ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company	:	Case No. 2013-0228
	:	Case No. 2012-2098
	:	
	:	On Appeal from the Public Utilities Commission of Ohio
	:	PUCO Case No. 10-2929-EL-UNC

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(VOLUME 1 OF 2)
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IN THE SUPREME COURT OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company;	:	Case No. 2012-1 2 – 2 0 9 8
	:	Appeal from the Public Utilities Commission of Ohio
Industrial Energy Users-Ohio,	:	
Appellant,	:	Public Utilities Commission of Ohio Case No. 10-2929-EL-UNC
v.	:	
Public Utilities Commission of Ohio,	:	
Appellee.	:	

NOTICE OF APPEAL OF APPELLANT INDUSTRIAL ENERGY USERS-OHIO

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NOTICE OF APPEAL OF APPELLANT
INDUSTRIAL ENERGY USERS-OHIO

Appellant, Industrial Energy Users-Ohio ("IEU-Ohio" or "Appellant") hereby gives its notice of appeal, pursuant to Sections 4903.11 and 4903.13, Revised Code, and Supreme Court Rule of Practice 2.3(B), to the Supreme Court of Ohio and Appellee, the Public Utilities Commission of Ohio ("Commission" or "PUCO"), from the Commission's March 7, 2012 Entry (Attachment A), May 30, 2012 Entry (Attachment B), July 2, 2012 Opinion and Order (Attachment C), October 17, 2012 Entry on Rehearing (Attachment D), and December 12, 2012 Entry on Rehearing (Attachment E) in Case No. 10-2929-EL-UNC.

Appellant was and is a party of record in Case No. 10-2929-EL-UNC and timely filed its application for rehearing from the March 7, 2012 Entry on March 27, 2012; timely filed its application for rehearing from the May 30, 2012 Entry on June 19, 2012; timely filed its application for rehearing from the July 2, 2012 Opinion and Order on August 1, 2012; and timely filed its application for rehearing from the October 17, 2012 Entry on Rehearing on November 15, 2012.

The Commission's March 7, 2012 Entry, May 30, 2012 Entry, July 2, 2012 Opinion and Order, October 17, 2012 Entry on Rehearing, and December 12, 2012 Entry on Rehearing (collectively, "the Capacity Case Decisions") are unlawful and unreasonable for the reasons set out in the following Assignments of Error:

1. The Capacity Case Decisions are unlawful and unreasonable since any authority the Commission may have to approve prices for generation-related capacity service does not permit the Commission to apply a cost-based ratemaking methodology or resort to Chapters 4905 and 4909, Revised Code, to supervise and regulate pricing for generation-related capacity services. Similarly, the Capacity Case Decisions are unreasonable and unlawful to the extent that they state or otherwise

suggest that AEP-Ohio[1] has a right to establish rates for generation-related services that are based on any cost-based ratemaking methodology, including the ratemaking methodology identified or referenced in Chapters 4905 and 4909, Revised Code.

2. The Capacity Case Decisions are unlawful and unreasonable because the Commission's jurisdiction under Sections 4905.04, 4905.05, 4905.06, and 4905.26, Revised Code, extends to an electric light company, only when it is "engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state,"[2] and does not include wholesale transactions between AEP-Ohio and competitive retail electric service ("CRES") providers.

3. The Capacity Case Decisions are unlawful and unreasonable because the Commission is without authority to "adjudicate controversies between parties as to contract rights."[3] The Commission's Capacity Case Decisions rest upon the Commission's assessment of AEP-Ohio's rights under PJM Interconnection, L.L.C.'s ("PJM") Reliability Assurance Agreement ("RAA"), a contract approved by the Federal Energy Regulatory Commission ("FERC"), which is subject to Delaware law. The Commission is without jurisdiction to determine what, if any, rights AEP-Ohio may have under an agreement and this is particularly true in this case since the RAA is subject to the exclusive jurisdiction of FERC.

4. Assuming for purposes of argument that the Commission has authority to authorize the billing and collection of a generation-related capacity service charge pursuant to Chapters 4905 and 4909, Revised Code, the Capacity Case Decisions are unreasonable and unlawful because AEP-Ohio failed to present the required evidence and the Commission failed to comply with the substantive and procedural requirements contained in such Chapters.

5. The Capacity Case Decisions, which claimed to set a generation-related capacity rate consistent with the RAA, are unlawful and unreasonable inasmuch as the Capacity Case Decisions violate the plain language of the RAA, which must be interpreted under Delaware law (the controlling law under the RAA).

   a. The administratively-determined "cost-based" rates for AEP-Ohio's certified electric distribution service area contained in the Capacity Case

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[1] As used herein, AEP-Ohio refers to Ohio Power Company, which has merged with Columbus Southern Power Company.

[2] Section 4905.03, Revised Code.

[3] *New Bremen v. Pub. Util. Comm.*, 103 Ohio St. 23, 30-31 (1921).

Decisions violate the plain language of Article 2 of the RAA that states the RAA has a region-wide focus and pro-competitive purpose.

b. Even if the Commission could establish cost-based rates that were consistent with the RAA, the Commission unlawfully and unreasonably based its determination of "cost" upon the embedded cost of AEP-Ohio's owned and controlled generating assets based on a defective assumption that such generating assets are the source of capacity available to CRES providers serving customers in AEP-Ohio's certified electric distribution service area. The RAA requires that any change to the default pricing, PJM's Reliability Pricing Model ("RPM" or RPM-Based Pricing), must be just and reasonable and looks to the Fixed Resource Requirement ("FRR") Entity, and the FRR Entity's Service Area and the Capacity Resources in the FRR Entity's Capacity Plan to establish any pricing other than RPM-Based Pricing. Based on the plain meaning of the word "cost," the Capacity Case Decisions' sanctioning of the use of embedded cost to establish generation-related capacity services is arbitrary and capricious. In addition, the uncontested evidence demonstrates that AEP-Ohio is not an FRR Entity, AEP-Ohio's owned and controlled generating assets are not dedicated to serve Ohio load or satisfy any FRR obligation and also demonstrates that AEP-Ohio's owned and controlled generating assets are not the Capacity Resources in the FRR Entity's Capacity Plan. In such circumstances, the Commission's reliance upon embedded cost data for AEP-Ohio's owned and controlled generating assets to establish the cost incurred to provide generation-related capacity services to CRES providers is arbitrary and capricious.

6. The Capacity Case Decisions, which offer AEP-Ohio the opportunity to obtain above-market compensation for generation-related capacity service through a deferred revenue supplement [computed based upon the difference between RPM-Based Pricing and $188.88/megawatt-day ("MW-day"), including interest charges] are unlawful and unreasonable for the reasons detailed below.

a. The above-market supplement is unlawful and unreasonable inasmuch as it allows AEP-Ohio to collect above-market compensation for generation-related capacity service in violation of Ohio law's prohibition on collecting transition revenue or its equivalent. The above-market supplement also violates the terms of AEP-Ohio's Commission-approved settlement commitment to not impose lost generation-related revenue charges on shopping customers.

b. The above-market supplement conflicts with the policies contained in Section 4928.02, Revised Code, which relies upon market forces, customer choice, and prices disciplined by market forces to regulate prices for competitive electric services. Additionally, the Capacity Case

Decisions are unlawful and unreasonable inasmuch as the Commission authorized AEP-Ohio to collect above-market compensation for generation-related capacity service, which will provide AEP-Ohio's generation business with an unlawful subsidy in violation of Section 4928.02(H), Revised Code.

c. The Commission is prohibited under Section 4928.05(A), Revised Code, from regulating or otherwise creating a deferral associated with a competitive retail electric service under Section 4905.13, Revised Code. The Commission may only authorize deferred collection of a generation service-related price under Section 4928.144, Revised Code, and any such deferral must be related to a rate established under Sections 4928.141 to 4928.143, Revised Code.

d. The Commission unlawfully and unreasonably authorized AEP-Ohio to defer the collection of generation-related capacity service revenue. Under generally accepted accounting principles, only an incurred cost can be deferred for future collection. To the extent that the Capacity Case Decisions imply the Commission's intended use of Section 4928.144, Revised Code, that Section also requires the Commission to identify the incurred cost that is associated with any deferral, a requirement unreasonably and unlawfully neglected by the Capacity Case Decisions.

e. The Commission unlawfully and unreasonably determined that allowing AEP-Ohio to collect above-market compensation for generation-related capacity service was appropriate to address AEP-Ohio's claims regarding the financial performance of its generation business, the competitive business segment under Ohio law. The Commission's deference to AEP-Ohio's claims regarding the financial performance of its competitive generation business is also unlawful and unreasonable because it violates the Commission's prior determinations holding that such financial performance is irrelevant for purposes of establishing compensation for generation-related service.

f. The Commission unlawfully and unreasonably authorized AEP-Ohio to increase the above-market revenue supplement by adding carrying charges to the deferred supplement without any evidence that carrying charges, or any specific level of carrying charges, are lawful or reasonable.

g. The Capacity Case Decisions are unlawful and unreasonable because they fail to recognize that the rates and charges applicable to non-shopping customers, *i.e.* customers taking service under AEP-Ohio's electric security plan ("ESP"), are also providing AEP-Ohio with compensation for generation-related capacity service, it ignores or disregards the fact that AEP-Ohio has maintained that non-shopping customers are, on average, paying nearly twice the $188.88/MW-day price, and it fails to

establish a mechanism to credit such excess compensation obtained from non-shopping customers against any deferred balance the Capacity Case Decisions work to create by comparing RPM-Based Pricing to the $188.88/MW-day price. The non-symmetrical and arbitrary bias embedded in the Capacity Case Decisions' description of how the deferred revenue supplement shall be computed guarantees that AEP-Ohio shall collect, in the aggregate, total revenue for generation-related capacity service substantially in excess of the revenue produced by using the $188.88/MW-day price to determine AEP-Ohio's generation-related capacity service compensation for shopping and non-shopping customers.

7. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission failed to restore RPM-Based Pricing as required by Section 4928.143(C)(2)(b), Revised Code, when it rejected AEP-Ohio's ESP in its February 23, 2012 Entry on Rehearing in AEP-Ohio's consolidated ESP proceeding (which included this proceeding). Additionally, the Capacity Case Decisions are unlawful and unreasonable because the Commission abrogated its February 23, 2012 Entry on Rehearing despite the fact that no party filed an application for rehearing from the February 23, 2012 Entry on Rehearing challenging the appropriate level of compensation AEP-Ohio was to receive for generation-related capacity service during the pendency of the Commission's review in this proceeding.

8. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the temporary two-tiered rates authorized therein violate the comparability requirements in Chapter 4928, Revised Code, which require the generation-related capacity service rate applicable to CRES providers or otherwise to shopping customers to be comparable to the generation-related capacity service rate embedded in AEP-Ohio's standard service offer ("SSO") rates and are otherwise unduly discriminatory in violation of Ohio law.

9. The Capacity Case Decisions are unlawful and unreasonable because the temporary two-tiered rates established by the March 7, 2012 Entry and May 30, 2012 Entry were not based upon the record from this proceeding.

10. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission failed to direct AEP-Ohio to refund the above-market portion of capacity charges in place since January 2012 or credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges.

11. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission violated Section 4903.09, Revised Code, by failing to properly address all material issues raised by the parties.

12. In addition to the individual errors committed by the Commission which are referenced or identified herein, the totality of the Commission's conduct throughout this proceeding is arbitrary and capricious, an abuse of discretion, otherwise outside the law and "... at variance with 'the rudiments of fair play' long known to our law. The Fourteenth Amendment condemns such methods and defeats them." *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 71 (1935) (*quoting Chicago, Milwaukee, & St. Paul Ry. Co. v. Polt*, 232 U.S. 165, 168 (1917)). Additionally, the implications of the Commission's unlawful and unreasonable actions in the proceeding below now threaten to reach beyond the customers served by AEP-Ohio as both Duke Energy Ohio, Inc. ("Duke") and The Dayton Power and Light Company ("DP&L") have filed copycat applications seeking to impose hundreds of millions of dollars in unlawful, unreasonable, and above-market generation-related charges upon the customers they serve.

13. The Capacity Case Decisions are unlawful and unreasonable because they unreasonably impair the value of contracts entered into with CRES providers by retroactively altering the capacity pricing method that was in place when such contracts were executed. The unlawful and unreasonable impairment arises, in the particular circumstances presented by this case (and will arise in the case of Duke's copycat application if the Commission grants Duke's request), because the prices established by PJM's RPM-Based Pricing establishes generation-related capacity service prices three years in advance and the Capacity Case Decisions alter the capacity prices that had been fixed and were known and certain at the time such contracts were executed. To the extent the Commission has any authority to approve prices for generation-related capacity services by altering the ratemaking methodology, that authority may not be lawfully exercised to affect the prices established by the capacity pricing method previously approved by the Commission, in force by operation of law and known and certain for contracts entered into prior to the effective date of the new capacity pricing method.

WHEREFORE, Appellant respectfully submits that Appellee's March 7, 2012 Entry, May 30, 2012 Entry, July 2, 2012 Opinion and Order, October 17, 2012 Entry on Rehearing, and December 12, 2012 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to the Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

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CERTIFICATE OF FILING

I hereby certify that, in accordance with Supreme Court Rule of Practice XIV, Section 2(C)(2), Industrial Energy Users-Ohio's Notice of Appeal has been filed with the Docketing Division of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus, Ohio, in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on the 14th day of December 2012.

