BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

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The Commission finds:

(1) On March 30, 2012, Ohio Power Company (AEP-Ohio) filed an application for a standard service offer, in the form of an electric security plan (ESP), in accordance with Section 4928.143, Revised Code.

(2) On August 8, 2012, the Commission issued its Opinion and Order, approving AEP-Ohio's proposed ESP, with certain modifications, and directed AEP-Ohio to file proposed final tariffs consistent with the Opinion and Order by August 16, 2012.

(3) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the Opinion and Order upon the Commission's journal.

(4) On September 7, 2012, AEP-Ohio, The Kroger Company (Kroger), Ormet Primary Aluminum Corporation (Ormet), Industrial Energy Users-Ohio (IEU), Retail Energy Supply Association (RESA), OMA Energy Group and the Ohio Hospital Association (OMAEG/OHA), the Ohio Energy Group (OEG), FirstEnergy Solutions Corp. (FES), The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, Ohio Schools), and the Ohio Consumers' Counsel and Appalachian Peace and Justice Network (OCC/APJN) filed applications for rehearing. Memoranda contra the various applications for rehearing were filed by Duke Energy Ohio, Inc. (Duke) and Duke Energy Commercial Asset Management Inc. (DER/DECAM), FES, OCC/APJN, IEU-Ohio, OMAEG/OHA, OEG, Ohio Schools, and AEP-Ohio on September 17, 2012.

(5) By entry dated October 3, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the August 8, 2012, Opinion and Order. The Commission has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and

adequately considered by the Commission and are being denied. In considering the arguments raised, the Commission will address the merits of the assignments of error by subject matter as set forth below.

I. PROCEDURAL MATTERS

(6) On September 28, 2012, OCC/APJN moved to strike portions of AEP Ohio's application for rehearing filed on September 7, 2012, as well as portions of its memorandum contra filed on September 17, 2012. Specifically, OCC/APJN allege that AEP-Ohio improperly relies upon the provisions of stipulations from the AEP-Ohio Distribution Rate stipulation in Case No. 11-351-EL-SSO, et al., and the Duke ESP stipulation in Case No. 11-3549-EL-SSO, et al., OCC/APJN opine that both stipulations preclude the use of any provisions as precedent, and that the use of any stipulation provisions is not only contrary to the inherent nature of a stipulation, but also contrary to public policy.

On October 3, 2012, AEP Ohio filed a memorandum contra OCC/APJN's motion to strike. In its memorandum contra, AEP Ohio argues that OCC/APJN should be estopped from moving to strike any provisions contained within AEP-Ohio's application for rehearing, as OCC/APJN failed to allege that the references to Duke's ESP stipulation and the AEP-Ohio distribution case were improper in its memorandum contra AEP Ohio's application. In addition, AEP-Ohio notes that the Commission already rejected OCC/APJN's argument in the Opinion and Order.

The Commission finds OCC/APJN's assignment of error should be dismissed. OCC/APJN failed to raise its objections to the use of stipulation references contained within AEP-Ohio's application for rehearing in its memorandum contra to AEP-Ohio's application for rehearing, so it is unnecessary for us to address those references. Regarding the stipulation references in AEP-Ohio's memorandum contra the applications for rehearing, we find that, consistent with our Opinion and Order in this proceeding, the references to other stipulations by AEP-Ohio were limited in scope and did not create prejudicial impact on any parties, nor were the references used to in any way bind parties to positions they had in any previous

proceeding.[1] In fact, OCC/APJN referred to specific stipulation provisions from a separate proceeding in its own application for rehearing.[2] Accordingly, we find that OCC/APJN's motion to strike should be denied.

(7) In its application for rehearing, IEU contends that the Opinion and Order was unreasonable by failing to strike witness testimony that contained references to stipulations. Specifically, IEU argues that the attorney examiners improperly failed to strike testimony of two AEP Ohio witnesses and a witness for Exelon.

The Commission finds that IEU fails to raise any new arguments, and accordingly, its application for rehearing regarding references to stipulations should be denied.[3]

(8) In its application for rehearing, OCC/APJN allege that the Commission abused its discretion by denying its request to take administrative notice of the Capacity Case materials.

In its memorandum contra, FES provides that the Commission's denial of OCC/APJN's request to take administrative notice was proper. FES points out that the request for administrative notice was made after the evidentiary record was closed and post-hearing briefs were filed. FES adds that had administrative notice been taken, other parties would have been prejudiced.

In the Opinion and Order, the Commission denied OCC/APJN's request to take administrative notice, noting that administrative notice would prejudice parties and would improperly allow OCC/APJN to supplement the record in an inappropriate manner.[4] OCC/APJN fail to present any compelling arguments as to why the Commission's decision was unreasonable, therefore, we find OCC/APJN's request should be denied.

(9) On September 24, 2012, Kroger filed a reply memorandum to AEP-Ohio's memorandum contra the various applications for

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1 Opinion and Order at 10.

2 OCC/APJN Application for Rehearing (AFR) at 113-114.

3 Opinion and Order at 10.

4 *Id.* at 12-13.

rehearing. On September 25, 2012, Kroger filed a motion to withdraw its reply memorandum. Kroger's request to withdraw its reply should be granted as Rule 4901-1-35, Ohio Administrative Code (O.A.C.), does not recognize the filing of replies.

(10) On September 18, 2012, Duke Energy Ohio Inc. (Duke) filed a motion to file memorandum contra instanter to file its memorandum contra. Duke admits that it incorrectly relied on an out of date entry which directed parties to file all memoranda contra within five business days rather than a more recent entry issued April 2, 2012, which directed that memoranda contra be filed within five calendar days. No memorandum contra Duke's motion was filed.

Duke's motion to file its memorandum contra is reasonable and should be granted. The memorandum contra was filed one day late and granting the request will not prejudice any party to the proceeding or cause undue delay.

II. STATUTORY TEST

(11) FES, IEU, OCC/APJN, and OMAEG/OHA argue that the Commission improperly conducted the statutory price test by only considering the time period between June 1, 2013, and May 31, 2015. The parties contend that the Commission failed to consider the first ten months of the modified ESP. Specifically, OCC/APJN believe that the Commission has departed from its past precedent in conducting the statutory test, and that the Commission's test brought "a degree of precision that is not called for under the statute"[5] and, therefore, exceeds the scope of its authority.

AEP-Ohio responds that the Commission's decision to compare the ESP with the results that would otherwise apply under a MRO over a period when the MRO alternative could realistically be implemented was reasonable to develop an accurate prediction of costs.

The Commission notes that the General Assembly explicitly provided, in Section 4928.143(C)(1), Revised Code, that "the electric security plan so approved...is more favorable in the

5 OCC AFR at 7.

aggregate as compared to the expected results that would otherwise apply under Section 4928.142 of the Revised Code." To properly conduct the statutory test, the Commission must, by statute, consider what the expected results would have been had AEP-Ohio proceeded under Section 4928.142, Revised Code. The Commission properly followed the plain meaning of the text contained within the statute in performing the statutory price test.

Finally, we note that OCC/APJN's claims about the Commission departing from its precedent ignore the fact that, since AEP-Ohio filed its original application in January of 2011, the proceedings have taken a different course than typical Commission precedent. After the Commission rejected AEP-Ohio's Stipulation in February 2012, the Commission entered unchartered waters. In light of the unique considerations associated with his case, we looked first at the statute, and followed it with precision.

(12) In their respective assignments of error, OMAEG/OHA, FES and IEU argue that it was improper for the Commission to use the state compensation mechanism figure of $188.88 in calculating the MRO under the statutory test, as opposed to using RPM capacity prices. IEU explains that the Commission should have used actual CBP results to identify the expected generation price under the MRO. Further, both IEU and FES state that Section 4928.142, Revised Code, provides that the price of capacity should be market-based.

AEP-Ohio responds that the Commission already addressed these arguments, and they should, therefore, be rejected.

The Commission finds that the parties fail to present any new arguments with regard to the appropriate price for capacity to use in developing the competitive benchmark price under the statutory price test. In the Opinion and Order, the Commission explicitly notes that AEP-Ohio's status as an FRR entity makes it appropriate to utilize its cost of capacity, as opposed to utilizing RPM prices.[6] Accordingly, we deny these requests for rehearing.

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6 Opinion and Order at 74

(13) OCC/APJN and IEU argue that the Commission miscalculated the impact of the various riders when conducting the statutory test. OCC/APJN and IEU state that the Commission failed to consider the costs for the Turning Point project for the entire life of the facility. Further, IEU believes the Commission wrongfully set the pool termination rider (PTR) at zero, and that the impact of the pool termination could be significant. In addition, IEU argues that the Commission did not explain why the entire RSR amount was not included in the statutory test, nor the effect of the deferral created by the Opinion and Order in Case No. 10-2929-EL-UNC (Capacity Case).

In its memorandum contra, AEP-Ohio notes that the Commission thoroughly addressed the potential costs associated with the GRR in its Opinion and Order. AEP-Ohio adds that the Commission rationally declined to include any speculative costs that may be associated with the RSR, and adds that the Commission was correct in not including the capacity deferral figures in the statutory test.

The Commission finds that the applications for rehearing filed by IEU and OCC/APJN should be denied, as the calculations contained within the statutory test do not underestimate the costs associated with the GRR. In light of the Commission's determination that parties failed to demonstrate the need for the Turning Point Solar project, the statutory test may actually contain an overestimate cost of the GRR.[7]

Regarding IEU's other arguments, we reject the claim that the Commission failed to explain the RSR determination of $388 million. In its Opinion and Order, the Commission explained:

> The RSR determination of $388 million is calculated by taking the $508 million RSR recovery amount and subtracting the $1 figure to be devoted towards the Capacity Case deferral, as recovery of this deferral will occur under either an ESP or an MRO. Using LJT-5 in AEP-Ohio Ex. 114, when we consider the total connected load of 48 million kWh and multiply it by $1 over the term of the modified ESP, we reach

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[7] See *In the Matter of the Long Term Forecast Report of Ohio Power Company and Related Matters,*. Case No. 10-501-EL-FOR, et al. Opinion and Order (January 9, 2013).

> a figure of $144 million to be devoted towards the Capacity Case deferral. However, as the RSR recovery amount increases to $4/MWh in the final year of the modified ESP, we also must account for an increase in the RSR of $24 million, which is also calculated by connected load in LJT-5. Therefore, the actual amount which should be included in the test is $388 million (Opinion and Order at 75).

IEU's incorrect assertion and attempt to misrepresent the Commission's Opinion and Order is inappropriate, and its assignment of error shall be rejected. Further, the Commission reiterates that any costs that may be associated with the deferral created by the Capacity Case are unknown at this time and dependent on actual customer shopping statistics. In any event, as AEP-Ohio points out and we explained in our Opinion and Order, costs associated with the deferral would fall on either side of the statutory test, in light of the fact that the Commission has adopted a state compensation mechanism.[8] Finally, we reject IEU's assignment of error that costs associated with the PTR should have been included in the statutory test. Not only is the record void of credible numbers associated with the costs of pool termination, but also costs associated with the PTR would only arise if AEP-Ohio's corporate separation is amended, and would be subject to subsequent Commission proceedings.[9]

(14) Ohio Schools, OMAEG/OHA, IEU, and OCC/APJN allege that the modified ESP is not more favorable, in the aggregate, than the results that would otherwise apply pursuant to Section 4928.142, Revised Code. OMAEG/OHA argue that there is no evidence that the expeditious transition to market will provide any benefits to AEP-Ohio or its customers. Ohio Schools states that exempting Ohio's schools from the RSR could be a non-quantifiable benefit that would make the modified ESP more favorable under the statutory test. IEU believes that the benefits associated with the energy auctions and move to a competitive bid process do not outweigh the costs associated with the ESP and are unsupported by the record. IEU alleges

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8 Opinion and Order at 75

9 *Id.* at 49

that the Commission failed to explain how the qualitative benefits outweigh the costs associated with the ESP.

OCC/APJN acknowledge that qualitative benefits set forth by the Commission may have merit, but that a MRO provides similar, and possibly greater non-quantifiable benefits. Specifically, OCC/APJN explain that the ESP's expedient transition to market may be a qualitative benefit, but assert than under a MRO, energy may also be supplied through the market in less than two and a half years, and a MRO provides a safe harbor for customers and financial security for an EDU. OCC/APJN state that Section 4928.142(D), Revised Code, permits the Commission to accelerate the blending requirements associated with a MRO to 100 percent after the second year. Further, OCC/APJN provide that the Commission has the ability to adjust the blending of market prices in order to mitigate any changes in an EDU's standard service offer (SSO). In light of these considerations, OCC/APJN contend that the modified ESP is not more favorable in the aggregate than the results that would otherwise apply under a MRO.

Similarly, FES notes that the qualitative benefits of the modified ESP do not overcome the $386 million difference between a MRO and the modified ESP. FES reasons that AEP-Ohio may participate in full auctions immediately, and that AEP-Ohio must establish competitive auctions unless it can provide that a modified ESP is more favorable than an MRO, negating the transition to market in two and a half years as a benefit.

In its memorandum contra, AEP-Ohio asserts that the Commission correctly concluded that the increased energy auctions would offset any cost impacts associated with the modified ESP, and that the qualitative benefits of the accelerated pace towards a competitive market have a significant value. AEP-Ohio notes that the statute affords the Commission significant discretion, and the Commission appropriately weighed the quantitative costs with the qualitative benefits.

The Commission affirms that under the statutory test, the modified ESP is more favorable, in the aggregate, than the

results that would otherwise apply under a MRO. As we provided in our Opinion and Order, the fact that AEP-Ohio will be delivering and pricing energy at market prices in two and a half years is an invaluable benefit of this ESP, and it will create a robust marketplace for consumers. Even IEU concedes that the objective of accelerating the competitive bid process is a benefit to the public.[10] Our determination that the qualitative benefits outweigh the costs associated with the modified ESP was driven by the fact that customers will be able to benefit from market prices immediately through the enhancement of the competitive marketplace.

