

**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)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. 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.)	

**INITIAL BRIEF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC**

June 29, 2012

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I. INTRODUCTION

A. Overview and Position of RESA and Direct Energy

Now comes the Retail Energy Supply Association (“RESA”), Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, the “Suppliers”)¹ and pursuant to the procedural schedule established by the Attorney Examiners, submits its initial post-hearing brief in the above styled docket. At first blush, given the sheer size of this proceeding with over 40 parties, 68 expert witnesses and thousands of pages of transcripts, the task of assimilating the facts and law of the case into a cogent presentation with a suggested course of Commission action seems unobtainable. On reflection though, when the expert testimony is carefully studied, there appears to be agreement on many of the most significant issues. All the parties seem to be in agreement as to how AEP Ohio should restructure in the future to meet its obligation to provide bundled competitive service to standard service customers and charge Competitive Retail Electric Service (“CRES”) providers for capacity. AEP Ohio has applied for, and no parties object to, AEP Ohio foregoing its Fixed Resource Requirement (“FRR”) obligations in favor of AEP Ohio placing its generation assets in the PJM Interconnect Base Residual Auction and providing capacity to CRES at the reliability pricing model (“RPM”) rate starting June 1, 2015. Similarly, AEP Ohio has applied for and no party objects to, obtaining the capacity and energy for the standard service offer via a competitive bid process similar to the descending clock auctions used by the FirstEnergy Ohio utilities and Duke Energy Ohio starting June 1, 2015. Finally, AEP Ohio has applied to utilize the same rate design for the standard service offer

¹ Teresa L. Ringenbach presented testimony jointly on behalf of both RESA and Direct Energy in this proceeding.

as was in use during its first ESP plan and is in use today, and with minor adjustments no party objects to that approach.²

Thus, with more or less general agreement on how generation procurement for standard service will be conducted and how capacity rates will be determined in the future, what remains to be addressed in the matter at bar are the rates, conditions and policies to be implemented over the next 36 months. Specifically, what to charge CRES providers for capacity, how to dismantle substantial existing barriers to retail competition, and how to equitably facilitate AEP Ohio's transition from legacy, standard cost-of-service rates³ to rates determined by the market. From the perspective of the Suppliers, the above transition requires five major amendments to the Application filed by AEP Ohio on March 30, 2012.

The first major modification is to the interim charge⁴ to CRES providers for capacity (i.e. State Compensation Mechanism or "SCM") proposed by AEP Ohio. The Commission by its own entry established a docket⁵ to consider and review the SCM. The SCM issue, though, became more complex when AEP Ohio as part of the Application in this proceeding ("ESP IIA"), suggested a SCM different from that which AEP Ohio proposed in the 10-2929 Capacity Charge proceeding. Like AEP Ohio, the Suppliers fully participated in the 10-2929 Capacity Charge case. The Suppliers' position in both proceedings is that the SCM should be set at the

² In sharp contrast, Standard Service rate design was a major issue for both the January 2011 ESP II application and the September 7, 2011 Stipulation.

³ Allen Direct at 4. Allen states that as of March 1, 2012, 26.1% of the AEP Ohio's connected load switch a CRES provider, with 2.2% with a pending witch. An additional 8.4% had provided notice to the company of their intent to switch. Resulting in 36.7% of the Company's load having switched or indicated their intent to switch, and 63.3% of the Company's load who have not switched or indicated their intent to switch.

⁴ "Interim" in this content being the time period between July 2012 when the current rate authorization expires and June 2015 when RPM rates apply.

⁵ Case No. 10-2929-EL-UNC ("Capacity Charge" case).

prevailing RPM price.

The second major modification is in regards to the need—and if needed, the design—of a mechanism to assure that the rates permitted during the 36 month interim period are not so low as to deny AEP Ohio a reasonable opportunity to earn a fair return on its committed jurisdictional assets. The Suppliers in their testimony⁶ supported the concept of a Rate Stabilization Rider to compensate AEP Ohio if the utility was in jeopardy of having its jurisdictional assets confiscated. AEP Ohio in its application asks for a Retail Stabilization Rider⁷ for exactly the same purpose. The Retail Stabilization Rider requested, though, has significant design flaws. The Suppliers reject the Retail Stabilization Rider as presented by AEP Ohio and will suggest a replacement that maintains the concept of assuring AEP Ohio the opportunity to earn a reasonable return, but does not use assured gross revenue of \$929 million plus fuel to achieve that goal.

The third major modification is to the timing of when AEP Ohio begins competitive bid procurement of capacity and energy. AEP Ohio suggests a limited “energy only” procurement starting 6 months after transfer of its jurisdictional generation assets,⁸ a full energy auction for the SSO load with delivery beginning January of 2015, and complete competitively bid capacity and energy procurement commencing in June 2015. The Suppliers believe that given the proper Rate Stabilization Rider to address AEP Ohio’s legitimate financial concerns, there is no reason

⁶ RESA Ex. 102, Direct Testimony of Teresa Ringenbach, and RESA Ex. 103, Supplemental Testimony of Teresa Ringenbach. .

⁷ The fact that the acronym for AEP Ohio’s and RESA’s rider to assure revenues necessary to prevent confiscation of AEP Ohio’s jurisdictional assets are both RSR caused some confusion in the cross examination of RESA witness Ringenbach. While RESA supports the concept of an RSR, it does not endorse the mechanics of the RSR proposed by AEP Ohio.

that full competitive procurement⁹ should not begin with the June 2014 PJM planning year, as that is a full six months after the expected termination of the AEP Pool Agreement (as authorized by the Federal Energy Regulatory Commission or “FERC”) and after transfer of the jurisdictional assets.

The fourth and fifth major changes to the Application are to remove the informational and structural barriers to shopping that exist today which prevent the development of a robust retail market. To address these informational needs the Suppliers propose a list of Electric Data Interchange and web based information system enhancements that are needed. As for the structural barriers to shopping, they include the addition of a purchase of receivables program, reduction of switching fees, which currently are double those charged by the other Ohio electric utilities, and removal of the minimum stay requirements.

B. Procedural History

On January 27, 2011, AEP Ohio filed an application for a new electric security plan beginning in January 2012 and through May 2015 in case dockets 11-346-EL-SSO *et al.* (“ESP II”). On September 7, 2011, a number of interested parties entered into a Stipulation and Recommendation, modifying AEP Ohio’s proposed ESP. The Stipulation and Recommendation represented an agreement on a number of terms and conditions to be implemented as a whole. The Stipulation established a two tier SCM rate consisting of a tier one rate of the RPM capacity price for those previously shopping, and \$255 per mw-day for all new shoppers.¹⁰ On September

⁸ 5% of the load.

⁹ Meaning, for both capacity and energy.