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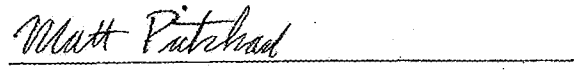
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Appeal of Appellant Industrial Energy Users-Ohio* was served upon the parties of record to the proceeding before the Public Utilities Commission of Ohio listed below and pursuant to Section 4903.13, Revised Code, this 14th day of December 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



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ATTORNEY EXAMINERS

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY

The Commission finds:

(1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company and Ohio Power Company (AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEPSC refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA).

(2) On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio. The Commission invited all interested

1 The Commission notes that the merger of Columbus Southern Power Company into Ohio Power Company has been confirmed today in a separate docket. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

stakeholders to submit written comments in the proceeding within 30 days of issuance of the entry and to submit reply comments within 45 days of the issuance of the entry. Additionally, in light of the change proposed by AEP-Ohio, the Commission adopted as the state compensation mechanism for AEP-Ohio the current capacity charges established by the three-year capacity auction conducted by PJM Interconnection (PJM), during the pendency of the review.

(3) On January 20, 2011, AEP-Ohio filed a motion to stay the reply comment period and to establish a procedural schedule for hearing, as well as for an expedited ruling. In the alternative, AEP-Ohio requested an extension of the deadline to file reply comments until January 28, 2011. In support of its motion, AEP-Ohio asserted that, due to the recent rejection of its application by FERC based on the "existence of a state compensation mechanism," it would be necessary for the Commission to move forward with an evidentiary hearing process to establish the state compensation mechanism. AEP-Ohio argued that, in light of this recent development, the parties needed more time to file reply comments.

(4) By entry issued January 21, 2011, the attorney examiner granted AEP-Ohio's motion to extend the deadline to file reply comments and established the new reply comment deadline as February 7, 2011. The January 21, 2011, entry also determined that AEP-Ohio's motion for the Commission to establish a procedural schedule for hearing would be considered after the reply comment period had concluded.

(5) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code.[2] The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

(6) By entry issued August 11, 2011, in the present case, the attorney examiner established a procedural schedule in order

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2 *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 Nos. 11-346-EL-SSO and 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 Nos. 11-349-EL-AAM and 11-350-EL-AAM.

to establish an evidentiary record on a state compensation mechanism. Interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism. An evidentiary hearing was scheduled to commence on October 4, 2011.

(7) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[3] including the above-captioned case. Pursuant to an entry issued September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(8) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation (ESP 2 order).

(9) Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (ESP 2 entry on rehearing). Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation.

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3 *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved state compensation mechanism established in the present case.

(10) On February 27, 2012, AEP-Ohio filed a motion for relief and request for expedited ruling in the present docket. Under the provisions of Rule 4901-1-12(C), Ohio Administrative Code (O.A.C.), any memoranda contra AEP-Ohio's request for expedited ruling are due by March 5, 2012. Memoranda contra AEP-Ohio's request for relief were filed by FirstEnergy Solutions Corp. (FES), Interstate Gas Supply, Inc. (IGS), Duke Energy Retail Sales, LLC (DERS), Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), and Ohio Manufacturers' Association (OMA). A joint memorandum contra was filed by Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, and the Retail Energy Supply Association (RESA) (collectively, Joint Suppliers).[4]

(11) In its motion for relief and request for expedited ruling, AEP-Ohio asserts that, in light of the Commission's rejection of the ESP 2 Stipulation, the Commission should quickly resume this proceeding from the point at which it was suspended to allow for consideration of the stipulation. AEP-Ohio reasons that, in the absence of the ESP 2 Stipulation, this proceeding would have been resolved by the end of 2011, and the Company would not have faced the prospect of unreasonably low capacity rates. AEP-Ohio believes that the Commission should expeditiously consider implementation of a cost-based capacity rate, at least for a transition period during which the Company would remain an FRR entity, and issue a decision on the merits of the case within 90 days.

Additionally, AEP-Ohio argues that a reasonable interim capacity rate should be implemented during the pendency of this proceeding, but cautions that the Commission should not

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4 On February 28, 2012, and March 5, 2012, IGS and RESA, respectively, filed a motion to intervene in this case. IGS and RESA are, therefore, each deemed a party for the purpose of responding to AEP-Ohio's motion pursuant to Rule 4901-1-12(E), O.A.C.

prejudge the merits of the case through implementation of the interim rate. AEP-Ohio contends that the interim rate should not be based exclusively on PJM's Reliability Pricing Model (RPM) auction prices, which, according to AEP-Ohio, would precipitate immediate, irreparable financial harm on the Company, as it would be forced to provide CRES providers with access to its capacity at below-cost rates. AEP-Ohio believes that the majority of its customers would leave its SSO service, resulting in massive revenue loss for the Company. Specifically, AEP-Ohio projects that its earnings for 2012 and 2013 would decrease by 27 percent and 67 percent, respectively, resulting in a return on equity of 7.6 percent and 2.4 percent, respectively, as well as possible downward adjustments to the Company's credit ratings. AEP-Ohio argues that such a result would be confiscatory, unreasonable, and unjust. AEP-Ohio adds that the Company would be forced to pursue all possible legal remedies if the Commission elects to impose full RPM-based capacity pricing. Noting that the ESP 2 Stipulation was rejected for reasons unrelated to its capacity charge provisions, AEP-Ohio argues that it should not be subject to the punitive result of full RPM-based capacity pricing, which the Company believes would prejudice the outcome of this proceeding by causing the majority of its customers to switch providers by the time a final decision is reached. AEP-Ohio also claims that switching to RPM-based capacity pricing now, and later implementing a different pricing scheme after the case is decided, would cause uncertainty and confusion for customers.

AEP-Ohio believes that using the same two-tiered capacity pricing proposed in the ESP 2 Stipulation would offer the most stability and represents a reasonable middle ground based on the record in this case. Specifically, AEP-Ohio proposes that the interim rate should be RPM-based capacity pricing for the first 21 percent of shopping load of each customer class, plus aggregation, but excluding mercantile load, with an interim rate of $255.00/megawatt-day (MW-day) for shopping load above the 21 percent cap. AEP-Ohio notes that this "status quo" proposal would essentially maintain the approach implemented to date by the Company pursuant to the revised Detailed Implementation Plan (DIP) filed on December 29, 2011, which the Company recognizes was subsequently modified by the Commission on January 23, 2012, in the consolidated cases. AEP-Ohio asserts that the record supports

its interim proposal or, in the alternative, an interim mechanism that conforms to the Commission's modifications to the revised DIP, with the exception of the inclusion of mercantile load. AEP-Ohio notes that it has filed the testimony of Dr. Kelly Pearce in this docket, as well as testimony from the same witness in support of the ESP 2 Stipulation in the consolidated cases, which, according to the Company, supports a cost-based formula rate that is well in excess of its interim proposal. AEP-Ohio notes that Dr. Pearce's testimony supports a capacity rate of $355.72/MW-day, whereas its interim proposal would set aside amounts of RPM-priced capacity for an initial tier of customers and provide for a capacity rate of $255.00/MW-day for amounts above the first tier.

Alternatively, AEP-Ohio proposes a compromise position of RPM-based capacity pricing for customers already served by CRES providers or those having provided a switch request as of the date of the ESP 2 entry on rehearing, and $255.00/MW-day for all other customers, including aggregation load, that switch before the case is decided. AEP-Ohio believes that this proposal is a reasonable interim solution, one that would facilitate shopping during the pendency of the case, as well as avoid financial harm for the Company. As this approach would adopt two opposing litigation positions in part, AEP-Ohio notes that it can be implemented without prejudice to the outcome of the case.

Finally, AEP-Ohio notes that the ESP 2 entry on rehearing is unclear with respect to the directive regarding capacity pricing and that the Commission should provide clarification so that AEP-Ohio may comply with the Commission's directive.

(12) In its memorandum contra, FES argues that AEP-Ohio's motion for relief should be denied as legally and procedurally deficient, and that the Commission should reject the Company's attempt to retain the anticompetitive and discriminatory capacity pricing scheme from the now rejected ESP 2 Stipulation. FES contends that AEP-Ohio has a number of means by which it could have sought relief, including seeking rehearing of the ESP 2 entry on rehearing pursuant to Section 4903.10, Revised Code, or seeking emergency rate relief pursuant to Section 4909.16, Revised Code. If AEP-Ohio's dispute is with the allegedly confiscatory impact of the state

compensation mechanism set forth in the RAA, FES notes that the Company has already filed a complaint case in FERC Docket No. EL11-32, seeking to change the terms of the RAA. Rather than pursue these options, FES argues that AEP-Ohio elected to file its motion for relief, which disregards the rehearing process and is not authorized by statute.

Additionally, FES takes issue with AEP-Ohio's claim that RPM-based capacity pricing will cause the Company to suffer immediate and irreparable harm. FES points out that, although AEP-Ohio sought rehearing of the December 8, 2010, entry in this docket, the Company did not claim in its application for rehearing that RPM-based capacity pricing would cause such harm and, therefore, FES contends that the Company has waived the argument. FES adds that AEP-Ohio's claim that RPM-based capacity pricing is confiscatory is not credible, given that the Company voluntarily used such pricing throughout the term of its first ESP. FES notes that the RPM zonal price for delivery year 2011/2012 is approximately $116.00/MW-day and that AEP-Ohio voluntarily charged a price of $105.00/MW-day as recently as the 2009/2010 delivery year. FES further notes that AEP-Ohio's projections for 2012 and 2013 show significant earnings, despite the Company's unsupported assumption that the majority of its customers will switch to CRES providers under RPM-based capacity pricing. FES also indicates that AEP-Ohio's anticipated return on equity of 7.6 percent for 2012 under RPM-based capacity pricing is almost exactly what the Company had projected that it would earn under the ESP 2 Stipulation.

In addition, FES argues that the Commission's directive to AEP-Ohio is clear and that there is no need for clarification of the ESP 2 entry on rehearing. FES asserts that AEP-Ohio should comply with the Commission's directive and continue to charge RPM-based pricing for its capacity in accordance with the state compensation mechanism established in the Commission's December 8, 2010, entry. In order to comply with the Commission's directive, FES notes that AEP-Ohio need only notify PJM that the state compensation mechanism requires RPM-based capacity pricing.

FES adds that the restoration of RPM-based capacity pricing, which is the default pricing structure under the RAA, would

not predetermine the outcome of this case but rather complies with the RAA and restores all parties to the circumstances in place throughout all of AEP-Ohio's first ESP. Given that the ESP 2 Stipulation has now been rejected, FES also notes that there is no support in the record for a capacity price of $255.00/MW-day, which was negotiated by the signatory parties to the stipulation. FES argues that AEP-Ohio cannot rely on the hearing record in the consolidated cases to support its claims, as the consolidated cases were consolidated for the limited purpose of considering the ESP 2 Stipulation. Further, FES points out that even several of the signatory parties agreed that setting the capacity price based on anything other than RPM-based pricing was unreasonable but that the other purported benefits of the ESP 2 Stipulation made the two-tiered approach acceptable to them. FES adds that AEP-Ohio's interim proposal would harm governmental aggregation and restrict shopping. FES also argues that the two-tiered interim proposal would discriminate among shopping customers, as well as between shopping customers and non-shopping customers, and that there are no benefits to outweigh the harm caused to competitive markets, now that the ESP 2 Stipulation has been rejected. With respect to AEP-Ohio's alternative proposal, FES argues that it directly conflicts with state law and policy and with the Commission's express intent in the ESP 2 order to accommodate governmental aggregation. FES notes that, if AEP-Ohio's alternative proposal is adopted, all governmental aggregation load from the November 2011 ballot initiatives would be denied RPM-based capacity pricing, as those communities have not completed enrollments.

(13) IGS states that it does not object to AEP-Ohio's interim proposal, but argues that AEP-Ohio's compromise position should be rejected. Although IGS believes that capacity charges should be market based, it notes that there is a need for a measured transition from a regulated to a competitive paradigm. IGS asserts that AEP-Ohio's interim proposal is a reasonable approach that would enable the parties to engage again in a constructive dialogue toward a more permanent solution that provides certainty for all stakeholders. IGS contends that AEP-Ohio's interim proposal would provide clarity for CRES providers, as well as an opportunity for customers to benefit from savings offered by CRES providers. IGS notes that the interim proposal, which would essentially

maintain the capacity pricing recommended in the ESP 2 Stipulation, was agreed to by most of the parties in the consolidated cases. IGS cautions that the RPM capacity allotments must be available to all customer classes equally, if AEP-Ohio's interim proposal is to remain a viable interim solution. Additionally, although IGS does not object to AEP-Ohio's interim proposal, IGS suggests that, as an alternative, the Commission could implement a cap on the governmental aggregation load to which RPM-based capacity pricing applies. With respect to mercantile customers, IGS proposes that the Commission could defer the decision of whether to exclude such customers to the communities seeking to aggregate, instructing each community to capture its decision in its plan of governance.

