

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**POST-HEARING BRIEF OF  
INTERSTATE GAS SUPPLY, INC.**

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## I. INTRODUCTION

When Ohio Power Company d/b/a AEP Ohio (“AEP”) filed its electric security plan (“ESP”), it was advertised as a “balanced package.” What AEP delivered was an anti-competitive rate structure with the stated purpose of staving off competition in AEP’s service territory for as long as possible. Ohio policy is to encourage competition, not hinder it, and to foster competition the Commission must modify the ESP. IGS proposed several modifications that would keep the ESP intact but also enhance competition for the benefit of all customers in AEP’s service territory. Specifically, if AEP receives above-market capacity pricing, which IGS opposes, the Commission should:

- Adopt a purchase of receivables (“POR”) program
- Implement retail auctions in lieu of the proposed wholesale auctions
- Eliminate minimum stay requirements

For these reasons, explained in detail below, the Commission should order the modifications proposed by IGS.

## II. ARGUMENT

### A. **The Commission should not adopt a capacity price structure that will hinder competition.**

IGS would begin by reiterating that any capacity price in excess of the RPM market price will harm competition, and the greater the excess, the greater the harm. If capacity is not priced fairly and reasonably, it can artificially inflate prices and suppress or altogether eliminate shopping opportunities. (Tr. at 4254:3-6 (“whatever the market rate is at the time for the RPM pricing on capacity would be part of [the CRES provider’s pricing] calculation”); *see also Id.*, 4254:15-19.) Because capacity pricing plays a role in CRES Supplier’s offers to customers, an

increase in this capacity price will likely require CRES providers to either increase their prices or force them to cancel their existing contracts. (IGS Ex. 101 (Parisi Dir. Test.) at 7:1-3, 5-11.)

AEP's proposed inflated capacity prices will not only threaten existing shopping, but it will further suppress the opportunities for non-shopping customers to shop during the ESP period. If the Commission adopts a capacity price that is higher than market (even for Tier 1 pricing in AEP's proposal), it will "make it very difficult for suppliers to offer competitive pricing for the entire ESP period." (IGS Ex. 101 at 6:12-13.) And once the Tier 1 capacity limits are reached, CRES suppliers would have to pay an even higher amount for capacity in the second tier. (*Id.* at 6:13-15.) It follows that the two-tier system will "severely limit the amount of shopping that occurs in the AEP service territory through the ESP period" creating "a longer-term chilling effect on competition." (*Id.* at 6:15-20.)

Finally, IGS would reiterate what it explained in detail in the capacity-charge case (10-2929-EL-UNC): the capacity charge must be set consistent with Ohio policy, and Ohio policy affirmatively requires the encouragement and promotion of competition. AEP's inflated capacity-charge proposal plainly violates that policy; RPM pricing plainly advances it.

The Commission should recognize that the price and structure of capacity charges during proposed by during AEP's ESP period will negatively impact the competition. Accordingly the Commission should not adopt AEP's proposed capacity price and rather require that AEP charge CRES suppliers RPM pricing for the AEP ESP term.

**B. If a tiered capacity system is adopted, which IGS does not advocate, the Commission should modify AEP's proposal to allow for additional customer migration.**

AEP proposes a tiered capacity system that limits the ability of customers to shop, and it creates a price disparity based on a customer's place in the queue. (Tr. 1539:11-20; Tr. 1528:24-

1531:14; Tr. 1535:19-1536:2.) IGS, along with many other customers and supplier groups, oppose this two-tiered system for multiple reasons. To avoid repetition of intervenor briefs, IGS will not recite every reason for opposing the two-tier capacity. IGS would highlight, however, several outcomes if the two-tier capacity structure is adopted.

First, it appears likely that the two-tier capacity structure as proposed will be quickly oversubscribed. With 15.57% of residential customers either shopping or soon to shop as of May 31, 2012, it appears that the 21% threshold for 2012 will be reached sooner rather than later. (AEP Ex. 151 (Allen Reb.), at 10.) Further the arrival of aggregation customers to Tier 1 on January 1, 2013 (Tr. 1571:6-14), will make the already limited Tier 1 capacity even scarcer. AEP witness Allen admitted on the stand that including the total potential aggregation load could reduce the 31% Tier 1 capacity to approximately 10%. (Tr. at 1564:18-1565:1.)