¹⁰ A set aside was also established for government aggregation for communities that previously passed ordinances and residential customers until the class equaled the set aside for year one of the Stipulation.

30, 2011, the signatory parties to the Stipulation filed a Joint Motion to consolidate a number of pending AEP Ohio cases, including the Capacity Charge case, with AEP Ohio's ESP proposal, which was approved by the Commission. As a result, the Capacity Charge case was joined with ESP II for purposes of hearing.

By Opinion and Order dated December 14, 2011, in the combined case dockets, this Commission approved the Stipulation and Recommendation with certain modifications. A number of applications for rehearing were filed, by signatory and non-signatory parties alike, requesting modification or reversal of the Commission's Opinion and Order and also seeking clarification of the two-tiered capacity system and allocation of RPM pricing.¹¹ The Commission modified the approved Stipulation by Entries dated January 23, 2012, altering, in part, the application of the two-tiered capacity to governmental aggregation customers. On February 23, 2012, the Commission reversed its December 14, 2011 decision and rejected the Stipulation and Recommendation. AEP Ohio was told to either reinstate its application or file a revised application by March 30, 2012. Further, the Attorney Examiners were directed to establish a separate procedural schedule for the Capacity Charge case. In the interim, the Commission determined that the two-tier capacity structure approved under the Stipulation should remain in place.

On March 5, 2012, AEP Ohio filed notice of its intent to file a modified ESP application, and on March 30, 2012, AEP Ohio filed its proposed modified ESP ("ESP IIA"). By Entry dated

¹¹ On January 13, 2012, Ormet Primary Aluminum Corporation, Industrial Energy Users-Ohio, RESA, OMA Energy Group, Ohio Hospital Association, FirstEnergy Solutions Corp., and the OCC and APJN filed applications for rehearing of the December 14, 2011 Opinion and Order. Additionally, on February 17, 2012, IEU-Ohio filed an application for rehearing of the Commission Clarification Entry of January 23, 2012.

April 2, 2012, the Attorney Examiner set a procedural schedule for this case, and allowed additional interested parties to intervene and file testimony. By entry dated March 7, 2012, the Commission order that during the pendency of the Capacity Charge case, AEP Ohio would continue to charge the two tiered capacity price, until June 1, 2012, when the capacity price would return to the RPM based price. By Entry dated May 30, 2012, the Commission extended the two tier capacity pricing through July 2, 2012, altering the two-tier capacity rate to be \$146 MW day for Tier One, and \$255 MW-day for Tier Two.

C. Intervenor Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business, LLC

The Retail Energy Supply Association (“RESA”) is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. Several RESA members are certificated as competitive retail electric service providers and are active in the Ohio retail market. This initial brief may represent the position of RESA as an organization, but may not represent the views of any particular RESA member. RESA members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources N.A, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; Next Era Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Trans Canada Power Marketing Ltd.; and TriEagle Energy, L.P.

Direct Energy Services, LLC and Direct Energy Business, LLC are both certificated as

CRES providers in Ohio. RESA, Direct Energy Services, LLC and Direct Energy Business, LLC jointly sponsored the testimony of Teresa L. Ringenbach

II. CRITERIA FOR EVALUATING ELECTRIC SECURITY PLAN

Section 4928.141(a), Revised Code requires every electric distribution utility to provide customers who have not arranged for power and other competitive service to provide power and all aspects of competitive services as a bundled standard service offer (“SSO”) to their customers beginning January 1, 2009. Section 4928.141, Revised Code permits the electric utility to provide SSO service either by outsourcing via a public bid process (MRO)¹² or by securing Commission approval of an ESP.¹³ In the matter at bar, AEP Ohio has selected an ESP, thus the Commission must engage in an analysis to assure that the ESP is in compliance with Section 4928.143, Revised Code. The Supreme Court of Ohio in the AEP Ohio ESP I case, In Re Application of Columbus Southern Power Co. 128 Ohio St. 3d 512; 2011 Ohio-1788 (2011), held that every charge or condition of the standard service offer for competitive services must be supported by an authorizing provision of Section 4928.143 (B)(2). As detailed below, in the matter at bar the March 30, 2011 Application fails to meet the statutory criteria for approval. The ESP as offered is not more favorable than an MRO in violation of Section 4928.143(C)(1), Revised Code. Second, Rider RSR that is proposed cannot be justified under the limited authorizations of Section 4928.143(B)(2). Finally, the Commission in order to approve the Application must consider whether AEP Ohio’s proposed ESP meets the state’s energy policies established in Section 4928.02, Revised Code, including subsection B which requires the

¹² Section 4928.142, Revised Code.

Commission assure a diversity of supplies and suppliers with terms and conditions that meet the retail customers' needs. Without the five modifications listed in the Introduction, the Commission will have to reject the Application. Section 4928.143(C), Revised Code does permit the Commission to modify an ESP Application.¹⁴ The Suppliers advocate that the Commission require the five modifications listed in the introduction section in order to have the application as modified meet the statutory standards.

III. ARGUMENTS

A. The Commission should direct AEP Ohio to implement a capacity charge for CRES Providers that is a transparent, market based price and is consistent with AEP Ohio's transition to market.

1. CRES Providers, and their customers, should pay for capacity at prevailing RPM based rates.

RESA and Direct Energy hold, consistent with their position in Capacity Charge case, that the RPM price is the only appropriate price to charge CRES providers and their customers for capacity under AEP Ohio proposed ESP plan.¹⁵ The RPM based price is the right price for capacity because it is a single rate that is a transparent, market based price.¹⁶ The RPM price is the most economically efficient price for capacity.¹⁷ Additionally, RPM is the price for capacity charged by all other EDUs in Ohio.

AEP Ohio has recognized in its proposed modified ESP the importance of transition to a

¹³ Section 4928.143, Revised Code.

¹⁴ "Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section 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."

¹⁵ Ringenbach Direct, 7-8.

¹⁶ Ringenbach Direct, 7.

competitive market as AEP Ohio has made a commitment to participate in the RPM auctions for capacity, and to have a full energy auction beginning in January 2015.¹⁸ AEP Ohio charged CRES providers the prevailing RPM price for capacity up until January 1, 2012, and will charge CRES providers and their customers will again pay prevailing RPM prices beginning in June of 2015. Setting the capacity price at RPM for CRES providers ensures a consistent market structure for customer through the interim period, helps to facilitate a smooth transition of AEP Ohio's load to full market, and promotes the growth of the competitive market.