IGS believes that AEP-Ohio's compromise position would distort the basic premise of market-priced capacity and would immediately and perhaps permanently stifle competition. Noting that there has been a general consensus among stakeholders that AEP-Ohio should transition to competition, IGS argues that a flat rate increase to $255.00/MW-day for all customers electing to shop after February 23, 2012, would not serve this end but would rather create a roadblock to competitive markets.

(14) In its memorandum contra, DERS argues that AEP-Ohio's motion for relief should be denied and that the Company should be required immediately to implement RPM-based rates for capacity while this proceeding is pending. DERS believes that AEP-Ohio's interim proposal would harm the competitive markets and dissuade customers from shopping in violation of state policy. According to DERS, AEP-Ohio's interim proposal would penalize new shoppers by imposing a dramatic escalation in capacity charges. Noting that the Commission has approved RPM-based capacity pricing as the state compensation mechanism, DERS maintains that AEP-Ohio seeks a drastic change from the situation that existed before this proceeding commenced. DERS further notes that AEP-Ohio's proposed two-tiered capacity charge is entirely at odds with the capacity charge calculation methodologies approved for other utilities in the state.

Additionally, DERS contends that there is no justification for the remedy that AEP-Ohio seeks. DERS argues that AEP-Ohio has effectively sought a stay of the capacity-related portion of the ESP 2 entry on rehearing. DERS asserts that AEP-Ohio has made no attempt to address any of the relevant factors that are considered in determining whether to grant a stay of an order, other than to allege that the Company will suffer financial harm.

(15) IEU-Ohio argues that AEP-Ohio's motion for relief should be denied as another attempt by the Company to impede shopping by limiting access to RPM-based capacity pricing. IEU-Ohio notes that the state compensation mechanism established in this proceeding requires RPM-based capacity pricing. Because the Commission has now rejected the ESP 2 Stipulation including its capacity pricing provisions, IEU-Ohio asserts that the "status quo" price is the RPM-based price as a matter of law. IEU-Ohio adds that each of the interim solutions proposed by AEP-Ohio is discriminatory and non-comparable in violation of various sections of Chapter 4928, Revised Code, in that similarly situated customers would be subject to one of two significantly different capacity prices based on nothing more than when the determination to switch providers was made.

In addition, IEU-Ohio agrees with DERS that AEP-Ohio has failed to provide any basis for a stay of the Commission's orders regarding capacity charges. Specifically, IEU-Ohio contends that a claim of irreparable harm does not enable AEP-Ohio to secure approval for a new capacity pricing scheme, even on an interim basis, in this proceeding. IEU-Ohio believes that, although claims of financial distress and confiscation may appropriately justify regulatory relief in some circumstances, no such circumstances exist in this case. IEU-Ohio notes that AEP-Ohio has not invoked the Commission's authority under Section 4909.16, Revised Code, and that the Company, therefore, has no justification for seeking interim relief based on alleged financial distress. IEU-Ohio further notes that AEP-Ohio has failed to provide any support for its claim of confiscation and instead has offered non-record information showing positive returns for 2012 and 2013. Given that AEP-Ohio has benefited from significantly excessive earnings under the same SSO rates and the same capacity pricing mechanism

that the Company was ordered to implement in the ESP 2 entry on rehearing, IEU-Ohio maintains that the Company has not provided any basis upon which to believe that the ESP 2 entry on rehearing will result in confiscation. Even if there were a legitimate confiscation claim, IEU-Ohio believes that AEP-Ohio should direct its efforts at FERC.

Additionally, IEU-Ohio disputes AEP-Ohio's argument that a return to RPM-based capacity pricing would create confusion for customers and CRES providers. IEU-Ohio avers that the only confusion surrounding capacity charges stems from AEP-Ohio's continued efforts to impede shopping. Noting that AEP-Ohio is not authorized to compete with CRES providers to provide service to retail customers, IEU-Ohio also takes issue with AEP-Ohio's claim that it would be unlawful to require the Company to provide below-cost capacity to its competitors. IEU-Ohio asserts that AEP-Ohio has clearly indicated that its proposed capacity pricing structure is intended to prevent customers from shopping.

IEU-Ohio further argues that none of AEP-Ohio's proposed interim solutions is based on record evidence. IEU-Ohio points out that AEP-Ohio's testimony in this proceeding has not been subjected to discovery or cross-examination and that reliance on the record supporting the ESP 2 Stipulation and the ESP 2 order is unreasonable in light of the fact that the stipulation has now been rejected. IEU-Ohio also contends that AEP-Ohio's proposed interim solutions are unreasonable, as they would unreasonably restrict customer choice and limit access to RPM-based capacity pricing. Finally, IEU-Ohio maintains that the ESP 2 entry on rehearing clearly directs AEP-Ohio to implement RPM-based capacity pricing. IEU-Ohio adds that AEP-Ohio's position that the ESP 2 entry on rehearing requires clarification is not credible in light of testimony given by the Company during the hearing on the ESP 2 Stipulation, as well as arguments raised by AEPSC in a recent filing for relief in FERC Docket No. ER11-2183.

(16) OCC, in its memorandum contra, argues that AEP-Ohio's motion for relief and request for expedited ruling are procedurally improper and that the subject matter of the motion should have been addressed in an application for rehearing of the ESP 2 entry on rehearing. OCC requests that

the Commission treat AEP-Ohio's motion as an application for rehearing and proceed on that basis. OCC further contends that AEP-Ohio's untested financial assertions are not part of the record and should be disregarded.

In addition, OCC maintains that AEP-Ohio has failed to provide any legal basis for its interim capacity pricing proposals. OCC believes that Section 4928.143(C)(2)(b), Revised Code, requires a return to the RPM-based capacity pricing that existed in December 2011 under the first ESP and that AEP-Ohio's proposals are not consistent with the statute. OCC adds that the ESP 2 entry on rehearing is clear and that the Commission ordered AEP-Ohio to apply RPM-based capacity pricing under the conditions that were used during the first ESP. OCC notes that it is disingenuous for AEP-Ohio to claim that it does not understand the Commission's directive in the ESP 2 entry on rehearing when the Company's pleading in this case and the recent filing in FERC Docket No. ER11-2183 are largely devoted to asserting the consequences of a return to RPM-based capacity pricing. OCC concludes that AEP-Ohio's attempt to limit shopping by increasing capacity charges in violation of state policy should be rejected.

(17) The Joint Suppliers argue that AEP-Ohio's interim capacity proposals are contrary to the ESP 2 entry on rehearing, including the Commission's clear directive to implement RPM-based capacity pricing. The Joint Suppliers assert that the two-tiered capacity charge agreed to under the ESP 2 Stipulation was a specific component of a comprehensive plan that cannot now be lifted in part from the stipulation and used outside of the context for which it was created. The Joint Suppliers add that AEP-Ohio's interim proposals would effectively curtail competition and postpone market-based pricing indefinitely, without all of the other aspects of a transition to competition, which was the purpose of the two-tiered capacity charge in the ESP 2 Stipulation. The Joint Suppliers contend that, outside of the context of the comprehensive ESP 2 Stipulation, the only appropriate charge for capacity is RPM-based pricing. The Joint Suppliers note that the top tier of $255.00/MW-day, which was a negotiated number, has no logical basis and does not reflect market prices. The Joint Suppliers believe that RPM-based capacity pricing is both transparent and predictable for all market participants, including consumers and CRES

providers, and is the only appropriate pricing for capacity outside of the context of a comprehensive transition to a competitive market. The Joint Suppliers note that, for non-shopping customers, the price of capacity is built into AEP-Ohio's tariff rates. With respect to shopping customers, the Joint Suppliers note that the RPM-based capacity rate will be approximately $116.00/MW-day until the June 2012 billing cycle, which is the same amount that AEP-Ohio has charged since the June 2011 billing cycle, other than for a small number of commercial and industrial customers that switched after the ESP 2 Stipulation was executed. The Joint Suppliers add that AEP-Ohio reinstated, in its compliance tariffs filed on February 28, 2012, the 90-day notice requirement for most non-residential customers that elect to shop, which the Joint Suppliers argue will protect the Company from a flood of shopping for at least the next 90 days while this proceeding is pending. Therefore, the Joint Suppliers maintain that AEP-Ohio's financial concerns are not well founded at this time.

(18) OMA argues that granting AEP-Ohio's motion would harm Ohio manufacturers. OMA contends that the relief sought by AEP-Ohio would prevent customers from taking advantage of historically low market prices. OMA adds that, if AEP-Ohio's motion for relief is granted, the Company will not be incented to develop expeditiously a better rate plan than the rejected ESP 2 Stipulation, as the Company will have some of the revenue protection that it seeks. OMA also argues that AEP-Ohio could lessen the detrimental financial impact of the ESP 2 entry on rehearing by developing and filing a new and improved SSO. OMA notes that AEP-Ohio's projected 2.4 percent return on equity for 2013, while not a healthy return on equity, does not reflect a new rate plan and thus may never come to fruition. OMA emphasizes that AEP-Ohio seeks relief for only an interim period until a new SSO is approved. OMA believes that it is more important for AEP-Ohio and the other parties to develop a new SSO that can be expeditiously implemented so as to avoid financial harm to both AEP-Ohio and customers.

Additionally, OMA asserts that AEP-Ohio's motion for relief is legally deficient. OMA contends that the Commission may not authorize AEP-Ohio to modify its capacity charges, even for an interim period, unless the state compensation mechanism is

changed, emergency relief is granted, or the RAA is modified at FERC's direction. OMA further contends that AEP-Ohio's motion for relief is not authorized under Ohio law and is thus procedurally deficient.

(19) On March 5, 2012, AEP-Ohio filed a motion for leave to file a reply to the various memoranda contra to provide the Commission with updated information in response to the arguments offered by the intervenors and ensure that the Commission has the necessary information to make an informed decision. The motion includes the affidavit of AEP-Ohio employee William A. Allen, Director-Rate Case Management, regarding the level of shopping in AEP-Ohio's service territory and the details and assumptions used in the Company's analysis in support of the information provided in the Company's request for relief.

AEP-Ohio responds that 36.7 percent of AEP-Ohio's load has switched or indicated an intention to switch to a CRES provider as of March 1, 2012. Under the two-tier capacity pricing mechanism approved by the Commission in the ESP 2 order, AEP-Ohio claims that 6.8 percent of its total load transferred to a CRES provider at the second tier of $255.00/MW-day. This is the interim structure that AEP-Ohio requests remain in place until the Commission issues a final decision on the capacity charge issue. Since the ESP 2 entry on rehearing issued February 23, 2012, AEP-Ohio states some 10,000 switch requests have been presented to the Company.

Further, Mr. Allen attests that, since his rebuttal testimony in the consolidated cases, the energy prices in the PJM market have decreased by approximately 25 percent, increasing the headroom available for CRES providers. Mr. Allen further reasons that, with the current energy prices, CRES providers can make offers below the Company's tariff rates with capacity at $255.00/MW-day. According to AEP-Ohio, customer shopping increased after the ESP 2 entry on rehearing and will continue to increase, particularly if all capacity is priced at RPM, harming AEP-Ohio.

(20) On March 6, 2012, FES filed a memorandum contra AEP-Ohio's motion for leave to file a reply. FES contends that AEP-Ohio filed its motion for relief pursuant to Rule 4901-1-12(C), O.A.C.,

which, in exchange for an accelerated response time, prohibits the filing of a reply. Further, FES argues that there is nothing AEP-Ohio filed in its reply that could not have been included in its motion for relief, which would have granted the other parties an opportunity to respond. FES claims that AEP-Ohio's reply is unreasonable and a violation of procedural due process and requests that the Commission not consider the information presented in the reply as, according to FES, to do so would be plain error.

(21) Rule 4901-1-38, O.A.C., provides that the Commission may, for good cause shown, prescribe different practices from those provided by rule. It is imperative that the Commission have the most accurate and complete information available to make an informed decision to balance the interests of all stakeholders, particularly in light of the unique circumstances of this case. Accordingly, we grant AEP-Ohio's motion for leave to file a reply.

(22) We reject claims that the interim relief is not based upon record evidence. The instant proceeding was consolidated with 11-346 and the cases enumerated in footnote three of this entry for purposes of considering the ESP 2 Stipulation. All of the testimony and exhibits admitted into the record for purposes of considering the ESP 2 Stipulation are part of the record in this proceeding. Our subsequent rejection of the ESP 2 Stipulation did not remove such evidence from the record, and we may, and do, rely upon such evidence in our decision granting interim relief.

(23) As certain of the memoranda contra argue, the two-tier capacity rate was created and agreed to by numerous intervenors to the consolidated cases, as one component of the ESP 2 Stipulation. As is the case with a stipulation, parties negotiate for and compromise on various provisions. We understand that parties may feel that consideration of the two-tier capacity rate as the state compensation mechanism denies the other parties to the stipulation the benefit of the bargain. Moreover, while AEP-Ohio may have other avenues to challenge the alleged confiscatory impact of the state compensation mechanism, the Commission is also vested with the authority to modify the state compensation mechanism established in our December 8, 2010, entry in this case.

