does not mean that AEP Ohio can charge captive customers two different prices for

³⁷⁰ *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 87 (2002) (emphasis added); *see also Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 314 (2006) (following *AK Steel* and holding that there was no discrimination because there was no evidence to challenge that “all residential consumers will have an equal opportunity to avoid the rate-stabilization charge”).

³⁷¹ Direct Testimony of Gary A. Swanson on behalf of Summit Ethanol, LLC (“Swanson Direct”), pp. 4-5.

³⁷² Tr. Vol. X, pp. 2920-2921.

³⁷³ Tr. Vol. X, p. 2920.

the same service. The Modified ESP's two-tiered pricing is discriminatory and violates state policy.

Notably, because AEP Ohio's non-fuel base generation pricing is not cost-based, AEP Ohio cannot show what SSO customers are paying for capacity. "Thus, there are essentially three different prices for the same capacity in AEP Ohio's service territory, each of which is different than the RPM-based price paid for capacity everywhere else in Ohio."³⁷⁴ AEP Ohio has tried to suggest that SSO customers are paying \$355/MW-day for capacity, but its evidence is insufficient. Mr. Allen simply compared the revenues of base generation rates with revenues under a \$355/MW-day capacity price as applied to AEP Ohio's total connected load.³⁷⁵ He acknowledged that he cannot say whether SSO customers are paying \$355/MW-day for capacity.³⁷⁶ Indeed, Mr. Roush acknowledged that AEP Ohio does not have a basis to disaggregate the base generation rates into subcomponents in any meaningful way.³⁷⁷ Ms. Thomas also testified that the base generation price in the Modified ESP includes energy, capacity and ancillary services.³⁷⁸ Thus, if the base generation revenues approximate the \$355/MW-day charge, it cannot reflect simply the capacity component. In this additional respect, the Modified ESP is discriminatory and violates state policy.

³⁷⁴ Banks Direct, p. 8.

³⁷⁵ Tr. Vol. V, p. 1438.

³⁷⁶ Tr. Vol. V, pp. 1438-1439 (because "the company has not done a cost-of-service study to establish rates for retail customers in excess of 20 years or nearly 20 years depending on the company").

³⁷⁷ Tr. Vol. IV, p. 1112.

³⁷⁸ Tr. Vol. IV, p. 1297. Mr. Allen also admitted that the base generation price was set to allow AEP Ohio to recover capacity and other costs, such as nonfuel O&M costs. Tr. Vol. V, pp. 1440-1441.

E. The Above-Market Prices Represent Improper Subsidies to AEP Ohio and Unlawful Cross-Subsidies to AEP GenCo.

If AEP Ohio is allowed to charge above-market prices for capacity provided to shopping customers, it will be provided with an improper revenue stream with which, prior to corporate separation, it could subsidize its competitive generation affiliate and its regulated wires business. FES witness Schnitzer quantified these above-market capacity costs to CRES providers at approximately \$875 million based on AEP Ohio's own switching assumptions.³⁷⁹ As IEU witness Murray testified, the Modified ESP's two-tiered pricing structure:

[W]ould allow AEP-Ohio to impose and collect generation-related revenue from a currently higher than market charge on CRES providers who seek to serve load in the AEP-Ohio service area, when various AEP-Ohio affiliates are actively acquiring load at both the wholesale and retail level in other electric utility service areas while relying upon market-based priced capacity in order to do so. This is fundamentally unfair – to AEP-Ohio customers, the broad PJM region and to CRES providers.³⁸⁰

Indeed, AEP Ohio is planning to (and will) separate its generation assets into a competitive affiliate, AEP GenCo. Under the Modified ESP, all above-market revenues plus all RSR revenues collected from SSO and shopping customers will flow to AEP GenCo.³⁸¹ Mr. Powers acknowledged that AEP Ohio has “no other plans for those [generating] resources other than assuming that the ESP is approved to have them in healthy shape. At that point they'll be competitive resources that will hopefully be successful in bidding into various auctions and the like.”³⁸² Mr. Nelson confirmed FES' concerns on this issue when he incredibly described AEP

³⁷⁹ Schnitzer Direct, p. 49.

³⁸⁰ Murray Direct, p. 35.

³⁸¹ Lesser Direct, p. 9.

³⁸² Tr. Vol. II, pp. 423-424.

Ohio and AEP GenCo *after corporate separation* “as pretty much joined at the hip in the sense that it’s really AEP Ohio just split into two pieces.”³⁸³

Contrary to Mr. Nelson’s “joined at the hip” notion, Ohio law and FERC rules require that AEP Ohio and AEP GenCo operate independently in a manner that does not result in cross-subsidies flowing from the regulated utilities’ customers to the unregulated wholesale supplier.³⁸⁴ Indeed, the corporate separate plan filed by AEP Ohio in Case No. 12-1126-EL-UNC prohibits such cross-subsidies.³⁸⁵ As FES witness Lesser explained:

AEP Ohio proposes to enter into contracts with its independent AEP Generation Resources affiliate at an above-market price, thereby providing AEP Generation Resources with an anticompetitive cross-subsidy. Whether these prices are below AEP Ohio’s claimed embedded capacity cost is immaterial. The fact that AEP Ohio intends to enter into contracts with AEP Generation Resources at prices that are all above the PJM RPM market price, is anticompetitive.³⁸⁶

DERS witness North described the harm that would result if the Commission approved AEP Ohio’s cross-subsidy proposal:

By allowing AEP Ohio to receive above-market subsidies for its generation, the Commission would send the message that competitors are not on an equal footing with the EDU in providing electric service. Furthermore, the Commission would be taking a step back from the robust competitive market structure that has been implemented in the FirstEnergy service territories, and recently affirmed by the ESP approved for Duke Energy Ohio.³⁸⁷

There is no basis on which to allow AEP Ohio and then AEP GenCo, over all other generators, to receive above-market prices for capacity in Ohio’s competitive market. Such revenue can only

³⁸³ Tr. Vol. II, p. 579.

³⁸⁴ Lesser Direct, pp. 4-6, 29-30.

³⁸⁵ Lesser Direct, p. 8.

³⁸⁶ Lesser Direct, p. 29.

³⁸⁷ North Direct, pp. 8-9.

serve to further sustain AEP Ohio's position in its service territory and simultaneously benefit its competitive affiliates.

F. AEP Ohio's "Alternative" Proposal For Capacity Pricing Would Impose Even Greater Charges On CRES Providers.

As an alternative to the two-tiered pricing for capacity, AEP Ohio proposes that it could charge all shopping customers \$355/MW-day for capacity, eliminate the RSR, and provide shopping customers with a credit.³⁸⁸ However, the credit would not reduce CRES providers' costs and, thus, would limit even further CRES providers' interest and ability in offering competitive products to customers in AEP Ohio's service territory.³⁸⁹ AEP Ohio also acknowledged that there is no analysis underlying the shopping credit amount – on either a \$/MWh or total dollars basis.³⁹⁰ Thus, there is no evidence to suggest that the shopping credit would alleviate the significant impact of the \$355/MW-day price, which exceeds the price proposed for both tiers. In addition, AEP Ohio would receive more revenue under the alternative proposal,³⁹¹ allowing for further subsidies. AEP Ohio, in fact, would receive \$3.226 billion under the alternative proposal, as compared to \$2.787 billion under the two-tiered original proposal.³⁹² The alternative proposal is an unsupported Trojan horse that does not alleviate the improper effects of charging a (significantly) above-market price for capacity provided to shopping customers.

³⁸⁸ Tr. Vol. V, p. 1433.

³⁸⁹ Tr. Vol. V, p. 1434.

³⁹⁰ Tr. Vol. V, pp. 1437-1438.

³⁹¹ Tr. Vol. V, pp. 1434-1435 (AEP Ohio witness Allen acknowledging that "that would be my suspicion. I haven't done the calculation, but I think that's correct," using the same shopping assumptions).

³⁹² FES Ex. 118.

IV. THE MODIFIED ESP INCLUDES PROVISIONS THAT ARE NOT AUTHORIZED BY OHIO LAW.

A. The GRR Cannot Be Approved.

- 1. The GRR is not authorized by R.C. § 4928.143(B)(2)(c) because the costs associated with renewable projects must (and should) be bypassable pursuant to R.C. § 4928.64(E).**

AEP Ohio attempts to justify the GRR by inappropriately conflating two unrelated statutes, R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64. This is inappropriate; these statutes address completely different policy concerns and provide for different methods of cost recovery. Under R.C. § 4928.64(E), any costs incurred in association with renewable energy projects must be bypassable. The GRR may not be authorized, even as a placeholder, in the face of this clear statutory direction.

- a. Ohio law does not authorize nonbypassable cost recovery for compliance with renewable energy benchmarks.

R.C. § 4928.143(B)(2)(c)³⁹³ creates a market safety valve that allows the Commission to authorize an EDU to impose a nonbypassable surcharge to recover the costs of a new generating facility for the life of the facility. The Commission may do so if, and only if, the facility was

³⁹³ This statute provides:

(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility.

sourced through a competitive bid process and there is a need for the facility based on resource planning projections.³⁹⁴

R.C. § 4928.64 addresses a completely different statutory goal. R.C. § 4928.64 obligates EDUs and CRES providers to meet renewable energy resource benchmarks. As both EDUs and CRES providers must meet these requirements, from a policy perspective, these costs should be bypassable in order to avoid double charging shopping customers for the costs of meeting these requirements. As Staff witness Strom testified, “If customers shop, then whoever they are shopping with would have to cover the renewable requirements, so it doesn’t make sense for a shopping customer to have to pay for both those with whom they’re shopping, the cost of complying with renewable requirements with them and with the EDU.”³⁹⁵ This policy framework was codified by the General Assembly in R.C. § 4928.64(E), which provides: “All costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier.”³⁹⁶ Thus, an EDU is affirmatively denied nonbypassable cost recovery under R.C. § 4928.143(B)(2)(c) for renewable energy project costs incurred to comply with R.C. § 4928.64.