2. The two-tiered capacity rate is an arbitrary and above market price.

AEP Ohio offers in its proposed ESP an arbitrary and inefficient two-tiered pricing structure with a Retail Stability Rider to recover additional non-fuel revenues, or, alternatively, a \$356 MW-day rate with \$10 MW-day shopping credits offered to a limited number of shopping customers.¹⁹ Both of AEP Ohio's proposals are unworkable and prevent all customers from enjoying the benefits of a transparent, market based capacity price and will inhibit shopping and prevent growth of the competitive market during AEP Ohio's transition to the competitive market.²⁰

AEP Ohio proposes a two-tier capacity construct similar to the construct presented in the September 7, 2011 Stipulation which the Commission rejected in its February 23, 2012 Entry. AEP Ohio proposes that an increase percentage of shopping customers receive capacity pricing at \$145.79 MW-day: 21% in Planning Year ("PY") 2012-2013, 31% in PY 2013-2014, and 41%

¹⁷ FES Ex. 102-A, Direct Testimony of J. Lesser (Public Version), 13.

¹⁸ AEP Ohio Ex. 101, Direct Testimony of R. Powers, 11-12.

¹⁹ AEP Ohio Ex. 116, Direct Testimony of W. Allen, 13-17.

in PY 2014-2015.²¹ The remaining shopping customers will pay \$255 MW-day.²² The two tier pricing structure should be rejected, as the pricing is an arbitrary, opaque price, and the two-tier structure is proven to be ineffective. RESA supported a two tier structure as part of the September 7, 2001 stipulation, because taken in the totality of the settlement, the settlement with tiers was still in the public interest. RESA and Direct having now real world experience with the tier structure have admitted this is a confusing and inefficient way to price capacity. In addition, AEP Ohio has proposed to change both who qualifies for tier one, excluding thousands of commercial customers who qualified for tier one under the stipulation, as well as changing other important features of the settlement.²³

The two tier pricing structure as proposed in the Application denies all shopping customers access to market based prices, and is inconsistent with this state's policies and AEP Ohio's own stated decision to transition to a competitive market. The prices proposed under the two tiers are neither cost based nor market based.²⁴ AEP Ohio witness Allen admits that the purported "discount" of AEP Ohio's claimed cost of capacity reflected by the two tier prices were arbitrarily set by AEP Ohio.²⁵ The two-tiered price results in subsidies for AEP's

²⁰ IGS Ex. 101, Direct Testimony of Parisi, 8-9.

²¹ Allen Direct, 6.

²² AEP Ohio refers to this two tier proposal as a "capacity discount" compared to the \$356 MW-day AEP Ohio claims to charge its own customers for shopping. Although, as witness Murray noted, "AEP Ohio has presented no evidence to demonstrate that the prices for capacity to be charged CRES providers are comparable to the default generation supply service and price of the SSO." IEU Ex. 125, Direct Testimony of K. Murray (Public), 45.

²³ Also See RESA Petition for Rehearing In Re 10-2929-EL-UNC proceeding for which the Commission granted rehearing to permit more time to examine the rehearing petitions.

²⁴ OCC Ex. 117, Direct Prepared Testimony of J. Wallach, 17.

²⁵ Tr. Vol. V, 1407-1408. Reviewing the deposition transcript, witness Allen stated regarding the two tier prices, "Question: So, again, it's not a cost-based price? Answer: I don't know that I would agree. It---there's cost basis but it's a discount from cost. It's not completely arbitrary. Question: Well, the amount of the discount is arbitrary, is it not? Answer: Yes."

generation business, to the detriment of competitors and shopping/non-shopping customers.²⁶ As noted by witness Murray, the two-tiered capacity proposal would “go against the structural reforms and policy objectives that are part and parcel of the effort to remedy an anticompetitive electric industry structure.”²⁷

Not only are the proposed two-tier prices arbitrary, but the structure of the two-tiered capacity proposal is inefficient and inherently flawed. The two-tiered capacity rates have been in place now for over six months, and those CRES providers who have had first-hand experience implementing the two-tiered structure have agreed that the structure is inefficient, unfair, and confusing.²⁸ In fact, the only party that supports the two-tiered structure in this proceeding is AEP Ohio.

Despite extensive negotiations of the Appendix C by interested parties in the first stage of this proceeding, the two tiered capacity structure, which has been in operation since January 1, 2012, has created customer confusion and backlash.²⁹ AEP Ohio has proposed no additional changes to the two-tiered capacity structure to remedy or simplify the process or even address the concerns raised by parties to this proceeding.

A major problem with the two-tiered capacity plan is AEP Ohio’s continued failure to provide necessary information to CRES providers in an efficient and timely manner. CRES providers continue to have difficulty verifying which of their customers are in which tier.³⁰

²⁶ Murray Direct, 29; DERS Ex. 103, Direct Testimony of P. North, 7-8.

²⁷ Murray Direct, 29.

²⁸ Parisi Direct, 12-13; *see also* FES Ex. 105, Testimony of T.C. Banks, 5-13; Ringenbach Direct, 7-11.

²⁹ Ringenbach Direct, 7-8.

³⁰ Ringenbach Direct, 8.

Including when soliciting new customers there is no information provided on a customers' bill or to the customer which tells them where they stand in the tier process.³¹ CRES provider capacity invoices provided by AEP Ohio do not break out load by the individual tiers and there are ongoing disagreements regarding where a customer stands in queue.³² AEP Ohio's proposed ESP does not address these concerns. In fact, AEP Ohio continues to attempt to delay the implementation of the Cap Tracking System, even though the Cap Tracking System was supposed to be in place by mid-February of this year under the original Stipulation.³³

Even if AEP Ohio were to provide timely and complete information to CRES providers, the queue and the Detailed Implementation Plan create inherent layers of complexity which have led to disputes and interpretational issues as to which customers are in which tier.³⁴ FES witness Banks' testimony lays out a number of these issues that CRES providers have confronted, and will continue to confront, in attempting to apply the two tier system and capacity allocations.³⁵ Despite the confusion relating to the two tiers and capacity allotments, AEP Ohio's only proposed check on its implementation of the allotments is an "audit" conducted by AEP Ohio once a year.³⁶ AEP Ohio will conduct the audit itself and report the results to the Commission Staff.³⁷ This meager "audit" proposal fails to even remotely address the number of concerns

³¹ Tr. Vol. XIII, 3730.

³² Ringenbach Direct, 8.

³³ Banks Direct, 7-8.

³⁴ As RESA witness Ringenbach testified, "...the tiered approach has been a nightmare to implement." Tr. Vol. XIII, 3724.

³⁵ Banks Direct, 9-17.

³⁶ Banks Direct, 9.

regarding proper allocation of Tier Capacity that have arisen under the first six months of the year, and will continue to arise if the two tier structure is implemented.

Finally, it is important to consider that many customers who have already begun shopping did so based on the assumption that they are currently, or would soon, receive RPM priced capacity. By denying all customers access to the RPM based price, many of these customers may have the option to terminate their contracts with CRES providers.³⁷ This outcome may actually *reverse* the current number of shopping customers. As a result a single capacity rate should be applied to all shopping customers.

