

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast )  
Report of Ohio Power Company and ) Case No. 10-501-EL-FOR  
Related Matters. )

In the Matter of the Long-Term Forecast )  
Report of Columbus Southern Power ) Case No. 10-502-EL-FOR  
Company and Related Matters. )

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in these matters and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Matthew J. Satterwhite and Yazen Alami, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Ohio Power Company and Columbus Southern Power Company.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

McNees, Wallace & Nurick LLC, by Samuel C. Randazzo, Joseph E. Olikier, and Matthew R. Pritchard, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Mark A. Hayden, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, and Calfee, Halter & Griswold, LLP, by James F. Lang, Laura C. McBride, and N. Trevor Alexander, 1400 KeyBank Center, 800 Superior Avenue, Cleveland, Ohio 44114, on behalf of FirstEnergy Solutions Corp.

The Behal Law Group LLC, by Jack D'Aurora, 501 South High Street, Columbus, Ohio 43215, on behalf of University of Toledo Innovation Enterprises.

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, 52 East Gay Street, Columbus, Ohio 43215, on behalf of the Retail Energy Supply Association.

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, 52 East Gay Street, Columbus, Ohio 43215, on behalf of Interstate Gas Supply, Inc. d/b/a IGS Energy.

OPINION:

I. HISTORY OF THE PROCEEDINGS

On April 15, 2010, pursuant to the requirements of Rule 4901:5-1-03, Ohio Administrative Code (O.A.C.), Ohio Power Company (OP) and Columbus Southern Power Company (CSP) (jointly, AEP-Ohio or the Company)<sup>1</sup> filed their 2010 long-term forecast report (LTFR). The LTFR contains information on AEP-Ohio's energy demand, peak loads, and reserves, as well as a resource plan that the Company can implement to meet anticipated demand. On December 20, 2010, AEP-Ohio filed a supplement to its LTFR to offer supporting information concerning its intent to enter a capital leasing arrangement for a total of 49.9 megawatts (MW) of solar energy resources (SER), known as the Turning Point project, to facilitate compliance with its SER benchmarks under Section 4928.64(B), Revised Code.

Section 4935.04(D)(3), Revised Code, requires that the Commission hold a public hearing on a LTFR upon the showing of good cause to the Commission. On January 12, 2011, Staff filed a motion for a hearing in these cases. By entry issued on January 26, 2011, the attorney examiner found that the proposed construction of over 49 MW of SER would be a significant addition in generating facilities sufficient to justify review of AEP-Ohio's LTFR and, therefore, granted Staff's motion for a hearing.<sup>2</sup> The hearing was scheduled to commence on March 9, 2011. Motions for intervention in these proceedings were filed by Industrial Energy Users-Ohio (IEU-Ohio) and FirstEnergy Solutions Corp. (FES) on January 28, 2011, and February 17, 2011, respectively. On March 7, 2011, AEP-Ohio filed proofs of publication of notice of the hearing, as required by Section 4935.04(D)(3), Revised Code.

The hearing was convened, as scheduled, on March 9, 2011, and continued to permit Staff to complete its investigation and to allow for settlement discussions. On

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<sup>1</sup> By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

<sup>2</sup> The entry also granted a motion for intervention filed by the Ohio Consumers' Counsel, which subsequently filed a notice of withdrawal from these proceedings on October 24, 2011.

November 21, 2011, AEP-Ohio and Staff (jointly, signatory parties) filed a partial stipulation and recommendation (stipulation), which would resolve all of the issues raised in these proceedings (Joint Ex. 1). On December 14, 2011, IEU-Ohio and FES filed a motion to strike and motion *in limine*, requesting that a provision of the stipulation pertaining to the Turning Point project (Turning Point provision) be stricken from the stipulation. By entry issued on February 29, 2012, the attorney examiner granted the motions for intervention filed by IEU-Ohio and FES, denied the motion to strike and motion *in limine*, and scheduled the hearing to reconvene on March 28, 2012. On March 9, 2012, AEP-Ohio filed the direct testimony of William K. Castle (AEP-Ohio Ex. 1), and Staff filed the direct testimony of Mark C. Bellamy (Staff Ex. 1). On March 12, 2012, IEU-Ohio and FES filed a motion that, *inter alia*, sought an expedited discovery schedule, which was denied by the attorney examiner by entry on March 19, 2012. On March 21, 2012, FES filed the direct testimony of Jonathan A. Lesser (FES Ex. 1). AEP-Ohio and Staff filed a joint motion to strike portions of Dr. Lesser's testimony on March 27, 2012.

The hearing reconvened, as scheduled, on March 28, 2012. During the hearing, the attorney examiner granted, in part, and denied, in part, the joint motion to strike portions of Dr. Lesser's testimony (Tr. at 168-172). Initial briefs were filed by the parties on April 25, 2012, and reply briefs were filed on May 4, 2012.

By entry issued on September 5, 2012, the Commission reopened the record in these proceedings, pursuant to Rule 4901-1-34(A), O.A.C., and established a briefing schedule for the limited purpose of permitting additional briefing on certain specified issues related to the need for the Turning Point project. In response to the entry, on September 14, 2012, University of Toledo Innovation Enterprises (UTIE) filed a motion to intervene in these proceedings, which was opposed by FES. Supplemental initial briefs were filed by the parties and UTIE on October 3, 2012, and supplemental reply briefs were filed on October 17, 2012.

Additionally, on October 3, 2012, the Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc. d/b/a IGS Energy (IGS) filed initial comments in response to the September 5, 2012, entry. On October 9, 2012, AEP-Ohio filed a motion to strike the initial comments of RESA and IGS. In its motion, AEP-Ohio argued that the Commission's September 5, 2012, entry did not solicit comments from interested stakeholders, and that, because RESA and IGS were not parties to these proceedings, they should not be permitted to file the additional briefs requested of the parties in the entry. On October 17, 2012, RESA and IGS filed a joint memorandum contra AEP-Ohio's motion to strike. RESA and IGS requested that their joint memorandum

contra be considered a motion to intervene or, alternatively, *amicus* comments, in the event the Commission determined that only parties should respond to the September 5, 2012, entry. By entry issued on October 17, 2012, the attorney examiner denied AEP-Ohio's motion to strike. Although the attorney examiner found that the September 5, 2012, entry clearly requested additional briefs from the parties to the proceedings, the attorney examiner nevertheless granted RESA's and IGS' request that their joint memorandum contra be considered a motion for intervention in these proceedings. On October 31, 2012, AEP-Ohio filed a memorandum contra the motion for intervention, and a joint reply memorandum was filed by RESA and IGS on November 7, 2012.

During the hearing held on March 9, 2011, seven members of the general public testified in support of AEP-Ohio's efforts to comply with renewable energy and energy efficiency requirements for reasons such as reductions in pollution and other adverse environmental impacts, increased financial savings for customers, and creation of new jobs. Additionally, numerous letters were received by the Commission in support of the Turning Point project from state and local public officials, as well as various entities, including the Athens County Economic Development Council; International Brotherhood of Electrical Workers, Fourth District; Natural Resources Defense Council; University Clean Energy Alliance of Ohio; Ohio Farm Bureau Federation; Voinovich School of Leadership and Public Affairs, Ohio University; Southeastern Ohio Port Authority; Zanesville-Muskingum County Port Authority; The Ohio State University Extension, Noble County; Morgan County Community Improvement Corporation; Noble Local School District; Noble County Chamber of Commerce; Ohio Environmental Council; Green Energy Ohio; United States Department of Agriculture, Ohio Rural Development; International Brotherhood of Electrical Workers, Local Union No. 972; Buckeye Hills, Hocking Valley Regional Development District; Zane State College; Eastern Ohio Development Alliance; Community Improvement Corporation of Noble County; Ohio Mid-Eastern Governments Association; University of Toledo; Ohio AFL-CIO; Solar Energy Solutions; Appalachian Partnership for Economic Growth; and the Parkersburg-Marietta Building and Construction Trades Council.