The General Assembly also addresses the intersection of these two statutes in the preamble to division (B) of R.C. § 4928.143, providing that an ESP may contain terms that conflict with “any other provision of Title XLIX of the Revised Code . . . except . . . division (E) of section 4928.64, . . . of the Revised Code.”³⁹⁷ Thus, the Commission is expressly prohibited

³⁹⁴ December 14, 2011 Opinion and Order, Case No. 11-346-EL-SSO, pp. 39-40.

³⁹⁵ Tr. Vol. VIII, p. 2513.

³⁹⁶ R.C. § 4928.64(E) (emphasis added).

³⁹⁷ R.C. § 4928.143(B) (emphasis added). The other provisions that cannot be ignored in an ESP relate to governmental aggregation under R.C. § 4928.20 and charges to municipal electric utility customers under R.C. § 4928.69.

from authorizing an ESP which conflicts with R.C. 4928.64(E), the provision requiring that any costs incurred to meet the renewable requirements shall be bypassable.

b. AEP Ohio admits that the GRR is intended solely to meet Ohio's renewable energy benchmarks.

AEP Ohio attempts to avoid the plain language of these statutes in two ways. First, AEP Ohio claims the GRR should be approved as a nonbypassable placeholder rider in the event the Commission later determines that the Turning Point Solar project is needed. However, under R.C. § 4928.143(B)(2)(c), the decision regarding whether Turning Point is needed must be made in this proceeding. There is no justification for creating a “placeholder” GRR now, particularly when the law clearly prohibits a nonbypassable GRR for Turning Point.

Second, AEP Ohio focuses on R.C. § 4928.143(B)(2)(c) when attempting to justify the GRR. However, this statute is intended to be a lifeline if Ohio needs additional generation. It is not applicable here, because AEP Ohio admits that Turning Point is not needed since AEP Ohio is long on energy and capacity for the foreseeable future.³⁹⁸ AEP Ohio witness Nelson admitted that Turning Point will be used to help AEP Ohio meet its renewable energy requirements under S.B. 221.³⁹⁹ AEP Ohio witness Dias acknowledged that Turning Point “ties into the alternative energy requirement mandates that EDU has responsibility for.”⁴⁰⁰ NRDC witness Lyle provided testimony in support of the GRR and Turning Point Solar project. But, he acknowledged that the intent of the project is to meet the solar carve-out of the statutory requirements for renewable benchmarks.⁴⁰¹ As the witnesses testifying in support of Turning Point admit that it is intended

³⁹⁸ See, e.g., Tr. Vol. I, pp. 226-227 (AEP Ohio witness Powers); Vol. II, pp. 564-65, 569-570, 633 (AEP Ohio witness Nelson).

³⁹⁹ Tr. Vol. II, p. 704.

⁴⁰⁰ Tr. Vol. VI, p. 2058.

⁴⁰¹ Tr. Vol. IX, p. 2635.

to comply with R.C. § 4928.64 rather than to provide least-cost energy and capacity, the GRR is not justified under R.C. § 4928.143(B)(2)(c).

- c. Even though there is no justification for approving the GRR, AEP Ohio can still seek bypassable cost recovery for Turning Point.

While there is no justification for the GRR, this does not mean that AEP Ohio cannot still pursue the construction of Turning Point. AEP Ohio has a current, long-term solar contract, which is recovered on a bypassable basis through the FAC.⁴⁰² As was recognized by Mr. Lyle, AEP Ohio could enter into a purchase power agreement with Turning Point: “They could and they have with Timber Road and Wyandot.”⁴⁰³ If Turning Point is a worthwhile project, AEP Ohio can pursue it using the same bypassable framework which has funded other investments in solar resources in Ohio.

2. AEP Ohio has provided no evidence to justify the GRR and the Commission must consider this “term and condition” of the Modified ESP in this proceeding.

R.C. § 4928.143(C)(1) requires analysis of all terms and conditions in the assessment of an ESP. Under R.C. § 4928.143(B)(2)(c), “need” may only be determined if the Commission “first determines *in the proceeding* that there is a need for the facility based on resource planning projections” (emphasis added). Despite the statutory requirement that AEP Ohio provide details regarding the terms and conditions and “need” for Turning Point in this proceeding, the record is silent on these essential issues.

⁴⁰² Tr. Vol. II, p. 575.

⁴⁰³ Tr. Vol. IX, p. 2642.

AEP Ohio witness Roush confirmed that the rate design for the GRR has not been prepared and is not presented in connection with this proceeding.⁴⁰⁴ The record is silent as to how the RECs from Turning Point would be credited. As AEP Ohio witness Roush testified, there is no language in the proposed GRR tariff explaining how the RECs would be credited “because this language is kind of a placeholder like the whole rider itself.”⁴⁰⁵ The record does not include sufficient information on the potential cost of Turning Point and the associated revenue requirement. AEP Ohio witness Nelson testified that the estimate submitted by AEP Ohio after it was ordered by the Commission to provide a revenue requirement was only preliminary and that AEP Ohio did not know the total cost that would be payable by customers for the Turning Point project.⁴⁰⁶ AEP Ohio did not provide any information regarding open tax issues, including whether a tax credit would be available, and Mr. Nelson did not know of the status of the contracts with the Turning Point developers.⁴⁰⁷

As shown by each of these examples, AEP Ohio has failed to provide basic information about Turning Point which would allow the Commission to consider this “term and condition” in this proceeding. As a result, AEP Ohio has failed to meet its evidentiary burden to establish a “need” for Turning Point, and the GRR should be rejected.

⁴⁰⁴ Tr. Vol. IV, p. 1086.

⁴⁰⁵ Tr. Vol. IV, p. 1170.

⁴⁰⁶ Tr. Vol. II, pp. 570-572.

⁴⁰⁷ Tr. Vol. II, pp. 572-573.

3. The evidence establishes that the Turning Point Solar project does not, in any event, satisfy the requirements of R.C. § 4928.143(B)(2)(c).

a. The Turning Point Solar project was not competitively sourced.

In order to establish a nonbypassable surcharge like the GRR, AEP Ohio must show that Turning Point “was sourced through a competitive bid process.”⁴⁰⁸ However, AEP Ohio has failed to meet this burden. When asked whether he knew if the contracts associated with Turning Point have been competitively bid, AEP Ohio witness Nelson simply stated, “Don’t know.”⁴⁰⁹ Mr. Nelson also did not know whether the selection of Turning Point or the acquisition of the solar panels was competitively bid.⁴¹⁰ As there is no evidence that Turning Point was competitively sourced, there is no evidence that it is the most cost-efficient way to meet Ohio’s renewable goals.

While NRDC witness Lyle mentioned in his direct testimony that AEP Ohio might include a showing that its “renewable energy projects were competitive compared to independently-owned renewable energy projects,” he acknowledged on cross-examination that the statute requires that the project be sourced through a competitive bid process.⁴¹¹ “I have not seen any evidence that they have [solicited the Turning Point project through a competitive bid process] or they have not.”⁴¹² Mr. Lyle also agreed that the resource planning process should involve a least-cost analysis and that AEP Ohio should establish that the Turning Point Solar

⁴⁰⁸ R.C. 4928.143(B)(2)(c).

⁴⁰⁹ Tr. Vol. II, pp. 573-574.

⁴¹⁰ Tr. Vol. II, p. 574. No other AEP Ohio witness provided testimony on this point.

⁴¹¹ Compare Direct Testimony of Thomas Lyle on behalf of Natural Resources Defense Council (“Lyle Direct”), p. 11 with Tr. Vol. IX, pp. 2636-2637.

⁴¹² Tr. Vol. IX, p. 2644.

project meets a least-cost analysis.⁴¹³ He acknowledged that he has not seen any evidence of such a consideration in this proceeding.⁴¹⁴

AEP Ohio has failed to establish that Turning Point was competitively sourced and is the cheapest option to procure generation or solar RECs. As R.C. 4928.143(B)(2)(c) requires this evidence before a nonbypassable surcharge can be approved, the GRR should be rejected.

b. There is no need for additional generation.

R.C. 4928.143(B)(2)(c) also provides that “no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility.” (emphasis added). This language is clear. If a facility is needed based on resource planning projections – i.e., to ensure customer access to adequate and reliable electric resources, then the Commission has the authority to grant nonbypassable cost recovery if the statutory requirements are met. However, the preamble language in R.C. § 4928.143(B) excludes from the scope of that authority any renewable energy project, such as Turning Point, that is intended to allow AEP Ohio to meet its renewable energy resource benchmarks. Accordingly, in order to meet the statutory requirements AEP Ohio must establish that Turning Point is needed to provide generation.

Once again, the record evidence shows that there is no need for Turning Point. Staff witness Fortney testified that he is unaware of any current need for the construction of generation facilities.⁴¹⁵ In response to a question regarding whether AEP Ohio or the AEP East zone needed the Turning Point project as additional capacity to satisfy its capacity obligations, AEP Ohio witness Nelson acknowledged: “I don’t know ultimately if it will be needed during that period,

⁴¹³ Tr. Vol. IX, pp. 2644-2645.

⁴¹⁴ Tr. Vol. IX, pp. 2645-2646.