AEP Ohio's proposed alternative—capacity at \$356 MW-day with shopping credits—is equally unworkable. This proposal still requires allocation of shopping credits to certain percentages of customers on a first come first serve basis—which will likely result in the same confusion and inefficiency experienced with the Detailed Implementation Plan in the two-tiered proposal.³⁸ Additionally, the credit does not reduce the capacity price down to the RPM based price, and thus is still an opaque and arbitrary capacity price.⁴⁰

3. *The Commission should direct AEP Ohio to implement prevailing RPM based capacity pricing, with a Rate Stability Rider to collect additional revenues to the degree that the Commission determines additional revenues are needed.*

The Suppliers believe RPM priced capacity is the only right price for capacity. The Suppliers recognize that a transition adjustment for AEP Ohio may be necessary as AEP Ohio progresses to a competitive market. Thus, to the extent RPM is considered confiscatory, the

³⁷ Banks Direct, 9.

³⁸ Parisi Direct, 5-6.

³⁹ Ringenbach Direct, 11.

Commission should permit AEP Ohio to collect additional revenues to the extent additional revenues are needed. The amount collected in the RSR should be set at a level that allows AEP Ohio's total revenue from its regulated services, in the aggregate, to cover its prudently incurred costs and provide for a reasonable return.⁴¹ This is in line with the dictates of the Ohio Supreme Court. The High Court last took up the subject of whether rates approved by the Commission were so low as to be confiscatory in Ohio Edison v. PUC, 63 Ohio St. 3d 555 (1992). The Court affirmed in Ohio Edison its earlier interpretation of federal constitutional cases which state that in order to determine whether a rate order is just and reasonable, the Commission must balance investor and consumer interests.⁴² However, any rate selected by the Commission is considered just and reasonable if it falls within the "broad zone of reasonableness"—that is, "the range between which a [rate] would be so low as to be confiscatory and so high as to be exploitive of consumers."⁴³ The Court recognized "investor concerns as only one factor that the commission is to consider in setting just and reasonable (*i.e.*, constitutional) rates. Once these interests are appropriately balanced, the rates' effect on the company's financial integrity (*i.e.*, debt rating and dividend level) is but another of the risks which a utility, as any other unregulated enterprise, must bear."⁴⁴

Although RESA supports an RSR in concept, RESA does not support the RSR as proposed by AEP Ohio. The RSR is proposed as a revenue decoupling mechanism intended to replace revenue lost as customers shop and their revenues are replaced with revenues from CRES

⁴⁰ Ringenbach Direct, 11.

⁴¹ Ringenbach Direct, 11.

⁴² Ohio Edison v. PUC 63 Ohio St. 3d 555, 562-63 (1992).

⁴³ *Id.* at 563 n6.

providers.⁴⁵ AEP Ohio requests the RSR payments in order to prevent “financial harm” and “achieve economic stability and certainty” as AEP Ohio transitions to competition, and customers begin shopping.⁴⁶ The RSR will collect a set amount of non-fuel generation revenues for the three year term of the ESP, based on a baseline of revenues from AEP Ohio’s 2011 earnings.⁴⁷ The RSR is proposed to collect a set revenue of \$44.1 million in PY 2012-2013, \$102.9 million in PY 2013-2014, and \$137.2 million in PY 2014-2015.⁴⁸

However, AEP Ohio’s proposed RSR would allow AEP Ohio guaranteed revenues that would shift AEP Ohio’s risk to its customers, shopping and non-shopping alike. For example, AEP Ohio and its shareholders would typically absorb decreases in customer demand due to weather or economic downturns, but under the proposed RSR AEP Ohio would be guaranteed a certain level of income from its customers regardless of the status of weather conditions, economic conditions, or other risks affecting customer demand.⁴⁹ Granting AEP Ohio a guaranteed revenue stream will also allow AEP Ohio and its new affiliate to make uneconomic investments and incur uneconomic costs that are unrelated to prevailing market conditions.⁵⁰

In lieu of an RSR that insulates AEP Ohio from risk, while shifting that risk to

⁴⁴ *Id.* at 564-65.

⁴⁵ OEG Ex. 101, Direct Testimony of L. Kollen, 12; Allen Direct, 13.

⁴⁶ Kollen Direct, 13.

⁴⁷ Allen Direct, 13.

⁴⁸ Allen Direct, WAA Ex. 6.

⁴⁹ Tr. Vol. II, 389 (Cross-Examination of Powers).

Q. “... financial risk of weather from the company, is that a shareholder risk or is that—should that be a customer risk?

A. I mean, generally speaking in my experience it's been a shareholder risk.

Q. Right. And how about economic downturn?

A. Again, to the extent that load goes down and kilowatt-hour sales goes down, that's been a utility risk.” *Id.* at 389.

⁵⁰ DECAM Ex. 101, Direct Testimony of S. Pradhan, 10.

consumers, RESA and Direct suggest a mechanism that will help AEP Ohio transition its generation function from a regulated EDU to a competitive entity. A RSR in this form will offer stability to AEP Ohio as it transitions, and is specifically provided for in Section 4928.143(B)(2)(d).⁵¹ Additionally, because AEP Ohio's transition to a competitive market is a benefit to all customers, the costs of this transition should be borne equally by all customers. In terms of an RSR mechanism two models can be supported by the record in the matter at bar. First, the Commission can project an amount of money it believes AEP Ohio needs in order to earn a reasonable return on its jurisdictional generating assets and set that as the RSR rider, or OEG witness Kollen presented an adjustment based on the actual rate of return on equity AEP Ohio experiences. Using actual rate of return goes straight to the Ohio Supreme Court's concern of setting rates that do not over compensate the utility or overcharge the rate payers.⁵² There is also testimony from several experts on what the proper rate of return should be.⁵³

B. Energy Auctions

The Commission should direct Ohio Power Company to move to a competitive bid process ("CBP") for energy effective as of June 1, 2014. Advancing the start date of the CBP serves to bring the value and benefits of competition to customers in a timeframe in which the evidence shows would bring no harm to AEP Ohio.⁵⁴ AEP Ohio's current proposal is to begin a

⁵¹ R.C. § 4928.143(B)(2)(d) states: "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 account or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service."

⁵² RESA does not agree with Mr. Kollen's suggestion to apply rider to shopping customers only.

⁵³ See e.g. Testimonies of OEG witness Kollen, Ormet witness Wilson, and AEP Ohio rebuttal witness Avera.

⁵⁴ Exelon Ex. 101, Direct Testimony of D. Fein (Public), 8, 19-20.