## II. DISCUSSION AND CONCLUSION

### A. Applicable Law

There are several statutes that are pertinent to the Commission's resolution of these proceedings. First, pursuant to Section 4935.04(C), Revised Code, each person owning or operating a major utility facility within this state, or furnishing electricity

directly to more than 15,000 customers within this state, is required to file an annual LTFR. After reviewing the LTFR and the hearing record, the Commission, in compliance with Section 4935.04(F), Revised Code, must determine if:

- (1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;
- (2) The load requirements are based on substantially accurate historical information and adequate methodology;
- (3) The forecasting methods consider the relationships between price and energy consumption;
- (4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area;
- (5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet forecasted electric power demand;
- (6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;
- (7) All assumptions made in the forecast are reasonable and adequately documented.

Additionally, Section 4928.64(B), Revised Code, establishes benchmarks for each electric distribution utility (EDU) and electric services company to acquire a portion of its electricity supply for retail customers in Ohio from renewable energy resources. Specifically, the statute requires that, for 2012, a portion of the electricity sold by means of retail electric sales in Ohio must come from alternative energy resources, including 0.060 percent from SER, half of which must be met with resources

located within Ohio. This requirement increases each year until 2024, at which point the requirement is 0.5 percent.

Finally, in accordance with Section 4928.143(B)(2)(c), Revised Code, the Commission may authorize, under certain circumstances, a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by an EDU, as a component of its electric security plan (ESP). Among other requirements, the statute provides that the Commission must first determine that there is a need for the facility based on resource planning projections submitted by the EDU, before a nonbypassable surcharge may be authorized.

B. Summary of the Stipulation

As previously noted, AEP-Ohio and Staff filed a stipulation, which would resolve all of the issues in these proceedings. Pursuant to the stipulation, the signatory parties, *inter alia*, agree:

- (1) The Commission should make all necessary findings that AEP-Ohio's application and subsequent filings in these dockets comply with and satisfy the requirements of Section 4935.04, Revised Code, and Chapters 4901:5-3 and 4901:5-5, O.A.C., relating to the long-term forecast, resource planning, and related requirements.
- (2) Based on resource planning projections submitted by AEP-Ohio, pursuant to Section 4928.143(B)(2)(c), Revised Code, and the provisions of Section 4928.64(B)(2), Revised Code, that require the Company to obtain alternative energy resources, including SER located in Ohio, the Commission should find that there is a need for the 49.9 MW solar facility known as the Turning Point project during the LTFR planning period as described in the stipulation.

(Joint Ex. 1 at 3-4.)

C. Procedural Matters

1. Motions to Strike

As noted above, IEU-Ohio and FES filed a motion to strike and motion *in limine*, which requested that the Turning Point provision be stricken from the stipulation. The motion was subsequently denied by the attorney examiner. Additionally, during the hearing, IEU-Ohio and FES moved to strike portions of the testimony of AEP-Ohio witness Castle and Staff witness Bellamy regarding the need for the Turning Point project. IEU-Ohio and FES also moved to strike a portion of Mr. Castle's testimony referring to a stipulation involving Dayton Power and Light Company (DP&L) in Case No. 10-505-EL-FOR (DP&L Case).<sup>3</sup> The motions were denied by the attorney examiner. (Tr. at 11-17.) In its brief, IEU-Ohio argues that the attorney examiner should have granted the motion to strike and motion *in limine*, as well as the oral motion to strike raised during the hearing, because it would be unlawful to make a finding of need for a generating facility in a LTFR proceeding. As addressed further below, the Commission finds that the need for the Turning Point project may be considered in these proceedings and, accordingly, we affirm the attorney examiner's rulings.

According to IEU-Ohio, the motion to strike Mr. Castle's reference to the stipulation in the DP&L Case should also have been granted, as the stipulation specifically provides that neither the stipulation nor any Commission ruling adopting it may be cited as precedent in any future proceeding. As AEP-Ohio was not a signatory party to the stipulation in the DP&L Case, the Company is not bound by its terms and, accordingly, we believe the attorney examiner's ruling denying the motion to strike was appropriate under the circumstances.

Finally, during the hearing, the attorney examiner granted, in part, and denied, in part, the joint motion to strike portions of FES witness Lesser's testimony that was filed by AEP-Ohio and Staff (Tr. at 168-172). In its brief, FES argues that the attorney examiner's ruling was in error in that Dr. Lesser's testimony regarding nonbypassable cost recovery should not have been stricken. FES notes that Sections 4928.143(B)(2)(c) and 4928.64(B)(2), Revised Code, are both referenced in the stipulation. FES asserts that the only reason for a finding of need under Section 4928.143(B)(2)(c), Revised Code, is to obtain nonbypassable cost recovery and that FES should, therefore, have been permitted to address whether nonbypassable cost recovery is appropriate for the

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<sup>3</sup> In the Matter of the Long-Term Forecast Report of Dayton Power and Light Company and Related Matters, Case No. 10-505-EL-FOR.

Turning Point project. FES also asserts that it should have been permitted to address the different cost recovery mechanisms found in Sections 4928.143(B)(2)(c) and 4928.64(E), Revised Code, in order to refute the signatory parties' definition of need. FES maintains that the signatory parties were permitted to testify regarding cost recovery and that it was prejudicial to prevent FES from rebutting their testimony. FES argues that the attorney examiner inappropriately denied its motion to strike the Turning Point provision from the stipulation and then further erred in failing to allow FES to refute the signatory parties' testimony regarding that provision.

As discussed further below, the Commission finds that arguments regarding cost recovery are premature at this point and should be addressed in a separate proceeding. Contrary to FES' assertion, neither AEP-Ohio nor Staff directly addressed the issue of whether a nonbypassable surcharge is lawful or appropriate for the Turning Point project in their testimony in these proceedings. Rather, their testimony is solely focused on the question of the need for the Turning Point project. For these reasons, we find no error in the attorney examiner's rulings.

## 2. Motion for Expedited Discovery Schedule

IEU-Ohio asserts that the attorney examiner erred in denying the motion for expedited discovery schedule, which was filed on March 12, 2012. Specifically, IEU-Ohio argues that its ability to prepare for the hearing was prejudiced in violation of due process, because IEU-Ohio was not permitted to conduct discovery on AEP-Ohio's witness. Rule 4901-1-17(E), O.A.C., provides that, in LTFR proceedings, no party may serve a discovery request later than 25 days prior to the commencement of the evidentiary hearing. Here, the hearing commenced on March 9, 2011. Following the public testimony, the hearing was continued and subsequently reconvened on March 28, 2012. Regardless of whether the hearing is deemed to have commenced on March 9, 2011, or on March 28, 2012, the time period for discovery had already expired, pursuant to the rule, when IEU-Ohio filed its motion. The entry that scheduled the hearing to reconvene on March 28, 2012, was issued on February 29, 2012. IEU-Ohio could have sought an extension of the discovery period at that point, but did not. Additionally, although the testimony of AEP-Ohio witness Castle was not filed until after the discovery period had ended, nothing precluded IEU-Ohio from filing a notice of deposition, pursuant to Rule 4901-1-21(B), O.A.C., prior to the discovery deadline. The Commission finds that IEU-Ohio had ample time in which to conduct discovery, given that AEP-Ohio's LTFR and supplement were filed on April 15, 2010, and December 20, 2010, respectively. Further, IEU-Ohio was afforded the opportunity and fully participated in the cross-examination of AEP-Ohio witness



Castle during the hearing. We find no prejudice to IEU-Ohio as a result of the attorney examiner's ruling.

3. Exclusion of Exhibits

IEU-Ohio contends that the attorney examiner's exclusion of IEU-Ohio Exhibits 3 through 12 from the record in these proceedings was in error (Tr. at 91). IEU-Ohio notes that the exhibits consist of newspaper articles that were offered to show that there is sufficient expected construction of solar facilities to meet both AEP-Ohio's need and the statewide need for solar renewable energy credits (SRECs). AEP-Ohio and Staff objected to the admission of the exhibits on the basis of lack of foundation (Tr. at 88-91). IEU-Ohio contends that the newspaper articles are relevant and were properly authenticated. According to IEU-Ohio, the newspaper articles should not have been excluded from the record for lack of foundation or based upon any other objection such as hearsay.