Further, customers still maintain protection from any unforeseen risks that may arise from a developing competitive market by having a reasonably priced SSO plan that caps rate increases at 12 percent. In approving the modified ESP, we struck a balance that guarantees reasonably priced electricity while allowing the markets to develop and customers to see future opportunities to lower their electric costs. The General Assembly has vested the Commission with discretion to make these types of decisions by allowing us to view the entire picture, in the aggregate, as to what the effects of the modified ESP would be, going beyond just the dollars and cents aspect of it. While parties may disagree with the Commission's policy decisions, there is no doubt that we have discretion to arrive at our conclusion that the modified ESP is more favorable than the results that would otherwise apply.[11] By utilizing regulatory flexibility, we are allowing the competitive markets to continue to emerge and develop, while maintaining our commitment of ensuring that there are stable prices for customers, as is consistent with our state policy objectives set forth in Section 4928.02, Revised Code. Further, we note that while IEU predicts that the increase in slice-of-system energy auctions and the acceleration of 60 percent AEP-Ohio's energy auction to June 1, 2012, would increase costs associated with the modified ESP, this prediction is conclusory in nature, and IEU fails to develop any arguments based on the record to support this presumption.

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10 Oral Argument Tr. at 46

11 Counsel for OCC and IEU have acknowledged that the Commission has broad discretion in conducting the statutory test. See Oral Argument Transcript at 117, 118. OMAEG/OHA affirm this as well in its AFR at pg. 9

In addition, we find OCC/APJN's assertions that a MRO would provide the same qualitative benefits as the modified ESP to be without merit. OCC/APJN correctly point out that in the Duke ESP the Commission determined that, under a MRO, the Commission may alter the blending proportions beginning in the second year of a MRO, pursuant to Section 4928.142, Revised Code. However, OCC/APJN ignore the fact that modifications may only be made to "mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price... ." Therefore, it is entirely speculative for OCC/APJN to argue that a MRO option would allow for AEP-Ohio to engage in competitive market pricing in less than two and a half years, as it assumes that there will be an abrupt or significant change in AEP-Ohio's SSO price. The plain meaning of the text within Section 4928.142(D), Revised Code, indicates that the default provisions contained within the statute apply, absent an exigent scenario, and we find it would be foolish for the Commission to turn away a guarantee of market-based pricing for AEP-Ohio customers within two and a half years on the off chance there are abrupt or significant changes in the market. Earlier in this proceeding, OCC advocated that AEP-Ohio must carefully follow the blending provision contained within Section 4928.142(D), Revised Code, and utilize the default provisions in the statute.[12] Accordingly, we reject OCC/APJN's assignment of error. Finally, we reject Ohio Schools' assignment of error, as the Commission previously addressed their as to why the schools should not be exempt from the RSR.[13]

(15) OMAEG/OHA argue the Commission conducted the statutory test by relying on extra-record evidence, and that the analysis the Commission used in conducting the statutory price test is not verifiable or supported by any party.

In its memorandum contra, AEP-Ohio responds that the Commission only used record evidence to arrive at its conclusion, and the fact that the Commission reached a different result than what any party advocated is not unusual or improper.

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12 OCC Ex. 114 at 6-7, Initial Brief at 10-11

13 Opinion and Order at 37

The Commission finds OMAEG/OHA's argument to be without merit. In conducting the statutory test, the Commission unequivocally described, in extensive record based detail, its basis in calculating the quantitative aspects of the statutory test.[14] Specifically, we began with the statutory test created by AEP-Ohio witness Thomas and made modifications to the foundation of the test.[15] While the results of the test may have been different than what any party advocated, all parties, including OMAEG and OHA, had the opportunity to cross-examine Ms. Thomas on her methodology and inputs in conducting the statutory test.[16] As this test was admitted in the record, and our corrections to the test were explained in extensive detail within the Opinion and Order describing the flow-through effect of our modifications, we find OMAEG/OHA's assignment of error should be rejected.

(16) In its assignment of error, AEP-Ohio contends that the Commission underestimated the benefits of the modified ESP in the statutory test. Specifically, AEP-Ohio argues the $386 million figure the Commission determined was the quantifiable difference between an MRO and the modified ESP considered the entire term of the ESP, after the Commission concluded that it is appropriate to consider only the period from June 2013 through May 2015. AEP-Ohio states that when looking at quantifiable items during just the two year period, the modified ESP becomes less favorable by only $266 million. AEP-Ohio concludes that the Commission underestimated the value of the modified ESP.

In its memorandum contra, IEU, OCC/APJN, OMAEG/OHA, and FES state that AEP-Ohio underestimates the cost disadvantage of the modified ESP. The parties explain that even if the Commission adopted AEP-Ohio's suggestion, any adjusted dollar figures would still not overcome the quantitative disadvantage of the modified ESP

The Commission finds that AEP-Ohio's assignment of error should be rejected. In adopting AEP-Ohio's methodology of conducting the statutory test, the Commission evaluated three

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14 *Id.* at 73-75

15 AEP-Ohio Ex. 114

16 Tr. at 1260-1342

parts: the statutory price test, other quantifiable considerations, and non-quantifiable factors. The two year time frame pertains only to the statutory price test, which required the Commission to determine that the ESP, as modified, is more favorable than results that would otherwise apply. In looking at just the pricing component, the Commission utilized a two year window in order to determine, with precision, what the price would be when the modified ESP was compared with the results that would otherwise apply. In our next step in conducting the statutory test, the Commission looked at components of the modified ESP that were quantifiable in nature. We evaluated these components from September 2012 through the end of the term of the modified ESP, because, as indicated in the Opinion and Order, these are costs that customers will pay regardless of when an auction would be established. The Commission was not inconsistent when it considered the statutory price test under a two year window but looked at quantifiable costs over the entire term of the ESP, because, pursuant to Section 4928.143(C)(1), Revised Code, we are to compare the modified ESP with results that would otherwise apply based on (a) its pricing, (b) other terms and conditions, including deferrals and future recovery of deferrals, and (c) it must be viewed, in the aggregate. This is consistent with how AEP-Ohio presented the statutory test in the record, and that is how the Commission, in correcting the errors made by AEP-Ohio, followed the statute with precision to determine that AEP-Ohio sustained its burden in indicating that the modified ESP was more favorable than any results that could otherwise apply.[17] Accordingly, AEP-Ohio's assignment of error should be rejected.

III. RETAIL STABILITY RIDER

(17) In its assignment of error, OCC/APJN argue the RSR is not justified by Section 4928.143(B)(2)(d), Revised Code, as it does not provide stability and certainty for retail electric service. Specifically, OCC/APJN believe the Commission failed to determine which of the six categories contained within Section 4928.143(B)(2)(d), Revised Code, it relied upon in approving the RSR. Similarly, Ohio Schools, IEU, and FES assert that

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[17] See Opinion and Order at 73-77.

there is no statutory basis for the RSR within Section 4928.143(B)(2)(d), Revised Code.

In its memorandum contra, AEP-Ohio provides that the RSR is clearly justified by Section 4928.143(B)(2)(d), Revised Code. AEP-Ohio points out that the statute has three distinct inquiries. Regarding the first query, AEP-Ohio explains that the RSR is clearly a charge as specified under the statute. In discussing the second query, AEP-Ohio states that the RSR is not only related to limitations on customer shopping for retail electric generation service, but also is related to bypassibility, default service, and amortization periods and accounting or deferrals. However, AEP-Ohio also requests clarification from the Commission on which items the Commission relied upon in reaching its conclusion. Finally, AEP-Ohio argues the Commission used extensive record-based findings to support its finding that the RSR provides stability and certainty regarding retail electric service.

In order to clarify the record in this proceeding, the Commission finds that OCC/APJN's application for rehearing should be granted. In approving the RSR pursuant to Section 4928.143(B)(2)(d), Revised Code, the Commission found that, the RSR, as modified, was reasonable. First, as OCC/APJN admits in its application for rehearing,[18] the RSR is indeed a charge, meeting the first component of the statute. Next, the RSR charge clearly falls within the default service category, as set forth in Section 4928.143(B)(2)(d), Revised Code. The RSR, as we specified in our Opinion and Order, freezes non-fuel generation rates throughout the term of the ESP,[19] allowing all standard service offer customers to have rate certainty throughout the term of the ESP that would not have occurred absent the RSR. As a SSO is the default service plan for AEP-Ohio customers who choose not to shop, the RSR meets the second inquiry of the statute as it provides a charge related to default service. While several parties analyze other sections the RSR charge may or may not be classified in, these issues do not need to be addressed as the RSR clearly is a charge related to default service.

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18 See OCC/APJN AFR pg. 36-38

19 Opinion and Order at 31

Finally, as we discussed in extensive detail in our Opinion and Order, the RSR promotes stable retail electric service prices by stabilizing base generation costs at their current rates, ensuring customers have certain and fixed rates going forward.[20] Therefore, the RSR, as a charge for default service to ensure customer stability and certainty, is consistent with Section 4928.143(B)(2)(d), Revised Code.

In addition, we find IEU's argument that the Commission failed to provide any analysis in support of the RSR to be erroneous.[21] The Commission devoted four pages of its Opinion and Order to examining the RSR in determining its compliance with the statute. In fact, IEU actually acknowledges that the Opinion and Order made multiple justifications for the RSR,[22] and devoted six pages of its application for rehearing to the Commission's justification of the RSR. The RSR is consistent with the text contained within Section 4928.143(B)(2)(d), Revised Code, and its rationale was justified both in this entry on rehearing and in the Commission's Opinion and Order.[23] Accordingly, all other assignments of error pertaining to statutory authority for the creation of the RSR are denied.

(18) Several parties contend that the inclusion of the Capacity Case deferral in the RSR is impermissible by statute. OCC/APJN, OMAEG/OHA, and OEG believe that the deferral contained within the RSR is not lawful under Section 4928.144, Revised Code, as it does not constitute a just and reasonable phase-in. Further, OMAEG/OHA state that a deferral is not authorized as a wholesale charge under the Commission's regulatory ratemaking authority pursuant to Section 4909.15, Revised Code, as the Commission did not comply with ratemaking requirements prior to approval of the capacity charge.

In its memorandum contra, AEP-Ohio responds that the Commission properly invoked Section 4928.144, Revised Code, in implementing a phase-in recovery. AEP-Ohio points out that because the RSR is justified under Section 4928.143,

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20 *Id.* at 31-32

21 IEU AFR at 38.

22 *Id.* at 41

23 See Opinion and Order at 31-34.

Revised Code, the deferral recovery mechanism established within the RSR is clearly permissible pursuant to Section 4928.144, Revised Code.

The Commission affirms its decision that the RSR deferral is justified. In the Capacity Case, the Commission authorized that, pursuant to Section 4909.15, Revised Code, AEP-Ohio shall modify its accounting procedures to defer the difference between the state compensation mechanism (SCM) and market prices for capacity, which, as we reiterated in the Capacity Entry on Rehearing, is reasonable and lawful. Further, Section 4928.143(B)(2)(d), Revised Code, allows for the establishment of terms, conditions, or charges relating to limitations on customer shopping for retail generation service, as well as accounting or deferrals, so long as they would have the effect of stabilizing or providing certainty regarding retail electric service. Therefore, the inclusion of the deferral, which is justified by Section 4909.15, Revised Code, within the RSR is permissible by Section 4928.143, Revised Code, as it has the effect of providing certainty for retail electric service by allowing CRES suppliers to purchase capacity at market prices while allowing AEP-Ohio to continue to offer reasonably priced electric service to customers who choose not to shop.

(19) Similarly, in their assignments of error, OEG and Ohio Schools argue that the Commission does not have authority to allow AEP-Ohio to recover wholesale costs associated with the SCM from retail customers through the RSR, thus requiring that the $1/MWh of the RSR that is earmarked towards the difference in capacity costs should be eliminated. Likewise, OMAEG/OHA opine that because wholesale capacity costs are being recovered from retail customers, there is a conflict between the Opinion and Order and the Capacity Case order.

AEP-Ohio responds that given its unique FRR status, the wholesale provision of capacity service is necessary for customers to be able to shop throughout the term of the ESP. AEP-Ohio explains that the impact of wholesale revenues on retail services offered by CRES suppliers is relevant under the ESP statute because it ensures not only that customers have the option to shop, but also it establishes reasonable SSO rates for those who choose not to shop. AEP-Ohio opines that regardless of how the capacity costs are classified, all CRES

suppliers ultimately rely on AEP-Ohio's capacity resources, thereby directly affecting the retail competitive market.

FES also disagrees with the characterization of the RSR as a wholesale rate. FES believes that the deferral is a charge that provides revenue in support of all of AEP-Ohio's services, including distribution, transmission, and competitive generation. Therefore, FES states that because the deferral is made available to AEP-Ohio for all of AEP-Ohio's services, it is properly allocated to all of AEP-Ohio's customers. FES explains that as a result of AEP-Ohio's election to become a FRR entity, AEP-Ohio must bear the competitive obligation to provide the capacity to its entire load.

The Commission finds OEG and OMAEG/OHA's assignments of error to be without merit. Under Section 4928.143(B)(2)(d), Revised Code, the Commission is authorized to establish charges that would have the effect of stabilizing retail electric service. In its application for rehearing, OEG fails to cite to any provision that precludes the Commission from recovering wholesale costs through a retail charge. To the contrary, the Commission has explicit statutory authority to include these costs in the RSR because, although they are wholesale, they were established to allow CRES providers access to capacity at market prices in order to allow retail electric service providers the ability to provide competitive offers to AEP-Ohio customers. The fact that these costs not only open the door to a robust competitive retail electric market, but also stabilize retail electric service by lowering market prices and allowing AEP-Ohio to maintain a reasonable SSO price is clearly permissible under Section 4928.143(B)(2)(d), Revised Code. Accordingly, OEG and OMAEG/OHA's assignments of error should be rejected, as they narrow the plain meaning of the statute.

(20) In its application for rehearing, OCC/APJN opine that the RSR unreasonably violates cost causation principles. Specifically, OCC/APJN assert that retail customers are subsidizing CRES providers and non-shopping customers are being charged for a service they are not receiving. OCC/APJN note that Section 4928.02(H), Revised Code, prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail electric service.

FES responds that CRES providers are not the cost causers, but rather, AEP-Ohio is as a result of its FRR status. FES explains that AEP-Ohio bears the obligation to provide capacity to its entire load, and that capacity costs would be incurred regardless of whether there were any CRES providers.