CBP with delivery in January of 2015, so that by June 1, 2015, the Company will provide 100% energy and capacity at prices determined in a CBP.⁵⁵ The Company is also proposing to conduct a limited SSO energy auction for only 5% of the SSO load with delivery starting six months after final orders approving the ESP as proposed and corporate separate as filed.⁵⁶ This proposed 5% auction is based on the express condition of financially being made whole and the delivery period of the 5% auction would extend through December 31, 2014.⁵⁷

AEP Ohio intends to complete both its corporate separation and pool termination by January 1, 2014.⁵⁸ AEP Ohio has consistently pointed to both of these events as the necessary preconditions to implementing a CBP.⁵⁹ Based on AEP Ohio's own assertions that these preconditions will be met by or before the anticipated date, the Suppliers see no evidence that indicates that AEP Ohio cannot and should not proceed with a CBP commencing on June 1, 2014.⁶⁰ This auction date will provide AEP Ohio a full six months to prepare for and set up an auction after it has completed its corporate separation and pool termination.⁶¹ By implementing an auction on June 1, 2014, AEP Ohio will accelerate the benefits of an energy only auction, and the transition to a full competitive retail market.⁶²

⁵⁵ Powers Direct, 20.

⁵⁶ Powers Direct, 20-21.

⁵⁷ Powers Direct, 20-21.

⁵⁸ AEP Ohio Ex. 103, Direct Testimony of p. Nelson, 21-22.

⁵⁹ See e.g., Powers Direct, 19-21.

⁶⁰ Fein Direct, 8, 19-20.

⁶¹ Fein Direct, 8, 19-20.

⁶² Fein Direct, 8, 19-20.

C. The Commission should ensure CRES customers are provided equal access to the benefits of the proposed modified ESP and should not implement nonbypassable, generation-based rates.

AEP Ohio's ESP IIA provides for certain benefits that are paid for by all customers, but may not be offered to all customers. Additionally, AEP Ohio has proposed certain aspects of the ESP IIA that improperly charge CRES customers for costs relating to AEP Ohio's generation, which CRES customers already pay through their rates for CRES providers. The Commission should modify AEP Ohio's electric security plan to ensure that all customers, shopping or non-shopping, are provided equal access to the benefits of the ESP IIA, and are not double charged for generation based services through certain non-bypassable rates.

The Commission should ensure that all customers, whether they are shopping or non-shopping, are eligible for funds collected through the economic development rider ("EDR"). AEP Ohio witness Dias notes that the EDR "supports mercantile customers that retain and increase Ohio jobs," thereby facilitating the "state's effectiveness in a global economy."⁶³ The proposed EDR is a nonbypassable rider, and thus is paid by all customers.⁶⁴ Accordingly, the benefits of the rider should be shared among all customers. As noted by RESA witness Ringenbach,

"Needless to say, if there is an opportunity to increase employment through the use of economic development funds, that opportunity should extend to shopping and non-shopping customers alike. Excluding shopping customers from receiving economic developments funds is not only unduly discriminatory, but interferes with the mission of the EDR rider to grow the local economy."⁶⁵

Thus, in order to fully carry out the purpose of the EDR, the Commission should require AEP

⁶³ AEP Ohio Ex. 118, Direct Testimony of S. Dias, 13.

⁶⁴ AEP Ohio Ex. 100, Modified ESP Application, 14.

Ohio to offer the benefits of the EDR to both shopping and non-shopping customers alike.

AEP Ohio should also ensure that energy efficiency programs, rebates, SmartGrid meters, and SmartGrid data are available at the same terms and conditions to all customers, regardless of whether they purchase generation service from a CRES provider or take standard service. AEP Ohio witness Dias discusses the use of these programs, and their importance in improving efficiency and service reliability.⁶⁶ The costs of these programs are paid equally by all customers, shopping or non-shopping, through nonbypassable riders, including gridSMART rider and the Energy Efficiency and Peak Demand Reduction Rider, although AEP Ohio has not made clear in its modified ESP Application whether these programs will be available to all customers.⁶⁷ The Commission should ensure that these programs are available to all customers. As noted by RESA witness Ringenbach, “It is a matter of basic fairness for shopping customers and standard service customers to be treated the same for these utility funded service enhancements and the Commission’s order in this case should state the explicitly.”⁶⁸

AEP Ohio additionally seeks to implement several nonbypassable generation-based riders, including the Generation Resource Rider (“GRR”). This proposal not only inhibits the growth of the competitive retail electric market, but it violates Ohio’s state policy in Section 4928.02(H), Revised Code, which prohibits the collection of generation based rates through non-bypassable riders. According to AEP Ohio, the GRR “helps the EDU to address long-term

⁶⁵ Ringenbach Direct, 4-5.

⁶⁶ Dias Direct, 11.

⁶⁷ Dias Direct, 11.

⁶⁸ Ringenbach Direct, 6.

capacity needs by providing the opportunity to build additional generation if needed in the future.”⁶⁹ AEP Ohio has requested that the GRR be set at zero, and will only collect costs if the new build generation is approved in a separate proceeding. However, AEP Ohio asks that the Turning Point Solar facility be approved for recovery through the GRR in this case, although costs will be determined in yet another case.⁷⁰

AEP Ohio’s request in this proceeding is premature and inappropriate. In order for the Turning Point Solar project to be approved, the full details of those costs must be disclosed and considered by the Commission. Additionally the Turning Point Solar project, or any other proposed generation investment, must be properly dedicated to the load, and must be subjected to competitive bidding to ensure efficiency.⁷¹ Setting the GRR as a placeholder rider is improper at this point as the “need” and “cost” of new generation resources need to be determined together.⁷² AEP Ohio has at this time failed to demonstrate any “need” for the Turning Point Solar project that would justify the GRR.⁷³

Additionally, the Commission should not implement the GRR as it seeks to collect from shopping customers costs relating to the Turning Point Solar facility, a renewable energy facility.⁷⁴ Although the GRR is set as a “placeholder” rider, AEP Ohio’s proposal to flow through the costs of the Turning Point Solar project creates uncertainty for CRES providers, who

⁶⁹ Dias Direct, 13.

⁷⁰ Ringenbach Direct, 11.

⁷¹ Ringenbach Direct, 12.

⁷² Lesser Direct, 66-68.

⁷³ Lesser Direct, 50-53.

⁷⁴ Dias Direct, 13.

must also meet Ohio's renewable energy portfolio standards.⁷⁵ CRES customers already pay for renewable energy through their CRES providers.⁷⁶ Thus, the GRR creates the very real possibility that CRES customers will pay twice for renewable energy—once through their CRES provider, and again through the GRR.⁷⁷

AEP Ohio's GRR proposal is simply inconsistent with the state's policy to promote the growth of a robust competitive market, as well as AEP Ohio's transition to market and should be rejected. To the extent a GRR is implemented, costs should not be assessed to shopping customers.⁷⁸ Alternatively, the GRR should be set at zero and incorporation of the Turning Point Solar or other facilities should occur in a separate case.⁷⁹

D. The Commission should require AEP Ohio to develop programs designed to allow for efficient billing and access of information to CRES providers in order to promote competition in Ohio.