⁴¹⁵ Tr. Vol. XVI, p. 4593.

but I don't think it would have been part of our plan submitted so far, obviously, since it's not in existence yet.”⁴¹⁶ AEP Ohio witness Nelson confirmed that AEP Ohio has been and is long on generation: AEP Ohio “has had capacity and energy well in excess of its internal customers’ needs and it has been selling a significant amount to its sister companies in the pool.”⁴¹⁷ AEP Ohio witness Graves acknowledged that there is no need to develop new capacity in AEP Ohio’s territory to maintain adequate reliability.⁴¹⁸

The evidence presented at the hearing is clear. AEP Ohio is long on generation, and does not need Turning Point to meet its reliability obligations. Moreover, AEP Ohio has not shown that energy and capacity are not available in the market. As of June 1, 2015, AEP Ohio acknowledges that PJM will be responsible for ensuring that its markets satisfy demand.⁴¹⁹ As AEP Ohio has failed to show that Turning Point is needed “based on resource planning projections,” the GRR should be rejected.

B. The RSR Cannot Be Approved.

1. R.C. § 4928.143(B)(2) does not authorize the RSR.

AEP Ohio’s proposed Retail Stability Rider (“RSR”) is intended to replace the “lost” revenue associated with charging prices below AEP Ohio’s purported cost of capacity. The purpose of this rider is to “provide financial stability for AEP Ohio.”⁴²⁰ However, R.C. §

⁴¹⁶ Tr. Vol. II, p. 569.

⁴¹⁷ Tr. Vol. II, p. 633.

⁴¹⁸ Tr. Vol. III, p. 774.

⁴¹⁹ Tr. Vol. II, p. 570 (AEP Ohio witness Nelson acknowledging that AEP Ohio “will rely upon [the] PJM auction” to ensure adequate capacity as of June 1, 2015).

⁴²⁰ Allen Direct, p. 14.

4928.143(B)(2) does not authorize the RSR. Nothing in this statute authorizes a utility to receive compensation for a second “transition to market”⁴²¹ which should have taken place in 2001.

AEP Ohio will likely argue that the RSR is justified under the general language contained in R.C. § 4928.143(B)(2)(d).⁴²² However, this provision is not a blank check for AEP Ohio. Instead, this provision only authorizes charges which AEP Ohio can establish “would have the effect of stabilizing or providing certainty regarding retail electric service.” The RSR does not meet this burden, and in fact this rider would destabilize the market. It does not provide any certainty to customers, who will receive no benefit. As was recognized by OCC witness Duann, “[t]here is no showing of any inherent economic efficiency or equity consideration, as proposed in the Modified ESP, in proposing the RSR.”⁴²³ The only “stability” provided by this massive charge is to AEP Ohio, and customers receive no benefit. As a result, the RSR should be rejected.

2. The RSR is an anti-competitive subsidy, which violates state policy.

The record evidence establishes there is no legal justification for the RSR. AEP Ohio seeks an anti-competitive nonbypassable revenue stream through the RSR as a way to receive well above-market revenues while stopping shopping. AEP Ohio’s strategy is clear. It proposes an RSR rather than higher generation rates because it wants to: (1) keep its PTC lower to avoid

⁴²¹ Powers Direct, p. 18.

⁴²² This statute provides:

(d) 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.

⁴²³ Direct Testimony of Daniel J. Duann on behalf of the Office of Ohio Consumers’ Counsel (“Duann Direct”), p. 7.

additional shopping; and (2) force shopping customers to pay for generation assets they do not benefit from.

The RSR is derived based on an annual revenue target comprised of three revenue streams: (1) retail non-fuel generation revenues; (2) CRES capacity revenues; and (3) auction capacity revenues.⁴²⁴ These revenue streams, plus an assumed credit for shopped load, “are then compared to a target of \$929 million annually.”⁴²⁵ However, the RSR does not include any revenue from the GRR, the DIR, the pool modification provision, or sales to AEP affiliates.⁴²⁶ Instead, the rider is a direct subsidy intended to provide AEP Ohio with guaranteed non-fuel revenue of \$929 million annually (of course, fuel revenue also is guaranteed through the Fuel Adjustment Clause).⁴²⁷

Providing AEP Ohio with a guaranteed nonbypassable revenue stream is an unwarranted anti-competitive subsidy to AEP Ohio that would effectively limit shopping. Exelon witness Fein explained that the RSR would harm the development of competitive markets in AEP Ohio’s service territory:

To allow recovery [of the RSR] from shopping customers would stifle competition. When a customer takes supply from a CRES provider, that customer receives all of its generation-related service from that CRES. If a shopping customer is forced unfairly to continue to pay the EDU for generation-related charges in addition to paying the CRES provider, the customer is effectively paying twice for the same service. Paying the utility for a service the customer is already receiving from the CRES would likely cause the customer to pay more for electric power than had the customer

⁴²⁴ Tr. Vol. V, p. 1426; Allen Direct, Ex. WAA-6.

⁴²⁵ Tr. Vol. V, p. 1426.

⁴²⁶ Tr. Vol. V, pp. 1427, 1593.

⁴²⁷ Lesser Direct, p. 79. Among other things, the RSR will make AEP Ohio whole for the costs of the proposed 5% energy-only auction. Tr. Vol. I, pp. 243-244.

not switched to the CRES, even if the CRES supplier's generation is at a lower cost than the SSO.⁴²⁸

OCC witness Ibrahim also testified regarding a modification to the allocation of the RSR.⁴²⁹ However, in his direct testimony, he confirmed that “it should be clear that OCC does not support AEP’s proposal to charge customers for the RSR.”⁴³⁰ On cross-examination he acknowledged that if the RSR were charged only to shopping customers, it would discourage shopping⁴³¹ – in contravention of state policy. OCC witness Duann testified: “I recommend that the Commission reject the RSR. . . I find there is no legal basis for such a charge and that the Company has not shown the RSR charge benefits its customers. Allowing the RSR will not advance the state policy of ensuring access to reasonably priced electric service.” DECAM witness Pradahn agreed that the RSR is anti-competitive: “The effect of the rider is to finance generation operations – including the prospective operation by a non-regulated affiliate – through retail rates.”⁴³² Schools witness Frye testified that the RSR also should be rejected because “it is a transition charge designed to recover a portion of its capacity costs for its generating assets” and “the recovery of transition costs is no longer permitted.”⁴³³ He further observed, “In paying the non-bypassable RSR, AEP-Ohio distribution customers would be subsidizing AEP-Ohio’s competitive service.”⁴³⁴ AEP Ohio’s transparent effort to stop customer choice in Ohio through the establishment of the RSR should be rejected.

⁴²⁸ Fein Direct, pp. 13-14.

⁴²⁹ See Direct Testimony of Amr A. Ibrahim on behalf of the Office of Ohio Consumers’ Counsel (“Ibrahim Direct”), p. 9 *et seq.*

⁴³⁰ Ibrahim Direct, p. 9.

⁴³¹ Tr. Vol. VII, pp. 2263-2264.

⁴³² Direct Testimony of Salil Pradhan on behalf of Duke Energy Commercial Asset Management, Inc. (“Pradhan Direct”), pp. 9-10.

⁴³³ Frye Direct, p. 8.

⁴³⁴ Frye Direct, p. 9.

3. The value of the RSR is improper and arbitrary.

a. The RSR provides an unwarranted guarantee to AEP Ohio.

AEP Ohio proposes to receive guaranteed non-fuel revenues in the amount of \$929 million through the RSR, which is based on a revenue level that, all else equal, would have resulted in AEP Ohio earning a 10.5% ROE in 2011. The ROE underlying the RSR represents the equity for all lines of business for AEP Ohio.⁴³⁵ AEP Ohio witness Allen acknowledged that the 10.5% ROE simply was his recommendation. In choosing this ROE, Mr. Allen did not: hire any outside experts to analyze the appropriate ROE;⁴³⁶ did not analyze the capital structure of the company or compare it with other companies; did not take the company's long-term debt into account or compare it to other companies; did not take into account the company's retained earnings or how those compared to other companies; and didn't take into account the company's ratio of common equity to retained earnings or how those compared with other companies – all of which he agreed are relevant factors for models used to determine appropriate ROEs.⁴³⁷

AEP Ohio attempted to justify this guaranteed revenue stream, and the 10.5% ROE target, through rebuttal testimony from AEP Ohio witness Avera, but this testimony misses the point. Even if a 10.5% ROE were appropriate, Mr. Avera provides no justification for why AEP Ohio should be *guaranteed* a revenue stream from its generation assets in a competitive market. After S.B. 3, Ohio law no longer guarantees revenue or returns on equity associated with generation assets.

⁴³⁵ Tr. Vol. V, p. 1497.

⁴³⁶ Tr. Vol. V, pp. 1616-1617. AEP Ohio witness Avera was retained after-the-fact.

⁴³⁷ Tr. Vol. V, pp. 1618-1619.

Further, AEP Ohio witness Allen described the RSR as a “decoupling mechanism for generation”⁴³⁸ that would be symmetrical,⁴³⁹ but he later acknowledged on cross-examination that that was not true. He admitted that if AEP Ohio’s generating revenues decreased, for example, by \$94.7 million and at the same time its generating expenses also decreased by the same amount, AEP Ohio would still collect \$94.7 million through the RSR from customers.⁴⁴⁰

Q: And there is no mechanism created in this plan for refunding those moneys to your customers in those circumstances, correct?

A: That’s correct.⁴⁴¹

There also is no specific audit process proposed for the RSR,⁴⁴² creating even more concern that AEP Ohio’s calculation of this significant rider could harm customers.

b. The proposed calculation of the RSR is flawed.

AEP Ohio’s proposed RSR formula is flawed. The revenue requirement for any specific year could change depending on several factors, such as the amount of shopping which is experienced during the ESP term. The “lost revenues” associated with shopping customers includes revenue “lost” as a result of customers who shopped before the Stipulation ESP.⁴⁴³ If the “revenue target” was adjusted to remove the 17% of customers who shopped prior to the Stipulation was approved, AEP Ohio’s own estimates suggest that no additional RSR revenues would be needed.⁴⁴⁴

⁴³⁸ Tr. Vol. V, p. 1426.