Because of the decreased capacity available, IGS recommends that the Commission ensure that the first tier of customers receive RPM-priced capacity. (IGS Ex. 101 at 12:3-13:1.) IGS further proposes that the Tier 1 capacity thresholds should be raised an additional 10% over the proposed thresholds to provide more incentive and more opportunities for customers to shop at lower capacity rates. (IGS Ex. 101 at 13:1-4.) Because aggregation customers would take up the bulk of available Tier 1 capacity, IGS also recommends that these customers be limited to second tier capacity pricing. (IGS Ex. 101 at 13:4-7.) Finally, *any* tiered capacity structure should end after 2014, at which point the CRES Suppliers should begin paying RPM market-priced capacity in preparation for AEP's full transition to competition on June 1, 2015. (IGS Ex. 101 at 13:7-9.)

These modifications would substantially mitigate the harms described above and would allow for additional shopping opportunities during the ESP. (IGS Ex. 101 at 9-11.) Therefore, if

the Commission adopts a two-tier capacity structure in this ESP, it should modify the structure as proposed.

**C. If the Commission grants AEP's proposals for capacity higher than the RPM price, the Commission should modify the ESP to include a POR program and other market enhancement mechanisms.**

To counteract the anticompetitive effect of adopting a capacity price above RPM, the Commission should modify the ESP to include a purchase of receivables ("POR") program and other market enhancement mechanisms. As explained above, any capacity charge or structure above the RPM market rate will hinder competition in violation of Ohio's precompetitive electric policy. *See, e.g.*, R.C. 4928.02(H). To enable AEP's ESP proposal to satisfy state policy, the Commission should modify the ESP to 1) include a purchase of receivables ("POR") program and 2) initiate retail auctions as proposed by IGS witness Parisi and 3) to eliminate the minimum stay provisions. Lowering these barriers to entry will open AEP's territory to more robust competition. (Tr. 4269:16-23.)

**1. A purchase of receivables program would enhance competition by allowing AEP to use the low-risk structure it already has in place to purchase CRES receivables.**

A POR program is an integral and important component of a robust competitive market. The existence of a POR program can make or break whether a CRES Supplier chooses to participate in an EDU's market. (Tr. 4310:7-10.) For example, when IGS decides whether to enter the market, "one of the first things that [it] look[s] at is whether the market has purchase of receivables." (Tr. 4236:10-13.) Similarly, Direct Energy does not participate in AEP's market for residential customers "because [it doesn't] have a purchase of receivables program." (Tr. 3702:1-6.) IGS participates in about thirty service territories across the country with "the vast majority hav[ing] purchase of receivables." (Tr. 4248:9-10.) Though AEP has not proposed

implementing a POR program in this ESP, IGS recommends the Commission modify the ESP to include such a valuable program. To enable implementation of a POR program, IGS recommends that the Commission set a schedule for implementation and establish a collaborative comprised of AEP, Staff, and any interested stakeholders. (IGS Ex. 101 at 21:1-13; Tr. 4302:19-21.)

**a. The Commission is not precluded from modifying the ESP to include a POR Program.**

The Commission may “modify and approve” any ESP filed under R.C. 4928.143(A). R.C. 4928.143(C)(1). Further, in determining whether an ESP should be modified, the Commission “must consider more than price.” *In re Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, ¶ 27 (2011). Any ESP may include “provisions relating to the supply and pricing of electric generation service,” R.C. 4928.143(B)(1), as well as any provisions relating to shopping, R.C. 4928.143(B)(2)(d). The proposed POR program falls within the permissible criteria of an ESP, and should be a considered modification.