1. The Commission should direct AEP Ohio to adopt a Purchase of Receivables Program and adopt other efficient Billing Options.

The Commission should modify AEP Ohio's proposed ESP to require AEP Ohio to implement a Purchase of Receivables ("POR") program similar to the program adopted in the Duke ESP and used in the Ohio Gas Markets. By simplifying the billing process, a POR

⁷⁵ Lesser Direct, 53.

⁷⁶ Ringenbach Direct, 12.

⁷⁷ Tr. Vol. VIII, 2511-15. As noted by Commission Porter, Rider AER, which collects costs relating to the Timber Road wind facility is bypassable while the GRR, which intends to collect costs for a solar facility, is nonbypassable. "Q. What's the rationale, as you understand it, for the company's proposal for having the Timber Road REPA be included in this nonbypassable rider rather than -- I'm sorry, in the bypassable AER rider rather than in a nonbypassable rider? Why should it be bypassable versus nonbypassable?

A. 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."

⁷⁸ Ringenbach Direct, 12.

⁷⁹ Ringenbach Direct, 12.

program promotes competition by allowing more competitors to compete in the AEP Ohio service territory, particularly in the residential market, as well as expand the number of customers able to shop. As noted by RESA witness Ringenbach, “[a] simple review of the higher switching statistics on the natural gas side and on the electric side behind Duke Energy Ohio clearly demonstrates that where a POR program is in place there are many suppliers making multiple residential offers.”⁸⁰ This is further proven by the fact that Duke’s service territory, the only electric distribution utility with a POR program, has the greatest level of CRES supplier participation of all electric utilities in Ohio.⁸¹

AEP Ohio’s current collection and billing system results in numerous problems and inefficiencies for customers, CRES providers and the utility. Under AEP Ohio’s current system, the customer may still receive a single bill, and may be required to pay CRES charges to avoid disconnection.⁸² However, if only partial payment is made, or no payment is made by the customer, the CRES provider will only see the portion of the payment applied to CRES charges, and with no ability to verify whether the funds are being applied appropriately when there are arrearages.⁸³ Additionally, payment plans may increase customer arrearages owed to the CRES provider.⁸⁴ Further, if a customer with arrears leaves its CRES provider and returns to utility service, two entities (the CRES provider and the EDU) must attempt to collect the back due

⁸⁰ Ringenbach Direct, 15.

⁸¹ Parisi Direct, 18; see the customer migration reports in Parisi Direct, 19-20.

⁸² Ringenbach Direct, 15.

⁸³ Ringenbach Direct, 15.

⁸⁴ Ringenbach Direct, 16-17.

payments.⁸⁵

A POR program provides customers with a single bill and a single collection point for payment.⁸⁶ Under the POR program, a utility would purchase the CRES provider's accounts receivables at the point where the supplier delivers the electricity into the utility's system.⁸⁷ The CRES provider would be paid up front, and the utility would collect and keep all of the customer payments that would otherwise be paid to the supplier.⁸⁸ In other words, no distinction is made between the money owed for wire service and power and any bad debt would then be addressed in a "bad debt tracker."⁸⁹ By coupling a POR with a bad debt tracker, which is used in the Duke's tariff, and major gas utilities in Ohio, the amount of bad debt associated with customer bills will become known.⁹⁰ This will ensure that only the exact bad debt is paid by customers.⁹¹

POR provides numerous advantages for competition. A POR simplifies enrollment of new CRES customers by requiring only one screening for credit, and only one deposit if the customer presents a credit risk.⁹² This will expand the potential for lower income residential customers to shop and take advantage of the competitive market.⁹³ POR would also simplify enrollment of customers and credit screening. POR programs such as this are used successfully in a number of other states with customer choice including Illinois, New York, Virginia,

⁸⁵ Ringenbach Direct, 16.

⁸⁶ Ringenbach Direct, 15.

⁸⁷ Parisi Direct, 15.

⁸⁸ Parisi Direct, 15.

⁸⁹ Ringenbach Direct, 18.

⁹⁰ Ringenbach Direct, 17.

⁹¹ Ringenbach Direct, 17.

⁹² Ringenbach Direct, 17.

⁹³ Ringenbach Direct, 17.

Pennsylvania, Indiana, Kentucky, Maryland, and Michigan, and have been successful in expanding competition, particularly to residential customer classes.⁹⁴ Also, as noted above, POR programs will allow more CRES providers to participate in the market, increasing competition, which in turn will decrease prices and the introduction of new and innovative products.⁹⁵ For these reasons, RESA and Direct Energy encourage the Commission to direct AEP Ohio to implement a POR program.

AEP Ohio has also recently begun automatically returning certain shopping customers to standard service if that customer is in arrears by \$50 or more for a period of more than 60 days.⁹⁶ On May 14, 2012, certain CRES providers received notices indicating that starting on May 16, 2012, AEP Ohio will begin automatically returning customers in arrears by \$50 or more for a period of more than 60 days to the default service.⁹⁷ It is not uncommon for customers to miss a payment deadline or to have an unpaid or partially paid monthly invoice.⁹⁸ As a result, AEP Ohio's recent change resulted in a large number of customers being involuntary switched to default service—particularly small commercial and residential customers who are at greater financial risk.⁹⁹ Essentially, a small commercial customer could pay late but pay in full two months in a row and lose their CRES provider and be stuck with AEP on a minimum stay.¹⁰⁰ Further, AEP Ohio provided a mere two-day notice to CRES providers of this new policy—

⁹⁴ Parisi Direct, 18.

⁹⁵ Parisi Direct, 18.

⁹⁶ Ringenbach Supplemental, 2.

⁹⁷ Ringenbach Supplemental, 2; FES Ex. 119.

⁹⁸ Ringenbach Supplemental, 2.

⁹⁹ *Id.*

¹⁰⁰ Ringenbach Supplemental, 2.

providing no time for CRES providers to warn customers or otherwise act.¹⁰¹ The new policy can only be interpreted as a further attempt to inhibit shopping in AEP Ohio's service territory. The Commission should direct AEP Ohio to reverse this practice as soon as possible.

In addition to POR, AEP Ohio should implement additional billing options to allow suppliers flexibility in providing unique and innovative services to customers. First, the Commission should require AEP Ohio to open a workshop to explore supplier consolidated billing ("SCB") with utility shut off for CRES receivables. SCB gives the option of taking on the entire utility bill for customers.¹⁰² SCB would allow CRES providers to offer new products quickly while still maintaining a single bill and collection point for customers.¹⁰³

Additionally, the Commission should require the implementation of rate ready and bill ready billing as soon as possible.¹⁰⁴ Bill ready billing allows the supplier to calculate a bill based on different products outside those products the utility's rate ready system.¹⁰⁵ AEP Ohio's current bill-ready billing does not function consistently for CRES providers or their customers and AEP Ohio should be required to invest in a more functional billing system.¹⁰⁶

This flexibility in the utility billing system will maximize the potential for new products and lower costs by allowing the CRES providers to move quickly with changing market options and products for customers.¹⁰⁷

¹⁰¹ Ringenbach Supplemental, 2-3.