AEP-Ohio rejects OCC/APJN's argument that the RSR creates a cross-subsidy, as the Commission explicitly found in its Opinion and Order that all customers benefit from RPM pricing and the other features the RSR contains. By its very nature, AEP-Ohio asserts, the RSR cannot cause a cross-subsidy because all customers ultimately benefit from the RSR. AEP-Ohio also provides that the RSR does not violate Section 4928.02(H), Revised Code, because it is not a distribution or transmission rate recovering generation-related costs, and points out that all Ohio EDUs have generation-related SSO charges.

The Commission finds OCC/APJN's argument to be without merit. The RSR is not discriminatory in any manner, as it is permissible pursuant to Section 4928.143(B)(2)(d), Revised Code, and provides benefits to all customers in AEP-Ohio's territory, regardless of whether customers are shopping or non-shopping customers. Further, the Commission previously rejected such arguments within in its Opinion and Order, and accordingly, we affirm our decision.[24]

(21) Also in its application for rehearing, OCC/APJN raise the argument that the RAA does not authorize a state compensation mechanism in which non-shopping customers are responsible for compensating AEP-Ohio for its FRR obligations. This, OCC/APJN state, causes unduly preferential and discriminatory pricing because it forces non-shopping customers to pay twice, as they already have capacity charges built into their rates.

AEP-Ohio disagrees with OCC/APJN's contention, explaining that the statute explicitly allows for the creation of stability charges pursuant to Section 4928.143(B)(2)(d), Revised Code, and the fact that all customers benefit from the RSR makes OCC/APJN's assertion incorrect. FES notes that revenue

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[24] *Id.* at 37.

included with the deferral cannot be considered a double-charge because it supports all of AEP-Ohio's services, and thus is properly allocated to all of AEP-Ohio's customers.

The Commission finds that OCC/APJN's arguments should be rejected. Both AEP-Ohio and FES agree that the RSR should be collected as a non-bypassable rider, and we agree. As set forth in our Opinion and Order, the RSR benefits all of AEP-Ohio's customers, both shopping and non-shopping in that it allows for the competitive market to continue to develop and expand while allowing AEP-Ohio to maintain a competitive SSO offer for its non shopping customers.[25] Accordingly, as we previously rejected OCC/APJN's arguments, we affirm our decision.

(22) IEU argues that the RSR is improper because it allows for above-market pricing, which the Commission lacks statutory jurisdiction to establish. IEU contends that the RSR's improper collection of above-market prices for capacity violates Section 4928.02, Revised Code, which provides that state policy favors market-based pricing.

AEP-Ohio states that the Commission appropriately addressed the SCM within the Capacity Order, noting that IEU's arguments for market pricing were properly ignored in the Commission's Opinion and Order.

The Commission finds IEU's arguments to be without merit. In its Entry on Rehearing in the Capacity proceedings, the Commission rejected these arguments, explaining that one of the key considerations was the impact of AEP-Ohio's capacity charges on CRES providers and the competitive retail markets. Further, the intent of the Commission in adopting its capacity decision was to further develop the competitive marketplace by fostering an environment that promotes retail competition, consistent with Section 4928.02, Revised Code. Accordingly, as IEU's argument has already been dismissed in the Capacity Case, we find it to be without merit.

(23) Ohio Schools, IEU, and FES allege that the RSR wrongfully allows for AEP-Ohio to collect transition revenue by recovering

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25 *Id.*

stranded costs. Ohio Schools opine that the approval of cost-based capacity charges is irrelevant because the Commission's decision in the Capacity Case was unlawful. Further, Ohio Schools note that the non-deferral aspects of the RSR still amount to transition charges. IEU adds that the Commission is improperly ignoring its statutory obligation by allowing AEP-Ohio to collect transition revenue, and evade the Commission-approved settlement in which AEP-Ohio was obligated to forgo the collection of any lost revenues. FES and Ohio Schools believe that it is meaningless that AEP-Ohio's status as an FRR entity occurred after the ETP proceedings.

AEP-Ohio believes these arguments should be rejected, as the Commission explicitly dismissed the arguments in the Opinion and Order, as well as in the Capacity Case.

The Commission previously rejected these arguments in its Opinion and Order, noting that AEP-Ohio did not seek transition revenues, and that costs associated with the RSR are permissible in light of AEP-Ohio's status as an FRR entity.[26] We also rejected IEU's arguments again in the Entry on Rehearing in the Capacity Case, finding that AEP-Ohio's capacity costs do not fall within the category of transition costs.[27] As the Commission previously dismissed these arguments, we find that all assignments of error alleging that the RSR allows for the collection of transition revenue should be rejected.

(24) In their respective applications for rehearing, OCC/APJN, OMAEG/OHA and FES argue that even if the RSR is justified, the Commission erred by overestimating the value of the RSR to $508 million. OCC/APJN and OEG believe that the Commission improperly used assumed capacity revenues based on RPM prices, even though AEP-Ohio is authorized to collect capacity revenues at the SCM price. OCC/APJN assert that the current construct forces customers to pay twice for capacity, and if the Commission calculated the RSR based on the $188.88/MW-day figure, it would determine that the RSR is unnecessary. Also, OCC/APJN state that the RSR should have taken into account additional revenue AEP-Ohio will receive

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26 *Id.* at 32.

27 Capacity Case EOR at 56-57

for capacity associated with the energy auctions that will occur during the term of the ESP. OCC/APJN allege that collecting the capacity rate from SSO customers in the energy-only auctions will create capacity revenues that should be offset from the $508 million. In addition, OCC/APJN argue that the Commission applied too low of a credit for the shopped load without providing any rationale in support of its adoption. Ormet argues the proper credit for shopped load was $6.45/MWh, making the RSR overstated by approximately $121 million.

In response, AEP-Ohio points out that it will not book, as revenue, the entire $188.88/MW-day capacity cost. Rather, as established in the Capacity Case, AEP-Ohio explains that the regulatory asset deferral is tied to incurred costs that are not booked as revenues throughout the term of the deferral. AEP-Ohio provides that any revenue collected from CRES providers is limited only to RPM prices and the inclusion of the deferral does not alter the revenue AEP-Ohio receives. Further, AEP-Ohio notes that the Commission's modification of the RSR from a ROE-based revenue decoupling mechanism to a revenue target approach further warrants the use of RPM prices when calculating the RSR in light of the increased risk associated with a fixed RSR. AEP-Ohio also states that the inclusion of capacity revenues associated with the January 2015 energy auction should no longer be applicable, as the Commission does not incorporate any reductions in nonfuel generation revenue associated with the 2014/2015 delivery year. Finally, AEP-Ohio notes that the $3/MWh energy credit was reasonable and supported by the record, and Ormet's request to make an adjustment is speculative and should be rejected. Specifically, AEP-Ohio states that Ormet ignores pool termination concepts and the fact that energy sales margins attributed to transferred plants would become unavailable after pool termination.

The Commission finds that the applications for rehearing should be denied. Claims that the RSR overcompensates AEP-Ohio fail to consider the actual construct of the $188.88/MW-day capacity price, as the deferral established in the Capacity Case will not be booked as a revenue during the deferral

period.[28] The revenue AEP-Ohio will collect for capacity is limited only to the RPM price of capacity. Therefore, all assertions that parties make about AEP-Ohio receiving sufficient revenue from the capacity deferral alone are incorrect and should be rejected. Further, we note that OCC/APJN again mischaracterize the function of the RSR, because, as we have emphasized both in the Opinion and Order and again in this Entry, the RSR allows for stability and certainty for AEP-Ohio's non-shopping customer prices, while the deferral relates to capacity, thereby making it inappropriate to claim customers are being forced to pay twice for capacity.

Finally, we find that OCC/APJN and Ormet's applications for rehearing regarding the $3/MWh energy credit should be denied. In approving the RSR, we determined that off-system sales for AEP-Ohio will be lower than anticipated based on our estimation that AEP-Ohio's shopping statistics were overestimated. In light of the likelihood that AEP-Ohio will not see significant off-system sales as OCC/APJN and Ormet allege, we found it was unreasonable to raise the energy credit. Further, we find AEP-Ohio presented the most credible testimony about the energy credit, as it took into consideration the impacts pool termination would have on energy sales margins.[29] On brief, Ormet introduces extra-record evidence that not only should be rejected, but also even if considered fails to rebut the reasonableness of AEP-Ohio's testimony. Therefore, we affirm our determination that the energy credit calculation of $3/MWh is reasonable.

(25) Also in its application for rehearing, OEG argues that, in the alternative, if the Commission does not use the $188.88/MW-day capacity price in the RSR calculation, then the Commission should include the amount of the capacity deferral for the purposes of enforcing the 12 percent earnings cap. OEG points out that this appears to be consistent with what the Commission intended in its Opinion and Order, and is consistent with Commission precedent. OEG also suggests that the Commission clarify that the earnings cap was an ESP provision adopted pursuant to Section 4928.143(B)(2)(d), Revised Code.

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28 *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, (Opinion and Order) July 2, 2012.

29 See AEP-Ohio Ex. 116 at 13, Ex. WAA-6.

AEP-Ohio responds by stating that it is not opposed to including the deferral earnings as deferred capacity revenue when enforcing the 12 percent earnings cap, as it is consistent with the Commission's prior decision regarding AEP-Ohio's fuel deferrals under AEP-Ohio's ESP I.[30]

The Commission finds that OEG's application for rehearing correctly indicated that it was the Commission's intent in its Opinion and Order to include the deferred capacity revenue in AEP-Ohio's 12 percent earnings cap. We believe the inclusion of the deferred capacity revenue is important to ensure AEP-Ohio does not reap a disproportionate benefit as a result of the modified ESP.[31] Therefore, the Commission clarifies that, in the 12 percent SEET threshold established within the Opinion and Order, the complete regulatory accounting of the threshold should include the entire $188.88/MW-day capacity price as current earnings, not just the RPM component, as well as the $3.50 and $4.00 per MWh RSR. The $1.00/MWh of the RSR charge that is to be devoted towards the capacity deferral shall be off-set with an amortization expense of $1.00/MWh. However, we reject OEG's request to include the 12 percent threshold as a condition to the RSR, as the Commission can and will adequately analyze AEP-Ohio's earnings consistent with Section 4928.143(F), Revised Code, without creating an unnecessary regulatory burden, as reiterated in our SEET analysis below. Accordingly, OEG's application for rehearing should be granted in part and denied in part.

(26) In its application for rehearing, OCC/APJN assert that the Commission should not have found that AEP-Ohio may file an application to adjust the RSR in the event that there is a significant reduction in its non-shopping load. OCC/APJN argue that this unreasonably transfers the risks associated with economic downturns from AEP-Ohio and onto customers.

The Commission finds OCC/APJN's application for rehearing should be denied. The Commission has the discretion to take appropriate action, if necessary, in the event there are significant changes in the non-shopping load for reasons beyond AEP-Ohio's control. Further, we note that in the event

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30 *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, (Opinion and Order) January 11, 2011.

31 Opinion and Order at 37.

there are significant changes in the non-shopping load, any adjustments to the RSR are still subject to an application process where parties will be able to appropriately advocate for or against any adjustments.

(27) In addition, OCC/APJN argue that the Commission violated Section 4903.09, Revised Code, by failing to allocate the RSR by the percentage of customers shopping in each class. OCC/APJN believe that cost causation principles dictate that the RSR should be allocated among the different customer classes based on their share of total switched load. To the contrary, Kroger asserts that the Commission's Opinion and Order unreasonably requires demand-billed customers to pay for RSR costs through an energy charge, despite the fact that the costs are capacity based but allocated on the basis of demand. Kroger requests that the Commission eliminate the RSR's improper energy charge to demand-billed customers on rehearing.

In its memorandum contra, AEP-Ohio states that OCC/APJN are misguided in their approach, as shopping customers are not the only cost-causers of the RSR, because all customers have the right to shop at any time. If the Commission were to accept rehearing on this area, AEP-Ohio argues that the cost of the RSR would be dramatically shifted from residential customers to industrial and commercial customers. AEP-Ohio also states that Kroger's proposal would unduly burden smaller load factor customers in commercial and industrial classes. AEP-Ohio reiterates that the RSR benefits for all customer classes.

The Commission rejects arguments raised by OCC/APJN and Kroger. As AEP-Ohio correctly points out, and as we emphasized in our Opinion and Order, all customers, residential, commercial, and industrial, and both shopping and non-shopping, benefit from the RSR, as it encourages competitive offers from CRES providers while maintaining an attractive SSO price in the event market prices rise. Were the Commission to adopt suggestions by either party, these benefits would be diminished, as industrial and commercial customers would be harmed by a reallocation of the RSR if we took up OCC/APJN's application, and smaller commercial and industrial customers would face an undue burden of the RSR were we to adopt Kroger's recommendation. We believe the

Opinion and Order struck the appropriate balance through recovery per kWh by customer class, as it spreads costs associated with the RSR charge among all customers, as all customer ultimately benefit from its design.

(28) Furthermore, IEU, FES, and OCC/APJN contend that the fact that the RSR revenues will continue to be collected after corporate separation and flow to AEP-Ohio's generation affiliate violates Section 4928.02(H), Revised Code. OCC/APJN opine that when the RSR is remitted to AEP-Ohio's affiliate, AEP-Ohio will be acting to subsidize its unregulated generation affiliate. IEU states that the Opinion and Order will provide an unfair competitive advantage to AEP-Ohio's generation affiliate, evading corporate separation requirements.

AEP-Ohio responds that, as it is the captive seller of capacity to support its load consistent with its FRR obligations, it must continue to fulfill its FRR obligations even after corporate separation is completed. Due of the nature of its FRR status, AEP-Ohio points out that it must pass through generation related revenues to its subsidiary in order to provide capacity and energy for its SSO load. While AEP-Ohio acknowledges that it will be legally separated from its affiliate, the fact that it remains obligated to provide SSO service for the term of the ESP and the SSO agreement between AEP-Ohio and its affiliate is subject to FERC approval shows the cross-subsidy allegations are improper.