(24) As we noted in the entry establishing the state compensation mechanism, the Commission approved retail rates for AEP-Ohio in its first ESP proceeding. *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 08-917-EL-SSO, *et al.* (ESP 1 Case). These retail rates included the recovery of capacity costs through provider-of-last-resort (POLR) charges to certain retail shopping customers based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM under the current FRR mechanism. Entry (December 8, 2010) at 1-2. Further, the Commission established, as the state compensation mechanism, the current RPM rate established by the PJM base residual auction.

(25) However, on remand from the Supreme Court, the Commission eliminated the POLR charges. ESP 1 Case Order on Remand at 33 (October 3, 2011). Therefore, AEP-Ohio is no longer receiving any contribution towards recovery of capacity costs from the POLR charges. Further, evidence presented in this proceeding in support of the ESP 2 Stipulation claimed that RPM rates for capacity are below AEP-Ohio's costs to provide such capacity. As we have previously noted, the evidence in the record indicates a range of potential capacity costs from a low of $57.35/MW-day (FES Ex. 2 at 5) to a high of $355.72/MW-day, as a merged entity (AEP-Ohio Ex. 3 at 10). Moreover, when retail customers switch to competitive suppliers, AEP-Ohio cannot take full advantage of the opportunity to sell into the wholesale market as any margin on off-system sales must be shared with other AEP affiliate companies under its current Pool Agreement and in many instances is flowed through to customers of non-Ohio AEP utility affiliates. The Pool Agreement was last amended in 1980 and did not contemplate current circumstances. Until the Pool Agreement is modified, it places AEP-Ohio in a position different from other Ohio utilities.

(26) Accordingly, we find support in the record that, as applied to AEP-Ohio for the interim period only, the state compensation mechanism could risk an unjust and unreasonable result. Therefore, the Commission implements the two-tier capacity pricing. We implement the two-tier capacity pricing mechanism proposed by AEP-Ohio in its motion for relief, subject to the clarifications contained in our January 23, 2012,

entry, including the clarification including mercantile customers as governmental aggregation customers eligible to receive RPM-priced capacity. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class shall be entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, shall be entitled to receive tier-one RPM pricing. The second-tier charge for capacity shall be at $255.00/MW-day. This interim rate will be in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.

Finally, we note that, on March 5, 2012, AEP-Ohio filed notice of its intent to file a modified ESP, pursuant to Section 4928.143, Revised Code, by March 30, 2012. AEP-Ohio plans to propose as part of the modified ESP a capacity charge, applicable until such time as AEP-Ohio can transition from an FRR to an RPM entity. AEP-Ohio submits that this will preclude the need for the Commission to adjudicate this case, provided a satisfactory interim mechanism is established and the ESP is resolved expeditiously. The Company states the term of the modified ESP will be June 1, 2012, through May 31, 2016.

Although AEP-Ohio believes that the present case may be resolved under its modified application for an ESP, the Commission believes that resolution of this case should no longer be delayed. Our decision today temporarily modifying the state compensation mechanism will allow the Commission to fully develop the record to address the issues raised in this proceeding. Therefore, the Commission directs the attorney examiner to issue a procedural schedule in this case under which this matter be set for hearing no later than April 17, 2012.

It is, therefore,

ORDERED, That AEP-Ohio's motion for leave to file a reply is granted. It is, further,

ORDERED, That AEP-Ohio's motion for relief be granted, as determined above, until May 31, 2012. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

SJP/GNS/vrm

Entered in the Journal
MAR 07 2012

Barcy F. McNeal
Secretary

ATTACHMENT B

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY

The Commission finds:

(1) By entry issued on March 7, 2012, the Commission granted the request of Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio or Company) for relief and implemented an interim capacity charge until May 31, 2012.[1] This interim capacity charge established a two-tier capacity pricing mechanism proposed by the Company, subject to the clarifications contained in our January 23, 2012, entry in this proceeding. More specifically, mercantile customers in governmental aggregations are eligible to receive capacity priced in accordance with PJM Interconnection's (PJM's) Reliability Pricing Model (RPM). Further, under the two-tier capacity pricing mechanism, the first 21 percent of each customer class is entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, are entitled to receive tier-one RPM pricing. The second-tier charge for capacity is $255/megawatt (MW)-day. Further, the March 7, 2012, entry placed the interim rate in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism would revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

(2) On April 30, 2012, AEP-Ohio filed a request for an extension of the interim capacity pricing implemented by the Commission, pursuant to entry issued on March 7, 2012. AEP-Ohio reasons that, as a result of issues arising in this proceeding, the scheduled start of the evidentiary hearing in the Company's

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

modified electric security plan (ESP 2) cases,[2] and the fact that Commission Staff is working on both proceedings, it is unlikely that an order on the merits can be issued before May 31, 2012. Furthermore, AEP-Ohio notes that, as part of its modified ESP 2 proceeding, it proposes an alternative two-tiered capacity pricing mechanism. AEP-Ohio reasons that consideration of the capacity charge mechanism in the modified ESP 2 proceeding represents the potential for yet another change in capacity rates for shopping customers. To avoid customer confusion and uncertainty, undue disruption to the competitive Ohio retail market, and financial harm to the Company given the significant drop in the RPM rate effective June 1, 2012, AEP-Ohio requests that the current interim capacity charges remain in effect (tier one at $146/MW-day and tier two at $255/MW-day) until the Commission issues a decision on the merits.

(3) Memoranda contra AEP-Ohio's motion for an extension of the currently effective interim capacity rates were filed by Ohio Manufacturers' Association (OMA), jointly by Duke Energy Commercial Asset Management (DECAM) and Duke Energy Retail Sales (DERS), jointly by FirstEnergy Solutions (FES) and Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), Exelon Generation Company (Exelon), and Retail Energy Supply Association (RESA). Ohio Energy Group (OEG) also filed a response.

(4) In their joint memorandum contra, FES and IEU-Ohio respond that AEP-Ohio's motion for extension should be denied because it is legally and procedurally deficient. Specifically, FES and IEU-Ohio argue that the Commission has already determined that the interim two-tiered capacity pricing ends on May 31, 2012, and that RPM-based pricing will resume on June 1, 2012. According to FES and IEU-Ohio, there is no reason to alter the Commission's determination that the interim two-tiered capacity pricing will remain in place only for that limited period, particularly when customers and competitive retail electric service (CRES) providers have relied on the Commission's determination in making decisions regarding

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2 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer* and *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM.

shopping. Further, FES and IEU-Ohio contend that AEP-Ohio's motion for extension constitutes an untimely application for rehearing. FES and IEU-Ohio maintain that AEP-Ohio effectively seeks a substantive modification of the Commission's March 7, 2012, entry granting interim relief and that the Company should have, but did not, file an application for rehearing as its remedy. Because AEP-Ohio elected not to file an application for rehearing, FES and IEU-Ohio assert that the Company's motion should be rejected as an untimely application for rehearing and a collateral attack on the March 7, 2012, entry. FES and IEU-Ohio also contend that the purported harm to AEP-Ohio from RPM-based capacity pricing is overstated and unsupported. FES and IEU-Ohio argue that AEP-Ohio has failed to establish that it is entitled to emergency rate relief or to offer any evidence demonstrating that financial peril would result from a return to RPM-based capacity pricing. FES and IEU-Ohio note that, in light of the interim relief granted by the Commission to date, AEP-Ohio's return on equity will exceed the 7.6 percent in 2012 formerly projected by the Company, which FES and IEU-Ohio contend is more than enough to avoid significant financial harm to the Company. FES and IEU-Ohio further note that AEP-Ohio will not be harmed by RPM-based capacity pricing, given that such pricing applies to every other generator in Ohio and the rest of PJM. Finally, FES and IEU-Ohio assert that, at a minimum, AEP-Ohio's request to maintain the current pricing for customers in the first tier should be rejected, if the Commission should decide to extend the interim two-tiered capacity pricing. FES and IEU-Ohio maintain that there is no reason to deny such customers the benefits of the decrease in RPM-based capacity pricing for the 2012/2013 delivery year.

(5) In its memorandum contra, OMA asserts that AEP-Ohio's motion is not merely a request for an extension, but is actually a request for additional relief in that the Company seeks to modify the RPM-based capacity pricing for customers in the first tier. Additionally, OMA notes that, although the Commission limited the interim relief period to May 31, 2012, it did not guarantee that this case would be resolved by June 1, 2012. According to OMA, the unlikelihood of having a final Commission decision by that date does not warrant an extension of the interim capacity pricing. OMA contends that AEP-Ohio has failed to show good cause for its request,

offering nothing other than an unsubstantiated claim of financial harm. OMA maintains that AEP-Ohio's motion would harm Ohio manufacturers, noting that AEP-Ohio is asking for a rate increase that would impact shopping customers immediately without any demonstration that there is any harm to the Company. OMA further argues that AEP-Ohio's motion for extension is an unlawful and untimely attempt at rehearing of the Commission's March 7, 2012, entry. Finally, OMA recommends that, if the Commission grants AEP-Ohio's motion, the Commission should also require the Company to deposit the difference between the RPM-based price for capacity and the amount authorized by the Commission as additional or continued interim relief into an escrow account. If the Commission ultimately determines that the state compensation mechanism should be based on RPM pricing, OMA requests that AEP-Ohio be directed to return the amount in escrow directly to customers that paid more than the RPM-based price through agreements with CRES providers.

(6) DERS and DECAM contend that AEP-Ohio should not be permitted, even on an interim basis, to charge anything more than RPM-based capacity prices. DERS and DECAM believe that AEP-Ohio's effort in this proceeding to extend capacity pricing that is above market rates will form the basis of the Company's attempt to gain approval of its pending modified ESP 2 proposal. Without the Commission's approval to extend AEP-Ohio's current capacity pricing, DERS and DECAM maintain that the Company will be unable to prove that its proposed ESP is more favorable than a market rate option. Further, DERS and DECAM note that the Commission's March 7, 2012, entry did not direct that the capacity pricing for customers in the first tier should remain at the RPM price that was then in effect. Rather, DERS and DECAM assert that, as the RPM price changes for the 2012/2013 year, the capacity price for customers in the first tier must likewise change. According to DERS and DECAM, AEP-Ohio has failed to demonstrate that the Commission should grant further extraordinary relief. DERS and DECAM note that the relief requested by AEP-Ohio would have a prejudicial impact on the competitive environment in Ohio by altering the business arrangements made by CRES providers. DERS and DECAM contend that AEP-Ohio has not offered verifiable, convincing support for its projections of revenue loss. DERS and DECAM

conclude that the Commission should reject AEP-Ohio's attempt to have the Commission prejudge the final outcome of this proceeding. DERS and DECAM add that, if the Commission elects to grant further relief, it should at least deny AEP-Ohio's request to maintain the current RPM-based price for customers in the first tier.

(7) In its memorandum contra, RESA argues that AEP-Ohio's motion is an impermissible collateral attack on the March 7, 2012, entry and that the Company should have made its arguments in an application for rehearing. RESA contends that there are no new circumstances that would warrant consideration of AEP-Ohio's motion, which is essentially an untimely application for rehearing. RESA notes that the RPM-based capacity price to take effect on June 1, 2012, was known on March 7, 2012, when the entry was issued, and that it was also foreseeable at that point that a final order may not be issued by May 31, 2012. RESA further notes that the potential revenue reduction and resulting financial harm that AEP-Ohio will suffer from RPM-based capacity pricing was also known on March 7, 2012, and is, therefore, no reason to grant the Company's motion. Finally, RESA adds that AEP-Ohio's motion should be denied on equitable grounds. RESA believes that customers that shopped under a state compensation mechanism for capacity at RPM-based prices should be able to rely on the Commission's prior orders and receive the benefit of RPM-based capacity pricing.

(8) Exelon likewise responds that there is no legitimate reason or set of facts that has occurred since the March 7, 2012, entry that would warrant a delay in the return to RPM-based capacity pricing. Exelon contends that AEP-Ohio seeks only to restrict competitive market offerings and to restore an environment in which the Company's profits are protected at the cost of competition. Exelon argues that the mere fact of AEP-Ohio's status as a Fixed Resource Requirement (FRR) entity does not justify further avoidance of RPM-based capacity pricing. Exelon notes that AEP-Ohio's FRR status does not excuse it from its responsibility to explore lower cost capacity options in the market and that nothing prevents the Company from procuring capacity from the market to fulfill its FRR commitment. Exelon also notes that the record reflects a serious disagreement as to whether any cost-based rate that

may be appropriate or lawful would be an embedded cost rate, as AEP-Ohio seeks, or a marginal or incremental cost-based rate. Further, Exelon points out that AEP-Ohio has known since December 8, 2010, that it is required to charge CRES providers RPM-based capacity prices. Finally, Exelon asserts that granting AEP-Ohio's motion would effectively curtail competition and postpone market-based pricing indefinitely.

(9) Arguing that AEP-Ohio's motion should be denied, OCC notes that the Commission determined in its March 7, 2012, entry that the state compensation mechanism would revert to RPM-based capacity pricing effective June 1, 2012, and that some customers may have relied on this entry in making decisions regarding shopping. OCC adds that AEP-Ohio seeks to maintain a capacity price for customers in the first tier that will be neither a cost-based nor market-based rate as of June 1, 2012. Additionally, OCC contends that AEP-Ohio has offered no evidence in support of its claim of financial harm. According to OCC, the Commission has no jurisdiction to reverse its finding in the March 7, 2012, entry that RPM-based capacity prices will take effect on June 1, 2012. OCC notes that, because AEP-Ohio failed to file a timely application for rehearing of the March 7, 2012, entry, the Commission is without statutory authority to consider the Company's requested relief.