The Commission affirms the ruling of the attorney examiner denying the admission of IEU-Ohio Exhibits 3 through 12. The Commission notes that IEU-Ohio was free to provide a witness to sponsor its exhibits in order to establish a proper foundation, subject to cross-examination. IEU-Ohio chose not to provide a witness to sponsor the exhibits, attempting instead to seek the admission of the exhibits through AEP-Ohio witness Castle. However, Mr. Castle had no knowledge of the exhibits (Tr. at 71). Accordingly, the Commission finds that IEU-Ohio failed to establish a proper foundation for the exhibits, that the exhibits lack any probative value in these proceedings, and that the attorney examiner properly denied admission of the exhibits. In any event, the Commission finds that admission of the exhibits would not alter in any way our determinations below. The Commission agrees with Staff witness Bellamy that newspaper articles are speculative and irrelevant in terms of the determination of the need for the Turning Point project (Tr. at 139).

4. Motions for Intervention

a. UTIE

On September 14, 2012, UTIE filed a motion to intervene in these proceedings. In support of its motion, UTIE states that it is a leader in the innovation and economic development of solar energy and that it seeks to intervene in these proceedings for the purpose of advocating that the Turning Point project should be approved and constructed. UTIE contends that it will be adversely affected, if it is not permitted to voice its concerns and advocate in support of its interests. UTIE adds that, in light of

its substantive expertise with respect to the Turning Point project, the Commission will benefit from the information that UTIE provides. UTIE explains that its participation will not delay the proceedings and will significantly contribute to full development and equitable resolution of the factual issues. UTIE notes that, in Case No. 11-346-EL-SSO, *et al.* (ESP 2 Case), the Commission allowed parties to intervene well after the proceedings had commenced. UTIE asserts that the Commission should take the same approach in the present proceedings and grant its request for intervention.

On September 21, 2012, FES filed a memorandum contra UTIE's motion to intervene. FES argues that UTIE's motion is considerably untimely, as it was filed well after the intervention deadline and following completion of post-hearing briefing. FES adds that there is no good cause for granting late intervention under the circumstances. FES further argues that UTIE fails to explain how its interests will be adversely affected by these proceedings and fails to satisfy many of the Commission's criteria for intervention. FES contends that UTIE may intend to introduce new facts into the record, which FES believes would be inconsistent with Commission precedent including the ESP 2 Case, as well as inappropriate and prejudicial at this point in the proceedings, given that the other parties would have no opportunity to participate in discovery, conduct cross-examination, or present contrary evidence with respect to UTIE's position. FES concludes that UTIE's motion to intervene should be denied, or, if intervention is granted, that UTIE should be affirmatively prohibited from attempting to introduce non-record evidence in its briefs.

On September 25, 2012, UTIE filed a reply memorandum in response to FES' memorandum contra. Initially, UTIE notes that intervention is to be liberally allowed so that the Commission may consider the positions of all persons with a real and substantial interest in the proceedings. Additionally, UTIE contends that it seeks intervention in response to the specific issues identified in the Commission's entry of September 5, 2012, and that it filed its motion just nine days after the entry was issued to reopen the proceedings for the purpose of obtaining additional information related to the question of need for the Turning Point project. UTIE further contends that it adequately explained in its motion how its interests will be adversely affected, if the motion is denied. Finally, UTIE explains that it does not intend to supplement the record with new evidence. Rather, UTIE seeks intervention only to address, by way of argument and explanation, the specific issues outlined by the Commission in the September 5, 2012, entry. Noting that it will base its position solely on the existing record, UTIE concludes that it should be granted leave to intervene in these

proceedings for the limited purpose of addressing the issues raised in the September 5, 2012, entry.

On September 28, 2012, FES filed a motion to strike UTIE's reply memorandum. FES asserts that UTIE seeks to introduce new facts into the evidentiary record and also failed to serve the reply on the parties in accordance with Rule 4901-1-05, O.A.C. On October 1, 2012, UTIE filed a memorandum contra FES' motion to strike. UTIE argues that its reply clearly stated that the attached non-record exhibits were offered solely for the purpose of responding to FES' claim that UTIE would not be adversely affected, if it were denied intervention. UTIE also contends that FES was not harmed by UTIE's failure to serve its reply by electronic mail. UTIE adds that it will serve all documents that it files with the Commission.

Pursuant to Section 4903.221, Revised Code, the Commission may, in its discretion, grant late intervention for good cause shown. Rule 4901-1-11(F), O.A.C., further provides that an untimely motion to intervene will be granted only under extraordinary circumstances. Upon review of UTIE's motion to intervene and the responsive pleadings, the Commission finds that, although the motion was untimely filed, there is good cause to grant the motion, pursuant to Section 4903.221(A)(2), Revised Code, and that UTIE otherwise satisfies the Commission's criteria for intervention. As UTIE notes, the Commission issued an entry on September 5, 2012, to reopen the record in these proceedings and establish a briefing schedule for the limited purpose of permitting additional briefing on specified issues related to the need for the Turning Point project. Given these extraordinary circumstances, in which the Commission reopened the record on its own motion, we find that UTIE's motion for intervention is reasonable and should be granted for the limited purpose of allowing UTIE to address the issues enumerated in the Commission's September 5, 2012, entry. With this restriction in place, UTIE's limited intervention will not delay the proceedings or cause prejudice to the other parties, which had the opportunity to respond to UTIE's position in their supplemental reply briefs. Additionally, the Commission finds that FES' motion to strike UTIE's reply memorandum should be denied, although we emphasize that attempts by any party to offer or otherwise rely on non-record evidence in their briefs, or to raise arguments that are not responsive to the issues identified in the September 5, 2012, entry, have been disregarded in our resolution of these proceedings.

b. RESA and IGS

As noted above, RESA and IGS filed initial comments on October 3, 2012, in response to the Commission's September 5, 2012, entry. AEP-Ohio filed a motion to strike the initial comments of RESA and IGS on October 9, 2012. The attorney examiner issued an entry on October 17, 2012, denying AEP-Ohio's motion to strike and granting RESA's and IGS' request that their joint memorandum contra the motion to strike be considered a motion for intervention in these proceedings. On October 31, 2012, AEP-Ohio filed a memorandum contra the motion for intervention. RESA and IGS filed a joint reply on November 7, 2012.

RESA and IGS contend that the unusual process related to consideration of the Turning Point project is an unforeseen and extraordinary circumstance that justifies intervention at this point in the proceedings. In response, AEP-Ohio asserts that RESA and IGS attempt to intervene too late and well after the hearing and briefing had concluded. AEP-Ohio adds that RESA and IGS had ample notice of these proceedings through their participation in the ESP 2 Case, where the Company indicated in its original application and testimony filed in January 2011 that the issue of need for the Turning Point project would be considered in the present LTFR proceedings, consistent with the Commission's rules. According to AEP-Ohio, there are no extraordinary circumstances justifying RESA's and IGS' untimely request for intervention. AEP-Ohio also argues that RESA and IGS have not satisfied the remaining requirements for intervention.

RESA and IGS reply that there are two extraordinary circumstances justifying intervention. First, RESA and IGS argue that the issues related to the need for the Turning Point project were primarily being considered in the ESP 2 Case, in which RESA and IGS were active participants. RESA and IGS add that the intervention deadline for these proceedings had already passed, when the Commission indicated in its August 8, 2012, opinion and order in the ESP 2 Case that the need determination would be made in the present cases. As a second extraordinary circumstance, RESA and IGS note that the Commission is faced with an important matter of first impression, which prompted the Commission to seek additional information on the question of need. RESA and IGS conclude that it is reasonable to allow interested, knowledgeable entities to participate. Additionally, RESA and IGS contend that they have satisfied all of the other intervention criteria and that they do not seek to add new evidence to the record, contrary to AEP-Ohio's claims.

Consistent with the Commission's conclusion with respect to UTIE's motion for intervention, the Commission also finds that RESA's and IGS' request for intervention is reasonable in light of the highly unusual and interrelated history of the present proceedings and the ESP 2 Case. We, therefore, find that RESA and IGS should be permitted to intervene in these cases for the limited purpose of addressing the issues specified in the September 5, 2012, entry.