⁴³⁹ Tr. Vol. V, pp. 1443, 1452-1453.

⁴⁴⁰ Tr. Vol. V, p. 1597.

⁴⁴¹ Tr. Vol. V, pp. 1597-1598.

⁴⁴² Tr. Vol. V, p. 1496.

⁴⁴³ Tr. Vol. V, pp. 1605-1606 (“Yes, they are” treated the same.).

⁴⁴⁴ Tr. Vol. V, pp. 1606-1609; *see also* Allen Direct, Ex. WAA-6.

AEP Ohio witness Powers acknowledged that the RSR revenue requirement could be affected by other factors, including decreased customer demand due to weather.⁴⁴⁵ However, he later acknowledged that financial risk associated with weather or economic downturns is generally speaking a shareholder risk, as opposed to a risk borne by customers.⁴⁴⁶ If shopping increased, the RSR charge will increase.⁴⁴⁷ If weather was milder than normal, the RSR would increase – thus, “it would have the effect of normalizing revenues independent of the weather.”⁴⁴⁸ OCC witness Duann testified that because the RSR could vary significantly, “that creates great financial uncertainty for the customer”⁴⁴⁹ and he described the RSR as “an extreme form of revenue guarantee.”⁴⁵⁰

c. The \$3/MWh credit is arbitrary and unsupported.

The \$3/MWh credit for shopped load included in the derivation of the RSR is not an actual margin calculation and is not based on any modeling or projection; it is simply based on Mr. Allen’s “experience.”⁴⁵¹ In fact, AEP Ohio responded in discovery that it did not know the amounts underlying the \$3 figure.⁴⁵² Mr. Allen also admitted in his deposition that there is nothing to corroborate his judgment; that he could not point the parties to any specific figures or data to support it;⁴⁵³ and that “I didn’t do a calculation when I developed it.”⁴⁵⁴ Thus, Mr.

⁴⁴⁵ Tr. Vol. I, p. 314-315.

⁴⁴⁶ Tr. Vol. II, p. 389.

⁴⁴⁷ Tr. Vol. V, p. 1426.

⁴⁴⁸ Tr. Vol. V, p. 1448, 1452.

⁴⁴⁹ Tr. Vol. IX, p. 2757.

⁴⁵⁰ Tr. Vol. IX, p. 2757.

⁴⁵¹ Tr. Vol. V, pp. 1429-1430.

⁴⁵² Tr. Vol. V, p. 1611; Tr. Vol. XVIII, pp. 4907-16 (Mr. Allen discussing how he may have developed the \$3/MWh value by doing the math “subconsciously”).

⁴⁵³ Tr. Vol. V, pp. 1429-1431.

⁴⁵⁴ Tr. Vol. V, p. 1611.

Allen's "thought exercises of how you could support that \$3" have no evidentiary basis and lack credibility.⁴⁵⁵

Mr. Allen attempted in his rebuttal testimony to invent an after-the-fact justification for the \$3/MWh credit, but cross-examination revealed that this justification also lacked credibility.⁴⁵⁶ Amazingly, although the largest downward adjustment Mr. Allen made to AEP Ohio's energy margins in his after-the-fact calculation is a 60% reduction to account for revenue sharing under the AEP East Pool,⁴⁵⁷ he failed to account for the elimination of the Pool (and this 60% reduction) after Pool termination on or before January 1, 2014. Pool termination also will eliminate the second downward adjustment he made based on his guess that only 50-80% of reduced sales result in additional off-system sales. He believed, without offering any evidentiary support, that 20-50% of this energy is purchased and, thus, elimination of the purchases will not result in an energy margin.⁴⁵⁸ However, given that AEP Ohio is long on generation, it will not have these purchases after Pool termination and all energy freed up from shopping will result in energy margin. Regardless, Mr. Allen failed to explain why the RSR should be calculated using a credit based solely on his "judgment" when actual figures could be used.

For these reasons and several others addressed in cross-examination, the RSR should not be approved.

⁴⁵⁵ Tr. Vol. V, p. 1611. Mr. Allen also testified that "it's a value that I just inherently know It's based upon my intuition;" "you have to use art, experience, and intuition." Tr, Vol. V, pp. 1643, 1644.

⁴⁵⁶ See Tr. Vol. XVII, pp. 4863-69, 4873-75, 4897-4905, 4922-24.

⁴⁵⁷ Rebuttal Testimony of William A. Allen on behalf of AEP Ohio ("Allen Rebuttal"), pp. 5-6.

⁴⁵⁸ Tr. Vol. XVII, p. 4874.

C. The Energy and Capacity Charges To Be Paid To AEP GenCo Cannot Be Approved.

After corporate separation, AEP Ohio proposes to simply pass through generation revenues to AEP GenCo through one or more contracts between those two entities.⁴⁵⁹ However, there has been no evidence that this would be the most prudent way to procure energy during this period.

1. AEP GenCo's charges to AEP Ohio for purchased power are subject to prudence requirements of R.C. § 4928.143(B)(2)(a).

When asked whether the FAC costs once paid to AEP GenCo after corporate separation would be subject to Commission audit for prudence, AEP Ohio witness Nelson testified: "I'm not going to make any commitments about future audits and so forth."⁴⁶⁰ While Mr. Nelson may not want to make any commitments, this issue is clear under Ohio law. R.C. § 4928.143(B)(2)(a) allows an EDU to recover prudently incurred costs for purchased power.⁴⁶¹ This statute specifically addresses purchased power from affiliates, which are subject to the same prudence standard as other purchases. Because AEP Ohio will be corporately separated from AEP GenCo after corporate separation, its purchases of capacity during this period must be subject to a prudence review.

2. The above-market capacity prices that will be charged by AEP GenCo are not prudent.

AEP Ohio witness Nelson described that the contract during the window after corporate separation would not be priced separately for energy and capacity, and would instead simply be a

⁴⁵⁹ Tr. Vol. II, p. 517.

⁴⁶⁰ Tr. Vol. II, p. 622.

⁴⁶¹ R.C. § 4928.143(B)(2)(a) provides that "(a) Automatic recovery of any of the following costs of the electric distribution utility, **provided the cost is prudently incurred**: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes" (Emphasis added.)

pass-through of the base generation SSO revenue.⁴⁶² Mr. Nelson testified “I don’t know at this point” whether the capacity-only sale between January 1 and June 1, 2015 would be under the same contract.⁴⁶³ When asked about the negotiations of the contract between AEP GenCo and AEP Ohio, Mr. Nelson described: “The GenCo, though it’s created as a legal entity, I think it was created at the end of 2012 [sic], it doesn’t yet exist with any assets, so the folks that have been involved and working on this contract are AEP Service Corporation folks acting on behalf of both sides of this transaction.”⁴⁶⁴

AEP Ohio’s assumptions that AEP Ohio and AEP GenCo can continue to operate as a fully integrated company post-corporate separation are wrong. R.C. § 4928.143(B)(2)(a) specifically states that AEP Ohio may only recover prudently incurred costs of purchased power from affiliates during this period. AEP Ohio has presented no evidence that its proposed purchased power price during this period will be prudent. There appears to be good reason for this silence -- AEP Ohio’s proposal appears to be well above-market during this period.

By way of example, Constellation/Exelon witness Fein testified that Exelon made an offer of energy and capacity to serve AEP Ohio’s SSO load for June 1, 2014 through May 31, 2016, at a cost lower than AEP Ohio is proposing to charge its customers: “[N]ot only did AEPSC fail to act on an offer that is far more favorable than Ohio Power’s own proposed capacity prices, it failed to act on an offer that was . . . cheaper than the then-prevailing PJM RPM capacity prices.”⁴⁶⁵

⁴⁶² Tr. Vol. II, p. 517.

⁴⁶³ Tr. Vol. II, p. 525.

⁴⁶⁴ Tr. Vol. II, p. 623.

⁴⁶⁵ Fein Direct, p. 18.

In addition to Exelon's offer, the \$255/MW-day capacity price that would be provided to AEP GenCo for the period January 1 to June 1, 2015 also bears no relation to costs or market.

Q. How is the \$255 per megawatt-day price determined for the contract between the GenCo and AEP Ohio?

A. Well, one thing, it probably should sound familiar to a lot of folks, but it's just a, we think a reasonable number for that purpose for those five months. There's no particular calculation involved. . . .⁴⁶⁶

AEP Ohio witness Nelson acknowledged that the \$255/MW-day price for capacity has not been benchmarked to the prices, terms, or conditions of sales involving nonaffiliated companies.⁴⁶⁷ Mr. Nelson admitted that that price "wouldn't reflect the PJM RPM market" and he did not know whether the \$255/MW-day price reflected what nonaffiliated suppliers would charge AEP Ohio for the same service.⁴⁶⁸ AEP Ohio witness Nelson acknowledged that AEP Ohio will not determine whether the cost of its contract for SSO service with AEP GenCo could be reduced by contracting with someone other than AEP GenCo.⁴⁶⁹

Q. Is it correct that AEP Ohio will not determine whether the cost to it of the SSO supply contract could be reduced by contracting with someone other than AEP Generation Resources?

A. Yes, that's correct

Q. So AEP Ohio won't make any effort to do a market check of comparing that contract prices to what's available in the market?

A. No, I wouldn't think so.⁴⁷⁰

⁴⁶⁶ Tr. Vol. II, p. 526.

⁴⁶⁷ Tr. Vol. II, p. 608.

⁴⁶⁸ Tr. Vol. II, pp. 608-609.