The Commission rejects the arguments raised by IEU, FES, and OCC/APJN, and finds their applications for rehearing should be denied. As previously addressed in the Commission's Opinion and Order, AEP-Ohio, as an FRR entity, must continue to fulfill its obligations by providing adequate capacity to its entire load. Therefore, in order for AEP-Ohio, and the newly created generation affiliate to continue to provide capacity consistent with its FRR obligations, we maintain our position that AEP-Ohio is entitled to its actual cost of capacity, which will in part, be collected through the RSR in order for AEP-Ohio to begin paying off its capacity deferral. As we previously established, parties cannot claim that AEP-Ohio's

generation affiliate is receiving an improper subsidy when in fact, it is only receiving its actual cost of service.[32]

(29) In addition, Ormet and Ohio Schools renew their request for exemptions from the RSR in their applications for rehearing.

In its memorandum contra, AEP-Ohio asserts that Ormet and Ohio Schools second-guess the Commission's discretion and expertise, noting that the Commission already dismissed such requests in its Opinion and Order.

Again, the Commission rejects arguments raised by Ormet and Ohio Schools, as both have previously been rejected with ample justification in the Opinion and Order.[33]

(30) In its application for rehearing, AEP-Ohio opines that it was unreasonable for the Commission to use nine percent as a starting point in determining the RSR revenue target. AEP-Ohio argues that nine percent ROE is unreasonably low, as evidenced by the recently approved ROEs of 10 and 10.3 percent, respectively, in AEP-Ohio's distribution rate case. AEP-Ohio also points to the recent Capacity Case decision in which the Commission found it appropriate to establish a ROE of 11.15 percent. AEP-Ohio states that the witness testimony the Commission relied upon in reaching its conclusion did not reflect any consideration of AEP-Ohio's actual cost of equity.

In its memorandum contra, IEU explains that AEP-Ohio has failed to present anything new and its request should therefore be rejected. FES argues that AEP-Ohio's request is meaningless, as Ohio law requires AEP-Ohio's generation service to be independent within the competitive marketplace. OCC/APJN state that the use of a nine percent ROE is not unreasonable, and AEP-Ohio cannot rely on the Capacity Case as precedent because it previously asserted that the state compensation mechanism does not apply to SSO service or the capacity auctions. OCC/APJN also argue that AEP-Ohio's reliance on stipulated cases is improper.

The Commission finds that AEP-Ohio has failed to present any additional arguments for the Commission to consider. IEU

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32 *Id.* at 60

33 *Id.* at 37.

correctly points out that AEP-Ohio previously made these arguments both in the record and on brief. In its Opinion and Order, the Commission determined that there was compelling evidence in regards to an appropriate ROE, and the Commission adopted its target of nine percent based on such testimony.[34] Accordingly, as we provided sufficient justification for our establishment of a nine percent ROE to establish AEP-Ohio's revenue target, we find AEP-Ohio's arguments to be without merit, and its application for rehearing should be denied.

(31) In its assignment of error, AEP-Ohio requests that the Commission clarify that all future recovery of the deferral refers only to the post-ESP deferral balance process. AEP-Ohio also seeks a clarification that the remaining deferral balance that is not collected through the RSR during the term of the ESP will be collected over the three years following the ESP term.

OMAEG/OHA responds that at a minimum, the Commission should continue to make the determinations on cost recovery when more information on the delta is available. OCC/APJN also notes that any clarification is unnecessary because the Commission unreasonably found that deferrals could be collected from both shopping and non-shopping customers.

As the Commission emphasized in its Opinion and Order, the remainder of the deferral will be reviewed by the Commission throughout the term of this ESP, and no determinations on any future recovery will be made until AEP-Ohio provides its actual shopping statistics.[35] Accordingly, as the Commission will continue to monitor the deferral process, and as set forth in the Opinion and Order, we will review the remaining balance of the deferral at the conclusion of the modified ESP, we find that AEP-Ohio's application for rehearing has no merit and should be denied.

(32) In addition, AEP-Ohio requests that the Commission establish a remedy in the event the Ohio Supreme Court overturns the RSR. Specifically, AEP-Ohio argues that it would be subject to increased risk without such a backstop, and proposes a

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34 *Id.* at 33.

35 *Id.* at 36.

provision that CRES providers would automatically be responsible for the entire $188.88/MW-day capacity charge if either the capacity deferral or deferral recovery aspect of the RSR is reversed or vacated on appeal.

Ohio Schools, DER/DECAM, and OMAEG/OHA argue that AEP-Ohio's request is an unlawful request for rehearing of the Capacity Case, as the level of capacity charges was not determined in this proceeding on the modified ESP. OMAEG/OHA and Ohio Schools also point out that the creation of a backstop would cause instability and uncertainty, as CRES providers paying the delta between RPM and the cost-based rate may pass costs on to customers. IEU asserts that the mechanism, if approved, would result in an unlawful retroactive rate increase.

The Commission agrees with Ohio Schools, DER/DECAM, OMAEG/OHA, and IEU, and finds that AEP-Ohio's request for a backstop in the event the Commission's deferral mechanism is overturned to be an inappropriate request for rehearing that should have been raised in the Capacity Case. Therefore, AEP-Ohio's application for rehearing should be denied.

IV. FUEL ADJUSTMENT CLAUSE

(33) AEP-Ohio asserts that the Commission's failure to establish a final reconciliation and true-up for the fuel adjustment clause (FAC) was unreasonable. AEP-Ohio notes that the Opinion and Order specifically directed reconciliation and true-up for the enhanced service reliability rider (ESRR), and other riders that will expire prior to or in conjunction with the end of the ESP term. Regarding the FAC, AEP-Ohio contends the Commission failed to account for reconciliation and true-up when the AEP-Ohio's SSO load is served through the auction process. AEP-Ohio reasons that the Commission is clearly vested with the authority to direct reconciliation of the rider and has done so in other proceedings.[36]

FES contends that the Opinion and Order unreasonably maintains separate FAC rates for Ohio Power Company (OP)

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[36] Case No. 11-3549-EL-SSO, Duke Energy Ohio Inc., Opinion and Order at 32 (November 22, 2011).

and Columbus Southern Power Company (CSP) rate zones. FES argues that AEP-Ohio has merged and there is no basis to continue separate FAC rates. Based on the testimony of FES witness Lesser and AEP-Ohio witness Roush, FES states that OP customers will pay artificially reduced fuel costs, discouraging competition, and beginning in 2013, OP customers will be subject to drastic increases, as compared to CSP customers.[37] With individual FAC rates, FES reasons that CSP customers are discriminated against in comparison to OP customers for the same service in violation of Sections 4905.33 and 4905.35, Revised Code. As such, FES states that the Opinion and Order is unreasonable in its anti-competitive and discriminatory rate design without providing any rational basis.

IEU offers that nothing in the record of supports FES' claim that separate FAC rates for each rate zone causes artificially reduced fuel costs for the OP rate zone. IEU notes that at the briefing phase of these proceedings no party opposed maintaining separate FAC rates for each rate zone.

OCC/APJN also argue that the decision to maintain separate FAC rates for each rate zone is arbitrary and inconsistent, particularly as to the projected time of consolidation for customers in each rate zone, while approving immediate consolidation for the transmission cost recovery rider (TCRR). Further, OCC/APJN believes that the Commission's failure to consolidate the FAC rates while immediately consolidating the TCRR rates, negatively impacts OP customers. OCC/APJN submits that the Opinion and Order does not explain why consistency is necessary between the FAC and PIRR but not with the TCRR. OCC/APJN note that delaying the merger of the FAC rates causes OP customers to incur a $0.02/Mwh increase in rates. OCC/APJN state that the Commission failed to offer any explanation for the inconsistent treatment in the merger of the various rates and continuing separate FAC and PIRR rates, as required by Section 4903.09, Revised Code.

First, we grant rehearing on two issues raised in regard to the FAC. First, we grant OCC/APJN's request for rehearing only to clarify that the Commission did not intend to establish June

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[37] FES Ex. 102A at 45-46; FES Ex. 102B; Tr. at 1075-1077, 1082-1084.

2013, as the date by which the FAC rates of each service zone would be merged. The Commission will continue to monitor the deferred fuel balance of each rate zone to determine if, and when, the FAC rates should be consolidated. Second, we grant AEP-Ohio's request for rehearing to facilitate a final reconciliation and true-up of the FAC upon termination of the FAC rates. We deny the other requests for rehearing in regards to the FAC.

It is necessary to maintain separate FAC rates until the deferred fuel expense incurred by OP rate zone customers has been significantly reduced. Consistent with the Commission's decision in AEP-Ohio's prior ESP, the deferred fuel expenses incurred by each rate zone will be collected through December 31, 2018. We note that a significant portion of the deferred fuel expense incurred by CSP rate zone customers, over $42 million, was offset by significantly excessive earnings paid by CSP rate zone customers.[38] Further, as noted in the Opinion and Order, in addition to delaying the consolidation of the FAC rates to be consistent with the recovery of the PIRR, the Commission noted pending Commission proceedings will likely affect the FAC rate for each rate zone.[39] Furthermore, the Commission notes that the pending 2010[40] and 2011 SEET proceedings for CSP and OP could affect the PIRR for either rate zone. Because of the remaining balance of deferred fuel expense was incurred primarily by OP customers, as noted in the Opinion and Order, the Commission reasoned that maintaining distinct and separate FAC rates for each rate zone would facilitate transparency and review of any ordered adjustments in the pending FAC proceedings as well as any PIRR adjustments.[41]

The deferred fuel charges were incurred prior to the merger of CSP and OP and form the basis for the PIRR rates applicable to CSP and OP rate zone customers. If FES believes that the deferred fuel charges incurred by CSP or OP were discriminatory or imposed an undue or unreasonable prejudice, the appropriate time to address the claim would

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38 *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011); Entry on Rehearing

39 Opinion and Order at 17.

40 *In re AEP-Ohio*, Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC.

41 *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, et al., Opinion and Order (January 23, 2012).

have been in the FAC audit proceedings. In this proceeding the Commission has determined that it would be an unreasonable disadvantage for former CSP customers to be required to incur the significant outstanding deferred fuel expense incurred by former OP customers, particularly when possible adjustments to the FAC and PIRR rates for each rate zone are pending. The TCRR is analyzed and reconciled independent of the FAC the PIRR for each rate zone, and is not affected by the outcome of SEET or FAC proceedings. For these reasons, the Commission finds it reasonable and equitable to continue separate FAC and PIRR rates for each rate zone although we merged other components of the CSP and OP rates where we determined the consolidated rate did not impose an unreasonable disadvantage or demand on customers in either rate zone. On that basis, the Opinion and Order complies with Sections 4905.33 and 4905.35, Revised Code. Accordingly, we affirm the decision not to merge the FAC and deny the request of FES and OCC/APJN to reconsider this aspect of the Opinion and Order.

V. BASE GENERATION RATES

(34) In its assignment of error, OCC/APJN contend that the modified ESP's base generation plan does not benefit customers. OCC/APJN point to the testimony indicating that auction prices have gone down and CRES providers have been providing lower priced electric service. In light of these lower prices, OCC/APJN opine that freezing base generation prices is not a benefit because the market may be producing rates at lower prices. OCC/APJN allege that the Commission failed to ensure nondiscriminatory retail rates are available to customers, as the base generation rates were not properly unbundled into energy and capacity components, creating the risk of customers paying different prices for AEP-Ohio's capacity costs.

In its memorandum contra, AEP-Ohio responds that the Commission properly determined that freezing base generation rates for non-shopping SSO customers is beneficial because it allows for a stable and reasonably priced default generation service that will be available to all customers. AEP-Ohio further explains that OCC/APJN do not present any evidence to support its assertion that the base generation rate design makes it difficult for the Commission to ensure that all SSO

customers are receiving non-discriminatory generation service, and points out that OCC/APJN wrongfully attempt to extrapolate the Commission's Capacity order. AEP-Ohio adds that any accusations of the base generation rates being discriminatory are also improper because AEP-Ohio offers different services to its SSO customers than it does to CRES providers. Specifically, AEP-Ohio explains that it only offers capacity service to CRES providers, but it offers a bundled supply of generation service to its SSO customers, thereby eliminating any claim of AEP-Ohio providing discriminatory services.

The Commission affirms its decision in the Opinion and Order, as the frozen base generation rates amount to a reasonably priced, stable alternative that will remain available for all customers who choose not to shop. Further, OCC/APJN failed to provide any foundation in the evidentiary hearing and in its application for rehearing that the base generation rates were not properly unbundled. To the contrary, AEP-Ohio's base generation rates were almost unanimously unopposed by all parties who intervened in this proceeding, which included intervenors representing small business customers, commercial customers, and industrial customers.[42] Further, OCC/APJN fail to recognize that AEP-Ohio is not offering discriminatory rates between its non-shopping customers and those customers who shop, as AEP-Ohio provides different services to the shopping and non-shopping customers. Therefore, OCC/APJN's arguments fail, as Section 4905.33, Revised Code, prohibits discriminatory pricing for like and contemporaneous service, which does not apply here. AEP-Ohio provides capacity service to CRES providers, and provides a bundled generation service to its SSO customers.

VI. INTERRUPTIBLE POWER-DISCRETIONARY SCHEDULE CREDIT

(35) OCC/APJN state that the Commission failed to provide that the interruptible power-discretionary schedule (IRP-D) credit costs should not be collected from residential customers, which was necessary in order for the Commission to be consistent with the intent of the approved stipulation in Case No. 11-5568-EL-POR. Specifically, OCC/APJN argue that the stipulation in

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42 See Opinion and Order at 15-16.

that case provides that program costs for customers in a nonresidential customer class will not be collected from residential customers, and residential program costs will not be collected from non-residential customers.

In its memorandum contra, OEG argues that the credit adopted under the IRP-D is a new credit established in this proceeding, and therefore should not be governed by the EE/PDR stipulation. OEG opines that the Commission acted lawfully and reasonably in approving the IRP-D credit.

The Commission finds OCC/APJN's arguments should be rejected. As OEG correctly points out, the IRP-D credit was established in the modified ESP proceeding, therefore, it is not proper for OCC/APJN to use a stipulation that is only contemplated the programs set forth in the EE/PDR stipulation.