5. Motion to Take Administrative Notice

On January 7, 2013, IEU-Ohio filed a motion to take administrative notice or, in the alternative, to reopen these proceedings or supplement the record, along with a request for expedited treatment of the motion. Attached to IEU-Ohio's motion is Supplemental Exhibit 1, which, according to IEU-Ohio, provides a list of the Ohio-based SER certificates that were issued by the Commission in 2012. IEU-Ohio explains that the supplemental exhibit summarizes information that was compiled by Staff and posted on the Commission's website. IEU-Ohio further explains that its supplemental exhibit could not have been presented at the hearing, as many of the applications for certification had not yet been approved at that time. IEU-Ohio argues that the Commission should take administrative notice of the certification dockets or otherwise consider the information contained in the supplemental exhibit, which indicates that, in 2012, the market developed Ohio-based SER with a production capability of more than 32 MW. IEU-Ohio points out that this production capability is more than twice the amount that Staff claims must be developed each year to ensure that the SER benchmarks are satisfied. IEU-Ohio concludes that the Commission should grant its motion, because the information contained in its supplemental exhibit is relevant to the arguments raised by the signatory parties in these proceedings and provides the most recent data regarding the current state of the solar market in Ohio.

On January 9, 2013, AEP-Ohio filed a memorandum contra IEU-Ohio's motion. According to AEP-Ohio, there are numerous problems with the information presented by IEU-Ohio in its supplemental exhibit. AEP-Ohio requests that the Commission deny IEU-Ohio's late attempt to supplement the record.

The Commission finds that it would be improper to take administrative notice or otherwise consider the information offered by IEU-Ohio at this late stage in the proceedings. It is necessary to establish some reasonable cut-off point for purposes of our consideration of the stipulation, and we do not find it unreasonable to confine our analysis to the data that is already reflected in the record. Additionally, the Commission notes that our consideration of the information offered by IEU-Ohio

would not alter our determination regarding the need for the Turning Point project. Therefore, IEU-Ohio's motion should be denied.

D. Turning Point Project

In its 2010 LTFR supplement, AEP-Ohio provides information regarding its intent to enter into a potential capital leasing arrangement known as the Turning Point project, which would consist of 49.9 MW of SER located on reclaimed mine land in either Muskingum County or Noble County, Ohio. AEP-Ohio states that the Turning Point project would be placed in service in three phases: 20 MW in 2013, 15 MW in 2014, and 14.9 MW in 2015. AEP-Ohio further states that the Turning Point project is necessary to achieve the mandatory SER benchmarks set forth in Section 4928.64(B)(2), Revised Code.

1. Initial Arguments

The primary point of dispute among the parties to these proceedings is whether there is in fact a need for the Turning Point project. AEP-Ohio and Staff recommend that the Commission find that there is a need for the proposed project based on the Company's resource planning projections and the requirements of Section 4928.64(B)(2), Revised Code, while IEU-Ohio and FES disagree with the signatory parties' recommendation. Although IEU-Ohio and FES challenge the Turning Point provision of the stipulation, they otherwise do not oppose the stipulation.

AEP-Ohio contends that there is a need for in-state renewable energy generation resources. AEP-Ohio witness Castle testified that, at the time the Company filed its supplement to its LTFR, the installed and pending base of solar generation was roughly capable of satisfying only half of the statewide benchmark requirement for 2012, and that a viable SREC market would not exist without the construction and certification of additional solar generation. According to Mr. Castle, more recent data through March 5, 2012, indicates that the need for additional solar generation still exists, although the need has shifted from 2012 to 2015. Mr. Castle testified that the addition of the Turning Point project would delay, but not eliminate, the need for additional in-state SER. Specifically, Mr. Castle explained that, using a 17 percent capacity factor and a requirement for 360,000 megawatt hours (MWh) of annual in-state SER for 2024 and beyond, a total of 242 MW of SER must be built and certified in-state in order to perpetually meet the in-state benchmarks. (AEP-Ohio Ex. 1 at 8-10.)

Staff witness Bellamy also performed an analysis of the likely need for SRECs in Ohio. In his testimony, Mr. Bellamy provided four scenarios showing possible projections of the amount of in-state solar capacity through 2025, with and without the addition of the Turning Point project, and with other large and small solar capacity additions. According to Mr. Bellamy, in order to achieve compliance with the statutory mandate, large capacity installations are needed, and in the absence of the addition of significant new construction of in-state solar capacity, there will simply not be enough SRECs to meet the need. (Staff Ex. 1 at 3-9.) Staff, therefore, contends that a new solar facility must be built. Staff concludes that there is a need for the Turning Point project because it is the only known proposal before the Commission at this time that would address the shortage of SRECs.

IEU-Ohio contends that there is no legal or factual basis upon which the Commission may find that there is a need for the Turning Point project in these proceedings. IEU-Ohio's first argument is that the Commission lacks jurisdiction to make a finding of need for a generating facility in a LTFR proceeding, because Section 4935.04(E)(1), Revised Code, provides that the issues must be limited to those relating to forecasting. IEU-Ohio further argues that the determinations that the Commission is required to make in a LTFR proceeding, pursuant to Section 4935.04(F), Revised Code, do not include establishing that an EDU needs to construct a solar facility in order to satisfy the benchmarks set forth in Section 4928.64(B)(2), Revised Code. IEU-Ohio contends that a finding of need may only be made in ESP and certain power siting proceedings.

IEU-Ohio also asserts that a finding of need for a renewable energy facility would violate Sections 4928.143(B) and 4928.64(E), Revised Code. Specifically, IEU-Ohio contends that a nonbypassable charge for an alternative energy facility is prohibited by Section 4928.143(B), Revised Code, and that, pursuant to Section 4928.64(E), Revised Code, the charge for such a facility must be bypassable. IEU-Ohio's third argument is that, even if it were appropriate to address the issue of need for the Turning Point project in these proceedings, AEP-Ohio has not demonstrated that it needs SRECs. IEU-Ohio notes that AEP-Ohio's long-term purchase power agreement with the Wyandot solar facility will satisfy the Company's SREC requirements through at least 2020. Finally, IEU-Ohio contends that the arguments of AEP-Ohio and Staff regarding statewide SREC requirements are irrelevant, because the various requirements of Sections 4928.143(B)(2)(c), 4928.64(B)(2), and 4935.04, Revised Code, are specific to each EDU. Even assuming that statewide SREC requirements are relevant, IEU-Ohio maintains that AEP-Ohio has failed to demonstrate that there will be insufficient SRECs to satisfy the

requirements. IEU-Ohio asserts that a review of the current trends and projects in development indicates that the market will produce sufficient SRECs (FES Ex. 1 at 37, 39-40; Tr. at 133-137). According to IEU-Ohio, Staff witness Bellamy's four scenarios should not be relied upon by the Commission, as they are based on incorrect calculations and ignore current trends in the market. IEU-Ohio adds that AEP-Ohio witness Castle likewise failed to account for any of the SER that will be developed in Ohio and that his testimony contained inconsistencies and incorrect calculations that failed to exclude municipal utilities from the SREC requirements (Tr. at 36-37, 45). IEU-Ohio believes that AEP-Ohio and Staff have understated the amount of solar capacity that will be developed in the state.

For its part, FES argues that AEP-Ohio and Staff inappropriately conflate the need for the Turning Point project under Section 4928.143(B)(2)(c) and 4928.64(B)(2), Revised Code, which, according to FES, address separate and unrelated policy concerns and provide for different methods of cost recovery. FES notes that the General Assembly, in Section 4928.143(B), Revised Code, expressly excluded from the permissible scope of an ESP any nonbypassable recovery of the costs incurred by an EDU in complying with the renewable energy benchmarks that are set forth in Section 4928.64(B)(2), Revised Code. Further, FES contends that the record does not contain any evidence that establishes the need for SER based on resource planning projections. FES asserts that the Turning Point project is not needed to provide energy or capacity for AEP-Ohio's customers (Tr. 31, 53, 108; FES Ex. 1 at 13-17) and that, in any event, Section 4928.143(B)(2)(c), Revised Code, does not apply to the alternative energy requirements of Section 4928.64(B)(2), Revised Code. Even if such requirements were relevant, FES emphasizes that there is not a single forecast in evidence that supports the need for the Turning Point project for resource planning purposes. Noting that all of the witnesses agreed that resource planning under Section 4928.143(B)(2)(c), Revised Code, involves cost considerations (FES Ex. 1 at 7; Staff Ex. 1 at 2-3; AEP-Ohio Ex. 1 at Ex. WKC-2), FES adds that the signatory parties nevertheless failed to offer any evidence of the estimated cost of the project (Tr. at 102-106; FES Ex. 1 at 18-23) and, therefore, have failed to establish need.