⁴⁶⁹ Tr. Vol. II, pp. 523-524.

⁴⁷⁰ Tr. Vol. II, p. 524.

AEP Ohio has not shown that its proposed capacity price after corporate separation is prudent. Moreover, it appears that AEP Ohio cannot do so because market capacity prices are well below AEP Ohio's proposed contract price. Accordingly, AEP Ohio's proposal fails to meet the requirements of R.C. § 4928.143(B)(2)(a).

3. The agreement between AEP Ohio and AEP GenCo would fail FERC's EDGAR standards, which prevent abuse of market power.

AEP Ohio's proposal would be an improper cross-subsidy by AEP Ohio customers of a competitive affiliate, since there is no market basis for this price. Instead, it is merely the price AEP seeks to impose as a result of its FRR monopoly power. This proposal violates well-established FERC policy and should be rejected by the Commission.

AEP Ohio acknowledges that any contracts between AEP Ohio and AEP GenCo after corporate separation must be filed with and approved by FERC, including the capacity-only contract that would be needed for January 1 - June 1, 2015.⁴⁷¹ Under FERC guidelines, no wholesale sale of electric energy or capacity may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving FERC authorization for the transaction under section 205 of the Federal Power Act.⁴⁷² FERC requires pre-approval of these sales because a public utility with captive customers could potentially interact with market-regulated power sales affiliates in ways that transfer benefits to the affiliates and their stockholders to the detriment of captive customers.⁴⁷³ In affiliate cases "the mere opportunity" for affiliate abuse will lead to FERC rejection of the proposed agreement.⁴⁷⁴

⁴⁷¹ Tr. Vol. II, p. 515, 525; Tr. Vol. III, pp. 812-813.

⁴⁷² Tr. Vol. I, p. 38; *Duke Energy Indiana Inc.*, 136 FERC P 61001, 2011 WL 2644369, p. *2 (FERC 2011).

⁴⁷³ *Duke Energy Indiana Inc.*, 136 FERC P 61001, 2011 WL 2644369, p. *2 (FERC 2011).

⁴⁷⁴ *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC P 61382, 1991 WL 266200, *8 (FERC 1991) (hereinafter, "Edgar").

FERC's standard for reviewing these agreements is provided in the *Edgar* decision.⁴⁷⁵ In brief, there are three approaches to demonstrate that a utility (such as AEP Ohio) has chosen the lowest-cost supplier and, thus, that it has not unduly preferred its affiliate supplier (the GenCo). First, the utility may submit evidence of direct head-to-head competition between affiliated and non-affiliated suppliers either in a formal solicitation or in an informal negotiation process.⁴⁷⁶ Second, the utility may present evidence of the prices that non-affiliated buyers were willing to pay for similar services from that project.⁴⁷⁷ Finally, the utility may provide "benchmark" evidence of the prices, terms and conditions of sales by non-affiliated sellers, also known as the market price.⁴⁷⁸

AEP Ohio does not, and cannot, meet any of the *Edgar* criteria. AEP Ohio's proposal would force AEP customers to provide an anti-competitive cross-subsidy to AEP GenCo, in clear violation of the *Edgar* criteria. Because AEP Ohio's proposal would violate FERC standards, it should be rejected.

D. The Pool Modification Provision Cannot Be Approved.

1. There is no provision of R.C. § 4928.143(B)(2) that authorizes a pool modification provision.

AEP Ohio's proposed pool modification provision is extremely vague. AEP Ohio witness Nelson testified that AEP Ohio is not seeking compensation for the termination of the AEP Pool, but may seek compensation if the Commission fails to approve the Corporate

⁴⁷⁵ *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC P 61382, 1991 WL 266200 (FERC 1991). See *Duke Energy Indiana Inc.*, 136 FERC P 61001, 2011 WL 2644369, p. *3 (FERC 2011).

⁴⁷⁶ *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC P 61382, 1991 WL 266200, *8 (FERC 1991); *Duke Energy Indiana Inc.*, 136 FERC P 61001, 2011 WL 2644369, p. *3 (FERC 2011).

⁴⁷⁷ *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC P 61382, 1991 WL 266200, *9 (FERC 1991); *Duke Energy Indiana Inc.*, 136 FERC P 61001, 2011 WL 2644369, p. *3 (FERC 2011).

⁴⁷⁸ *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC P 61382, 1991 WL 266200, *9 (FERC 1991); *Duke Energy Indiana Inc.*, 136 FERC P 61001, 2011 WL 2644369, p. *3 (FERC 2011).

Separation plan as filed.⁴⁷⁹ In essence, AEP Ohio is not seeking compensation for pool modification but is at the same time reserving the right to subsequently seek such a charge.⁴⁸⁰ Though AEP Ohio is not currently seeking compensation for termination of the AEP Pool, it is important to determine as a preliminary matter whether or not pool termination is compensable in an ESP.

AEP Ohio witness Nelson acknowledged, “I don’t think there’s anything that specific as I recall” in R.C. § 4928.143 that would allow for recovery of lost generation revenue from a pool.⁴⁸¹ Mr. Nelson is correct. There is nothing in R.C. § 4928.143 which authorizes the Commission to provide compensation to AEP Ohio for terminating the Pool Agreement. As a result, there is no benefit to customers from AEP Ohio giving up the right to file some (unidentified) later application to recover these costs in the event the Corporate Separation plan is modified.

2. AEP Ohio has provided insufficient details or estimates on which the Commission could assess this “term and condition” of the Modified ESP.

As discussed above, AEP Ohio has provided almost no information regarding the pool modification provision of the ESP. Therefore it is extremely difficult to evaluate this “term and condition” of AEP Ohio’s proposal. Indeed, AEP Ohio witness Nelson admitted that “we haven’t laid out all the details because I don’t think we know all the components at this time.”⁴⁸² AEP Ohio witness Nelson also acknowledged that “the pool obviously is important to all our companies and finances so, yes, we have that modeling capability.”⁴⁸³ Despite the alleged

⁴⁷⁹ Nelson Direct, p. 22.

⁴⁸⁰ Nelson Direct, pp. 22-23.

⁴⁸¹ Tr. Vol. II, p. 698.

⁴⁸² Tr. Vol. II, pp. 583-584.

⁴⁸³ Tr. Vol. II, pp. 585-586.

importance of pool termination, AEP Ohio witness Nelson testified that AEP has modeled the impact of the termination of the pool on the other three Pool members, *but not on AEP Ohio*.⁴⁸⁴

AEP Ohio's failure to provide this basic information is significant. AEP Ohio witness Nelson acknowledged that "for the last few years" the capacity revenues that would be "lost" after termination of the pool and transfer of Amos 3 and Mitchell has been in the "general range" of \$350-\$400 million.⁴⁸⁵ If AEP Ohio's Corporate Separation plan is denied, AEP Ohio has stated that it intends to adjust ESP rates if the annual impact of pool termination is higher than \$35 million/year.⁴⁸⁶ This means that customers could potentially be asked to pay very significant amounts of money based on almost no information. AEP Ohio's failure to provide this basic information is grounds for denying any benefit associated with the "waiver" of the right to receive pool modification revenue which isn't authorized under R.C. § 4928.143 anyway.

3. The pool modification provision also would serve as an improper cross-subsidy for AEP Ohio's competitive generation affiliate.

AEP Ohio witness Nelson acknowledged that by the time the pool had terminated and AEP Ohio may come back to seek approval for the nonbypassable pool modification provision, "the generating assets will be with the AEP GenCo."⁴⁸⁷ Thus, he admitted that, "yes, the provision is related to the GenCo's lost revenue at that point."⁴⁸⁸ There is nothing in Ohio law which authorizes a competitive affiliate, the GenCo, to recover the costs associated with modification of an intra-AEP agreement like the Pool Agreement. Therefore, any pool

⁴⁸⁴ Tr. Vol. II, pp. 585-586.

⁴⁸⁵ Tr. Vol. II, p. 582.

⁴⁸⁶ Nelson Direct, p. 23.

⁴⁸⁷ Tr. Vol. II, p. 619.

⁴⁸⁸ Tr. Vol. II, pp. 619.

modification provision would constitute nothing more than an improper subsidy to the generation side of AEP Ohio's business.

The testimony at hearing further established this point. OCC witness Coppola agreed that the pool modification provision could provide an inappropriate subsidy to AEP Ohio.⁴⁸⁹ OCC witness Coppola further testified:

It is my understanding that since 2009, the Commission has not required AEP Ohio to share with its retail customers any of its off-system sales margins, including those made to other AEP Pool members, despite arguments made by OCC and others. Specifically, the Commission decided in the Company's first ESP that revenue or sales margins from the opportunity sale of capacity and energy by AEP Ohio to other AEP Pool members would not be used to reduce AEP Ohio's FAC costs to be collected from customers. . . . Additionally, the Commission determined that sales margins from off-system sales need not be included in calculating whether the Company's earnings are significantly in excess of the return on equity earned by publicly traded companies facing comparable risks. . . . To allow the Company the asymmetrical ability to require customers to compensate it for revenues from off-system sales, when such revenues were not used to reduce the ESP rates, is unfair and unreasonable. Retail customers of AEP Ohio should not have to guarantee the earnings of AEP Ohio. . . . [A]nd they should not be asked to pay for any 'lost revenue' as a result of the termination of the AEP Pool.⁴⁹⁰

OCC witness Coppola is right. As a result of S.B. 3, AEP Ohio is supposed to be "fully on its own in the competitive market."⁴⁹¹ There is no justification for providing any pool modification revenue for AEP GenCo after corporate separation, and any pool modification provision would be an improper cross-subsidy.