¹⁰² Ringenbach Direct, 18.

¹⁰³ Ringenbach Direct, 18.

¹⁰⁴ DERS Ex. 101, Direct Testimony of M. Walz, 5-6.

¹⁰⁵ Ringenbach Direct, 18; Walz Direct, 5-6.

¹⁰⁶ Walz Direct, 6.

¹⁰⁷ Ringenbach Direct, 18; Walz Direct, 6.

2. *The Commission should direct AEP Ohio to provide certain additional information to CRES Providers.*

AEP Ohio should develop a secure, web-based system that will provide electronic access to key customer usage and account data in a standard and generally accepted format that can be accessed and downloaded by CRES providers that are authorized to access the customer account. CRES customers rely on data provided by AEP Ohio about customers in order to offer customers an accurate price and to service accounts. A CRES provider receives customer data from AEP Ohio in three forms: the eligibility list (“Pre-Enroll List”), EDI transactions, and e-mail from the AEP Ohio help desk for updated and missing information.¹⁰⁸ However, none of these forms provide all the information needed by the CRES providers in order to provide effective service to customers.

RESA and Direct Energy recognize that developing a web-based system may take time and expense.¹⁰⁹ However, RESA and Direct Energy suggest that the Commission place a web-based tool to be complemented and in beta form by December 31, 2013 for testing, and the web-based system be released by May 31, 2014 for public use.¹¹⁰ Prior to these dates, AEP Ohio should would work with CRES providers to determine the appropriate data delivery mechanisms and appropriate communication to suppliers that should be incorporated.¹¹¹

In the interim period prior to implementation of a web-base system, the Commission should require AEP Ohio to return uniform information to a supplier that does not differ or

¹⁰⁸ Ringenbach Direct, 12-13.

¹⁰⁹ Ringenbach Direct, 13.

¹¹⁰ Ringenbach Direct, 13.

¹¹¹ Ringenbach Direct, 13.

contain incomplete information—regardless of the method used to deliver the information. In that regard, the Commission should require AEP Ohio to add Capacity PLCs and Transmission NSPLs along with their effective dates, the rate class, the load profile, the meter read cycle number, and an indication if the account is on PIPP service for EDI transactions.

AEP Ohio should provide regular “sync” lists to CRES providers. “Sync” lists allow CRES providers to compare information in their own systems with information in the utility system to spot and correct any discrepancies before a customer receives the information.¹¹² The provision of this data will lower CRES providers’ costs to serve and enroll an account, and will simplify a customer’s process to enroll with a CRES provider.¹¹³ Additionally, implementing these recommendations will create consistency across the Ohio service territories.¹¹⁴

In order to implement these changes properly and to ensure helpful functioning with CRES providers, the Commission should hold annual meetings or conference calls with registered CRES providers to discuss supplier coordination issues affecting CRES providers.¹¹⁵

E. Existing Shopping Barriers in AEP Ohio’s Tariffs Should be Removed.

AEP Ohio’s modified ESP retains a number of shopping barriers that inhibit or discourage customers from shopping. Specifically, AEP Ohio retains minimum stay periods and high switching fees for customers who exercise their choice to purchase electricity from a CRES providers. These barriers are an anticompetitive aspect of AEP Ohio’s tariffs that should be removed.

¹¹² Ringenbach Direct, 14.

¹¹³ Walz Direct, 4.

¹¹⁴ Walz Direct, 6.

The Commission should require AEP Ohio to reduce or eliminate the fee customers are charged for switching to competitive service.¹¹⁶ AEP Ohio charges a fee of \$10 for customers who choose to switch to a CRES provider, twice that of other utilities in Ohio.¹¹⁷ AEP Ohio states that the switching fee is a cost-based mechanism that is intended to collect costs relating to the process of switching customers.¹¹⁸ Yet, no AEP Ohio witness was able to provide any reason why AEP Ohio's fee is twice that of other utilities, and could not point to any extraordinary costs or processes of AEP Ohio.¹¹⁹ In fact, the cost of the fee has not been reevaluated since it was implemented in 1999 and, since that time, AEP Ohio's switching processes have improved and become automated, reducing costs.¹²⁰ As a result, there is simply no justification for such a high charge, aside from limiting shopping and increased competition, and it should be eliminated.

In addition to the unreasonably high cost, AEP Ohio charges the switching fee directly to customers, and does not allow the supplier to pay the fee, which is the practice in some other Ohio service territories.¹²¹ Thus, a supplier cannot offer to pay the fee and eliminate the disincentive to shop. To the extent the Commission allows AEP Ohio to retain a switching fee, the Commission should require AEP Ohio to allow supplier to pay the switching fee and require AEP to bring their fees in line with other utilities in the state.

The Commission should also reduce or eliminate the minimum stay periods for all

¹¹⁵ Ringenbach Direct, 14.

¹¹⁶ Walz Direct, 3.

¹¹⁷ Ringenbach Direct, 19.

¹¹⁸ Tr. Vol. IV, 1197-98 (Cross-Examination of Roush).

¹¹⁹ Tr. Vol. IV, 1201 (Cross-Examination of Roush).

¹²⁰ Tr. Vol. IV, 1197-98, (Cross-Examination of Roush)., RESA Exhibit 101.

¹²¹ Banks Direct, 31. Referencing Duke and FE territories.

customer classes. AEP Ohio proposes to continue the minimum stay periods until the beginning of the energy auction in January of 2015.¹²² These minimum stay periods include both the 12 month minimum stay for medium and large commercial and industrial customers, and the requirements for 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 16 through September 15 time period.¹²³ The existing limitations deter customers from shopping and are inconsistent with other EDU service territories.¹²⁴ The only justification AEP Ohio can provide for these minimum stay periods is that they prevent “seasonal gaming”, which was an initial concern in the electric transition plan cases.¹²⁵ AEP Ohio witnesses could not point to any reason to believe seasonal gaming is still an issue today, and could not provide examples of seasonal gaming that have occurred in other service territories or AEP Ohio’s own service territories.¹²⁶

The Commission should require AEP Ohio to remove these additional barriers to shopping, which do not exist in other Ohio service territories, and are inconsistent with AEP Ohio’s transition to market and this state’s policy to promote a competitive retail electricity market.

¹²² Tr. Vol. IV, 1117 (Cross-Examination of Roush).