FES further asserts that AEP-Ohio has not demonstrated that the Turning Point project is necessary to comply with its SER benchmarks (Tr. at 49, 110) or for the purpose of resource planning (Tr. at 31-34). FES contends that AEP-Ohio has more than enough SRECs to satisfy its SER benchmarks through the entire forecast period due to its 20-year purchase power agreement with the Wyandot solar facility, which provides the Company with over 15,000 in-state SRECs per year (FES Ex. 1 at 33; Tr. at 28). FES adds that, even if the SER required by the entire state to satisfy the SER



benchmarks are considered, AEP-Ohio has not shown that there is a need for the Turning Point project. FES notes that the signatory parties failed to present a single forecast of future market development of SER over the planning period and thus failed to establish a need for the Turning Point project. FES points out that AEP-Ohio's 2010 LTFR supplement and the testimony of Company witness Castle assume that no new solar capacity will be constructed by the market during the forecast period (Tr. at 39; AEP-Ohio Ex. 1 at 6, 9-10). According to FES, AEP-Ohio essentially asserts that Ohio must have sufficient SER in 2012 to meet the benchmarks through 2025, which would force current construction of significant and costly SER even though they are not needed to satisfy the statutory benchmarks for several years.

FES notes that there has been a rapid increase in the number of in-state solar photovoltaic applications that have been approved by the Commission since 2009, and that the PJM generation queue includes 215 MW of new, in-state solar photovoltaic facilities in addition to the facilities that have been approved by the Commission (FES Ex. 1 at 37-38, Ex. JAL-7). FES concludes that AEP-Ohio's testimony is illogical and should be accorded no weight. FES further concludes that Staff's testimony is also flawed, because it does not include a forecast estimating the amount of SER that will be constructed and certified during the planning period. FES notes that Staff instead determined, without justification, that Ohio would not comply in future years with the SER benchmarks if only eight MW per year of SER were developed by the market (Staff Ex. 1 at 9). FES emphasizes that Staff witness Bellamy determined that, if the market adds a total of 20 MW annually (as it did during 2010 and 2011), Ohio would significantly overcomply with the SER benchmarks (Staff Ex. 1 at 6-7; Tr. at 115).

FES notes that the Commission has stated that AEP-Ohio must demonstrate that the Turning Point project is necessary to comply with the SER provisions contained in Section 4928.64(B)(2), Revised Code, and that sufficient SER are not available through competitive markets.<sup>4</sup> FES argues that the signatory parties have merely assumed that sufficient in-state SRECs cannot be obtained in the competitive market, despite evidence offered by FES to the contrary, such as AEP-Ohio's 20-year purchase power agreement with the Wyandot solar facility and a successful solicitation for in-state SRECs conducted by the FirstEnergy EDUs in 2011 for a 10-year period (FES Ex. 1 at 20, Ex. JAL-3; Tr. at 28-29).

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<sup>4</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at 39-40 (December 14, 2011).

FES also argues that, under AEP-Ohio's proposal, shopping customers would be forced to pay a nonbypassable charge for the Turning Point project under Section 4928.143(B)(2)(c), Revised Code, while at the same time paying their competitive retail electric service (CRES) providers for SRECs, in violation of state policy prohibiting discrimination against shopping customers.

Finally, FES argues that the determination of need under Section 4928.143(B)(2)(c), Revised Code, must occur in an ESP proceeding and that there is no statutory authority to make use of the Commission's findings from a LTFR proceeding in an ESP proceeding. FES adds that AEP-Ohio failed to file the necessary information regarding the Turning Point project, pursuant to Rule 4901:5-5-06(B), O.A.C., which requires that specific details be provided in the LTFR filed in the forecast year prior to any filing for an allowance under Section 4928.143(B)(2)(c), Revised Code (Tr. at 32-34). FES asserts that, in the absence of the information required by the rule, the Commission does not have the information necessary to find that there is a need for the Turning Point project. FES also notes that, because AEP-Ohio's LTFR was filed in 2010, it was not filed in the forecast year prior to the Company's current ESP filing for an allowance under Section 4928.143(B)(2)(c), Revised Code, which occurred on March 30, 2012.

For all of these reasons, IEU-Ohio and FES conclude that the Commission must reject the Turning Point provision of the stipulation. In the alternative, FES requests that the entire stipulation be rejected.

## 2. Supplemental Arguments

As noted above, the Commission issued an entry on September 5, 2012, to reopen the record in these proceedings, pursuant to Rule 4901-1-34(A), O.A.C., and to establish a briefing schedule for the limited purpose of permitting additional briefing on certain issues related to the need for the Turning Point project. Specifically, the Commission requested that the parties address two issues: (1) how the Commission should properly determine whether there is a need for the Turning Point project and (2) whether the Commission should solely consider AEP-Ohio's need for the project, or also consider the need for the project by other EDUs, electric services companies, the state of Ohio, or other states.

In response to the September 5, 2012, entry, AEP-Ohio argues that the Commission's evaluation of the need for the Turning Point project should take into account more than just energy and capacity requirements and encompass factors such as the state's overall energy policy and the project's role in enabling compliance with

the in-state renewable portfolio standard (RPS). AEP-Ohio points out that Section 4928.143(B)(2)(c), Revised Code, refers to “resource planning projections” and that the Commission’s rules require a utility to analyze factors beyond energy and capacity in preparing a resource plan, including the use, availability, and potential development of alternative energy resources pursuant to Section 4928.64, Revised Code. AEP-Ohio believes that the Commission should consider the impact of the Turning Point project on the state’s energy policy and its role in enabling compliance with the SER benchmarks. AEP-Ohio also argues that the Commission should take a statewide approach in evaluating the need for the Turning Point project, consistent with Sections 4928.02(J) and (N), 4928.141, 4928.64, and 4935.04(F)(6), Revised Code. AEP-Ohio adds that the Commission has no jurisdiction to consider the availability of SER outside of the state.

Staff argues that the term “need” should be given its ordinary meaning and that, because there may be a shortage of in-state SRECs that are required to meet the requirements of Section 4928.64(B)(2), Revised Code, there is a need for the Turning Point project. Staff believes that the term “need,” as used in Section 4928.143(B)(2)(c), Revised Code, encompasses many components, including energy and capacity, as well as in-state SRECs. Staff also believes that the need for in-state SRECs applies to individual utilities, although the planning to achieve compliance with the statutory requirements should occur on a statewide basis. Staff adds that there is no relevant information in the record that would allow the Commission to consider the demand for SRECs outside of Ohio, which, in any event, would be a complicated issue to address.

UTIE asserts that the Commission’s determination of need, as part of the resource planning process, involves consideration of the entire impact of a new generation resource, including factors such as job creation and economic investment. UTIE notes that the Commission is tasked, pursuant to Section 4928.02(N), Revised Code, with facilitating the state’s effectiveness in the global economy. Additionally, UTIE believes that the Commission must ensure that compliance with the benchmarks established in Section 4928.64(B)(2), Revised Code, is reasonably practicable for generation suppliers and prudent for ratepayers. Citing the Commission’s forecasting duties under Section 4935.01(A)(1) and (2), Revised Code, UTIE urges the Commission to take a holistic approach in determining need and consider various issues such as diversity of supply, portfolio standards, and economic and environmental benefits. UTIE believes that the Commission should consider whether the Turning Point project is needed by other electric utilities or the state as a whole, including whether there are sufficient SRECs available inside and outside the state.

FES contends that the Commission should determine whether there is a need for the Turning Point project under Section 4928.143(B)(2)(c), Revised Code, by examining whether the PJM capacity market is failing to ensure reliability in Ohio and, if so, whether the Turning Point project is the least-cost option for ensuring reliability for Ohio consumers. FES believes that Sections 4928.143(B)(2)(c) and 4928.64(B)(2), Revised Code, are unrelated statutes that address different policy concerns and that, accordingly, there is no statutory justification for reading the SER benchmarks of Section 4928.64(B)(2), Revised Code, into the need determination of Section 4928.143(B)(2)(c), Revised Code. According to FES, Section 4928.143(B)(2)(c), Revised Code, serves as a safety valve for Ohio customers in the event an EDU must build additional capacity to ensure adequate and reliable generation capacity, whereas the objective of Section 4928.64(B)(2), Revised Code, is to incent market development of renewable resources by creating a demand for those resources through statutory benchmarks. FES further contends that, because the two statutes provide for different methods of cost recovery, the General Assembly clearly did not intend that compliance with the SER benchmarks be considered part of the determination of need under Section 4928.143(B)(2)(c), Revised Code. In making its argument, FES emphasizes that the sole purpose of the determination of need under Section 4928.143(B)(2)(c), Revised Code, is to award nonbypassable cost recovery to an EDU as part of its ESP. FES adds that Section 4928.143(B), Revised Code, however, expressly prohibits nonbypassable cost recovery for compliance with SER benchmarks. Accordingly, FES concludes that the General Assembly intended that Section 4928.143(B)(2)(c), Revised Code, would only be applied to address reliability issues.