⁴⁸⁹ Direct Testimony of Sebastian Coppola on behalf of the Office of the Ohio Consumers' Counsel ("Coppola Direct"), p. 12.

⁴⁹⁰ Coppola Direct, pp. 10-11.

⁴⁹¹ R.C. § 4928.38.

V. THE MODIFIED ESP WOULD PROVIDE AN ILLEGAL AND EXCESSIVE “TRANSITION” TO THE COMPETITIVE MARKET - WELL BEYOND THAT PROVIDED FOR BY LAW OR PROVIDED TO OTHER OHIO EDUS.

A. Ohio Law Does Not Allow For AEP Ohio To Receive Any Guaranteed Revenue For Its Competitive Generation Business.

The Modified ESP and AEP Ohio’s supporting testimony blur an important distinction in Ohio law. While AEP Ohio points to the Commission’s mission of “[e]nsuring financial integrity and service reliability in the Ohio utility industry,” it ignores the key limiting term. The Commission may have the stated mission to ensure the financial integrity of a regulated utility.⁴⁹² But that does not encompass competitive generation service, which is subject to the competitive market and not cost-based rate regulation.⁴⁹³ Ohio law requires that the Commission treat AEP Ohio’s distribution and generation functions separately,⁴⁹⁴ and no guaranteed returns are authorized for its generation function.

The rebuttal submitted by AEP Ohio witness Avera highlights AEP Ohio’s improper commingling of its wires and its generation business. Mr. Avera made no distinction in the financials for the two business operations.⁴⁹⁵ AEP Ohio’s presentation for the RSR and all

⁴⁹² While this is an element of the Commission’s mission statement, it is not a constitutional requirement. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944), does not guarantee a regulated utility any particular rate of return. Indeed, as shown in *Market St. Ry. Co. v. Railroad Commission of State of Cal.*, 324 U.S. 548, 566-67, 65 S.Ct. 770, 89 L.Ed. 1171 (1945), a regulated utility is not guaranteed a profit when competitive forces prevent it from recovering its costs.

⁴⁹³ See R.C. § 4928.06(B) (Only if “there is a decline or loss of effective competition with respect to a competitive retail electric service of an electric utility, which service was declared competitive by commission order issued pursuant to division (A) of section 4928.04 of the Revised Code, the commission shall ensure that that service is provided at compensatory, fair, and nondiscriminatory prices and terms and conditions”).

⁴⁹⁴ See R.C. § 4928.17 (requiring separate accounting functions for competitive and noncompetitive services).

⁴⁹⁵ See, generally, Rebuttal Testimony of William E. Avera on behalf of AEP Ohio (“Avera Rebuttal”).

arguments about whether a 10%, a 9% or a 6% ROE are “unreasonable”⁴⁹⁶ are irrelevant. No guaranteed revenue stream is available under Ohio law.

AEP Ohio’s presentation on these issues also lacks an evidentiary basis. Mr. Dias admitted that he was not aware of any financial projections with respect to the Modified ESP at different ROEs to assess what impact those ROEs would have on AEP Ohio over the next three years.⁴⁹⁷ Mr. Mitchell testified that AEP had performed a recoverability test for the AEP East fleet, which reflects a \$22 billion excess estimated cash flow over the next 30 years.⁴⁹⁸ He eventually acknowledged that AEP must have the calculation broken down for AEP Ohio,⁴⁹⁹ but no such information – which would have shown evidence of financial challenges to the extent they are actually predicted – was produced in connection with this proceeding.⁵⁰⁰ AEP Ohio submitted credit agency reports in connection with Ms. Hawkins’ testimony, apparently to suggest that it had suffered as a result of the Commission’s decision rejecting the Stipulation ESP.⁵⁰¹ However, Ms. Hawkins acknowledged that neither agency downgraded AEP.⁵⁰² Regardless, given that AEP Ohio’s generation function is not entitled to above-market pricing, any such concerns related to the ROE of AEP Ohio’s “wires” utility must be addressed as a utility issue and not through cross-subsidies from the generation function.

⁴⁹⁶ Mr. Allen believes that the ROE without the RSR – 6.4% – is unreasonable and, indeed, “confiscatory rate for the generation function, yes, I would say that.” Tr. Vol. V, pp. 1546, 1548. Mr. Dias testified that he believes any ROE “[l]ess than 10-1/2 as we proposed” would be unacceptable. Tr. Vol. VI, p. 1983.

⁴⁹⁷ Tr. Vol. VI, pp. 2022-2023.

⁴⁹⁸ Tr. Vol. III, pp. 854-855; OCC Ex. 104 (June 2011 AEP Recoverability Memo).

⁴⁹⁹ Tr. Vol. III, p. 886.

⁵⁰⁰ It is interesting to note that AEP used RPM capacity prices in connection with this internal financial memorandum. *Compare* Tr. Vol. III, pp. 872-873 (Mr. Mitchell acknowledging the capacity prices used in the Impairment Test memo) *with* Stoddard Direct, pp. 21, 27 (providing the RPM BRA prices for each such year).

⁵⁰¹ *See* Direct Testimony of Renee V. Hawkins on behalf of AEP Ohio (“Hawkins Direct”), Ex. RWH-6.

⁵⁰² Tr. Vol. II, p. 457.

If customers are asked to subsidize generation in order to protect the wires business in 2013 (which, of course, would be an unlawful cross-subsidy), then the customers should recoup that subsidy when the assets are transferred in AEP Ohio's corporate separation – i.e., AEP Ohio's generation assets should be transferred at the higher of book or market instead of transferring at book. AEP Ohio currently proposes to transfer its generating assets at net book value.⁵⁰³ AEP Ohio has provided no evidence or analysis of the assets' market value. AEP Ohio witness Nelson testified that he was not aware of any appraisal done by AEP Ohio showing the market value of the assets to be transferred.⁵⁰⁴ In fact, as part of the corporate separation process, AEP Ohio has not looked at either market value estimates or market value appraisals that would relate to the generating units involved.⁵⁰⁵ However, the differences between Mr. Nelson's testimony in this proceeding versus his testimony in the Stipulation ESP proceeding raise further concerns about AEP Ohio's presentation of these issues:

⁵⁰³ Tr. Vol. II, p. 507.

⁵⁰⁴ Tr. Vol. II, p. 507.

⁵⁰⁵ Tr. Vol. II, p. 511.

<p align="center">Nelson Testimony ESP Stipulation Hearing, 10/11/11 (pp. 705-706)</p>	<p align="center">Nelson Testimony Modified ESP Hearing, 5/17/12 (pp. 508-511)</p>
<p>“I’m not aware that there’s a completed evaluation in terms of a market value for plants.”</p>	<p>“I think we did a market value analysis – I don’t want to call it market value analysis. It is a comparison among units. . . . I certainly wouldn’t consider it a market evaluation.”</p>
<p>Q. My question to you was you have asked for those market value estimates already, they just haven’t been completed yet, correct? A. Yes. We’ve – as part of corporate separation, we’re looking at that.</p>	<p>Q. So as part of the corporate separation process, is it correct that you have not looked at either market value estimates or market value appraisals that would relate to the generating units involved in the corporate separation? A. That’s correct. As far as I know we haven’t.</p>
<p>Q. Well, isn’t it true you’ve asked for it but you don’t have it yet? A. . . . I think it’s prudent business practice to do some analysis like that.</p>	<p>Q. So you wouldn’t think it would be a prudent business practice to do an analysis like that? A. Not a market appraisal if you’re not planning on doing anything with the assets that you would need that information for.</p>

The Commission should eliminate the proposed cross-subsidies in the Modified ESP.

B. AEP Ohio Will Not Suffer “Substantial Financial Harm” Under RPM Prices For Capacity.

AEP Ohio’s unsupported allegations of “substantial financial harm” are particularly transparent when applied to its alleged need for above-market capacity prices. AEP Ohio witness Powers testified that he believes AEP Ohio experienced “substantial financial harm” in 2010 and 2011 when AEP Ohio was charging RPM prices for capacity instead of \$355/MW-day,⁵⁰⁶ and he believes this “harm” will extend to AEP GenCo after corporate separation.⁵⁰⁷ In AEP Ohio-speak, “financial harm” simply is code for receiving less revenue than AEP Ohio would like to receive. Indeed, under cross-examination, Mr. Powers acknowledged that, contrary to actual financial harm, AEP Ohio has enjoyed comfortable returns when it charged

⁵⁰⁶ Tr. Vol. I, pp. 245-247.

⁵⁰⁷ Tr. Vol. I, p. 257. Mr. Powers measures that “substantial financial harm” as the difference between the \$355/MW-day price and RPM prices, as applied to the number of shopping customers. Tr. Vol. I, pp. 246-247.

RPM prices for capacity. He admitted that AEP Ohio enjoyed a substantial return on equity in both years (12.06% in 2011 and 12.23% in 2010⁵⁰⁸) and over \$1 billion in net income over those two years.⁵⁰⁹

“Q. . . . Do you know whether the company, despite 19 percent or 20 percent of its customers switching in 2011, and customers switching in 2010, earned a combined net income of over \$1 billion in 2010-2011, yes or no?

A. Yes That would be my impression; yes.”⁵¹⁰

Mr. Powers acknowledged that AEP Ohio’s combined ROE in 2009 was even “higher than the 12 percent we’re talking here.”⁵¹¹ He also admitted that during this period of “significant financial harm” in 2011, there was no direct impact on AEP Ohio’s cost of capital and there was no impact on AEP Ohio’s ability to provide reliable service to its customers.⁵¹²

Thus far, for 2012, with the increased shopping reported by AEP Ohio witness Allen, Mr. Powers further acknowledged that first quarter 2012 net income was in the range of \$150 million.⁵¹³ In addition, Mr. Severs’ projections include \$300 million in dividends in 2012 and 2013 provided to AEP Ohio’s parent, American Electric Power Co.⁵¹⁴ In fact, Mr. Dias directly contradicted Mr. Powers’ testimony of “substantial financial harm.” Mr. Dias testified “I would agree with you that at the end of 2011 I would not consider us in financial distress”⁵¹⁵ He

⁵⁰⁸ Tr. Vol. I, pp. 248-249; FES Ex. 106 (reflecting that AEP Ohio enjoyed a 12.06% ROE in 2011, as shown on Exhibit WAA-6 in the direct testimony of AEP Ohio witness Allen).