Though the Commission has latitude to modify the ESP, AEP may argue that such a program cannot be adopted because it has a waiver from any requirement to purchase CRES accounts receivables. In Case No. 11-5544-EL-WVR, the Commission granted AEP’s request for “a waiver from any existing requirement to purchase CRES account receivables.” *In re Application of Columbus Southern Power*, Case No. 11-5544-EL-WVR, Entry at Finding (6) (Nov. 29, 2011). However, the Commission continued by “emphasiz[ing] that the waiver is limited to the purposes of this case only and *does not* impact the Commission’s ability to reconsider this issue in any future proceeding.” *Id.* (emphasis added). As such, the Commission can, and should, implement a POR program in this proceeding.



**b. A POR program advances state policy.**

Adopting a POR program would advance several state policy initiatives detailed in R.C. 4928.02. Initially, and most important, a POR program ensures “effective competition in the provision of retail electric service by avoiding anticompetitive subsidies.” R.C. 4928.02(H); *see also* IGS Ex. 101 at 14. This is evident by reviewing the switching statistics of Ohio’s natural gas utilities as well Duke Energy-Ohio, which “demonstrate[] that where a purchase of receivables (‘POR’) program is in place there are many suppliers making multiple residential offers.” (RESA Ex. 102 at 15:14-17.) Duke Energy-Ohio, the only electric distribution company with a POR program, has the greatest level of CRES supplier participation. (IGS Ex. 101 at 18:13-16.) Implementing a POR program also recognizes “the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.” R.C. 4928.02(G); *see also* IGS Ex. 101 at 14. Finally, a POR program ensures 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.” R.C. 4929.02(B); *see also* IGS Ex. 101 at 14. Furthering these state policies is another reason for the Commission to modify the ESP to include a POR Program.

**c. A POR program more efficiently uses resources while reducing costs to customers.**

Implementing a POR program will encourage competition by “reduc[ing] the overall cost of service for AEP’s customers, regardless of whether they receive generation service from AEP or from a competitive supplier.” (IGS Ex. 101 at 16:1-2.) Several factors reduce the overall cost to customers. Without a POR program, competitive suppliers must provide systems and resources to collect outstanding receivables of its customers. (IGS Ex. 101 at 16.) To the extent AEP’s distribution rates reflect AEP’s costs of systems and resources necessary to collect

arrearages, shopping customers will pay for these costs twice. (IGS Ex. 101 at 16; Tr. 4294:6-15; Tr. at 4295:4-5; Tr. at 4296:4-9.) Since these customers pay for these services, they should benefit from them. (Tr. at 4324:3-7.) Under the current system, AEP already attempts to collect CRES supplier arrears along with its own if a customer remains current on a payment plan. (RESA Ex. 102 at 16:14-16.) And, unlike CRES suppliers, AEP has the ability to terminate service and is thus better positioned to collect delinquent accounts at a lower cost to all customers. (IGS Ex. 101 at 16; Tr. at 4292:9 – 4293:15.) Therefore, a POR provides ratepayers a more cost-effective means of collecting arrears.

**d. A POR program provides other non-monetary benefits to consumers.**

A POR Program does more than lower costs. It provides customers “not only with a single bill, but more importantly with a single collection point.” (RESA Ex.102 at 15:17-18.) By streamlining the collection process to one bill, customers will “not face the additional stress and potential confusion of collections activity by multiple parties.” (IGS Ex. 101 at 15:22-23.) If several entities must seek collection for what appears to the customer as one unitary service, there is a substantial likelihood for customer confusion. (IGS Ex. 101 at 16; Tr. 4323:19-21; RESA Ex. 102 at 16:9-10.) A POR program also allows a CRES Supplier to utilize credit standards equivalent to those of the utility. (IGS Ex. 101 at 17.) In markets in which a POR program is not present, CRES suppliers must utilize more stringent credit standards because it does not have the ability to terminate service. (IGS Ex. 101 at 17.) As Mr. Parisi noted, utilizing these more restrictive standards is primarily driven by the market without a POR program. (Tr. 4240:22-4241:19.) With a POR program, however, CRES Suppliers would be able to offer their products to “a wide range of customers without a concern generally about uncollectibles.” (Tr. 4301:6-9.)