VII. AUCTION PROCESS

(36) In its assignment of error, OEG requests that the Commission clarify that separate energy auctions be held for each AEP-Ohio rate zone. OEG explains that this would be consistent with the FAC and PIRR recovery mechanisms, and without separate energy auctions, the auction may result in unreasonably high energy charges for Ohio Power customers. OEG also suggests that the Commission clarify that it will not accept the results from AEP-Ohio's energy auctions if they lead to rate increases for a particular rate zone, and points out that the Commission maintains the discretion and flexibility to reject auction results.

In its memorandum contra, AEP-Ohio submits that it is not necessary to determine the details relating to the competitive bid procurement (CBP) process, as these issues would be more appropriately addressed in the stakeholder process established pursuant to the Commission's Opinion and Order. In addition, AEP-Ohio opposes the proposal for the Commission to reject any unfavorable auction results, as the General Assembly's plan for competitive markets is not based on short-term market results, but rather based on full development of the competitive marketplace. FES notes in its memorandum contra that OEG presented no evidence in support of its arguments, and that its proposal would actually limit supplier participation and hinder

competition. FES explains that if the Commission were to adopt the ability to nullify auction results, it would discourage suppliers who invest significant time and resources into the auction from participating in any future auctions.

The Commission finds OEG's arguments on separate energy auctions should not be addressed at this time, and are better left to the auction stakeholder process that was established in the Commission's Opinion and Order.[43] We believe that the stakeholder process will allow for a diverse group of stakeholders with unique perspectives and expertise to establish an open, effective, and transparent auction process. However, we agree with FES and AEP-Ohio, who, in a rare showing of unity, oppose OEG's request to reject auction results. The Commission will not interfere with the competitive markets, and accordingly, we believe it is inappropriate to establish a mechanism to reject auction results. Accordingly, OEG's application for rehearing should be denied.

(37) In its application for rehearing, FES contends that Commission's Opinion and Order slows the movement of competitive auctions by only authorizing a 10 percent slice of system of auction and an energy only auction for 60 percent of its load in June 2014. FES argues that this delay is unnecessary as AEP-Ohio cannot show any evidence of substantial harm by earlier auction dates, and that AEP-Ohio is capable of holding an auction in June 2013.

The Commission rejects FES's arguments, as they have been previously raised and dismissed.[44] Further, the Commission reiterates that it is important for customers to be able to benefit from market-based prices while they are low, as evidenced by our decision to expand AEP-Ohio's slice-of-system auction, as well as accelerating the time frame for AEP-Ohio's energy auctions, but it is also important to take time to establish an effective CBP process that will maximize the number of auction participants.

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43 *Id.* at 39-40.

44 *Id.* at 38-40.

(38) In its application for rehearing, AEP-Ohio requests a modification to provide that, in light of the acceleration of AEP-Ohio's proposed CBP, base generation rates will be frozen throughout the entire term of the ESP, including the first five months after the January 1, 2015, 100 percent energy auction. AEP Ohio explains that it would flow all energy auction procurement costs through the FAC. Further, AEP-Ohio believes it would be unreasonable to adjust the SSO base generation rates for the first five months of 2015, as proposed in AEP-Ohio's application,[45] in light of the substantial modifications made by the Commission to accelerate and expand the scope of the energy auctions. AEP-Ohio warns that absent a clarification on rehearing, there could be adverse financial impacts of AEP-Ohio based on the Opinion and Order's auction modifications.

In its memorandum contra, FES explains that the Commission's Opinion and Order does not allow for AEP-Ohio to recover additional auction costs through the FAC. FES notes that AEP-Ohio's proposal would have the effect of limiting customer opportunities to lower prices, noting that if auction results were lower than SSO customer generation charges, customers would have to pay the base generation difference on top of the auction price, making the effects of competition meaningless. OMAEG/OHA add that costs associated with the auction are not appropriate for the FAC because it will disproportionately impact larger customers.

We find that AEP-Ohio's request to continue to freeze base generation rates through the auction process is inappropriate and should be rejected. The entire crux of the Opinion and Order was the value in providing customers with the opportunity to take advantage of market-based prices and the importance of establishing a competitive electric marketplace. AEP-Ohio's proposal is completely inconsistent with the Commission's mission and would preclude AEP-Ohio customers from realizing any potential savings that may result from its expanded energy auctions. This is precisely the reason why the Commission expanded and accelerated the CBP in the

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45 In its application, AEP Ohio proposed that the 2015 100 percent energy auction costs be blended with the cost of capacity and the clearing price from the energy auction, which would establish new SSO rates. See AEP-Ohio Ex. 101 at 19-21.

first place. Further, we find AEP-Ohio's fear of adverse financial impacts is unfounded, as the RSR will in part ensure AEP-Ohio has sufficient funds to efficiently maintain its operations. Therefore, we find AEP-Ohio's application for rehearing should be denied.

(39) AEP-Ohio opines that the Opinion and Order should be clarified to confirm that the Capacity Order's state compensation mechanism does not apply to the SSO energy auctions or non-shopping customers. DER/DECAM also request further clarification that auctions conducted during the term of the ESP pertain to full service requirements, with any difference between market-based charges and the cost-based state compensation mechanism to be included in the deferral that will be recovered from all customers.

The Commission finds that AEP-Ohio's application for rehearing should be denied. In its modified ESP application, AEP-Ohio originally offered to provide capacity for the January 1, 2015 energy auction at $255 per MW-day. In light of the Commission's decision in the Capacity Case, which determined $188.88 per MW-day would allow AEP-Ohio to recover its embedded capacity costs without overcharging customers, it would be unreasonable for us to permit AEP-Ohio to recover an amount higher than its cost of service. Further, we disagree with AEP-Ohio's assertion that the Commission should not rely on the Capacity Case in determining the cost of capacity for non-shopping customers beginning January 1, 2015, because, as previously stated, the Commission was able to determine that AEP-Ohio's that $188.88 per MW-day establishes a just and reasonable rate for capacity. Therefore, consistent with our Opinion and Order,[46] the use of $188.88 per MW-day allows for AEP-Ohio to be adequately compensated and ensures ratepayers will not face excessive charges over AEP-Ohio's actual costs. In addition, we reject DER/DECAM's request for clarification, as it is not necessary to address the difference between market-based charges and AEP-Ohio's capacity offer for the limited purpose of the January 1, 2015, energy only auction, since the cost of capacity is AEP-Ohio's cost of service.

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46 See Opinion and Order at 57

(40) In addition, AEP-Ohio argues that it was unreasonable for the Commission to establish early auction requirements and to update to its electronic systems for CRES providers without creating a mechanism for recovery of all prudently incurred costs associated with auctions and the electronic system upgrades.

OCC/APJN respond that AEP-Ohio failed to request any recovery mechanism for these costs within its original application in this proceeding, and that any costs associated with conducting the auction should have been accounted for within its application. Further, OCC/APJN point out that AEP-Ohio has not indicated that the modified auction process would increase its costs over the original auction proposal. Should the Commission grant AEP-Ohio's request, OCC/APJN opine that all costs should be paid by CRES providers, as the costs are caused by the need to accommodate CRES providers.

We agree with OCC/APJN, as AEP-Ohio failed to present any persuasive evidence that it would incur unreasonable and excessive costs in conducting its auction and upgrading its electronic data systems. AEP-Ohio's request is too vague and ambiguous to be addressed on rehearing, and we find that AEP-Ohio's request for an additional recovery mechanism for auction costs should be rejected.

(41) AEP-Ohio requests that the Commission clarify that the auction rate docket will only incorporate revenue-neutral solutions. In support of its request, AEP-Ohio notes that the Commission reserved the rate to implement a new base generation rate design on a revenue neutral basis for all customer classes, and should therefore attach the same condition of revenue neutrality for auction rates.

OCC/APJN argue that the Commission should reject the request for a clarification, as the Commission cannot anticipate all issues that may arise regarding a disparate impact on customers, and encourages the Commission to not box itself into any corners by granting AEP-Ohio's request.

The Commission rejects AEP-Ohio's request to incorporate revenue-neutral solutions within the auction rate docket. However, in the event it becomes apparent that there may be

disparate rate impacts amongst customers, the Commission reserves that right to initiate an investigation, as necessary, as set forth in the Opinion and Order.

(42) In addition, AEP-Ohio seeks clarification regarding costs associated with the CBP process. AEP-Ohio believes that because it is required update its CRES supplier information as well as the fact that it will need to hire an independent bid manager for its auction process, among other costs, AEP-Ohio should be entitled to recover its costs incurred.

In its memorandum contra, OMAEG/OHA oppose AEP-Ohio's request, arguing the Commission should not authorize AEP-Ohio to recover an unspecified amount of revenue without an estimate as to whether any costs actually exist. OMAEG/OHA state that it is not necessary for the Commission to make a preemptive determination about speculative costs.

As we previously determined with AEP-Ohio's previous request for auction related costs associated with electronic system data and the expanded auction process, the Commission finds that AEP-Ohio has not shown any estimates on what the auction related costs would be, nor has it provided any evidence as to what the costs may be. We agree with OMAEG/OHA, and find it is premature for the Commission to permit recovery on costs that are unknown and speculative in nature.

VIII. CUSTOMER RATE CAP

(43) OCC/APJN and OMAEG/OHA contend that the Commission's Opinion and Order regarding the customer rate cap is unlawfully vague. OCC/APJN provide that the Opinion and Order should clarify what it intends the rate cap to cover, and should establish a process to address situations where a customer's bill is increase by greater than 12 percent. Further, OCC/APJN request additional information on who will monitor the percentage of increase, and who will notify customers that they are over the twelve percent cap.

AEP-Ohio also suggests the Commission clarify the 12 percent rate cap, and requests a 90 day implementation period for programming and testing its customer billing system to account for the 12 percent cap. AEP-Ohio notes if the

Commission clarifies that AEP-Ohio shall have time to implement its new program, AEP-Ohio will still run calculations back to September 2012 and provide customer credits, if necessary. AEP-Ohio also seeks clarification that its calculation be based on the customer's total billing under AEP-Ohio's SSO rate, as it does not have the rate that certain customers pay CRES providers, and cannot perform a total bill calculation on any other basis other than SSO rates. Further, AEP-Ohio seeks clarification that it be directly authorized to create and collect deferrals pursuant to Section 4928.144, Revised Code, as well as authorization for carrying charges.

The Commission finds that OCC/APJN, OMAEG/OHA, and AEP-Ohio's applications for rehearing should be granted in regards to the customer rate cap in order to clarify the record. As set forth in the Opinion and Order, the customer rate impact cap applies to items that were established and approved within the modified ESP, and does not apply to any previously approved riders or tariffs that are subject to change throughout the term of the ESP. Specifically, the riders the 12 percent cap intends to safeguard against include the RSR, DIR, PTR and GRR. In addition, the 12 percent rate cap shall apply throughout the entire term of the ESP.

Further, we find that AEP-Ohio should be given 90 days to implement its customer billing system to account for the 12 percent rate increase cap. To clarify OCC/APJN's concerns, by allowing AEP-Ohio 90 days to implement its customer billing system, AEP-Ohio will be able to monitor customer rate increases and provide credits, also if necessary, going back to September 2012. Further, upon AEP-Ohio's implementation of its updated customer billing system, we direct AEP-Ohio to update its bill format to include a customer notification alert if a customer's rates increase by more than 12 percent, and indicate that the bill amount has been decreased in accordance with the customer rate cap.

Finally, as the customer rate impact cap is a provision of the ESP pursuant to Section 4928.143, Revised Code, we authorize the deferral of any expenses associated with the rate cap pursuant to Section 4928.144, Revised Code, inclusive of carrying charges, so we can ensure customer rates are stable for consumers by not increasing more than 12 percent.

IX. SEET THRESHOLD

(44) In its application for rehearing, AEP-Ohio argues that the Commission should eliminate the 12 percent SEET threshold. AEP-Ohio explains that the return on equity (ROE) values contained within the record are forward-looking estimates of its cost of equity, and do not reflect the ROE earned by companies with comparable risks to AEP-Ohio. AEP-Ohio provides that even if the values were from firms with comparable risks, the SEET threshold must be significantly in excess of the ROE earned. Further, AEP-Ohio points to the SEET threshold that the Commission approved for Duke, where the Commission approved a stipulation establishing a SEET threshold of 15 percent.[47] In addition, AEP-Ohio contends that the threshold does not provide any opportunity for the Commission to consider issues such as capital requirements of future committed investments, as well as other items contained within Section 4928.143(F), Revised Code.

In its memorandum contra, OCC/APJN note that the Commission not only followed Section 4928.143(F), Revised Code, but also that the SEET threshold is nothing more than a rebuttable presumption that any earnings above the threshold would be significantly excessive. IEU argues that AEP-Ohio unreasonably relies upon settlements in other proceedings to attempt to resolve contested issues contained within the Commission's Opinion and Order.

The Commission finds AEP-Ohio's application for rehearing should be denied. Under Section 4928.143(F), Revised Code, the Commission shall annually determine whether the provisions contained within the modified ESP resulted in AEP-Ohio maintaining excessive earnings. The rule further dictates that the review shall consider whether the earnings are significantly in excess of the return on equity of other comparable publicly traded companies with similar business and financial risk. The record in the modified ESP contains extensive testimony from three expert witnesses who testified in length on what an appropriate ROE would be for AEP-Ohio, and all considered comparable companies with similar risk in

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47 *In re Duke*, Case No. 08-920-EL-SSO (Opinion and Order) December 17, 2008 and Case No. 11-3549-EL-SSO (Opinion and Order) November 22, 2011.

reaching their conclusions.[48] In addition, three other diverse parties also presented evidence in the record that was consistent with the recommendations presented by the three expert witnesses, which when taken as a whole, demonstrates that a 12 percent ROE would be at the high end of a reasonable range for AEP-Ohio's return on equity.[49] Further, we believe that the SEET threshold of 12 percent is not only consistent with state policy provisions, including Section 4928.02(A), Revised Code, but also reflects an appropriate rate of return in light of the modified ESP's provisions that minimize AEP-Ohio's risk.[50]

X. CRES PROVIDER ISSUES

(45) In its application for rehearing, FES argues that the Commission unreasonably authorized AEP-Ohio to continue its anti-competitive barriers to shopping, including minimum stay requirements and switching fees without justification. FES asserts that both are contrary to state policies contained within Section 4928.02, Revised Code.