⁵⁰⁹ Tr. Vol. II, p. 363.

⁵¹⁰ Tr. Vol. II, p. 363.

⁵¹¹ Tr. Vol. I, p. 251 (discussing the results of AEP Ohio’s 2009 SEET proceeding).

⁵¹² Tr. Vol. I, pp. 253-255, 319.

⁵¹³ Tr. Vol. I, p. 364 (further acknowledging that the net income is potentially lower than otherwise expected because of a mild winter).

⁵¹⁴ Sever Direct, Ex. OJS-2; *see* Tr. Vol. I, p. 321 (AEP Ohio witness Powers acknowledged that that he is “aware that we expect our operating companies to dividend up to the parent”).

⁵¹⁵ Tr. Vol. VI, p. 1985.

also confirmed as “correct” that through the period of time since 2007 that the company has been charging RPM rates for capacity, the company has not been in financial duress.⁵¹⁶

AEP Ohio’s claims of financial harm that it might incur in 2013 largely are dependent upon Mr. Allen’s 65%/80%/90% switching assumptions by the end of 2012, which AEP Ohio witness Sever incorporated into his *pro forma* estimates.⁵¹⁷ This would be an unbelievable increase over the next six months to the highest shopping levels in the state, and would result in radically different shopping levels than those described to AEP’s investors earlier this year.⁵¹⁸ Notably, the 36.71% shopping level as of March 1, 2012 that Mr. Allen described in his direct testimony has dropped to 32.43% in his rebuttal testimony.⁵¹⁹ His estimates of monthly shopping growth that he relied upon to reach an average shopping level of approximately 68% by the end of 2012 are already outdated and wrong.⁵²⁰ As with much of AEP Ohio’s testimony, Mr. Allen’s estimates are not credible and cannot be relied upon by this Commission in determining what impact market pricing will have on AEP Ohio.

In any case, AEP Ohio must transition to market pricing, and market prices cannot be deemed “unreasonable” or “confiscatory” – they are the market prices at which willing buyers and willing sellers are transacting business.⁵²¹ AEP Ohio cannot be allowed to use its market power for capacity to charge above-market rates for which it has provided no evidence of

⁵¹⁶ Tr. Vol. VI, p. 1987.

⁵¹⁷ See Sever Direct, Ex. OJS-1, p. 1; Allen Rebuttal, p. 11; Tr. Vol. XVII, p. 4840.

⁵¹⁸ Tr. Vol. III, p. 903; FES Exs. 108, 109. AEP assumed a 24% switch rate under RPM-based capacity prices in its “Japan Road Show” presentation to foreign investors.

⁵¹⁹ Compare Allen Direct, Ex. WAA-1 with Allen Rebuttal, p. 10.

⁵²⁰ Tr. Vol. XVII, pp. 4837-40 and FES Ex. 120 (“AEP Estimated Shopping Assumptions, Allen Rebuttal versus Allen Direct.”).

⁵²¹ OEG witness Kollen agreed that AEP GenCo’s receipt of RPM pricing -- even if its fully embedded costs are more than double the RPM price -- would not be confiscatory because market pricing cannot be considered to be confiscatory. Tr. Vol. X, p. 2831.

financial harm and which could be used to improperly subsidize its competitive services to the further disruption of the competitive market.⁵²²

C. The Above-Market Revenue Will Subsidize AEP Ohio And Its Affiliates While The Modified ESP Limits Competition.

Through the Modified ESP's above-market capacity pricing and RSR, AEP Ohio would receive anti-competitive subsidies both before and after AEP Ohio's corporate separation.⁵²³ AEP GenCo, in particular, stands to gain substantially as it will receive both the above-market capacity charges and the RSR revenues.⁵²⁴ While AEP GenCo is receiving these above-market revenues, AEP Ohio believes that AEP GenCo also should be allowed to participate in its energy-only auction.⁵²⁵ Dr. Lesser explained how the Modified ESP's above-market revenues would improperly subsidize AEP GenCo and AEP Retail in such a scenario:

Suppose that AEP Generation Resources is allowed to bid to serve the auctioned SSO load, either directly or through AEP Retail. If AEP Generation Resources is paid an above-market price for capacity by AEP Ohio, then it can clearly undercut the market prices offered by other, unaffiliated CRES providers to serve that load. If AEP Retail offers to serve the SSO auction load using energy provided by AEP Generation Resources, then AEP Retail can similarly offer a below-market price, again undercutting other unaffiliated CRES providers. Thus, having received above-market prices for capacity from AEP Ohio, AEP Generation Resources would be able to subsidize AEP Retail.⁵²⁶

⁵²² See Banks Direct, p. 28 ("By virtue of AEP Ohio having elected to be an FRR entity in PJM, it has a natural monopoly for capacity in its service territory. As such, AEP Ohio is able to exercise market power over its ratepayers, while compounding the problem by not allowing those ratepayers complete freedom to choose a CRES provider at market based prices that are readily available in all other utility service territories in Ohio.").

⁵²³ Banks Direct, p. 27.

⁵²⁴ See Tr. Vol. I, p. 242 (AEP Ohio witness Powers), Vol. II, p. 519 (AEP Ohio witness Nelson).

⁵²⁵ Tr. Vol. II, p. 528.

⁵²⁶ Lesser Direct, p. 49.

The Modified ESP's subsidies are unfortunately consistent with AEP Ohio's blurred relationships between its distribution utility and its competitive generation function (and its affiliated retail generation service⁵²⁷). AEP Ohio witness Nelson described AEP Ohio and AEP GenCo *after corporate separation* "as pretty much joined at the hip in the sense that it's really AEP Ohio just split into two pieces."⁵²⁸ Mr. Nelson also could not answer or explain whether there will be any relationship between AEP Retail Energy and AEP GenCo after corporate separation.⁵²⁹

D. AEP Ohio Can Hold A CBP Now.

While seeking guaranteed revenues, AEP Ohio also seeks to protect its generation customer base by refusing to implement a CBP to supply SSO customers. AEP Ohio's FRR status is not a barrier to the use of a CBP. AEP Ohio witnesses acknowledged that the FRR does not prevent AEP Ohio from conducting a full-requirements solicitation for SSO supply prior to June 1, 2015.⁵³⁰ Two other Ohio EDUs that are FRR Entities have held CBPs for their SSO load.⁵³¹ AEP Ohio's participation in the Pool Agreement also does not prevent the use of a CBP. Thus, although AEP Ohio tries to argue that AEP Ohio would suffer "significant financial harm" if a CBP were implemented prior to pool termination, the undisputed and un rebutted testimony

⁵²⁷ For example, AEP Ohio's former CEO also acknowledged direct efforts at the retail level to dissuade customers from shopping: "[I]t's almost like the old telephone game of customers call and say they're leaving and we offer them an equally attractive rate, or something even a bit higher than the competitor. Because over the years we've treated these customers pretty well and they know that, so we're seeing some success in our retail operation and we continue to be aggressive in other jurisdictions other than our own." Banks Direct, p. 17, Ex. TCB-8 (quoting AEP-Q1 2011 American Electric Power Earnings Conference Call, Apr. 21, 2011).

⁵²⁸ Tr. Vol. II, p. 579.

⁵²⁹ Tr. Vol. II, p. 513.

⁵³⁰ Tr. Vol. I, p. 277 (Powers), Vol. II, p. 531 (Nelson), Vol. III, p. 789 (Graves).

⁵³¹ Tr. Vol. III, p. 789.

of FES witness Frame confirms that the Pool Agreement would not cause any financial harm to AEP Ohio as a result of a CBP:

There are no provisions in the AEP Pool Agreement that would preclude the implementation by AEP Ohio of a CBP for procuring electricity to support its SSO supply. As related to the AEP Pool Agreement, the economic impact on AEP Ohio and other Members of the AEP Pool from purchases and sales under a CBP should be off-setting, or largely so. . . .

To be sure, depending on how it is structured, the implementation of a CBP by AEP Ohio could create “stranded costs” for AEP Ohio in the sense that its generation capacity would not receive the same amount when forced to rely on the market for its revenues than it would under the traditional system of regulation. However, this issue is not related to the AEP Pool Agreement but rather is a direct outcome of moving from a regulated system of retail electric price determination to a market-oriented system.⁵³²

The financial impact of (finally) shifting to market-based pricing is exactly the alleged harm against which AEP Ohio is not entitled to protection. In any event, AEP Ohio has not quantified any such “substantial financial harm” that would arise. AEP Ohio witness Nelson testified that he did not even make an effort to quantify the financial harm that AEP Ohio claims would result from a CBP prior to corporate separation; “I wouldn’t have enough information to estimate that anyway.”⁵³³

As DECAM witness Pradhan testified, AEP Ohio’s delay will only harm customers: “[A]ny protracted delay in implementing full auctions deprives customers of today’s low market rates and removes from prospective auction participants the opportunity to invest in a process designed to keep costs as low as possible for customers.”⁵³⁴ Meanwhile, AEP affiliates have successfully participated in other Ohio CBPs. As FES witness Banks explained, “AEP Ohio’s

⁵³² Frame Direct, p. 3 (emphasis added).