FES argues that need under Section 4928.143(B)(2)(c), Revised Code, is determined by reviewing the utility's resource planning projections and that resource planning involves forecasting future energy and peak loads; showing, based on those forecasts, that additional resources will need to be acquired; and ensuring that those loads can be met with the lowest expected cost resource. According to FES, the requirements of Section 4935.04, Revised Code, and Rule 4901:5-5-06(B), O.A.C., govern resource planning with the objective of providing consumers with adequate, reliable, and cost-effective electricity resources, and not to determine whether a particular solar facility would assist an EDU in meeting its SER benchmarks. Because FES believes that the need determination should account for energy and capacity only, FES contends that the Commission may not consider whether the Turning Point project is needed by any entity to meet its SER benchmarks. FES notes that there is nothing in Section 4928.64, Revised Code, which permits the Commission to consider the needs of non-applicants in Ohio and elsewhere to comply with SER benchmarks.

FES further notes that, under Section 4928.143(B)(2)(c), Revised Code, the Commission is similarly limited to considering only the need of an EDU and its customers.

IEU-Ohio agrees with FES that the term "need," as used in Section 4928.143(B)(2)(c), Revised Code, refers to the need for capacity and energy. IEU-Ohio notes that both Sections 4928.143(B) and 4928.64(E), Revised Code, specifically prohibit a nonbypassable charge designed to recover the costs associated with an alternative energy resource like the Turning Point project or any other costs incurred in complying with the RPS requirements. IEU-Ohio also reiterates its belief that the need determination must occur in an ESP proceeding. IEU-Ohio asserts that the need determination must be based on the specific need of the EDU rather than a regional or statewide need. IEU-Ohio further contends that it would be unlawful and unreasonable to consider the RPS requirements in other states.

RESA and IGS argue that the Commission's consideration of need should be limited to whether there is an insufficient availability of the services required by an EDU to fulfill its provider of last resort obligations. Specifically, RESA and IGS contend that the reference to "need" in Section 4928.143(B)(2)(c), Revised Code, must be read narrowly to mean that generation is not available elsewhere for less. RESA and IGS note that the statute refers only to the need for a facility and not to the need for SRECs. However, if the Commission concludes that the need for SRECs is relevant to the analysis, RESA and IGS believe that the need determination should be made on the basis of whether SRECs are available in the market. RESA and IGS also believe that the Commission should adhere to the principle of cost causation by considering only the need of the electric utility that proposes to construct the generating facility.

#### E. Commission Review

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is

reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994), citing *Consumers' Counsel, supra*, at 126. The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

1. Turning Point Provision

a. Preliminary Matters

Before the Commission applies the three-part test to the stipulation submitted in these proceedings, there are a number of preliminary matters raised by FES and IEU-Ohio related to the Turning Point provision of the stipulation that must be addressed. First, FES and IEU-Ohio argue that the Commission is without authority to consider the need for the Turning Point project within the confines of a forecasting proceeding. FES and IEU-Ohio point to Section 4935.04(E)(1), Revised Code, which provides that the scope of the hearing in a forecasting case must be limited to issues relating to forecasting. Additionally, Section 4935.04(E)(2), Revised Code, provides a non-exhaustive list of matters that may be reviewed during a public hearing in a forecasting case, including the projected loads and energy requirements for each year of the period, as well as the estimated installed capacity and supplies to meet the projected load requirements. The provisions of the statute do not limit our review to the sole issue of AEP-Ohio's traditional generation capacity or otherwise preclude our consideration of the alternative energy resource requirements found in Section 4928.64, Revised Code. In fact, the Commission believes that the alternative energy resource requirements properly fall within the more general category of "energy requirements" enumerated in Section 4935.04(E)(2)(a), Revised Code. The statute,

therefore, provides a basis upon which the Commission may consider the need for the Turning Point project in these proceedings. We note that the Commission's forecasting rules, as set forth in Chapters 4901:5-1 through 4901:5-5, O.A.C., contemplate consideration of the alternative energy resource requirements within the context of a LTFR proceeding.

We disagree that Section 4928.143(B)(2)(c), Revised Code, requires the Commission to first determine, within an ESP proceeding, the need for an electric generating facility before authorizing a nonbypassable surcharge. As the Commission stated in the ESP 2 Case, we do not read the statute to restrict our determination of the need for the electric generating facility to the time at which an ESP is approved, but rather to ensure that the Commission holds a proceeding before it authorizes any allowance under the statute.<sup>5</sup> Neither does the Commission find any language in Section 4928.143(B)(2)(c), Revised Code, that expressly excludes alternative energy resources from its parameters. FES and IEU-Ohio argue that, pursuant to Section 4928.64(E), Revised Code, the costs associated with an alternative energy resource facility must be bypassable and that that section prevails over Section 4928.143(B)(2)(c), Revised Code, as specified in Section 4928.143(B), Revised Code. FES and IEU-Ohio also raise general concerns regarding the cost of the Turning Point project and the corresponding impact on ratepayers. However, the Commission finds that arguments regarding the cost recovery provisions of Sections 4928.143(B)(2)(c) and 4928.64(E), Revised Code, are premature at this point. Consistent with our recent opinion and order in the ESP 2 Case,<sup>6</sup> we believe that cost recovery is a matter that should be addressed in a separate proceeding. Further, as we have previously stated,<sup>7</sup> the Commission cannot and will not approve any recovery by way of a nonbypassable surcharge unless an applicant meets its burden of satisfying all of the requirements of Section 4928.143(B)(2)(c), Revised Code.

Finally, we find no merit in the argument that AEP-Ohio's resource plan fails to comply with the Commission's rules or that it was filed in the wrong year. The

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<sup>5</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order, at 24 (August 8, 2012).

<sup>6</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order, at 24 (August 8, 2012).

<sup>7</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order, at 39 (December 14, 2011).

requisite information was provided in the resource plan to the extent known when the plan was filed. We further find that AEP-Ohio complied with Rule 4901:5-5-06(B), O.A.C., having filed its LTFR and supplement in 2010, which is the forecast year prior to its ESP filing requesting an allowance under Section 4928.143(B)(2)(c), Revised Code, which initially occurred in 2011, although it was subsequently modified in 2012.

b. Three-Part Test

Proceeding to the three-part test for considering the reasonableness of the stipulation, the Commission notes that the signatory parties agree that the stipulation is the product of lengthy, serious negotiations among capable and knowledgeable parties (Joint Ex. 1 at 4). All parties were provided notice of an opportunity to participate in settlement discussions (Joint Ex. 1 at 2; AEP-Ohio Ex. 1 at 4). AEP-Ohio witness Castle testified that all parties to the stipulation regularly participate in proceedings before the Commission, are knowledgeable in regulatory matters, and were represented by experienced, competent counsel (AEP-Ohio Ex. 1 at 4). FES and IEU-Ohio offered no evidence or argument to the contrary.

With regard to the second criterion, the signatory parties submit that the stipulation, as a package, benefits ratepayers and the public interest (Joint Ex. 1 at 4). AEP-Ohio witness Castle testified that the stipulation provides for equal and fair treatment on all issues for both the Company and its customers. Mr. Castle further testified that it is in the public interest to recognize the need for addressing in-state renewable energy requirements in Ohio through investment in the state. Mr. Castle explained that consumers will benefit from a cleaner environment with reduced total generating plant emissions. (AEP-Ohio Ex. 1 at 4-5.)