Utilities with POR programs consistently experience greater shopping levels than utilities without POR programs. For example, in Pennsylvania, several utilities with POR programs have experienced over 20% shopping. (IGS Ex. 101 at Ex. 1.) Similarly, in Illinois, Commonwealth Edison recently implemented a POR program and experienced a 10% residential customer migration over the past year. (IGS Ex. 101 at 19:6-8.) Ohio shopping statistics show even more promising results. As of December 31, 2011, Duke Energy Ohio, the only electric utility with a POR program, experienced nearly 30% residential customer migration. (IGS Ex. 101 at 19:11-12; *Id.* at Ex. 2.) FirstEnergy utilities also show a large number of residential customers shopping; however, a vast majority of these residential customers participate due to opt-out aggregations programs. (IGS Ex. 101 at 19:12-18.) Even the major Ohio gas utilities' POR programs have created "a glide path for many suppliers and offers to residential and small commercial customers." (RESA Ex. 102 at 18:5-6.)

The record thus establishes shows that a POR program is a substantial benefit to encouraging competition and increasing shopping in a utility service area. No party has introduced evidence to the contrary.

**e. IGS's proposed POR program would not result in an increased cost or risk to AEP.**

Any perceived cost or risk that AEP may contend exists is eliminated both by the ability of AEP to recover its expenses and by AEP's current system of securitizing its receivables. Typically, utilities may recover costs of a POR program through either a discount rate or an uncollectible expense rider, or a combination of both. (IGS Ex. 101 at 17:20-22.) If a utility uses the discount rate method, it will pay the CRES provider a discount for value of the receivables as compensation for assuming the risk of unpaid accounts and collection expense. (IGS Ex. 101 at 17:22 – 18:1.) The other method, an uncollectible expense rider, accounts for

the uncollectible expenses and recovers the expenses through a separate rider. (IGS Ex. 101 at 18:1-5; *see also* Tr. 4242:19 – 4243:25; Tr. 4302:15-24.) Importantly, whichever mechanism is selected, a utility will recover its uncollectible expenses from CRES Suppliers. (IGS Ex. 101 at 18:5-8.)

As a utility, AEP's risk of collecting the expense is lower because it may encourage customer payment through a disconnection of service. Once the utility purchases the receivable, it receives the full rights, title, and interest in the receivable. (Tr. 4292:14-18; *Id.* at 4293:11-13.) As part of those rights, the utility may disconnect customers, upon following all proper protocols and Commission rules. (Tr. 4293:13-15.) As explained by Mr. Parisi, "once that receivable is purchased by the utility, it becomes their receivable, they have all of the tools available to them to ultimately collect on it and, in the event it ultimately is converted from a receivable to an uncollectible debt, they have a mechanism to recover that." (Tr. 4290:12-18.) Risk is also lowered under the discount rate mechanism. The utility and CRES provider would enter into a contract for a "discount to the amount that the utility would pay on a monthly basis to the CRES provider." (Tr. 4291:13-15.) This discount rate is typically "based upon [] system-wide experience with respect to uncollectibles," and is periodically adjusted based on the uncollectible expense rate. (Tr. 4291:16-23.)

Further, any concern of AEP about an increased cost or risk being passed to it through a POR program is eliminated by the fact that AEP currently securitizes its receivables. AEP Witness Hawkins testified that AEP Credit, a special-purpose entity "just for receivables" securitizes AEP's receivables. (Tr. at 458:14-459:1; *Id.* at 461:21-462:1.) According to Ms. Hawkins, AEP has been securitizing its receivables since late 2000. (Tr. at 462:14-17.) According to Ms. Hawkins, AEP only sells the receivables of its standard service offer

customers. (Tr. 463:17-21.) Though these receivables do not include CRES receivables (Tr. at 484:2-5), nothing would prevent AEP from negotiating with its affiliate to begin including these receivables as well.