⁵³³ Tr. Vol. II, p. 559.

⁵³⁴ Pradhan Direct, p. 5.

affiliates have . . . committed to serve millions of MWhs of electric service to customers in the FirstEnergy and DEO service territories without the benefit of a fuel adjustment or an above-market capacity charge as are sought [through the Modified ESP]. . . . AEP seems to believe in the benefits of competition and RPM-based capacity, except when it occurs in AEP Ohio’s own service territory.”⁵³⁵

E. In Comparison, The FEOUs’ and DEO’s Transitions Were Much More Limited.

AEP Ohio has made oblique references through the proceeding to the “transitions” provided to other EDUs, in an apparent attempt to justify the Modified ESP. However, the comparisons fall flat.

For example, AEP’s COO Powers asserted that the FirstEnergy Ohio utilities’ (“FEOUs”) assets “received \$6.9 billion in stranded costs” during the ETP cases.⁵³⁶ This statement misrepresents the facts. In their ETP Stipulation, the FEOUs actually agreed to a transition through which the FEOUs did not receive any additional incremental revenue. Rather, the FEOUs’ expenses increased due to amortization of the transition costs and their revenues decreased on an annual basis – through a reduction in residential generation rates, which reduction included the GTC and RTC components, and a freeze in distribution rates through December 31, 2007.⁵³⁷ The FEOUs also made a substantial amount of generation available to CRES providers at below-market pricing.⁵³⁸ In fact, a substantial portion of the stranded costs the Commission authorized the FEOUs to recover through accelerated amortization were RTCs,

⁵³⁵ Banks Direct, pp. 22-23.

⁵³⁶ Tr. Vol. I, p. 260.

⁵³⁷ See Case Nos. 99-1212-EL-ETP *et al.*, Opinion and Order, pp. 6-7 (July 19, 2000).

⁵³⁸ *Id.*, p. 7.

which AEP Ohio also recovered.⁵³⁹ On the other hand, AEP seeks to increase rates, charge above-market prices, and guarantee higher revenues. Thus, the Modified ESP is markedly different in its impact on the EDU and on customers. Should AEP Ohio consider making a similar transition, it would likely be much better received.

AEP Ohio may suggest that its RSR is consistent with Duke Energy Ohio's ("DEO") ESSC Rider; that, too, is wrong.⁵⁴⁰ OCC witness Duann explained that DEO's Rider ESSC, which was part of a settlement stipulation approved by the Commission, is "designed to collect \$110 million per year for three years."⁵⁴¹ However, other than a target revenue requirement, that is where any similarities with the RSR end. DEO's Rider ESSC expressly cannot be used to support any other DEO affiliate, including DEO's now-separate generation affiliate.⁵⁴² Therefore, it cannot serve as a subsidy and will be retained only by the wires company. On the other hand, AEP Ohio's proposed above-market capacity charges and RSR revenues are not only segregated from affiliates, but expressly passed on to the competitive generation affiliate. The Modified ESP is again materially distinct from DEO's "transition."

Moreover, the FEOUs and DEO also transitioned to fully competitive auctions as FRR entities. The FEOUs are subject to a FRR entity until May 31, 2013 and DEO will be an FRR entity until May 31, 2015.⁵⁴³ "In every case, both FirstEnergy [Ohio] and Duke Energy Ohio provided the necessary flexibility for LSEs to either be served by the FRR plan or to self-supply

⁵³⁹ *Id.*, pp. 30-34; FES Ex. 106, p. 4 and Att. 1.

⁵⁴⁰ Powers Direct, p. 6. However, Mr. Powers is not familiar with DEO's ESSC (Tr. Vol. I, pp. 276-277) and has no knowledge of DEO's capacity charges or the status of DEO's generating assets (Tr. Vol. I, pp. 235-236).

⁵⁴¹ Tr. Vol. IX, pp. 2759-2760.

⁵⁴² Tr. Vol. IX, pp. 2723-2724.

⁵⁴³ Jennings Direct, p. 9.

through opt-out resources.”⁵⁴⁴ On the other hand, AEP Ohio proposes to maintain its monopoly power on capacity and seeks to charge prices that are two- and four-times higher than the average market price.⁵⁴⁵ Thus, there is no comparison between the Modified ESP and the transitions that the Commission approved for other Ohio EDUs. There is no need for the Modified ESP’s oppressive terms and the Commission should reject the Modified ESP in its entirety.

VI. CONCLUSION

For the reasons set forth herein, the Modified ESP should be rejected in its entirety.

⁵⁴⁴ Jennings Direct, p. 9.

⁵⁴⁵ AEP Ohio also suggested that it is entitled to the Modified ESP because AEP Ohio was pressured to maintain its cost-based pricing in the years following S.B. 3. No AEP Ohio witness provided tangible evidence of such a request. While AEP’s COO provided testimony regarding this alleged pressure, he acknowledged he was not involved in that transition plan and has no knowledge of many of the relevant components of that transition. Tr. Vol. I, pp. 236-237 (“don’t know” whether AEP Ohio sought to impose a lost revenue charge on shopping customers in its ETP; “don’t recall specifically” whether the ETP was resolved in a settlement; and “don’t know” how the transition dealt with stranded cost recovery). Mr. Powers has not formed an opinion as to whether AEP Ohio’s settlement of the ETP case ended up being worse than the results of other Ohio utilities’ ETP cases. Tr. Vol. I, p. 238.

Respectfully submitted,

s/ Mark A. Hayden

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

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1405 East Sixth Street
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik (0006418)
Allison E. Haedt (0082243)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Post-Hearing Brief* was served this 29th day of June, 2012, via e-mail upon the parties below.

s/ Laura C. McBride

One of the Attorneys for FirstEnergy Solutions Corp.

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

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

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

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

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

Jeanne Kingery
Dorothy K. Corbett
Duke Energy Retail Sales
139 East Fourth St.
1303-Main
Cincinnati, OH 45202
jeanne.kingery@duke-energy.com
dorothy.corbett@duke-energy.com

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

Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215
etter@occ.state.oh.us

Thomas J. O'Brien
Bricker & Eckler
100 South Third St.
Columbus, OH 43215
tobrien@bricker.com

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

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister LLP
65 East State St., Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215
todonnell@bricker.com
cmontgomcry@bricker.com

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

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

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

C. Todd Jones
Christopher L. Miller
Gregory J. Dunn
Asim Z. Haque
Ice Miller LLP
250 West St.
Columbus, OH 43215
christopher.miller@icemiller.com
asim.haque@icemiller.com
gregory.dunn@icemiller.com

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

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

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

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

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

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

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

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

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

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

Stephanie M. Chmiel
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High St., Suite 1700
Columbus, OH 43215
Stephanie.chmiel@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale St., Suite 400
Pittsburgh, PA 15212
gary.a.jeffries@dom.com

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

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

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

Emma F. Hand
Douglas G. Bonner
Clinton A. Vince
SNR Denton US LLP
1301 K St., NW, Suite 600, East Tower
Washington, DC 20005
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
Clinton.vince@snrdenton.com

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

Diem N. Kaelber
Robert J. Walter
Buckley King LPA
10 West Broad St., Suite 1300
Columbus, OH 43215
kaelber@buckleyking.com
walter@buckleyking.com

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

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

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

Mark A. Whitt
Melissa L. Thompson
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad St.
Columbus, OH 43215
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com

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

Trent A. Dougherty
Cathryn Loucas
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
trent@theoec.org
cathy@theoec.org

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

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

Dane Stinson
Bailey Cavalieri LLC
10 W. Broad Street, Ste. 2100
Columbus, OH 43215-3422
dane.stinson@baileycavalieri.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Pkwy.
Dublin, OH 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Chad A. Endsley
Ohio Farm Bureau Federation
280 North High St.
P.O. Box 182383
Columbus, OH 43218
cendsley@ofbf.org

Brian P. Barger
4052 Holland-Sylvania Rd.
Toledo, OH 43623
bpbarger@bcslawyers.com

Joseph M. Clark
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

Sarah Reich Bruce
Ohio Automobile Dealers Association
655 Metro Place South, Suite 270
Dublin, OH 43017
sbruce@oada.com

Judi L. Sobecki
Randall V. Griffin
The Dayton Power & Light Company
1065 Woodman Dr.
Dayton, OH 45432
judi.sobecki@dplinc.com
randall.griffin@dplinc.com

Matthew R. Cox
Matthew Cox Law Ltd.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Roger P. Sugarman
Kegler, Brown, Hill & Ritter
65 E. State St., Suite 1800
Columbus, OH 43215
rsugarman@keglerbrown.com

Randy J. Hart
Rob Remington
David J. Michalski
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114
rjhart@hahnlaw.com
rrremington@hahnlaw.com
djnichalski@hahnlaw.com

Jack D'Aurora
The Behal Law Group LLC
501 S. High Street
Columbus, OH 43215
jdaurora@behallaw.com

Todd M. Williams
Williams Allwein and Moser LLC
Two Maritime Plaza, 3rd Floor
Toledo, OH 43604
toddm@wamenergylaw.com

Robert Burke
Braith Kelly
Competitive Power Ventures, Inc.
8403 Colesville Rd., Suite 915
Silver Spring, MD 20910
rburke@cpv.com
bkelly@cpv.com

Larry F. Eisenstat
Richard Lehfeldt
Robert L. Kinder, Jr.
Dickstein Shapiro LLP
1825 Eye St. NW
Washington, DC 20006
eisenstatl@dicksteinshapiro.com
lehfeldtr@dicksteinshapiro.com
kinderr@dicksteinshapiro.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/29/2012 4:27:12 PM

in

Case No(s). 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Brief FirstEnergy Solutions Corp.'s Initial Post-Hearing Brief electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.