FES argues that the stipulation violates the second part of the Commission's test. FES asserts that there is no evidence that ratepayers will benefit from the nonbypassable surcharge that will result if the Commission finds that the Turning Point project is needed, pursuant to Section 4928.143(B)(2)(c), Revised Code. According to FES, neither is there any evidence that the Turning Point project will ensure that ratepayers benefit from adequate, reliable, and cost-effective generation service or from AEP-Ohio meeting its future SER benchmarks. FES argues that new SER should be constructed by the market in the future, when actually needed, in order to take advantage of continually declining solar production costs.

With respect to the third prong of the Commission's three-part test, the signatory parties agree that the stipulation violates no regulatory principle or practice



(Joint Ex. 1 at 4). According to AEP-Ohio witness Castle, the stipulation is designed to comply with the requirements of Section 4935.04, Revised Code, and Chapters 4901:5-3 and 4901:5-5, O.A.C., relating to the long-term forecast, resource planning, and related requirements. Mr. Castle further notes that the Commission previously approved the need for a solar facility in Ohio in another LTFR proceeding, specifically the DP&L Case,<sup>8</sup> which indicates that no important regulatory principle or practice is violated in the present cases. (AEP-Ohio Ex. 1 at 5.) FES, however, believes that approval of the stipulation would violate important regulatory principles and practices, including principles providing that the Commission should not interfere in functioning markets that the General Assembly has encouraged through the enactment of Section 4928.64, Revised Code; should not violate Ohio law or the Commission's own rules; and should support its decisions based on the record and not on unjustified fear of markets.

Rather than addressing any particular part of the three-part test, IEU-Ohio argues, as a general matter, that the Commission is a creature of statute and that a stipulation cannot expand the Commission's authority. According to IEU-Ohio, there is no legal basis upon which the Commission can find that there is a need for the Turning Point project and, therefore, the stipulation submitted in these cases must be rejected. IEU-Ohio further notes that the stipulation is not evidence and that attempts by AEP-Ohio and Staff to treat it as such should be rejected.

c. Conclusion on Turning Point Provision

Upon review of the record in these proceedings, the Commission finds that the process used to negotiate the stipulation involved serious bargaining by capable, knowledgeable parties who have actively participated in prior Commission proceedings and, therefore, we find that the first criterion of the three-part test is met. The Commission, however, finds that the signatory parties have not demonstrated that the Turning Point provision of the stipulation benefits ratepayers and the public interest as required by the second prong of our three-part test.

As the parties note, the Commission has previously addressed the Turning Point project in the ESP 2 Case. Specifically, the Commission stated that AEP-Ohio would have the opportunity to demonstrate that the Turning Point project is necessary to comply with the SER provisions contained in Section 4928.64(B)(2), Revised Code,

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<sup>8</sup> *In the Matter of the Long-Term Forecast Report of Dayton Power and Light Company and Related Matters*, Case No. 10-505-EL-FOR, Opinion and Order (April 19, 2011).

and that sufficient SER are not available through competitive markets.<sup>9</sup> The Commission noted that it would first look to the market to build needed capacity and that new generation or capacity projects would only be authorized under Section 4928.143(B)(2), Revised Code, when generation needs cannot be met through the competitive market.

The stipulation offered for our consideration in the present proceedings seeks a finding from the Commission that there is a need for the Turning Point project, during the LTFR planning period, based on resource planning projections submitted by AEP-Ohio, pursuant to Section 4928.143(B)(2)(c), Revised Code, and the provisions of Section 4928.64(B)(2), Revised Code. The signatory parties have not made the requisite showing for such a finding. The evidence offered by AEP-Ohio, as well as Staff, in support of the stipulation, indicates that there is not presently a need for the Turning Point project. Specifically, the testimony provided by the signatory parties reflects that they do not project the need for additional in-state solar generation to arise until 2015 (AEP-Ohio Ex. 1 at 9; Tr. at 43). Even for that timeframe and beyond, the signatory parties have not demonstrated that the Turning Point project is necessary for AEP-Ohio to comply with its SER benchmarks (Tr. at 49, 110).<sup>10</sup> In fact, the signatory parties appear to concede that AEP-Ohio has no need for the Turning Point project. The signatory parties instead assert that there is a more general need for the Turning Point project because CRES providers or EDUs other than AEP-Ohio may need SRECs in 2015 or beyond. There is, therefore, no evidence that AEP-Ohio has a need for the Turning Point project to comply with its SER benchmarks under Section 4928.64(B)(2), Revised Code, or in any other respect. On the contrary, the record reveals that AEP-Ohio's 20-year purchase power agreement with the Wyandot solar facility is expected to provide sufficient SRECs to satisfy the Company's SER benchmarks throughout the forecast period (FES Ex. 1 at 33; Tr. at 28). Consequently, there is no basis upon which we can find that the Turning Point provision of the stipulation benefits AEP-Ohio's ratepayers.

Even if the SER benchmarks of the CRES providers and other EDUs in the state are considered, the signatory parties have not demonstrated a need for the Turning

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<sup>9</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at 39-40 (December 14, 2011).

<sup>10</sup> The Commission emphasizes that we only assume for the purpose of reaching a decision regarding the stipulation, but do not decide, that the determination of need under Section 4928.143(B)(2)(c), Revised Code, may take into account the SER benchmarks found in Section 4928.64(B)(2), Revised Code.

Point project. AEP-Ohio witness Castle unreasonably assumed that no new solar capacity will be constructed by the market during the forecast period (Tr. at 39; AEP-Ohio Ex. 1 at 6, 9-10), while Staff witness Bellamy found that, if the market continues to add 20 MW including 10 to 12 MW from the addition of a larger facility each year (as it did during 2010 and 2011), Ohio would over comply with the SER benchmarks (Staff Ex. 1 at 6-7; Tr. at 115-116). The record indicates that the number of in-state solar photovoltaic applications that have been approved by the Commission since 2009 has grown (FES Ex. 1 at 36-37), and there is no evidence that this trend will not continue.

Accordingly, the Commission must deny the signatory parties' request for a finding that there is a need for the Turning Point project, during the LTFR planning period, based on resource planning projections submitted by AEP-Ohio, pursuant to Section 4928.143(B)(2)(c), Revised Code, and the provisions of Section 4928.64(B)(2), Revised Code. Neither can we find that the Turning Point provision of the stipulation benefits ratepayers and the public interest, given that there has been no demonstration of need for the Turning Point project.

The Commission emphasizes that our decision is not intended to diminish the merits of the Turning Point project, or the importance of the RPS requirements of Section 4928.64, Revised Code. We also stress that our finding that the signatory parties have not demonstrated a need for the Turning Point project does not preclude AEP-Ohio from pursuing the project through other appropriate means, such as a long-term purchase power agreement. Considerable public testimony and written correspondence in support of the Turning Point project has been offered in these proceedings, and the Commission recognizes that the project may potentially provide numerous benefits, particularly for the project region, and that it is a worthwhile endeavor that AEP-Ohio should pursue. The Commission fully expects that AEP-Ohio will continue to develop the Turning Point project, and we encourage the Company to engage in efforts with EDUs, CRES providers, or other entities in the industry to enter into arrangements for the SRECs generated from the project.

We also note that AEP-Ohio remains obligated to expend \$20 million on the Turning Point project or other similar project, pursuant to Commission orders issued in Case No. 10-1261-EL-UNC.<sup>11</sup> In that proceeding, the Commission gave consideration to AEP-Ohio's future committed expenditure of \$20 million in the

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<sup>11</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code, Case No. 10-1261-EL-UNC, Opinion and Order, at 26-27 (January 11, 2011); Entry on Rehearing, at 9-10 (March 9, 2011).*

Turning Point project in our annual application of the significantly excessive earnings test of Section 4928.143(F), Revised Code. We found that it was reasonable to require the expenditure to occur by a date certain, but agreed that AEP-Ohio should propose a firm schedule in its next ESP proceeding.<sup>12</sup> As rehearing in the ESP 2 Case is pending at this point, we find it necessary in these proceedings to direct AEP-Ohio to expend \$20 million to the extent the Company has not already done so, and provide an updated status report regarding Turning Point or another investment in a similar project subject to Staff approval, by the end of 2013. Moreover, we direct AEP-Ohio to ensure that the benefits of the \$20 million investment flow through to the Company's ratepayers. Alternatively, if AEP-Ohio is unable to make the \$20 million investment in the Turning Point or similar project by the end of the year, the Company should submit a proposal for another appropriate use for the \$20 million investment, such as applying the amount to offset major storm damage costs that are deferred under the Company's recently approved storm damage recovery mechanism.<sup>13</sup>