(10) In its memorandum in response to AEP-Ohio's motion for extension, OEG asserts that the Company's request is reasonable, given that the implementation of a different pricing mechanism for a short period of time may only serve to aggravate the current uncertainty and customer confusion regarding capacity pricing. Specifically, OEG notes that it does not oppose an extension of AEP-Ohio's current capacity pricing structure for a 60-day period through the end of July.

(11) AEP-Ohio filed a reply to the memoranda contra on May 8, 2012. AEP-Ohio asserts that most of the arguments raised in the memoranda contra were also made by parties who opposed the initial request for interim relief and have been addressed and rejected by the Commission in the March 7, 2012, entry. Further, AEP-Ohio contends that assertions that the Commission, through the March 7, 2012, entry, affirmatively committed to the implementation of RPM capacity pricing as of June 1, 2012, are absurd. According to AEP-Ohio, such a

decision would amount to the Commission predetermining its decision on the merits and foreclose the possibility that the Commission could conclude that RPM pricing is not appropriate. Further, the Company reasons that, if the Commission issues its order before June 1, 2012, RPM capacity rates would not go into effect on June 1, 2012, as opposing parties claim. In addition, AEP-Ohio submits that evidence in this proceeding further supports that its capacity costs are $355/MW-day, significantly higher than the RPM rate of $20/MW-day, to be effective June 1, 2012.

(12) We reject the arguments that AEP-Ohio's request amounts to an untimely application for rehearing of the March 7, 2012, entry. The Commission is well within its jurisdiction to consider a request for an extension of its previous ruling. The fact that the Commission indicated that AEP-Ohio's interim relief would be in effect until May 31, 2012, does not prevent our subsequent approval of either an extension of the current interim relief or another interim capacity charge mechanism, if warranted under the circumstances. Due to various factors that have prolonged the course of this proceeding and precluded the issuance of an order by May 31, 2012, we find that AEP-Ohio's request for further interim relief does not constitute a collateral attack on the March 7, 2012, entry. Furthermore, for the reasons presented in the Commission's March 7, 2012, entry, in particular the evidence in the record that supports a range of capacity costs, as well as AEP-Ohio's participation in the Pool Agreement, the Commission concluded that "as applied to AEP-Ohio, ... the state compensation mechanism could risk an unjust and unreasonable result." The circumstances faced by AEP-Ohio that prompted the Commission to approve the request for interim relief have not changed.

The Commission adopted the interim capacity charge mechanism to allow for the development of the record in this case and to address the issues raised as to the state compensation mechanism for capacity charges, without the delay of AEP-Ohio's modified ESP 2 case, which had not yet been filed. As directed in the March 7, 2012, entry the evidentiary hearing in this case commenced April 17, 2012, continued as expeditiously as feasible, and concluded on May 15, 2012. Initial briefs were filed May 23, 2012, and reply briefs

> are due May 30, 2012. Despite the schedule in this proceeding, it is apparent that the Commission will not be able to issue a decision on the merits before the interim capacity mechanism expires on May 31, 2012. To the extent that the Commission has already concluded that the circumstances faced by AEP-Ohio are unique and have not changed since the issuance of the March 7, 2012, entry, and, given that the Commission has made significant progress to address the issues raised in the capacity charge proceeding, the Commission finds it reasonable and appropriate to extend the current interim capacity mechanism. The interim capacity rates put into effect by the March 7, 2012, entry, tier one at $146/MW-day and tier two at $255/MW-day, shall continue until July 2, 2012, unless the Commission issues its order in this case.

It is, therefore,

ORDERED, That AEP-Ohio's motion for an extension of the interim capacity rates is granted, such that the capacity rates put into effect by the March 7, 2012, entry shall continue until July 2, 2012, unless the Commission issues its order in this case. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto – concur

Cheryl L. Roberto

Lynn Slaby – concur

Lynn Slaby

GNS/SJP/vrm

Entered in the Journal
MAY 30 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

CONCURRING OPINION OF COMMISSIONERS CHERYL L. ROBERTO AND LYNN SLABY

In order to promote regulatory stability during the pendency of this matter, I concur in result only.

Cheryl L. Roberto

Lynn Slaby

Entered in the Journal
MAY 30 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

DISSENTING OPINION OF COMMISSIONER ANDRE T. PORTER

Commission's March 7, 2012, entry and order made clear that the interim rate adopted in that order "will be in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year." If this Commission is to adopt anything else other than RPM based rates for 100% of shopping load, in which case I would have significant reservations, then a record of evidence must be cited in support of the decision. At most, I believe that a case record could be cited to support an extension of the interim capacity price to be "RPM-based" for tier-one customers, *i.e.* approximately $20/Mw day as of June 1, 2012, with tier-two customers remaining at the previously approved $255 Mw day.

On December 8, 2010, the Commission approved a state compensation mechanism based upon PJM Inc.'s annual base residual auction. That auction establishes annual capacity rates, effective during the PJM delivery calendar year, *i.e.* from June 1 to May 31 of the following year, which competitive suppliers are to pay AEP-Ohio for their capacity. Thus, pursuant to this Commission's decision on December 8, 2010, and based upon the applicable base residual auctions, it is my understanding that AEP-Ohio charged $174.29/Mw day for capacity as of the date of that entry through May 31, 2011, and charged $110/Mw day as of June 1, 2011. No party, nor does the majority in its entry today, contends that the change in the state compensation mechanism as of June 1, 2011, was an unjustified interpretation of the Commission's adoption of the "capacity charges established by the three-year [base residual auction] conducted by PJM, Inc."

On December 7, 2011, this Commission modified and approved a Stipulation that was executed by AEP-Ohio and numerous other parties, many if not all of whom are currently participating in this proceeding. That Stipulation provided for a tiered capacity rate mechanism with 21%[1] of AEP-Ohio load qualifying for tier-one rates—rates that would be based upon the clearing prices of PJM's base residual auction and would, therefore, change annually to match the published PJM capacity clearing price effective on June 1; those not coming under the percentage cap would receive tier-two rates of $255/Mw day. It should be noted here that, similar to the December 8, 2010, entry, no

1 The percentage for tier-one capacity agreed to by AEP Ohio and other parties was 21% for 2012, 31% for 2013, and 41% for 2014.

party, nor does the majority in its entry today, contends that the annual change to match the published PJM capacity clearing price is an unjustified interpretation of the Commission's December 7, 2011, entry. The Commission later rejected all components of the Stipulation, including the tiered capacity mechanism.

However, on March 7, 2012, *following a request from AEP-Ohio*, the Commission approved, as an interim state compensation mechanism that was to last only until May 31, 2012, a tiered approach that is virtually identical in terms of its RPM-based components to each the December 8, 2010; December 7, 2011; and March 7, 2012, entries. That is, this Commission left no doubt that 21 % of shopping customers would qualify for tier-one capacity at RPM-based prices, with other shopping customers permitted to shop at the tier-two rate of $255/Mw day; after this interim mechanism expired on May 31, 2012, capacity rates for all competitive suppliers would be the RPM-based rate.

In sum, by approving the March 7, 2012, entry, which was itself based upon a review of the record that began with the December 8, 2010, entry, and developed to support the Stipulation as per AEP Ohio's request to maintain the *status quo*, the Commission made a decision to approve a two-tier mechanism, with tier-one pricing based upon RPM prices with the RPM prices changing to match current prices as of each new PJM delivery year. In light of the history and record of this case, I cannot support this today's entry, and the request of AEP Ohio.

Andre T. Porter

Entered in the Journal

MAY 3 0 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

ATTACHMENT C

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

OPINION AND ORDER

The Commission, coming now to consider the evidence presented in this proceeding, the transcripts of the hearing, and briefs of the parties, hereby issues its opinion and order.

APPEARANCES:

Steven T. Nourse, Matthew J. Satterwhite, and Yazen Alami, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215, Porter, Wright, Morris & Arthur, LLP, by Daniel R. Conway and Christen M. Moore, 41 South High Street, Columbus, Ohio 43215, and Quinn, Emanuel, Urquhart & Sullivan, LLP, by Derek L. Shaffer, 1299 Pennsylvania Avenue NW, Suite 825, Washington, D.C. 20004, on behalf of Ohio Power Company.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, and Steven L. Beeler, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Kyle L. Kern and Melissa R. Yost, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody M. Kyler, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

Taft, Stettinius & Hollister LLP, by Mark S. Yurick and Zachary D. Kravitz, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of The Kroger Company.

McNees, Wallace & Nurick LLC, by Samuel C. Randazzo, Frank P. Darr, and Joseph E. Oliker, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of the Retail Energy Supply Association.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, Eimer Stahl LLP, by David M. Stahl, 224 South Michigan Avenue, Suite 1100, Chicago, Illinois 60604, and Sandy I-ru Grace, 101 Constitution Avenue NW, Suite 400 East, Washington, D.C. 20001, on behalf of Exelon Generation Company, LLC.

Mark A. Hayden, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, Calfee, Halter & Griswold, LLP, by James F. Lang, Laura C. McBride, and N. Trevor Alexander, 1400 KeyBank Center, 800 Superior Avenue, Cleveland, Ohio 44114, and Jones Day, by David A. Kutik and Allison E. Haedt, 901 Lakeside Avenue, Cleveland, Ohio 44114, on behalf of FirstEnergy Solutions Corp.

Bricker & Eckler LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215, on behalf of the Ohio Hospital Association.

Bricker & Eckler LLP, by Lisa G. McAlister, 100 South Third Street, Columbus, Ohio 43215, on behalf of the Ohio Manufacturers' Association.

Jeanne W. Kingery and Amy B. Spiller, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc.

Whitt Sturtevant LLP, by Mark A. Whitt, Andrew J. Campbell, and Melissa L. Thompson, PNC Plaza, Suite 2020, 155 East Broad Street, Columbus, Ohio 43215, and Matthew White, 6100 Emerald Parkway, Dublin, Ohio 43016, on behalf of Interstate Gas Supply, Inc.

Bailey Cavalieri LLC, by Dane Stinson, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215, on behalf of the Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council.

Kegler, Brown, Hill & Ritter, LPA, by Roger P. Sugarman, 65 East State Street, Suite 1800, Columbus, Ohio 43215, on behalf of the National Federation of Independent Business, Ohio Chapter.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc.

Ice Miller LLP, by Christopher L. Miller, Asim Z. Haque, and Gregory H. Dunn, 250 West Street, Columbus, Ohio 43215, on behalf of the Association of Independent Colleges and Universities of Ohio.

Ice Miller LLP, by Asim Z. Haque, Christopher L. Miller, and Gregory H. Dunn, 250 West Street, Columbus, Ohio 43215, on behalf of the city of Grove City, Ohio.

OPINION:

I. HISTORY OF THE PROCEEDING

On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act (FPA) and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA) for the regional transmission organization (RTO), PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.

On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge. Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism are appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities (LSE) within PJM; (2) the degree to which AEP-Ohio's capacity charge is currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. The Commission invited all interested stakeholders to submit written comments in

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

the proceeding within 30 days of issuance of the entry and to submit reply comments within 45 days of the issuance of the entry. Additionally, in light of the change proposed by AEP-Ohio, the Commission explicitly adopted as the state compensation mechanism for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

On January 20, 2011, AEP-Ohio filed a motion to stay the reply comment period and to establish a procedural schedule for hearing. In the alternative, AEP-Ohio requested an extension of the deadline to file reply comments until January 28, 2011. In support of its motion, AEP-Ohio asserted that, due to the recent rejection of its application by FERC based on the existence of a state compensation mechanism, it would be necessary for the Commission to move forward with an evidentiary hearing process to establish the proper state compensation mechanism. AEP-Ohio argued that, in light of this recent development, the parties needed more time to file reply comments.

By entry issued on January 21, 2011, the attorney examiner granted AEP-Ohio's motion to extend the deadline to file reply comments and established the new reply comment deadline as February 7, 2011. The January 21, 2011, entry also determined that AEP-Ohio's motion for the Commission to establish a procedural schedule for hearing would be considered after the reply comment period had concluded.

On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code.[2] The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

Motions to intervene in the present case were filed and intervention was granted to the following parties: Ohio Energy Group (OEG); Industrial Energy Users-Ohio (IEU-Ohio); Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAE)[3]; Ohio Manufacturers' Association (OMA); Ohio Hospital Association (OHA); Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (jointly, Constellation); FirstEnergy Solutions Corp. (FES); Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc. (jointly, Duke); Exelon Generation Company, LLC (Exelon); Interstate Gas Supply, Inc. (IGS); Retail Energy Supply Association (RESA);

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2 *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 Nos. 11-346-EL-SSO and 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 Nos. 11-349-EL-AAM and 11-350-EL-AAM.