AEP-Ohio responds that FES's assertions present no new arguments, and the record fully supports the findings by the Commission. Further, AEP-Ohio explains that the modified ESP actually offered improvements to CRES providers, further indicating that rehearing is not warranted on this issue.

The Commission finds FES's application for rehearing relating to competitive barriers should be granted. Upon further consideration, we believe AEP-Ohio's switching rules, charges, and minimum stay provisions are inconsistent with our state policy objectives contained within Section 4928.02, Revised Code, as well as recent Commission precedent. The Commission recognizes that the application eliminates the current 90-day notice requirement, the 12-month minimum stay requirement for large commercial and industrial customers, and AEP-Ohio's seasonal stay requirement for residential and smaller commercial customers on January 1, 2015, however, we find that these provisions should be

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48 Opinion and Order at 33

49 *Id.* at 37.

50 *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2012-Ohio-5690, (Pfeifer, J., dissenting).

eliminated earlier. We believe it is important to ensure healthy retail electric service competition exists in Ohio, and recognize the importance of protecting retail electric sales consumers right to choose their service providers without any market barriers, consistent with state policy provisions in Sections 4928.02(H) and (I), Revised Code. We are confident that these objectives are best met by eliminating AEP-Ohio's notice and stay requirements in a more expeditious manner, therefore, we direct AEP-Ohio to submit within 60 days, for Staff approval, revised tariffs indicating the elimination of AEP-Ohio's minimum stay and notice provisions effective January 1, 2014, from the date of this entry. Further, these changes are consistent with provisions in both Duke and FirstEnergy's recent ESPs.[51]

Further, we note that, in Duke's most recent ESP, not only did the Commission approve a plan devoid of any minimum stay provisions, but also it granted a reduction in Duke's switching fee to $5.00.[52] Accordingly, we also find that AEP-Ohio's switching fee should be reduced from $10.00 to $5.00, which CRES suppliers may pay for the customer, as is consistent with Commission precedent.[53]

(46) In its application for rehearing, IEU argues the Opinion and Order failed to ensure that AEP-Ohio's generation capacity service charge will be billed in accordance with a customer's peak load contribution (PLC) factor. IEU acknowledges that the Opinion and Order directed AEP-Ohio develop an electronic data system that will allow CRES providers access to PLC data by May 31, 2014, but states that Opinion and Order will allow the PLC allocation process to be unknown for two years until that deadline. IEU proposes that the Commission adopt the uncontested recommendation of its witness to require immediate disclosure of AEP-Ohio's PLC factor.

AEP-Ohio states that IEU is merely trying to rehash arguments previously made. Further, AEP-Ohio points out that because the PLC value is something AEP-Ohio passes on to CRES

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51 *In re Duke Energy Ohio*, Case No. 11-3549-EL-SSO, (November 22, 2011) Opinion and Order, *In re FirstEnergy*, Case No. 12-1230-EL-SSO (July 18, 2012) Opinion and Order.

52 *In re Duke Energy Ohio*, Case No. 11-3549-EL-SSO, (November 22, 2011) Opinion and Order at 39-40.

53 *Id.*

providers, IEU's concerns about transparency in the PLC value allocation process is something IEU should address with any CRES provider from which it or its customers purchase energy.

The Commission rejects IEU's arguments, as the Opinion and Order already directed AEP-Ohio to develop an electronic system that will include PLC values, historical usage, and interval data.[54] Although we did not adopt IEU's recommendation of an immediate system, our intent in setting a May 31, 2014, deadline was to allow for members of the Ohio Electronic Date Interchange Working Group to develop uniform standards for electronic data that will be beneficial for all CRES providers. While IEU may not be pleased with the Commission's decision to develop a uniform program to the benefit of CRES providers, and ultimately customers, as well as to allow for due process in accordance with our five-year rule review of Chapter 4901:1-10, O.A.C., by allowing interested stakeholders to explore the possibility of a POR program, we affirm our decision and find that these provisions are reasonable.

XI. DISTRIBUTION INVESTMENT RIDER

(47) AEP-Ohio asserts that the Commission's failure to establish a final reconciliation and true-up for the distribution investment rider (DIR), which will expire with at the conclusion of the ESP, was unreasonable. AEP-Ohio reasons that it is unable to determine whether the DIR will have a zero balance upon expiration of the rider such that final reconciliation is necessary to address any over-recovery or under-recovery. AEP-Ohio adds that the Commission is clearly vested with the authority to direct reconciliation of the DIR, as was done for the ESRR and in other proceedings. Accordingly, AEP-Ohio contends that it was unreasonable for the Commission to not provide for reconciliation and true-up for the DIR.

We grant AEP-Ohio's request for rehearing to facilitate a final reconciliation and true-up of the DIR at the end of the ESP. Accordingly, within 90 days after the expiration of this ESP, AEP-Ohio is directed to file the necessary information for the

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54 *Id.* at 41

Commission to conduct a final review and reconciliation of the DIR.

(48) AEP-Ohio asserts that the Opinion and Order unreasonably adjusted the revenue requirement for accumulated deferred income taxes (ADIT). AEP-Ohio claims that the ADIT offset is inconsistent with the Commission approved stipulation filed in the Company's latest distribution rate case, Case No. 11-351-EL-AIR et al., (Distribution Rate Case) as the revenue credit did not take into account an ADIT offset which, as calculated by AEP-Ohio, results in the distribution rate case credit being overstated by $21.329 million. AEP-Ohio notes that the DIR was used to offset the rate base increase in the distribution rate case and included a credit for residential customers and a contribution to the Partnership with Ohio fund and the Neighbor-to-Neighbor program. AEP-Ohio argues that it is fundamentally unfair to retain the benefits of the distribution rate case settlement and subsequently impose the cost of ADIT offset through the DIR in the ESP when AEP-Ohio cannot take action to protect itself from the risk. On rehearing, AEP-Ohio asks that the Commission restore the balance struck in the distribution rate case settlement by eliminating the ADIT offset to the DIR.[55]

OCC/APJN reminds the Commission that AEP-Ohio's distribution rate case was resolved by Stipulation and the Stipulation does not include any provision for AEP-Ohio to adjust the revenue credit to customers contingent upon Commission approval of the DIR. OCC/APJN notes that the Distribution Rate Case Stipulation details the DIR revenues and the distribution of the revenue credit and also specifically provides AEP-Ohio the opportunity to withdraw from the Stipulation if the Commission materially modifies the DIR in this proceeding. Finally, OCC/APJN asserts that AEP-Ohio was the drafter of the Distribution Rate Case Stipulation and, pursuant to Ohio law, any ambiguities in the document must be construed against the drafting party.

The Commission has considered the appropriateness of incorporating the effects of ADIT on the calculation of a revenue requirement and carrying charges in several

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55 AEP-Ohio Ex. 151 at 9-10, Tr. at 2239

proceedings. In regard to determination of the revenue requirement for the DIR, we emphasize, as we stated in the Opinion and Order:

> The Commission finds that it is not appropriate to establish the DIR rate mechanism in a manner which provides the Company with the benefit of ratepayer supplied funds. Any benefits resulting from ADIT should be reflected in the DIR revenue requirement.

None of the arguments made by AEP-Ohio convinces the Commission that its decision in this instance is unreasonable or unlawful. As such, we deny AEP-Ohio's request for rehearing of this issue.

(49) Kroger contends that the Opinion and Order notes, but does not directly address or incorporate, Kroger's argument not to combine the DIR for the CSP and OP rate zones without offering any rationale. Kroger reiterates its claims that the DIR costs are unique and known for each rate zone and blending the DIR rates will ultimately require one rate zone to subsidize the costs of service for the other. Kroger requests that the Commission grant rehearing and reverse its decision on this issue.

AEP-Ohio opposes Kroger's request to maintain separate DIR rates and accounts for each rate zone. AEP-Ohio argues that the Commission specifically noted and explained why certain rider rates were being maintained separately. Given that AEP-Ohio's merger application was approved, AEP-Ohio states that it is unreasonable for the Company to establish separate accounts for the DIR.

The Commission notes that the DIR is a new plan approved by the Commission in the ESP and the distribution investment plan will take into consideration the service needs of the AEP-Ohio as a whole. Kroger's request to establish separate and distinct DIR accounts and rates would result in maintaining and essentially continuing CSP and OP as separate entities. Kroger has not provided the Commission with sufficient justification to continue the distinction between the rate zones or demonstrated any unreasonable disadvantage or burden to

either rate zone. The focus of the DIR will be on replacing infrastructure, irrespective of rate zone, that will have the greatest impact on improving reliability for customers. The Commission denies Kroger's request to reconsider adoption of the DIR on a rate zone basis.

(50) OCC/APJN argue on rehearing that the Commission failed to apply the appropriate statutory standard in Section 4928.143(B)(2)(h), Revised Code. As OCC/APJN interpret the statute, it requires the Commission to determine that utility *and customer expectations are aligned.*

AEP-Ohio retorts that OCC/APJN misinterpret that statute and ignore the factual record in the case to make the position which was already rejected by the Commission. AEP-Ohio reasons that in their attempt to attack the Opinion and Order, OCC/APJN parsed words and oversimplified the purpose of the statute.

The Opinion and Order discusses AEP-Ohio's reliability expectations and customer expectations as well as OCC/APJN's interpretation of the requirements of Section 4928.143(B)(2)(h), Revised Code.[56] OCC/APJN claim that the statutory requirement is that customer and electric distribution utility expectations be aligned at the present time. We reject their claim that the Opinion and Order focused on a forward-looking statutory standard and, therefore, did not apply the standard set forth in Section 4928.143(B)(2)(h), Revised Code. The Commission interprets Section 4928.143(B)(2)(h), Revised Code, to require the Commission to examine the utility's reliability and determine that customer expectations and electric distribution utility expectations are aligned to approve an energy delivery infrastructure modernization plan. The key for the Commission is not, as OCC/APJN assert, to find that customer and utility expectations were aligned, are currently aligned or will be aligned in the future but to maintain, to some degree, the reasonable alignment of customer and utility expectations continuously. As noted in the Opinion and Order, and in OCC/APJN's brief, over 70 percent of customers do not believe their electric service reliability expectations will increase and approximately 20 percent of customers expect

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56 Opinion and Order at 42-47.

their service reliability expectations to increase. AEP-Ohio emphasized aging utility infrastructure and the Commission expects that aging utility infrastructure increases outages and results in the eroding of service reliability. The Commission found it necessary to adopt the DIR to maintain utility reliability as well as to maintain the general alignment of customer and utility service expectations. Thus, the Commission rejects the arguments of OCC/APJN and denies the request for rehearing.

(51) OCC/APJN also assert that the DIR component of the Opinion and Order violates the requirements of Section 4903.09, Revised Code, because it did not address Staff's request for details on the DIR plan. In addition, OCC/APJN contend that the Opinion and Order failed to address details about the DIR plan as raised by Staff, including quantity of assets, cost for each asset class, incremental costs and expected improvement in reliability.

We disagree. The Opinion and Order specifically directed AEP-Ohio to work with Staff to develop the plan, to focus spending where it will have the greatest impact and quantify reliability improvements expected, to ensure no double recovery, and to include a demonstration of DIR expenditures over projected expenditures and recent spending levels.[57] Therefore, we also deny this aspect of OCC/APJN's request for rehearing of the Opinion and Order. Finally, the Commission clarifies that the DIR quarterly updates shall be due, as proposed by Staff witness McCarter, on June 30, September 30, December 30 and May 18, with the final filing due May 31, 2015, and the DIR quarterly rate shall be effective, unless suspended by the Commission, 60 days after the DIR update is filed.

(52) OCC/APJN contend that in their initial brief they argued that adoption of the DIR would impact customer affordability without the benefit of a cost benefit analysis.[58] With the adoption of the DIR, OCC/APJN reason that the Opinion and Order did not address customer affordability in light of the state policies set forth in Section 4928.02, Revised Code, and,

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57 *Id.* at 47

58 OCC/APJN Initial Brief at 96-114.

therefore, the Opinion and Order violates Section 4903.09, Revised Code.

We reject the attempt by OCC/APJN to focus exclusively on the DIR as the component of the ESP that must support selective state policies. First, we note that the Ohio Supreme Court has ruled that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply expresses state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[59] Nonetheless, we note that the ESP mitigates customer rate increases in several respects. The provisions of which serve to mitigate customer rate increases include, but are not limited to, stabilizing base generation rates until the auction process is implemented, June 1, 2015; requiring that a greater percentage of AEP-Ohio's standard service offer load be procured through auction sooner than proposed in the application; continuance of the gridSMART project so that more customers will benefit from the use of various technologies to allow customers to better control their energy consumption and costs; and developing electronic system improvements to facilitate more retail competition in the AEP-Ohio service area. Thus, while the adoption of the DIR supports the state policy to ensure reliable and efficient retail electric service to consumers in AEP-Ohio service territory, the above noted provisions of the approved ESP serve not only to mitigate the bill impact for at-risk consumers but all AEP-Ohio consumers. On that basis, the Opinion and Order supports the state policies set forth in Section 4928.02, Revised Code. Thus, we reject OCC/APJN's attempt to narrowly focus on the DIR as the component of the ESP that must support the state policies and deny the request for rehearing.

XII. PHASE-IN RECOVERY RIDER

(53) IEU asserts that the Opinion and Order is unlawful and unreasonable as it authorized recovery of the PIRR without taking into consideration IEU's arguments on the effect of ADIT. IEU argues that the decision is inconsistent with generally accepted accounting principles, regulatory principles,

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59 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, at 525, 2011-Ohio-1788

and violated IEU's due process by approving the PIRR without an evidentiary hearing.