**f. The Duke and Ohio natural gas utilities' POR programs evidence the success of POR in Ohio.**

When all arguments are considered for or against a POR program, the Commission should look to the success of Duke and the Ohio natural gas programs as evidence that a POR program should be included in AEP's service territory. While AEP may raise theoretical concerns about whether or not a POR program can be successfully implemented, the bottom line is that POR programs have been implemented throughout Ohio. The established POR programs have neither run afoul of Ohio law, nor have they been unduly burdensome to implement or administer. Examining the POR programs in place demonstrates that POR programs have contributed significantly to competition in Ohio.

As previously stated, the switching statistics of the natural gas utilities and Duke indicate that a POR program encourages supplier participation. (IGS Ex. 101 at 18:10-18; RESA Ex. 101 at 15.) The existence of the POR program also encourages greater customer shopping. As of December 31, 2011, 30% of Duke's residential customers were shopping. (IGS Ex. 101 at 19:10-12; *Id.* at Ex. 2.) Even with updating its information as of May 31, 2012, AEP still only has around 15% of its residential customers shopping. (AEP Ex. 151 at 10.) Further, POR has been a major contributor the natural gas competition in Ohio. All of the natural gas utilities that offer POR programs have seen significant migration of customers to competitive suppliers as well as more competitive offers to customers. According to the most recent Apples-to-Apples statistics, Columbia Gas of Ohio and Dominion East Ohio, both of which have well-established

POR programs, have, respectively, fifteen and sixteen competitive suppliers actively soliciting customers.

The programs in place for Duke and the natural gas utilities have been “very successful in creating a glide path for many suppliers and offers to residential and small commercial customers.” (RESA Ex. 101 at 18:3-6.) For all of the reasons stated above, the Commission should modify the ESP by ordering the initiation of a workshop or other collaborative process to address protocols for the implementation of a POR program.

**2. A retail auction should be adopted in lieu of a wholesale auction.**

AEP proposes three auctions in its ESP: a 5% auction six months from the final order in this case, an energy-only auction in January 2015, and a capacity and energy auction in June 2015. (AEP Ex. 100 (App.) at 11; Tr. 325:19 – 326:7.) All three auctions, as proposed, would be wholesale auctions in which the supplier would bid for a portion of load. (AEP Ex. 100 at 11; IGS Ex. 101 at 21:15-22:2.) As discussed below, a wholesale auction does not provide the robust transition to a competitive market that a retail auction would.

Unlike a wholesale auction, in which suppliers bid to serve AEP, CRES suppliers bid for the right to serve customers on the default service rate *directly*. (IGS Ex. 101 at 22:4-12.) This direct contact allows customers to become more comfortable with the idea of receiving supply from a non-utility CRES supplier. (IGS Ex. 101 at 22:18-20.) Moreover, a retail auction, as proposed by IGS, could raise additional revenue that could pay for a POR program, Choice customer education programs, and the Governor’s energy initiatives. (IGS Ex. 101 at 24.)

The Commission should adopt IGS’s recommendation for a collaborative to transition AEP to retail auctions for its proposed competitive loads. (IGS Ex. 101 at 24.)

**3. Minimum stay requirements should be eliminated at the *beginning* of the ESP term, not on January 1, 2015.**

AEP's tariff currently requires GS2, GS3, and GS4 customers (large commercial and industrial) that shop and then return to SSO service to remain on SSO service for at least 12 months before they may shop again. (IGS Ex. 101 at 24.) Similarly, returning GS1 and GS2 customers (residential and small commercial) must stay on the SSO rate through April 15 of the *following year* if the customer received SSO service from May 16 to September 15 of the current year. (IGS Ex. 101 at 24 (citing Ohio Power Original Tariff Sheet No. 103-26D).) In its ESP, AEP proposes to eliminate the 12-month minimum stay requirement and the "April 15" stay requirement as of January 1, 2015. (AEP Ex. 111 (Roush Dir.) at 4:14-22.)