3 On November 17, 2011, OPAE filed a notice of withdrawal from this case.

Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council (collectively, Schools); Ohio Farm Bureau Federation (OFBF); The Kroger Company (Kroger); Ohio Chapter of the National Federation of Independent Business (NFIB); Dominion Retail, Inc. (Dominion Retail); Association of Independent Colleges and Universities of Ohio (AICUO); city of Grove City, Ohio (Grove City); and Ohio Construction Materials Coalition (OCMC).[4]

Initial comments were filed by AEP-Ohio, IEU-Ohio, OMA, OHA, Constellation, Direct Energy, OEG, FES, OPAE, and OCC. Reply comments were filed by AEP-Ohio, OEG, Constellation, OPAE, FES, and OCC.

By entry issued on August 11, 2011, the attorney examiner set a procedural schedule in order to establish an evidentiary record on a proper state compensation mechanism. The evidentiary hearing was scheduled to commence on October 4, 2011, and interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism, including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism. In accordance with the procedural schedule, AEP-Ohio filed direct testimony on August 31, 2011.

On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[5] including the above-captioned case. Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the sole purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedules in the pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation, including its two-tier

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4 On April 19, 2012, OCMC filed a corrected cover sheet to its motion for intervention, indicating that it did not intend to seek intervention in this case.

5 *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

capacity pricing mechanism. Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part. Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved state compensation mechanism established in the present case.

By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012. Specifically, the Commission approved a two-tier capacity pricing mechanism modeled after the one recommended in the ESP 2 Stipulation. Approval of the interim capacity pricing mechanism was subject to the clarifications contained in the Commission's January 23, 2012, entry in the consolidated cases, including the clarification to include mercantile customers as governmental aggregation customers eligible to receive capacity pricing based on PJM's RPM. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class was entitled to tier-one, RPM-based capacity pricing. All customers of governmental aggregations approved on or before November 8, 2011, were also entitled to receive tier-one, RPM-based capacity pricing. For all other customers, the second-tier charge for capacity was $255/megawatt-day (MW-day). In accordance with the March 7, 2012, entry, the interim rate was to remain in effect until May 31, 2012, at which point the charge for capacity under the state compensation mechanism would revert to the current RPM price in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

By entry issued on March 14, 2012, the attorney examiner established a procedural schedule, which included a deadline for AEP-Ohio to revise or update its August 31, 2011, testimony. A prehearing conference occurred on April 11, 2012. The evidentiary hearing commenced on April 17, 2012, and concluded on May 15, 2012. During the evidentiary hearing, AEP-Ohio offered the direct testimony of five witnesses and the rebuttal testimony of three witnesses. Additionally, 17 witnesses testified on behalf of various intervenors and three witnesses testified on behalf of Staff.

On April 30, 2012, AEP-Ohio filed a motion for extension of the interim relief granted by the Commission in the March 7, 2012, entry. By entry issued on May 30, 2012, the Commission approved extension of the interim capacity pricing mechanism through July 2, 2012.

Initial briefs were filed by the parties on May 23, 2012, and reply briefs were filed on May 30, 2012.

II. APPLICABLE LAW

AEP-Ohio is an electric light company as defined by Section 4905.03(A)(3), Revised Code, and a public utility pursuant to Section 4905.02, Revised Code. AEP-Ohio is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

In accordance with Section 4905.22, Revised Code, all charges for service shall be just and reasonable and not more than allowed by law or by order of the Commission. Additionally, Section D.8 of Schedule 8.1 of the RAA, which is a portion of PJM's tariff approved by FERC, is informative in this case. It states:

> In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.

III. DISCUSSION AND CONCLUSIONS

A. Procedural Issues

1. Motion to Dismiss

On April 10, 2012, as corrected on April 11, 2012, IEU-Ohio filed a motion to dismiss this case. In its motion, IEU-Ohio asserts that the Commission lacks statutory authority to authorize cost-based or formula-based compensation for AEP-Ohio's FRR capacity obligations from CRES providers serving retail customers in the Company's service territory. On April 13, 2012, AEP-Ohio filed a memorandum in partial opposition to IEU-Ohio's motion to dismiss. AEP-Ohio argues that the establishment of wholesale rates to be charged to CRES providers for the provision of capacity for resale to retail customers is a matter governed by federal law. AEP-Ohio notes, however, that IEU-Ohio's untimely position in its motion to dismiss is severely undercut by its previous arguments regarding Ohio law. AEP-Ohio further notes that IEU-Ohio requests that the Commission order a return to RPM-based capacity pricing upon concluding that it has no jurisdiction. AEP-Ohio argues that, if the Commission concludes that it lacks jurisdiction, it must revoke the state compensation mechanism established in its December 8, 2010, entry, revoke its orders issued in this case, and leave the matter to FERC. IEU-Ohio filed a reply to AEP-Ohio's memorandum on April 16, 2012, reiterating its request for dismissal of the case and implementation of RPM-based capacity pricing. On April 17, 2012, RESA filed a memorandum contra IEU-Ohio's motion to dismiss. RESA contends that the Commission has jurisdiction pursuant to its general supervisory powers under Sections 4905.04, 4905.05, and 4905.06, Revised Code, as well as pursuant to Section 4928.143, Revised Code, to establish a state compensation mechanism and that IEU-Ohio's motion is procedurally improper and should be denied.

At the outset of the hearing on April 17, 2012, the attorney examiner deferred ruling on IEU-Ohio's motion to dismiss (Tr. I at 21-22). Upon conclusion of AEP-Ohio's direct case, IEU-Ohio made an oral motion to dismiss the proceeding, asserting that the Company had failed to meet its burden of proof such that the Commission could approve the proposed capacity charge based on either its authority to set rates for competitive or noncompetitive retail electric service, or its authority to set rates pursuant to Section 4909.16, Revised Code (Tr. V at 1056-1059). Again, the attorney examiner deferred ruling on the motion (Tr. V at 1061).

In its brief, IEU-Ohio argues that the Commission should dismiss this case and require AEP-Ohio to reimburse all consumer representative stakeholders for the cost of participation in this proceeding and 11-346, as such costs were incurred by all consumer representative stakeholders who opposed the ESP 2 Stipulation, with reimbursement occurring through a cash payment. IEU-Ohio contends that AEP-Ohio's proposed capacity charge is unlawful and contrary to the public interest based on the common law principles

codified in Chapter 1331, Revised Code, which is known as the Valentine Act and governs monopolies and anticompetitive conduct. IEU-Ohio asserts that the Valentine Act compels the Commission to reject AEP-Ohio's anticompetitive scheme to preclude free and unrestricted competition among purchasers or consumers in the sale of competitive generation service. According to IEU-Ohio, if the AEP East Interconnection Agreement (pool agreement) and the RAA are agreements having the effect of precluding free and unrestricted competition between the parties to such agreements, purchasers, or consumers, the agreements are void by operation of Ohio law. AEP-Ohio responds that IEU-Ohio urges the Commission to rely on a statute that it has no jurisdiction to enforce, noting that authority to enforce the Valentine Act is vested in the courts of common pleas, pursuant to Section 1331.11, Revised Code. AEP-Ohio adds that IEU-Ohio's request for reimbursement of litigation costs is unjustified under the circumstances of this case, unsupported by any statute or rule, and should be denied.

The Commission agrees with AEP-Ohio that it has no authority with respect to Chapter 1331, Revised Code. However, the Commission finds that it has jurisdiction to establish a state compensation mechanism, as addressed further below. IEU-Ohio's motion to dismiss this proceeding is, therefore, without merit and should be denied. In addition, IEU-Ohio's request for reimbursement of its litigation expenses is unfounded and should likewise be denied.

2. Motion for Permission to Appear *Pro Hac Vice Instanter*

On May 9, 2012, as supplemented on May 14, 2012, a motion for permission to appear *pro hac vice instanter* on behalf of AEP-Ohio was filed by Derek Shaffer. No memoranda contra were filed. The Commission finds that the motion for permission to appear *pro hac vice instanter* is reasonable and should be granted.

B. Substantive Issues

The key substantive issues before the Commission may be posed as the following questions: (1) does the Commission have jurisdiction to establish a state compensation mechanism; (2) should the state compensation mechanism for AEP-Ohio be based on the Company's capacity costs or on another pricing mechanism such as RPM-based auction prices; and (3) what should the resulting compensation be for AEP-Ohio's FRR capacity obligations. In addressing this final question, there are a number of related issues to be considered, including whether there should be an offsetting energy credit, whether AEP-Ohio's proposed cost-based capacity pricing mechanism constitutes a request for recovery of stranded generation investment, and whether OEG's alternate proposal should be adopted by the Commission.

1. Does the Commission have jurisdiction to establish a state compensation mechanism?

a. AEP-Ohio

Article 2 of the RAA provides that the RAA's purpose is "to ensure that adequate Capacity Resources, including planned and Existing Generation Capacity Resources, planned and existing Demand Resources, Energy Efficiency Resources, and [Interruptible Load for Reliability] will be planned and made available to provide reliable service to loads within the PJM Region, to assist other Parties during Emergencies and to coordinate planning of such resources consistent with the Reliability Principles and Standards." It further provides that the RAA should be implemented "in a manner consistent with the development of a robust competitive marketplace." Under Section 7.4 of the RAA, "[a] Party that is eligible for the [FRR] Alternative may satisfy its obligations hereunder to provide Unforced Capacity by submitting and adhering to an FRR Capacity Plan."

In accordance with the RAA, AEP-Ohio elected to opt out of participation in PJM's RPM capacity market and instead chose to become an FRR Entity that is obligated to provide sufficient capacity for all connected load, including shopping load, in its service territory. AEP-Ohio will remain an FRR Entity through May 31, 2015 (AEP-Ohio Ex. 101 at 7-8), and, accordingly, the Company has committed to ensuring that adequate capacity resources exist within its footprint during this timeframe. Under the RAA, the default charge for providing this service is based on PJM's RPM capacity auction prices. According to AEP-Ohio, due to the decrease in RPM auction prices as reflected below and the onset of retail shopping in the Company's service territory in 2010, the adverse financial impact on the Company from supplying CRES providers with capacity at prices below cost has become significant.

	$/MW-day	
PJM Delivery Year	PJM Base Residual Auction (BRA) Price	Capacity Charge*
2010/2011	$174.29	$220.96
2011/2012	$110.00	$145.79
2012/2013	$16.46	$20.01
2013/2014	$27.73	$33.71
2014/2015	$125.99	$153.89

*BRA adjusted for final zonal capacity price, scaling factor, forecast pool requirement, and losses

As a result, AEP-Ohio made the decision to seek approval, pursuant to the RAA, to collect a cost-based capacity rate from CRES providers. In its FERC filing, AEP-Ohio proposed cost-based formula tariffs that were based on its FERC Form 1 for 2009. In response to the FERC filing, the Commission opened this docket and, in the December 8, 2010, entry, adopted capacity pricing based on the RPM auction price as the state compensation mechanism for AEP-Ohio's FRR capacity obligations. Subsequently, FERC rejected AEP-Ohio's proposed formula rate in light of the state compensation mechanism.

AEP-Ohio asserts that, because FERC has jurisdiction over wholesale electric rates and state commissions have jurisdiction over retail rate matters, it is evident that the reference to a state compensation mechanism in Section D.8 of Schedule 8.1 of the RAA contemplates a retail, not a wholesale, capacity pricing mechanism. AEP-Ohio believes that the provision of generation capacity to CRES providers is a wholesale transaction that falls within the exclusive ratemaking jurisdiction of FERC. In its brief, AEP-Ohio states that the purpose of this proceeding is to establish a wholesale capacity pricing mechanism and that retail rates cannot change as a result of this case. AEP-Ohio notes that intervenors universally agreed that the compensation paid by CRES providers to the Company for its FRR capacity obligations is wholesale in nature (Tr. IV at 795; Tr. V at 1097, 1125; Tr. VI at 1246, 1309).

b. Intervenors

As discussed above with respect to its motion to dismiss, IEU-Ohio contends that the Commission lacks statutory authority to approve a cost-based rate for capacity available to CRES providers serving retail customers in AEP-Ohio's service territory. IEU-Ohio argues that, if the Commission concludes that the provision of capacity to CRES providers is subject to the Commission's economic regulation jurisdiction, it must determine whether the service is competitive or noncompetitive. IEU-Ohio notes that generation service is classified as a competitive service under Section 4928.03, Revised Code. IEU-Ohio emphasizes that no party has claimed that capacity is not part of generation service. IEU-Ohio asserts that, if the provision of capacity is in fact considered a competitive generation service, the Commission's economic regulation jurisdiction is limited to Sections 4928.141, 4928.142, and 4928.143, Revised Code, which pertain to the establishment of an SSO. IEU-Ohio notes that these sections contain various substantive and procedural requirements that must be satisfied prior to the lawful establishment of an SSO, none of which has been satisfied in the present case, which precludes the Commission from considering or approving AEP-Ohio's proposed cost-based capacity pricing mechanism. IEU-Ohio adds that Section 4928.05, Revised Code, prohibits the Commission from regulating competitive retail electric service under its traditional cost-based ratemaking authority contained in Chapter 4909, Revised Code. IEU-Ohio continues that, if the provision of capacity is nevertheless deemed a noncompetitive service, the Commission cannot approve AEP-Ohio's proposed capacity pricing mechanism because the Company has failed to satisfy any

of the statutory requirements found in Chapter 4909, Revised Code. IEU-Ohio also argues that AEP-Ohio has failed to satisfy the requirements of Section 4909.16, Revised Code, which must be met before the Commission can authorize a rate increase to avoid financial harm. Finally, IEU-Ohio maintains that the Commission's general supervisory authority is not a basis for approving rates. Even aside from the question of the Commission's jurisdiction, IEU-Ohio contends that AEP-Ohio has not met the burden of proof that would apply pursuant to Section 4909.16, 4909.18, or 4928.143, Revised Code.