AEP-Ohio offers that IEU's claims ignore that the deferred fuel expenses were established pursuant to the Commission's authority under Section 4928.144, Revised Code, in the Company's prior ESP Opinion and Order. The ESP 1 proceeding afforded IEU, and other parties due process when this component of the ESP was established. The purpose of the PIRR Case is to establish the recovery mechanism via a non-bypassable surcharge. AEP-Ohio argues that the ESP 1 order is final and non-appealable on this issue. AEP-Ohio notes that the Supreme Court of Ohio has held that there is no constitutional right to a hearing in rate-related matters if no statutory right to a hearing exists.[60] AEP-Ohio concludes that hearing was not required to implement the PIRR mechanism. Specifically as to IEU's ADIT related objections to the Opinion and Order, AEP-Ohio contends that IEU has made these arguments numerous times and the doctrine of res judicata estops IEU from continuing to make this argument.[61]

The Commission notes as a part of the ESP 1 proceeding, an evidentiary hearing was held on the application and the Commission approved the establishment of a regulatory asset to consist of accrued deferred fuel expenses, including interest. IEU was an active participant in the ESP 1 evidentiary hearing and was afforded the opportunity to exercise its due process rights. However, there is no statutory requirement for a hearing on the application to initiate the PIRR mechanism to recover the regulatory asset approved as a component of the ESP 1 order, as IEU claims. Interested persons were nonetheless afforded an opportunity to submit comments and reply comments on the Company's PIRR application. IEU was also an intervener in the PIRR Case and submitted comments and reply comments. The Commission agrees, as AEP-Ohio states, that IEU and other parties have argued and reargued that deferred fuel expenses should accrue net of taxes. The issue was raised but rejected by the Commission in the ESP 1 proceeding and the issue was raised, reconsidered and again rejected by the Commission in the PIRR Case Opinion and

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60 *Consumers' Counsel v. Pub Util. Comm.* (1994), 70 Ohio St.3d 300, 856 N.E.2d 213.

61 *Office of the Consumers' Counsel v. Pub. Util Comm.* (1984), 16 Ohio St.3d 9.

Order and the Fifth Entry on Rehearing. The Commission finds, as it relates to the PIRR, that the issues in this modified ESP 2 proceedings were appropriately limited to the merger of the PIRR rates and the effective date for collection of the PIRR rates. IEU has been afforded an opportunity to present its position in both the ESP 1 and PIRR proceedings and, as such, there is no need to reconsider the matter as a part of this proceeding. Accordingly, we deny IEU's request for rehearing of the issue.

(54) OCC/APJN argue that the Opinion and Order is inconsistent to the extent that it approves the request to merge the CSP and OP rates for several of the other riders under consideration in the ESP application but maintained separate PIRR riders for the CSP and OP rate zones. OCC/APJN emphasize that the Stipulation initially filed in this proceeding advocated the merger of the PIRR rates and in the December 14, 2011, Opinion and Order the Commission approved the merger of the rates. The Commission's decision not to merge the CSP and OP PIRR rates, according to OCC/APJN, is a reversal of its earlier ruling on the same issue without the justification required pursuant to Section 4903.09, Revised Code.

OEG notes that continuing to maintain separate FAC and PIRR rates for each of the rate zones will cause the need to conduct two separate specific energy-only auctions since the price to beat is different for each rate zone. OEG offers that one way for the Commission to address the issues raised on rehearing as to FAC and PIRR, is to immediately merge the FAC and PIRR rates.

As OCC/APJN explain, the Commission approved without modification, the merger of the PIRR rider rates. However, the Commission subsequently rejected the Stipulation on rehearing. The Commission notes that in regard to the FAC, the vast majority of deferred fuel expenses were incurred by OP rate zone customers, and a significant portion of the deferred fuel expense of former CSP customers was recovered through SEET evaluations. Upon further consideration of the PIRR and FAC rates issues, the Commission has determined that maintaining separate rates for the OP and CSP rate zones, given the significant difference in the outstanding deferred fuel expenses per rate zone, is reasonable, as discussed in the

Opinion and Order and advocated by IEU and Ormet. Accordingly, the Commission affirms its decision and denies OCC/APJN's request for rehearing as to the merger of the PIRR rates.

(55) OEG expresses concern that the PIRR rates will be in effect until December 31, 2018, while the FAC rate will expire with this ESP on May 31, 2015. OEG reasons that as of June 1, 2015, the rates for energy and capacity will be the same for OP and CSP rate zones. OEG requests that the Commission clarify that it is not precluding the merging of the PIRR rates after the current ESP expires. OEG reasons that merging the FAC and PIRR rates for each rate zone would reduce the administrative complexity and burden, increase efficiency, and align the structure of the FAC and PIRR with the other AEP-Ohio rider rates.

Simplification of the auction process for auction participants does not justify ignoring the deferred fuel expense balance incurred for the benefit of OP customers at the expense of CSP customers. The Commission will continue to monitor AEP-Ohio's outstanding deferred fuel expense balance and may reconsider its decision on the merger of the PIRR and FAC rates. However, at this time, we are not convinced by the arguments of OEG to reverse our decision in the Opinion and Order. Accordingly, we deny the request for rehearing.

XIII. ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION RIDER

(56) OCC/APJN offer that the Commission adversely affected the rights of the signatory parties to the EE/PDR Stipulation in Case No. 11-5568-EL-POR et al. by merging the EE/PDR rates in this proceeding. OCC/APJN assert that the parties envisioned separate EE/PDR rates for the CSP and OP rate zones after the merger of CSP and OP.

AEP-Ohio reasons that OCC/APJN's argument to maintain separate EE/PDR rates is without merit and notes that the Commission specifically stated that tariff amendments, as a result of the merger, would be reviewed and rate matters resolved in this proceeding.[62] AEP-Ohio supports the

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62 *In re AEP-Ohio*, Case No. 10-2376-EL-UNC, Entry at 7 (March 7, 2012).

Commission's decision and asks that the Commission deny this request for rehearing

In light of the fact that the Commission reaffirmed AEP-Ohio's merger on March 7, 2012, OCC/APJN should have been aware of the Commission's plan to consider the merging of CSP and OP rates as part of the ESP proceeding. Further, the Commission notes that nothing in the EE/PDR Stipulation or the Opinion and Order approving the Stipulation confirms the assertions of OCC/APJN that the parties expected the EE/PDR rates to be separately maintained after the merger of CSP and OP. In addition, OCC/APJN assert in their application for rehearing that combining the EE/PDR rates prevents the parties from receiving the benefit of the bargain reached in the EE/PDR Stipulation. We therefore deny the request for rehearing.

XIV. GRIDSMART

(57) AEP-Ohio asserts that the Commission's failure to establish a final reconciliation and true-up for the gridSMART rider which will expire prior to or in conjunction with the end of this ESP term, May 31, 2015, was unreasonable.

We grant AEP-Ohio's request for rehearing. Accordingly, the Commission clarifies and directs that within 90 days after the expiration of this ESP 2, AEP-Ohio shall make a filing with the Commission for review and reconciliation of the final year of the Phase I gridSMART rider.

XV. ECONOMIC DEVELOPMENT RIDER

(58) OCC/APJN renew their request on rehearing that the Commission Order AEP-Ohio shareholders maintain the Partnership with Ohio (PWO) fund at $5 million per year and to designate $2 million for the Neighbor-to-Neighbor program. OCC/APJN argue that the Commission's failure to address their request to fund the PWO and Neighbor-to-Neighbor funds, without explanation, is unlawful under Section 4903.09, Revised Code. Further, OCC/APJN reiterate that it is unjust and unreasonable for the Commission not to order AEP-Ohio to fund the PWO program in light of the fact that the Opinion and Order directed the Companies to reinstate the Ohio Growth Fund. OCC/APJN note that the Commission ordered

the funding of the Ohio Growth Fund in its December 14, 2011 order approving the Stipulation. OCC/APJN argue that the at-risk population is also facing extenuating economic circumstances, particularly in southeast Ohio served by AEP-Ohio. OCC/APJN offer that at-risk populations are to be protected pursuant to the policy set forth in Section 4928.02(L), Revised Code.

The Commission notes that provisions were made for the PWO to the benefit of residential and low-income customers, as part of the Company's distribution rate case.[63] The PWO fund directly supports low-income residential customers with bill payment assistance. The Commission concluded, therefore, that the funding in the distribution rate proceeding was adequate and additional funding of the PWO fund, as requested by OCC/APJN was unnecessary. However, as noted in the Opinion and Order, the Ohio Growth Fund, "creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio" to support Ohio's economy. For these reasons, the Commission did not revise the Opinion and Order and we deny OCC/APJN's application for rehearing.

XVI. STORM DAMAGE RECOVERY MECHANISM

(59) In its application for rehearing, AEP-Ohio suggests that the Commission clarify that, under the storm damage recovery mechanism's December 31 filing procedure, a cutoff of September 30 be established for all expenses incurred. AEP-Ohio opines that the clarification would allow any qualifying expenses that occur after September 30 of each year to be added to the deferral balance and carried forward. AEP-Ohio notes that absent a cut off date, if an incident occurs late in the reporting year, expenses may not be accounted for at the time of the December 31 filing.

In its memorandum contra, OCC/APJN point out that AEP-Ohio's request for clarification would result in customers accruing carrying costs for any costs that may be incurred between October 1 and December 31. As an alternative,

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63 *In re AEP-Ohio*, Case No. 11-351-EL-AIR, Opinion and Order at 6, 9 (December 14, 2011).

OCC/APJN suggest the Commission consider a provision allowing AEP-Ohio to amend its filing up to 30 days after the December 31 deadline to include any storm costs from the month of December that were not included in the original filing.

The Commission finds that AEP-Ohio's application for rehearing should be granted. We believe it is important to account for any expenses that may occur just prior to the December 31 filing, however, we are also sensitive to OCC/APJN's concern about carrying costs being incurred over a three-month period as a result of AEP-Ohio's request. Accordingly, we find that under the storm damage recovery mechanism, in the event any costs are incurred but not accounted for prior to the December 31 filing deadline, AEP-Ohio may, upon prior notification to the Commission in its December 31 filing, amend the filing to include all incurred costs within 30 days of the December 31 filing.

XVII. GENERATION RESOURCE RIDER

(60) FES and IEU argue, as each did in their respective briefs, that the dictates of Sections 4928.143(B) and 4928.64(E), Revised Code, require the GRR be established as a bypassable rider. FES, IEU and OCC/APJN request rehearing on the approval of the GRR on the basis that all the statutory requirements of Section 4928.143(B)(2)(c), Revised Code, have not been met as a part of this ESP. FES contends that Sections 4928.143(B)(2)(c) and 4928.64(E), Revised Code, are irreconcilable and the specialized provision of Section 4928.64, Revised Code, prevails. OCC/APJN adds that the Commission's creation of the GRR, even at zero, abrogated Ohio law. For these reasons, FES, IEU, and OCC/APJN submit that the GRR is unreasonable and unlawful.

Each of the above-noted requests for rehearing as to the GRR mechanism was previously considered by the Commission and rejected in the Opinion and Order. Nothing offered in the applications for rehearing persuades the Commission that the Opinion and Order is unreasonable or unlawful. Accordingly, the applications for rehearing on the establishment of the GRR are denied. Further, the Commission notes that we recently

concluded that AEP-Ohio and Staff failed to make the requisite demonstration of need for the Turning Point project.[64]

(61) IEU argues that the language in Section 4928.06(A), Revised Code, imposes a duty on the Commission to ensure that the state policies set forth in Section 4928.02, Revised Code, are effectuated. *Elyria Foundry v. Public Util. Comm.*, 114 Ohio St3d. 305 (2007). IEU contends the adoption of the GRR violates state policy and conflicts with the Capacity Order, in which where the Commission determined that market-based capacity pricing will stimulate true competition among suppliers in AEP-Ohio's service territory and incent shopping, thus, implicitly rejecting that above-market pricing is compatible with Section 4928.02, Revised Code.[65]

The Commission notes that the Supreme Court of Ohio determined that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply express state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[66] IEU does not specifically reference a particular paragraph in Section 4928.02, Revised Code, supporting that the GRR is unlawful. Nonetheless, the Commission reiterates, as stated in the Opinion and Order, that AEP-Ohio would be required to share the benefits of the project with all customers, shopping and non-shopping to advance the policies stated in paragraph (H), Section 4928.02, Revised Code.

XVIII. POOL MODIFICATION RIDER

(62) FES argues that the application did not include a description or tariffs reflecting a PTR and, accordingly, did not request a PTR to be initially established at zero. FES submits that there is no evidence and no justification presented in support of a PTR and, therefore, the Commission's approval of the PTR is unreasonable.

AEP-Ohio responds that FES's claims are misleading and erroneous. AEP-Ohio cites the testimony of witness Nelson

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64 *In re AEP-Ohio*, Case Nos. 10-501-EL-FOR and 10-502-EL-FOR, Opinion and Order at 25-27 (January 9, 2013).

65 *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, Opinion and Order at 23 (July 2, 2012).

66 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512 , at 525, 2011-Ohio-1788.

which included a complete description of the PTR. AEP-Ohio notes that the Commission was able to discern the structure of the PTR and approved the request. AEP-Ohio asserts that FES's claims do not provide a basis for rehearing.

FES's arguments as to the description of the PTR in the application overlook the testimony in the record and the directives of the Commission. As specifically stated in the Opinion and Order, recovery under the PTR is contingent upon the Commission's review of an application by the Company for such costs and any recovery under the PTR must be specifically authorized by the Commission.[67] Furthermore, the Opinion and Order emphasized that if AEP-Ohio seeks recovery under the PTR, it will maintain the burden set forth in Section 4928.143, Revised Code.[68] Accordingly, the Commission denies the request of FES for rehearing on this issue.

(63) IEU also submits that the PTR (as well as the capacity deferral and RSR) violates corporate separation requirements in that it operates to allow AEP-Ohio to favor its affiliate and ignore the strict separation between competitive and non-competitive services. Specifically, IEU contends that Section 4928.02(H), Revised Code, prohibits the recovery of any generation-related cost through distribution or transmission rates after corporate separation is effective.

We find that IEU made similar arguments as to generation asset divestiture. For the same reasons stated therein, the Commission again denies IEU's requests for rehearing.

(64) IEU also contends that the PTR[69] is unreasonable and unlawful as its approval permits AEP-Ohio to recovery generation-related transition revenue when the time period for recovery of such costs as passed, and where the Company agreed to forgo recovery of such costs in its Commission-approved settlement of its electric transition plan (ETP) cases.[70]

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67 Opinion and Order at 49.

68 *Id.*

69 IEU raises the same argument as to the RSR and the capacity charge.

70 *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Opinion and Order (September 28, 2000).