¹²³ Banks Direct, 31.

¹²⁴ Walz Direct, 3.

¹²⁵ Tr. Vol. IV, 1117-1119, (Cross Examination of Roush).

¹²⁶ Tr. Vol. IV, 1117-1119, (Cross Examination of Roush).

F. The Electric Security Plan as proposed by AEP Ohio in its modified ESP filed March 30, 2012, is not more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

Section 4928.143(C)(1), Revised Code also requires that in order for the Commission to approve the ESP, the Commission must find that the ESP is more favorable in the aggregate than the expected results under an MRO (the “in the aggregate test”).¹²⁷ The Commission confirmed in its December 14, 2011 Order in this case, that quantitative and qualitative factors should be considered in order to determine whether an ESP is more favorable in the aggregate than the expected results under an MRO.¹²⁸ The record demonstrates in this case that the modified ESP as proposed by AEP Ohio fails the numerical quantitative “in the aggregate test”, and is much more expensive than the expected results under a market rate offer.

In fact, AEP Ohio witness Thomas is the only witness to this proceeding that has calculated the proposed ESP to be more quantitatively favorable in the aggregate than the results under an MRO.¹²⁹ In reaching this result, witness Thomas’s testimony considers the two-tier capacity price to be a “discount” providing a benefit of \$988.7 million.¹³⁰ Thomas assumes that AEP Ohio is entitled to receive, and would receive, a \$356 MW-day charge for capacity¹³¹—a rate that AEP Ohio has never charged CRES providers and no regulatory entity has ever

¹²⁷ “Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section 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.”

¹²⁸ December 14, 2011 Opinion and Order, 32.

¹²⁹ AEP Ohio Ex. 114, Direct Testimony of L. Thomas, 3.

¹³⁰ Thomas Direct, LJT-1.

¹³¹ Thomas Direct, 15.

approved for AEP Ohio. Additionally, AEP Ohio has failed to provide any cost-of-service study demonstrating that it charges its own SSO customers a \$356 MW day rate.¹³²

The testimonies of other witnesses testifying on the outcome of the “in the aggregate test” have made note of this fundamental flaw, and have determined that correcting AEP Ohio witness Thomas’s errors demonstrate that the ESP proposed by AEP Ohio is less favorable numerically and quantitatively than the results under an MRO. DERS witness North testifies that his analysis of the “in the aggregate test” determined that the proposed ESP is more expensive than the MRO by over \$200 million through the three year period, and including the RSR and GRR, the proposed ESP is worse than the MRO by \$493.1 million.¹³³ FES witness Schnitzer concludes that under a wide range of reasonable assumptions, the proposed ESP would result in excess costs to the AEP Ohio zone as compared to an MRO ranging from \$400 million to \$1.3 billion, depending on the capacity cost that is adopted by the Commission in Case No. 10-2929-EL-SSO.¹³⁴ OCC witness Hixon estimates that on a quantifiable basis, the Modified ESP results in significant additional costs to customers over what is expected under an MRO, resulting in additional costs totaling \$552.3 million.¹³⁵ Additionally, Staff witness Fortney concluded that quantitatively, the proposed ESP is not more favorable in the aggregate than the results expected under an MRO.¹³⁶

It is clear that quantitatively, AEP Ohio’s proposed ESP fails the “in the aggregate test,”

¹³² Murray Direct, 50-51, 54; Lesser Direct, p. 11.

¹³³ North Direct, 6-7. North additionally noted that the total premium of the proposed ESP, as compared to an MRO, over the three year period is \$1.416 billion. North Direct, 9.

¹³⁴ FES Ex. 104, Direct Testimony of M. Schnitzer, 36.

¹³⁵ OCC Ex. 114, Direct Testimony of B. Hixon, 22. Witness Hixon notes that this analysis does not include additional non-quantifiable costs of the proposed ESP.

as it offers rates that are much higher than the alternative under an MRO. However, if the Commission is to approve a modified version of AEP Ohio's proposed ESP that will charge customers an above market price, the Commission must include qualitative provisions in the ESP that will preserve and promote the growth of the competitive market. The accelerated full competitive auction, reduction in switching fees, lower competitive rates that would follow adoption of a purchase of receivables program offer the type of qualitative benefits that could support a modified ESP. Put another way, if an above market ESP proposal is to be approved, the Commission must clear the obstacles for retail consumers to shop. Accordingly, the Commission should modify the proposed ESP to ensure that it contains provisions that will promote the competitive retail electricity market and will not hinder customers' ability to shop by making the revisions recommended by RESA.

IV. CONCLUSION

As proposed by AEP Ohio, the modified ESP application fails the ESP statutory "in the aggregate test" provided for in Section 4928.143, Revised Code. The modified ESP application violated important regulatory principles and is not in the interest of the public, or of ratepayers. As a result, the modified ESP application should be modified by the Commission as follows:

- Ensure that all shopping customers pay RPM based capacity rates and reject AEP Ohio's two tier paradigm and alternative proposal of \$356 MW-day capacity charge with shopping credits.
- To the extent the Commission finds the RPM price confiscatory, the Commission

¹³⁶ Staff Ex. 110, Direct Testimony of R.B. Fortney, 6.

may implement an appropriate rider to collect additional charges needed to stabilize AEP Ohio as it transitions to the competitive market.

- Direct AEP Ohio to conduct full competitive procurement for energy beginning with the June 2014 PJM planning year, a full six months after the expected termination of the AEP Federal Energy Regulatory authorized Pool and after transfer of the jurisdictional assets.
- Direct AEP Ohio to reduce or remove of switching fees, which currently are double those charged by the other Ohio Utilities, and reduce or remove the minimum stay periods for all customer classes.
- Reject AEP Ohio's proposed non-bypassable GRR and if adopted assess the GRR only against SSO customers. Alternatively, the GRR should be set at zero and incorporation of the Turning Point Solar project or other facilities should occur in a separate case.
- Direct AEP Ohio to provide the benefits of programs such as the economic development incentives, gridSMART, and energy efficiency programs that are funded through non-bypassable riders to all customers, shopping or non-shopping.
- Direct AEP Ohio to implement new programs that will allow CRES providers to offer low cost service to customers, and provide an opportunity to create innovative productions, including a Purchase of Receivables program, supplier consolidated billing with shut off, bill-ready and rate-ready billing.
- Direct AEP Ohio to implement EDI and web based information systems so that

CRES can obtain both customer usage history and account information and provide regular “sync” lists to CRES providers.

With these modifications in place, AEP Ohio’s proposed ESP will meet the statutory standards laid out Section 4928.143, Revised Code, will be to the benefit of ratepayers and the public interest, and further this state’s energy policy.

Respectfully submitted,




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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 29th day of June, 2012 by electronic mail, upon the persons listed below.



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