RESA and Direct Energy (jointly, Suppliers) argue that the Commission has authority under state law to establish the state compensation mechanism. The Suppliers contend that the Commission, pursuant to its general supervisory authority contained within Sections 4905.04, 4905.05, and 4905.06, Revised Code, may initiate investigations to review rates and charges, as it has done in this case to consider AEP-Ohio's capacity pricing mechanism for its FRR obligations. The Suppliers point out that, in the December 8, 2010, entry, the Commission even referenced those sections and noted that it has the authority to supervise and regulate all public utilities within its jurisdiction. Additionally, the Suppliers believe that the Commission may establish the state compensation mechanism pursuant to Sections 4928.141(A) and 4928.143(B)(2)(d), Revised Code, which enable the Commission to set rates for certain competitive services as part of an ESP. The Suppliers also assert that the provision of capacity is a retail electric service, as defined by Section 4928.01(A)(27), Revised Code, given that it is a service arranged for ultimate consumers in this state.

In response to the Suppliers, IEU-Ohio argues that the Commission's general supervisory authority does not provide it with unlimited powers to approve rates. IEU-Ohio further disputes the Suppliers' claim that Section 4928.143(B)(2)(d), Revised Code, offers another statutory basis upon which to approve capacity pricing for CRES providers, noting, among other reasons, that this is not an SSO proceeding.

c. Conclusion

As a creature of statute, the Commission has and may exercise only the authority conferred upon it by the General Assembly. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88 (1999). Thus, as an initial matter, the Commission must determine whether there is a statutory basis under Ohio law upon which it may rely to establish a state compensation mechanism. As we noted in the December 8, 2010, entry, Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction. We further noted that AEP-Ohio is an electric light company as defined in Section 4905.03(A)(3), Revised Code, and a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission. We affirm our prior finding that Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission the necessary statutory authority to establish a state compensation mechanism.

IEU-Ohio contends that the Commission must determine whether capacity service is a competitive or noncompetitive retail electric service pursuant to Chapter 4928, Revised Code. Section 4928.05(A)(1), Revised Code, provides that competitive retail electric service is, to a large extent, exempt from supervision and regulation by the Commission, including pursuant to the Commission's general supervisory authority contained in Sections 4905.04, 4905.05, and 4905.06, Revised Code. Section 4928.05(A)(2), Revised Code, provides that noncompetitive retail electric service, on the other hand, generally remains subject to supervision and regulation by the Commission. Prior to determining whether a retail electric service is competitive or noncompetitive, however, we must first confirm that it is indeed a retail electric service. Section 4928.01(A)(27), Revised Code, defines a retail electric service as "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption." In this case, the electric service in question (*i.e.*, capacity service) is provided by AEP-Ohio for CRES providers, with CRES providers compensating the Company in return for its FRR capacity obligations. Such capacity service is not provided directly by AEP-Ohio to retail customers. (AEP-Ohio Ex. 101 at 11; Tr. I at 63.) Although the capacity service benefits shopping customers in due course, they are initially one step removed from the transaction, which is more appropriately characterized as an intrastate wholesale matter between AEP-Ohio and each CRES provider operating in the Company's service territory. As AEP-Ohio notes, many of the parties, including the Company, regard the capacity compensation assessed by the Company to CRES providers as a wholesale matter (Tr. IV at 795; Tr. V at 1097, 1125; Tr. VI at 1246, 1309). We agree that the provision of capacity for CRES providers by AEP-Ohio, pursuant to the Company's FRR capacity obligations, is not a retail electric service as defined by Ohio law. Accordingly, we find it unnecessary to determine whether capacity service is considered a competitive or noncompetitive service under Chapter 4928, Revised Code.

The Commission recognizes that, pursuant to the FPA, electric sales for resale and other wholesale transactions are generally subject to the exclusive jurisdiction of FERC. In this case, however, our exercise of jurisdiction, for the sole purpose of establishing an appropriate state compensation mechanism, is consistent with the governing section of the RAA, which, as a part of PJM's tariffs, has been approved by FERC and was accepted by AEP-Ohio when the RAA was signed on its behalf by AEPSC.[6] Section D.8 of Schedule 8.1 of the RAA acknowledges the authority of a state regulatory jurisdiction, such as the Commission, to establish a state compensation mechanism. It further provides that a state compensation mechanism, once established, prevails over the other compensation methods that are addressed in that section. Additionally, FERC has found that the RAA does not

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6 In its order rejecting the FERC filing, FERC noted its approval of the RAA pursuant to a settlement agreement. *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011), *citing PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006), *order on reh'g*, 119 FERC ¶ 61,318, *reh'g denied*, 121 FERC ¶ 61,173 (2007), *aff'd sub nom. Pub. Serv. Elec. & Gas Co. v. FERC*, D.C. Circuit Case No. 07-1336 (March 17, 2009) (unpublished): FERC also noted that the RAA was voluntarily signed on behalf of AEP-Ohio.

permit AEPSC to change the state compensation mechanism. In fact, FERC rejected AEPSC's proposed formula rate, given the existence of the state compensation mechanism established by the Commission in its December 8, 2010, entry.[7]

2. Should the state compensation mechanism for AEP-Ohio be based on the Company's capacity costs or on another pricing mechanism such as RPM-based auction prices?

a. AEP-Ohio

As an initial matter, AEP-Ohio notes that it recently declared that it will not continue its status as an FRR Entity and instead will fully participate in the RPM capacity market auctions, beginning on June 1, 2015, which is the earliest possible date on which to transition from an FRR Entity to a full participant in the RPM capacity market. AEP-Ohio points out that this development narrows the scope of this proceeding to establishing a three-year transitional, rather than permanent, form of compensation for its FRR capacity obligations.

AEP-Ohio argues that it is entitled to full compensation for the capacity that it supplies to CRES providers pursuant to its FRR obligations. Specifically, AEP-Ohio contends that Section D.8 of Schedule 8.1 of the RAA grants the Company the right to establish a rate for capacity that is based on cost. AEP-Ohio notes that, by its plain language, the RAA allows an FRR Entity like AEP-Ohio to change the basis for capacity pricing to a cost-based method at any time. AEP-Ohio also notes that no party to this proceeding challenges the Commission's discretion under the RAA to establish cost-based capacity pricing as the state compensation mechanism. According to AEP-Ohio, the term "cost" as used in Section D.8 of Schedule 8.1 of the RAA refers to embedded cost. AEP-Ohio adds that its proposed cost-based capacity rate of $355.72/MW-day advances state policy objectives enumerated in Section 4928.02, Revised Code, as well as the Commission's objectives in this proceeding of promoting alternative competitive supply and retail competition, while also ensuring the Company's ability to attract capital investment to meet its FRR capacity obligations, which were set forth by the Commission in response to the FERC filing (OEG Ex. 101 at 4). With respect to promoting alternative competitive supply and retail competition, AEP-Ohio asserts that the Commission's focus should be on fairness and genuine competition, rather than on the manufacture of artificial competition through subsidization. AEP-Ohio believes that, because shopping will still occur and CRES providers will still realize a significant margin at the Company's proposed rate (Tr. XI at 2330-2333), the rate is consistent with the Commission's first objective. AEP-Ohio also believes that its proposed rate satisfies the Commission's second objective of ensuring the Company's ability to attract capital investment to meet its FRR capacity obligations. AEP-Ohio contends that its proposed rate would enable the Company to continue to attract

7 *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011).

capital and satisfy its FRR capacity obligations without harm to the Company, while providing customers with reliable and reasonably priced retail electric service as required by Section 4928.02, Revised Code. AEP-Ohio argues that cost-based capacity pricing would encourage investment in generation in Ohio and thereby increase retail reliability and affordability, as well as adequately compensate the Company for its capacity obligations as an FRR Entity.

AEP-Ohio contends that, during the period in which it remains an FRR Entity, RPM-based capacity pricing is not appropriate. As an FRR Entity, AEP-Ohio notes that it does not procure capacity for its load obligations in PJM's RPM auctions or even participate in such auctions, except to the extent that the Company has capacity that it does not need for its native load. AEP-Ohio points out that, under such circumstances, its auction participation is limited to 1,300 MW. (AEP-Ohio Ex. 105 at 8; Tr. III at 661-662.) AEP Ohio argues that, as an FRR Entity, it would not recover its capacity costs, if capacity pricing is based on RPM prices, and the difference is not made up by its SSO customers (Tr. I at 64). AEP-Ohio maintains that, because its obligations as an FRR Entity are longer and more binding reliability obligations than a CRES provider's obligations as an alternative LSE, an RPM-based price for capacity would not be compensatory or allow the Company to recover an amount even remotely approaching its embedded costs for the 2011-2012 and 2012-2013 PJM planning years, and should thus be rejected (Tr. II at 243). According to AEP-Ohio, RPM-based capacity pricing would also give CRES providers an unfair advantage over the members of the pool agreement, which purchase capacity based on embedded costs (Tr. I at 59-60), and discriminate against non-shopping customers.

Additionally, AEP-Ohio claims that RPM-based capacity pricing would cause substantial, confiscatory financial harm to the Company. According to AEP-Ohio witness Allen, the Company would earn a return on equity of 7.6 percent in 2012 and a return on equity of 2.4 percent in 2013, with a $240 million decrease in earnings between 2012 and 2013, if RPM-based capacity pricing is adopted (AEP-Ohio Ex. 104 at 3-5, Ex. WAA-1; Tr. III at 701).

Finally, AEP-Ohio notes that RPM-based capacity pricing is inappropriate because it would constitute an illegal subsidy to CRES providers in violation of Section 4928.02(H), Revised Code.

b. Staff

In its brief, Staff contends that AEP-Ohio should receive compensation from CRES providers for the Company's FRR obligations in the form of the prevailing RPM rate in the unconstrained region of PJM. Staff opposes the Company's request to establish a capacity rate that is significantly above the market rate. Staff notes that other investor-owned utilities in Ohio charge CRES providers RPM-based capacity pricing and that such pricing

should, therefore, also be appropriate for AEP-Ohio. Staff further notes that the evidentiary record does not support AEP-Ohio's proposed capacity pricing of $355.72/MW-day.

c. Intervenors

All of the intervenors in this case agree that the Commission should adopt RPM-based capacity pricing as the state compensation mechanism. Many of the intervenors note that AEP-Ohio has used RPM-based capacity pricing since 2007, without incurring financial hardship or compromising service reliability for its customers. They further note that AEP-Ohio will continue to use RPM-based capacity pricing, at the Company's own election, beginning on June 1, 2015. They believe, therefore, that the Commission should adopt RPM-based capacity pricing as the state compensation mechanism for the intervening three-year period for numerous reasons, including for the sake of competition and continuity.

FES argues that RPM-based capacity pricing is the proper state compensation mechanism for AEP-Ohio. FES contends that a market-based state compensation mechanism, specifically one that adopts the RPM price as the best indicator of the market price for capacity, is required because Ohio law and policy have established and promoted a competitive market for electric generation service; RPM-based pricing is supported by sound economic principles and avoids distorted incentives for CRES providers; and AEP-Ohio's return on equity is more than sufficient under RPM-based pricing, given that the Company's analysis is based on unrealistic shopping assumptions. FES adds that, even if cost-based pricing were appropriate, AEP-Ohio has dramatically overstated its costs. FES argues that AEP-Ohio's proposed capacity pricing mechanism is not based on the costs associated with the capacity provided by AEP-Ohio to Ohio customers; includes all costs, rather than just those avoidable costs that are relevant in economic decision making; includes stranded costs that may not be recovered under Ohio law; and fails to include an appropriate offset for energy sales. FES notes that, if the Commission were to allow AEP-Ohio to charge CRES providers any rate other than the RPM-based rate, the Company would be the only capacity supplier in PJM that could charge shopping customers its full embedded costs for generation, which, according to FES, is a concept that is not found within the RAA, whereas there are numerous provisions referring to "avoidable costs."

FES believes that AEP-Ohio's proposed capacity pricing would preclude customers from receiving the benefits of competition. Specifically, FES argues that competition is state law and policy, and benefits customers; AEP-Ohio's price of $355.72/MW-day would harm competition and customers; and its proposed price would provide improper, anti-competitive benefits to the Company.