As to IEU's claim that the PTR is unlawful under the agreement in the ETP cases, the Commission rejects this argument. As we stated in the Opinion and Order, approval of the PTR mechanism does not ensure any recovery to AEP-Ohio. AEP-Ohio can only pursue recovery under the PTR if this Commission modifies or amends its corporate separation plan, filed in Case No. 12-1126-EL-UNC (Corporate Separation Case), as to divestiture of the generation assets only. Further, if the conditions precedent for recovery under the PTR are met, AEP-Ohio has the burden under Section 4928.143, Revised Code, to demonstrate that the Pool Agreement benefitted Ohio ratepayers over the long-term, any PTR costs and/or revenues were allocated to Ohio ratepayers, and that any costs were prudently incurred and reasonable.[71] IEU made substantially similar claims regarding transition cost and the ETP cases in the Capacity Case.[72] The type of transition costs at issue in the ETP cases are set forth in Section 4928.39, Revised Code. We find that recovery for forgone revenue associated with the termination of the Pool Agreement is permissible under Section 4928.143(B)(2)(d), Revised Code, as discussed more fully below. Thus, we find IEU's arguments incorrect and premature. In addition, for the same reasons we rejected these arguments by IEU on rehearing in regard to the RSR and capacity charge, we reject these claims as to the PTR. IEU's request for rehearing is denied.

(65) FES, IEU and OCC/APJN reason that the Commission based its approval of the PTR on Section 4928.143(B)(2)(h), Revised Code, which applies only to distribution service and does not include incentives for transitioning to the competitive market. FES, IEU and OCC/APJN offer that the PTR is generation based and has no relation to distribution service. Further, FES offers that by the time the AEP Pool terminates, the generation assets will be held by AEP-Ohio's generation affiliate and any revenue loss experienced will be that of a competitive generation provider. According to FES and OCC/APJN, nothing in Section 4928.143(B)(2), Revised Code, or any other provision of Ohio law, permits a competitive generation provider to recover lost revenue or to incent the electric distribution utility to transition to market. Furthermore, FES

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71 Opinion and Order at 49.

72 *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, Opinion and Order at (date).

reasons that Section 4928.02(H), Revised Code, specifically prohibits cross-subsidization. IEU likewise claims that Section 4928.06, Revised Code, obligates the Commission to effectuate the state policies in Section 4928.02, Revised Code.

AEP-Ohio replies that despite the claims of FES, IEU and OCC/APJN, statutory authority exists for the adoption of the PTR falls under Section 4928.143(B)(2)(h), Revised Code, as the Commission determined in its Opinion and Order. The PTR, is also authorized, according to AEP-Ohio, under Section 4928.143(B)(2)(d), Revised Code. AEP-Ohio reasons that the purpose of the Pool Agreement is to stabilize the rates of Ohio customers, thus division (B)(2)(d) of Section 4928.143, Revised Code, also supports the recovery of Pool Agreement cost. AEP-Ohio states, in regards to the argument on cross-subsidies, that a significant portion of AEP-Ohio's revenues result from sales of power to other AEP Pool members. With the termination of the Pool Agreement, if there is a substantial decrease in net revenue, under the provisions of the PTR, the Company could be compensated for lost net revenue from retail customers. Based upon this reasoning, AEP-Ohio argues that the PTR is an authorized component of an ESP and was correctly approved by the Commission.

The Commission notes that the Opinion and Order specifically limited AEP-Ohio's right to recover under the PTR, only in the event this Commission modified or amended its corporate separation plan as to the divestiture of its generation assets.[73] The Opinion and Order also directed, subject to the approval of the corporate separation plan, that AEP-Ohio divest its generation assets from its electric distribution utility assets by transfer to its generation affiliate.[74] Further by Finding and Order issued on October 17, 2012, in the Corporate Separation Case, AEP-Ohio was granted approval to amend its corporate separation plan to reflect full structural corporate separation and to transfer its generation assets to its generation affiliate. Applications for rehearing of the Finding and Order in the Corporate Separation Case were timely filed and the Commission's decision on the applications is currently pending. The Commission reasons, however, that if we affirm

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73 Opinion and Order at 49.

74 *Id.* at 50.

our decision on rehearing, as to the divestiture of the generation assets, AEP-Ohio has no basis to pursue recovery under the PTR.

Nonetheless, we grant rehearing regarding the statutory basis for approval of the PTR. We find that Section 4928.143(B)(2)(d), Revised Code, supports the adoption of the PTR.[75] The termination of the Pool Agreement is a pre-requisite to AEP-Ohio's transition to full structural corporate separation. With AEP-Ohio's move to full structural corporate separation and CRES providers securing capacity in the market, the number of service offers for SSO customers and shopping customers will likely increase and improve. On that basis, termination of the Pool Agreement is key to the establishment of effective competition and authorized under the terms of Section 4928.143(B)(2)(d), Revised Code. We are not dissuaded from this position by the claims of OCC/APJN and FES. As OCC/APJN correctly assert, revenues received as a result of the Pool Agreement are not recognized in the determination of significantly excessive earnings. However, OCC/APJN fails to recognize that the language of Section 4928.143(F), Revised Code, specifically exclude such revenue. We also note, that while effective competition is indeed the goal of the Commission, Section 4928.02(H), Revised Code, does not strictly prohibit cross-subsidization. The Ohio Supreme Court has ruled that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply express state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[76]

(66) IEU claims that Section 4928.06, Revised Code, raises the state policies set forth in Section 4928.02, Revised Code, to requirements. *Elyria Foundry v. Public Util. Comm.*, 114 Ohio St.3d 305 (2007). We note, that more recently, the Ohio Supreme Court determined that the policies set forth in Section

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75 Section 4928.143(B)(2)(d), Revised Code, 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 accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

76 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, at 525, 2011-Ohio-1788

4928.02, Revised Code, do not impose strict requirements on any given program but simply express state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[77] Consistent with the Court's ruling we approved the establishment of the PTR subject to the Company making a subsequent filing for the Commission's review including the effectuation of state policies.

XIX. GENERATION ASSET DIVESTIURE

(67) In its application for rehearing, AEP-Ohio asserts that the Commission should have approved the corporate separation application at the same time that it issued the Opinion and Order or made approval of the Opinion and Order contingent on approval of the Company's corporate separation application filed in Corporate Separation Case. AEP-Ohio argues that structural corporate separation is a critical component of the ESP which is necessary for AEP-Ohio to transition to implementing an auction-based SSO. Thus, AEP-Ohio requests that the Commission clarify on rehearing, that the ESP will not be effective until the Commission approves AEP-Ohio's corporate separation application.

The Opinion and Order was issued August 8, 2012. The order in AEP-Ohio's Corporate Separation Case was issued October 17, 2012, approving the corporate separation plan subject to certain conditions. The Commission denies AEP-Ohio's request to make the ESP effective upon the approval of the corporate separation plan. AEP-Ohio had the option of designing its modified ESP application to incorporate its corporate separation plan or to timely request consolidation of the Corporate Separation Case and the ESP cases. AEP-Ohio did not undertake either option. Furthermore, the rates and tariffs in compliance with the Opinion and Order were approved and have been effective since the first billing cycle of September 2012. Accordingly, it would be unreasonable and unfair to make the effective date of the ESP the date the corporate separation case was approved. AEP-Ohio's request for rehearing is denied.

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[77] *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512 , at 525, 2011-Ohio-1788.

(68) IEU argues that the Opinion and Order is unlawful and unreasonable to the extent that the Commission approved the conditional transfer of the generation assets without determining that the transfer complied with Sections 4928.17, 4928.02, and 4928.18(B), Revised Code, and Chapter 4901:1-37, O.A.C.

As we previously acknowledged, AEP-Ohio did not request that the Corporate Separation Case and the ESP proceedings be consolidated. Therefore, as was noted in the Opinion and Order, the primary considerations in the ESP proceeding was how the divestiture of the generation assets and the agreement between AEP-Ohio and its generation affiliate would impact SSO rates and customers. The requirements for corporate separation contained in Sections 4928.17 and 4928.18(B), Revised Code, and the applicable rules in Chapter 4901:1-37, O.A.C., were addressed in the Corporate Separation Case which was issued subsequent to the Opinion and Order in this matter. As the issues raised by IEU have subsequently been addressed, we deny the request for rehearing.

(69) AEP-Ohio also requests that the Commission reconsider and modify the directives as to the pollution control revenue bonds (PCRB). AEP-Ohio requests that, at a minimum, the Commission clarify that the 90-day filing be limited to a demonstration that AEP-Ohio customers have not and will not incur any additional costs caused by corporate separation, and that the hold harmless obligation pertains to the additional costs caused by corporate separation. AEP-Ohio requests permission to retain the PCRB or, in the alternative, authorize AEP-Ohio to transfer the PCRB to its generation affiliate consistent with the Corporate Separation Case. AEP-Ohio suggest that the PCRBs be retained by AEP-Ohio until their respective tender dates and transfer the liabilities to its generation affiliate with inter-company notes during the period between closing of corporate separation and the respective tender dates of the PCRB. AEP-Ohio attests that either option offered would not cause customers to incur any additional costs that could arise from corporate separation and eliminate the need for any 90-day filing.

We grant rehearing on the issue of the PCRB to clarify and reiterate, consistent with the Commission's decision in the

Corporate Separation Case, that ratepayers be held harmless. In the Corporate Separation Case, in recognition of the Company's request for rehearing in this matter and as a condition of corporate separation, the Commission directed the Company utilize an intercompany note between AEP-Ohio and its generation affiliate wherein AEP-Ohio could retain the PCRB and avoid any burden on AEP-Ohio EDU ratepayers.[78] Thus, with the Commission's decision in the Corporate Separation Case, the 90-day filing previously ordered in this proceeding was no longer necessary.

(70) IEU argues that the Opinion and Order is unreasonable and unlawful as it allows AEP-Ohio, the electric distribution utility, to evade strict separation between competitive and non-competitive services and, as such insulates AEP-Ohio's generation affiliate, in violation of Section 4928.17(A)(3), Revised Code, affording its generation affiliate an undue preference or advantage. Similarly, FES argues that the Opinion and Order, to the extent that it permits AEP-Ohio, to pass revenue to AEP-Ohio's generation affiliate, violates Section 4928.143(B)(2)(a), Revised Code, as the statute requires that any cost recovered be prudently incurred, including purchased power acquired from an affiliate. According to FES, the record evidence demonstrates that the capacity price of $188.88 per MW-day is significantly higher than the price that can be acquired in the market and AEP-Ohio has not evaluated the arrangement with AEP-Ohio's generation affiliate or considered options available in the competitive market. As to the pass-through of generation based revenues from SSO customers, FES claims there is no record evidence to support an "arbitrary" price for energy and capacity from SSO customers. FES asserts that AEP-Ohio's base generation rate is not based on cost or market and that AEP-Ohio argued that the base generation rate reflects a $355 per MW-day charge for capacity. For these reasons, FES reasons that the base generation revenues reflect an inappropriate cross-subsidy and are a detriment of the competitive market.

Finally, IEU, FES, and OCC/APAC submits that the pass-through of revenues from AEP-Ohio to its generation affiliate,

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78 *In re Ohio Power Company*, Case No. 12-1126-EL-UNC, Order at 17-18 (October 17, 2012).

violates the state policy set forth in Section 4928.02(H), Revised Code.

AEP-Ohio replies that AEP-Ohio is a captive seller of capacity to support shopping load under its FRR obligations and is required to fulfill that obligation during the term of this ESP after corporate separation. AEP-Ohio states four primary reasons why payments to its generation affiliate are not illegal cross subsidies and should be passed to its generation affiliate after corporate separation during this ESP. First, the Commission approved functional separation and AEP-Ohio is presently a vertically-integrated utility. Second, during a portion of the term of this ESP, AEP-Ohio will be legally, structurally separated but remain obligated to provide SSO service at the tariff rates for the full term of the ESP. Third, after corporate separation, AEP-Ohio's generation affiliate will be obligated to support SSO service (energy and capacity) and AEP-Ohio reasons it is only appropriate that its generation affiliate receive the same generation revenue streams agreed to by AEP-Ohio for such service. Finally, there will be an SSO agreement between AEP-Ohio and its generation affiliate for the services, which is subject to the jurisdiction and approval by the Federal Energy Regulatory Commission (FERC). Furthermore, AEP-Ohio warns that without the generation revenues the arrangement between AEP-Ohio and its generation affiliate will not take place. AEP-Ohio also notes that FES has supported this approach on behalf of the First Energy operating companies for several years. AEP-Ohio concludes that the interveners' cross-subsidy arguments are not a basis for rehearing.

First, as we have noted at other times in this Entry on Rehearing, the Ohio Supreme Court has ruled that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply expresses state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[79]

The Commission recently approved AEP-Ohio's application for structural corporate separation to facilitate the Company's transition to a competitive market. Given that the term of this

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79 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, at 525, 2011-Ohio-1788.

> ESP, corporate separation of the generation assets, and AEP-Ohio's FRR obligations are not aligned, in the Opinion and Order the Commission recognized that revenues previously paid to AEP-Ohio for SSO service will be paid to its generation affiliate for the services provided. However, while we believe it is appropriate and reasonable for revenues to pass thru AEP-Ohio to its generation affiliate for the services provided by no means will we ignore Section 4928.143(B)(2)(a), Revised Code. The costs incurred by AEP-Ohio for SSO service will be evaluated for prudence as a part of AEP-Ohio's FAC/Alternative Energy Rider audit. None of the arguments presented by FES, IEU or OCC/APJN convince the Commission that this decision is unreasonable or unlawful and, therefore, we deny the requests for rehearing of this issue.

It is, therefore,

ORDERED, That Duke's motion to file memorandum contra instanter is granted. It is, further,

ORDERED, That Kroger's request to withdraw its reply memorandum filed on September 24, 2012, is granted. It is, further,

ORDERED, That AEP-Ohio's motion to consolidate is moot. It is, further,

ORDERED, That OCC/APJN's motion to strike is denied. It is, further,

ORDERED, That IEU's request to review the procedural rulings is denied. It is, further,

ORDERED, That the applications for rehearing of the Commission's August 8, 2012, Opinion and Order, be denied, in part, and granted, in part, as set forth herein. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

GNS/JJT/vrm

Entered in the Journal
JAN 30 2013

Barcy F. McNeal
Secretary