These minimum stays create an artificial barrier to shopping. (IGS Ex. 101 at 25:5.) A prohibition of shopping is necessarily, and by design, a barrier to shopping. The stay requirements in AEP's tariffs directly contravene R.C. 4928.02(C), which requires customers to have "effective choices over [electric] supplies and suppliers." A competitive market simply cannot exist unless customers are able to exercise their right to change suppliers and leave default service. (IGS Ex. 101 at 25:5-7.) Other Ohio electric distribution utilities are doing away with minimum stay requirements. (Tr. 3708: 5-6.) The Commission should not wait until six months before the ESP expires to fully remove these competitive barriers. Instead, the Commission should remove the minimum stay provisions from AEP's tariff at the beginning of the ESP period.

**D. The Commission should not approve the GRR placeholder without several modifications.**

AEP proposes a generation resource rider, which it characterizes as a "placeholder" for a future proceeding. (Tr. 599:24-600:6; Tr. 1170:12-18.) Though the proposed rider includes

“generic rider language,” AEP requests its approval with the promise that “the actual rider language, other than just this very plain vanilla placeholder, [] would be addressed in that later separate proceeding.” (Tr. 1171:5-8.) However, the Commission should not approve any rider, including the GRR, without specific modifications to ensure that the rider will not provide an anticompetitive subsidy flowing from competitive retail electric service to noncompetitive retail electric service. *See* R.C. 4929.02(H).

The GRR, as proposed, is a nonbypassable rider. (Tr. 1166:11-15; Tr. 599:10-17.) Even though *both* shopping and SSO customers will pay this rider, the GRR is intended to pay for only new generation assets to serve SSO customers. (Tr. 1166:16-18; *see also* Tr. 1166:23-1167:6.) AEP witness Roush went so far as to characterize the GRR as “nothing more than a financial hedge for SSO customers.” (Tr. 1167:5-6.)

A rider that recovers from *shopping* customers the costs of generation to serve *non-shopping* customers is by definition an anticompetitive subsidy flowing from shopping to SSO customers. (IGS Ex. 101 at 27.) To avoid violating R.C. 4928.02(H), the Commission should reject the proposed Rider GRR, modify Rider GRR to be bypassable, or modify the Rider GRR to allow the benefits of the rider to flow through to shopping customers. (IGS Ex. 101 at 27-28.)

The Commission should consider rejecting Rider GRR altogether. AEP, like other electricity suppliers, has the option to develop renewable energy projects on its own and recover the costs through market prices. (IGS Ex. 101 at 27.) Given all the other provisions of this ESP designed to support AEP’s generation business, Rider GRR is hardly necessary.

If the Commission instead determines that the Rider GRR is an appropriate piece of AEP’s ESP, then the Commission should modify the rider to make it bypassable, paid by the SSO customer benefiting from the Rider GRR. (IGS Ex. 101 at 27.)



Short of these alternatives, if the Commission determines that Rider GRR should remain nonbypassable, the Commission must make several modifications to the rider. To ensure benefits flow to all of the customers paying for the rider, shopping and non-shopping alike, AEP should sell the generated electricity on the market with revenues to be credited against the Rider GRR Cost. (IGS Ex. 101 at 27-28.) In addition AEP should use the renewable energy credits or “RECs” to reduce the renewable portfolio standard requirements for all customers. (IGS Ex. 101 at 28.) Several AEP witnesses agreed that this second approach, crediting the RECs to both shopping and non-shopping customers, was reasonable. (Tr. 599:18-22; Tr. 1169:24-1170:5.)

The Commission should not approve the generic Rider GRR without safeguards to protect against an anticompetitive subsidy. The Commission should instead either reject the Rider GRR or modify it as discussed herein.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should adopt the recommendations of IGS and modify the AEP ESP accordingly.

Dated: June 29, 2012

Respectfully submitted,

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I hereby certify that a copy of the Post-Hearing Brief of Interstate Gas Supply, Inc. was served to the following parties by electronic mail this 29th day of June, 2012:

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Summary: Brief of Interstate Gas Supply, Inc. electronically filed by Ms. Melissa L. Thompson on behalf of Interstate Gas Supply, Inc.