## 2. Remainder of the Stipulation

Among the other provisions of the stipulation, the signatory parties recommend that the Commission make all necessary findings that AEP-Ohio's application and subsequent filings in these dockets comply with and satisfy the requirements of Section 4935.04, Revised Code, and Chapters 4901:5-3 and 4901:5-5, O.A.C., relating to the long-term forecast, resource planning, and related requirements. In applying the three-part test to the remainder of the stipulation, the Commission first notes that FES and IEU-Ohio oppose only the Turning Point provision of the stipulation and that the remainder of the stipulation is uncontested by any party. As addressed above, we find that the stipulation satisfies the first part of the three-part test. With respect to the second part of the test, the Commission finds that, with the exclusion of the Turning Point provision, the remainder of the stipulation, as a package, benefits the public interest by resolving all of the remaining long-term forecast, resource planning, and related issues raised in these matters without resulting in expensive, protracted litigation on those issues. The second part of the three-part test is, therefore, met. Finally, the Commission finds that there is no

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<sup>12</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code, Case No. 10-1261-EL-UNC, Entry on Rehearing, at 9-10 (March 9, 2011).*

<sup>13</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 11-346-EL-SSO, et al., Opinion and Order, at 68-69 (August 8, 2012).*

evidence that the remainder of the stipulation, aside from the Turning Point provision, violates any important regulatory principle or practice and, thus, the remainder of the stipulation meets the third criterion. We also find that the remainder of the stipulation complies with the requirements of Section 4935.04, Revised Code.

Accordingly, the stipulation submitted by the signatory parties should be modified to eliminate the Turning Point provision from the stipulation and the remainder of the stipulation should be approved. The Commission believes that the stipulation, as modified to strike the Turning Point provision, is reasonable and should be adopted, and that AEP-Ohio's 2010 LTFR and supplement satisfy the statutory criteria enumerated in Section 4935.04(F), Revised Code.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AEP-Ohio is a public utility and electric light company within the definitions of Sections 4905.02 and 4905.03, Revised Code, as well as a person within the meaning of Sections 4935.04(A)(2) and 4906.01, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) AEP-Ohio is the owner or operator of a major utility facility and furnishes electricity directly to more than 15,000 customers within this state within the meaning of Section 4935.04(C), Revised Code, and, thus, must annually furnish a LTFR to the Commission for its review.
- (3) On April 15, 2010, AEP-Ohio filed its LTFR for 2010.
- (4) On December 20, 2010, AEP-Ohio filed a supplement to its LTFR to offer supporting information concerning the Turning Point project.
- (5) On November 21, 2011, AEP-Ohio and Staff filed a stipulation, which was intended to resolve all of the issues raised in these proceedings.
- (6) In accordance with Section 4935.04(D)(3), Revised Code, a hearing on AEP-Ohio's 2010 LTFR and supplement was held on March 9, 2011, and reconvened on March 28, 2012, to consider the stipulation.

- (7) Publication of notice of the hearing occurred in accordance with Section 4935.04(D)(3), Revised Code.
- (8) AEP-Ohio's 2010 LTFR and supplement satisfy the statutory criteria set forth in Section 4935.04(F), Revised Code.
- (9) The signatory parties have not demonstrated a need for the Turning Point project during the LTFR planning period.
- (10) As modified herein by the Commission, the stipulation entered into by the signatory parties to these proceedings to address all of the issues associated with AEP-Ohio's 2010 LTFR and supplement is reasonable and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the attorney examiner's procedural rulings be affirmed. It is, further,

ORDERED, That the motions for intervention filed by UTIE, RESA, and IGS be granted to the extent set forth herein. It is, further,

ORDERED, That the motion to strike filed by FES on September 28, 2012, be denied. It is, further,

ORDERED, That IEU-Ohio's motion to take administrative notice or, in the alternative, to reopen these proceedings or supplement the record be denied. It is, further,

ORDERED, That the stipulation submitted by the signatory parties be approved and adopted as modified herein. It is, further,

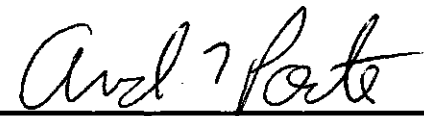
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

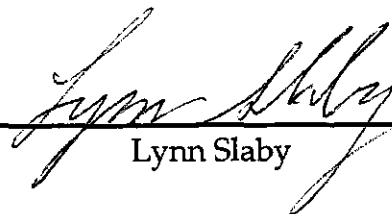
ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

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Steven D. Lesser

  
Andre T. Porter

  
Lynn Slaby

SJP/sc

Entered in the Journal

**JAN 09 2013**

  
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Barcy F. McNeal  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast )  
Report of Ohio Power Company and ) Case No. 10-501-EL-FOR  
Related Matters. )

In the Matter of the Long-Term Forecast )  
Report of Columbus Southern Power ) Case No. 10-502-EL-FOR  
Company and Related Matters. )

DISSENTING OPINION OF COMMISSIONER STEVEN D. LESSER

I decline to join my colleagues in signing this opinion and order. Initially, I agree with Staff and UTIE that we should be looking beyond AEP-Ohio's service territory. In our review of a LTFR, the Commission is obligated to "[e]stimate statewide and regional needs for energy for the forthcoming five- and ten-year periods which, in the opinion of the [C]ommission, will reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources." Section 4935.01, Revised Code.

The Commission has granted divestment of AEP-Ohio's generation fleet in the ESP 2 Case and corporate separation proceeding<sup>1</sup>; thereby, it is axiomatic that the Section 4928.64, Revised Code, SER benchmarks must be satisfied by market participants on a statewide basis. Staff witness Bellamy explained that, although there will likely be smaller projects that will help Ohio in meeting its solar needs over the next 15 years, the Turning Point project is the only large scale project of which Staff is aware that would help to satisfy the need. Mr. Bellamy concluded that, even with the potential for some growth in the solar market, there is nevertheless a need to construct the Turning Point project. (Staff Ex. 1 at 3-4; Tr. at 137-138.) Mr. Bellamy further concluded that additional solar capacity will need to be constructed, even if the Turning Point project is built (Staff Ex. 1 at 9). AEP-Ohio witness Castle likewise explained that construction of the Turning Point project can be expected to delay, but not eliminate, the need for additional in-state SER. Mr. Castle's testimony reflects that, using a 17 percent capacity factor and a requirement for 360,000 MWh of annual

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<sup>1</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order (August 8, 2012); *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (October 17, 2012).



in-state SER for 2024 and beyond, a total of 242 MW of SER must be built and certified in-state in order to perpetually meet the in-state benchmarks. (AEP-Ohio Ex. 1 at 8-10.)

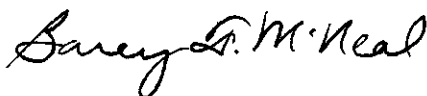
I find that the conclusions of AEP-Ohio witness Castle and Staff witness Bellamy are reasonable and are based on an analysis of in-state SER that have already been built and were certified by the Commission. I agree with the signatory parties that it was appropriate to consider the solar needs of the entire state for the entire LTFR planning period in concluding that there is a need for the Turning Point project, given that Ohio's total solar capacity determines whether there is a viable market for SRECs such that an electric utility will be able to satisfy its SER benchmarks, including the requirement in Section 4928.64, Revised Code, that one half be from in-state facilities (Tr. at 49-50). It should also be noted that, because Section 4935.01, Revised Code, includes "preservation of environmental quality" and "maintenance of a sound economy" in the list of criteria the Commission should contemplate, I believe the Commission should consider the testimony in these proceedings and the ESP 2 Case that touted the benefits of the Turning Point project for its environmental and economic development qualities.

Accordingly, I would approve the signatory parties' request for a finding that there is a need for the Turning Point project, during the LTFR planning period, based on resource planning projections submitted by AEP-Ohio, pursuant to Section 4928.143(B)(2)(c), Revised Code, and the provisions of Section 4928.64(B)(2), Revised Code.

  
Steven D. Lesser, Commissioner

SDL/sc **JAN 09 2013**

Entered in the Journal

  
Barcy F. McNeal  
Secretary