IEU-Ohio contends that AEP-Ohio has failed to demonstrate that its proposed capacity pricing mechanism is just and reasonable, as required by Section 4905.22, Revised Code. IEU-Ohio asserts that RPM-based capacity pricing is the appropriate market pricing

for capacity. IEU-Ohio believes that RPM-based capacity pricing is consistent with state policy, whereas AEP-Ohio's proposed capacity pricing mechanism would unlawfully subsidize the Company's position with regard to the competitive generation business, contrary to state policy. IEU-Ohio notes that neither AEP-Ohio's status as an FRR Entity nor the pool agreement is a basis for the Company's cost-based capacity pricing mechanism. IEU-Ohio points out that AEP-Ohio used RPM-based capacity pricing from 2007 through 2011, during which time the Company was an FRR Entity and the pool agreement was in effect. IEU-Ohio further argues that AEP-Ohio's proposed cost-based capacity pricing mechanism would produce results that are not comparable to the capacity price paid by SSO customers, contrary to state law. IEU-Ohio further notes that AEP-Ohio has not identified the capacity component of its SSO rates and that it is thus impossible to determine whether the proposed capacity pricing for CRES providers would be comparable to the capacity component of its SSO rates. (IEU-Ohio Ex. 102A at 29-32, Ex. KMM-10.) Regardless of the method by which the capacity pricing mechanism is established, IEU-Ohio requests that AEP-Ohio be directed to provide details to customers and CRES providers that show how the peak load contribution (PLC) that the Company assigns to a customer corresponds with the customer's PLC recognized by PJM. IEU-Ohio contends that this information is necessary to ensure that capacity compensation is being properly applied to shopping and non-shopping customers. (IEU-Ohio Ex. 102A at 33-34.)

The Suppliers argue that a capacity rate based on AEP-Ohio's embedded costs is not appropriate under the plain language of the RAA. Citing Section D.8 of Schedule 8.1 of the RAA, the Suppliers contend that AEP-Ohio may seek a cost-based rate by making a filing at FERC under Section 205 of the FPA, but only if there is no state compensation mechanism in place. The Suppliers add that the purpose of this proceeding is to establish the appropriate state compensation mechanism and that a state compensation mechanism based on AEP-Ohio's embedded costs would be contrary to the intent of the RAA, which refers only to the avoided cost rate. The Suppliers also note that allowing AEP-Ohio to recover its embedded costs would grant the Company a higher return on equity (12.2 percent in 2013) than has been allowed for any of its affiliates in other states and that is considerably higher than what the Commission granted in the Company's last rate case (RESA Ex. 103). Finally, the Suppliers maintain that AEP-Ohio's proposed cost-based capacity pricing mechanism would preclude CRES providers from making attractive offers, could result in shopping customers subsidizing non-shopping customers, and would destroy Ohio's growing competitive retail electricity market.

The Suppliers also believe that the two-tier capacity pricing mechanism that has been in effect is inequitable and inefficient and that a single RPM-based rate should be in place for all shopping customers. The Suppliers argue that the RPM price is the most transparent, market-based price for capacity, and is necessary as part of AEP-Ohio's three-year transition to market.

OEG argues that the Commission should establish either the annual or the average RPM price for the next three PJM planning years as the price that AEP-Ohio can charge CRES providers under the state compensation mechanism for its FRR capacity obligations. OEG notes that use of the three-year average RPM price of $69.20/MW-day would mitigate some of the financial impact on AEP-Ohio from fluctuating future RPM prices and ease the Company's transition out of FRR status. OEG adds that the two-tier capacity pricing mechanism should not be continued and that a single price should be charged for all CRES providers. OEG notes that its position in this case has been guided by the Commission's twin goals, as expressed to FERC, of promoting competition, while also ensuring that AEP-Ohio has the necessary capital to maintain reliability. OEG believes that AEP-Ohio's proposed capacity pricing mechanism represents a drastic departure from past precedent that would deter shopping and undermine the benefits of retail competition, which is contrary to the Commission's goal of promoting competition. With respect to OEG's position that a three-year RPM price average could be used, AEP-Ohio notes that the concept was raised for the first time in OEG's initial brief, is without evidentiary support, and should be rejected.

OMA and OHA assert that, because the Commission has already established RPM-based capacity pricing as the state compensation mechanism, AEP-Ohio has the burden, as the entity challenging the state compensation mechanism, of proving that it is unjust and unreasonable. OMA and OHA further assert that AEP-Ohio has failed to sustain its burden. OMA and OHA believe that RPM-based capacity pricing is a just, reasonable, and lawful basis for the state compensation mechanism. According to OMA and OHA, AEP-Ohio has not demonstrated that RPM-based capacity pricing would cause substantial financial harm to the Company. OMA and OHA note that AEP-Ohio's projections are based on unrealistic and unsubstantiated shopping assumptions, with 65 percent of residential customers, 80 percent of commercial customers, and 90 percent of industrial customers switching by the end of 2012 (AEP-Ohio Ex. 104 at 4-5). OMA and OHA believe that RPM-based capacity pricing would not impact AEP-Ohio's ability to attract and invest capital, noting that the Company continues to invest capital regardless of its capacity costs for shopping customers and has no need or plan to attract or invest capital in additional capacity (IEU-Ohio Ex. 104; Tr. I at 36, 128-131; Tr. V at 868). On the other hand, OMA and OHA argue that AEP-Ohio's proposed capacity pricing mechanism would substantially harm customers and CRES providers and violate state policy, as it would significantly restrict the ability of customers to shop and enjoy savings; would unfairly deny customers access to market rates for capacity when market rates are low, and subject customers to market rates when they are high; and would harm economic development and recovery efforts. OMA and OHA urge the Commission to ensure that all customers in Ohio are able to take advantage of historically low capacity prices and have access to the lowest possible competitive electricity rates, as a means to stimulate and sustain economic growth.

OCC contends that AEP-Ohio's proposed capacity pricing mechanism should be rejected because it is contrary to the plain language of the RAA, which provides that, if a state compensation mechanism exists, its pricing prevails. According to OCC, the Commission established RPM-based capacity pricing as the state compensation mechanism in its December 8, 2010, entry. OCC notes that FERC has already rejected AEPSC's attempt to establish a formula rate for capacity in Ohio in light of the Commission's adoption of RPM-based capacity pricing as the state compensation mechanism. OCC further notes that AEP-Ohio's proposed capacity pricing mechanism is inconsistent with economic efficiency and contrary to state policy. OCC's position is that the Commission should find that RPM-based capacity pricing is appropriate, given the precedent already established by the Commission and FERC, and in light of the fact that AEP-Ohio has historically used RPM-based pricing for capacity sales to CRES providers.

NFIB urges the Commission to base AEP-Ohio's capacity compensation on RPM prices. NFIB adds that AEP-Ohio's proposed capacity pricing mechanism does not promote competition and would prevent small business owners from taking advantage of historically low market prices over the next several years. NFIB believes that AEP-Ohio would earn a healthy return on equity under RPM-based capacity pricing and that the Company has failed to establish how it would be better equipped to transition to the RPM market, if its cost-based pricing mechanism is approved.

Dominion Retail recommends that the Commission continue to employ RPM-based capacity pricing as the state compensation mechanism, as market-based pricing is fundamental to the development of a robust competitive market in AEP-Ohio's service territory. According to Dominion Retail, RPM-based capacity pricing would not require AEP-Ohio, shareholders, or SSO customers to subsidize CRES providers, as the Company contends. Dominion Retail notes that AEP-Ohio proposed cost-based capacity pricing only when it became apparent that market-based energy and capacity charges would permit CRES providers to compete effectively for customers in the Company's service territory for the first time. Dominion Retail adds that AEP-Ohio's underlying motivation is to constrain shopping and that allowing the Company to charge a cost-based capacity rate would be contrary to the state policy of promoting competition. Dominion Retail argues that Ohio law does not require that capacity pricing be based on embedded costs. Dominion Retail points out that AEP-Ohio's status as an FRR Entity does not mean that the state compensation mechanism must be based on embedded costs. Dominion Retail notes that Duke Energy Ohio, Inc. will also be an FRR Entity until mid-2015, and that it nevertheless uses RPM-based capacity pricing. Dominion Retail further notes that Amended Substitute Senate Bill No. 3 (SB 3) eliminated cost-of-service-based ratemaking for generation service. Dominion Retail asserts that AEP-Ohio is unrealistic in assuming that CRES providers would be able to compete successfully if AEP-Ohio's proposed capacity pricing is adopted. Dominion Retail points out that even AEP-Ohio witness Allen agrees that the Company's proposed capacity pricing would stifle competition in the residential market (Tr. III at 669-

670). Finally, Dominion Retail points out that AEP-Ohio's proposed cost-based capacity pricing mechanism is nowhere near the Company's capacity proposal pending in 11-346, which would provide for a capacity rate of $146/MW-day for some shopping customers and $255/MW-day for the rest. Dominion Retail contends that this fact demonstrates AEP-Ohio's willingness to provide capacity at a rate less than what it has proposed in this case and also undercuts the Company's confiscation argument.

The Schools also request that the Commission retain RPM-based capacity pricing. The Schools argue that, if AEP-Ohio's proposed capacity pricing mechanism is adopted, the rate would likely be passed through to the Ohio schools that are served by CRES providers, and that these schools would suffer rate shock in violation of Section 4928.02(A), Revised Code (Schools Ex. 101 at 9). Additionally, the Schools believe that Ohio schools that do not currently receive generation service from a CRES provider would be deprived of the opportunity to shop, in violation of Section 4928.02(C), Revised Code (Schools Ex. 101 at 10-11). Finally, the Schools contend that approval of AEP-Ohio's proposed capacity pricing mechanism would likely result in cuts to teaching and staff positions, materials and equipment, and programs, in violation of Section 4928.02(N), Revised Code (Schools Ex. 101 at 10).

Duke also contends that the Commission should adopt RPM-based capacity pricing as the state compensation mechanism, which is consistent with state policy supporting competition. Duke asserts that, pursuant to the RAA, an FRR Entity may only apply to FERC for cost-based compensation for its FRR capacity obligations, if there is no state compensation mechanism in place. According to Duke, neither the RAA nor Ohio law grants AEP-Ohio the right to recover its embedded costs. Duke notes that, under Ohio law, capacity is a competitive generation service that is not subject to cost-based ratemaking.

Exelon and Constellation assert that, if AEP-Ohio's proposed capacity pricing mechanism is approved, retail competition in the Company's service territory will be stifled and customers will bear the cost. Exelon and Constellation cite numerous reasons supporting their position that AEP-Ohio's proposal should be rejected in favor of RPM-based capacity pricing: Ohio law does not require that the state compensation mechanism be based on cost; AEP-Ohio's status as an FRR Entity does not entitle it to cost-based capacity pricing; AEP-Ohio, even as an FRR Entity, could have elected to participate in the RPM auction for 2014, rather than self-supply more expensive capacity, putting its own interests above those of customers; RPM-based capacity pricing is consistent with state policy promoting the development of competitive markets, whereas the Company's proposal is not; the Company should not be allowed to unilaterally apply better-of-cost-or-market pricing; CRES providers are captive to AEP-Ohio, given the requirement that capacity be committed more than three years in advance of delivery; Ohio law requires comparable and nondiscriminatory access to CRES and RPM-based capacity pricing is used throughout Ohio except in AEP-Ohio's service territory; and adopting RPM-based capacity

pricing would avoid the need to determine an arbitrary estimate of the Company's cost of service for capacity and, in any event, SB 3 eliminated full cost-of-service analysis. Exelon and Constellation note that 11-346 is the proper forum in which to determine whether AEP-Ohio requires protection to maintain its financial integrity. Exelon and Constellation further note that they would support reasonable measures that comport with a timely transition to a fully competitive market and resolution of related issues in 11-346, if such measures are shown to be necessary.

IGS contends that RPM-based capacity pricing is the clear choice over AEP-Ohio's proposed capacity pricing mechanism. IGS points out that RPM-based capacity pricing already exists, was neutrally created, applies all over the region, is market-based, is nondiscriminatory, and provides the correct incentives to assure investment in generation resources. On the other hand, AEP-Ohio's proposal, according to IGS, was devised by the Company, for this case and this case only, returns Ohio to a cost-based generation regulatory regime, shows no relationship to short- or long-term generation adequacy, and could stifle competition. IGS notes that RPM-based capacity pricing fully comports with Ohio law in that it is market-based pricing and would support the continued development of Ohio's competitive market; would avoid subsidies and discriminatory pricing; would assure adequate resources are available to provide stable electric service; and would avoid any legal problems associated with extending the transition to competition. IGS asserts that AEP-Ohio's proposed capacity pricing would be contrary to Ohio law in that it would harm the development of competition; result in anticompetitive subsidies; and violate Ohio's transition laws. IGS also notes that AEP-Ohio's justifications for recovering embedded costs are refuted by the evidence and disregard state policy. IGS contends that RPM-based capacity pricing does not raise reliability concerns or subsidize CRES providers. IGS argues that AEP-Ohio has a fundamental disagreement with state policy. IGS notes that AEP-Ohio's judgment as to the wisdom of state policy is irrelevant, given that it has been codified by the General Assembly and must be effectuated by the Commission.

Finally, Kroger asserts that the most economically efficient price and the price that AEP-Ohio should be required to charge CRES providers for capacity is the RPM price.

d. Conclusion

Initially, the Commission notes that a state compensation mechanism, as referenced in the RAA, has been in place for AEP-Ohio for some time now, at least since issuance of the December 8, 2010, entry, which expressly adopted RPM-based capacity pricing as the state compensation mechanism for the Company during the pendency of this case. The state compensation mechanism was subsequently modified by the Commission's March 7, 2012, and May 30, 2012, entries granting AEP-Ohio's requests for interim relief. No party appears to dispute, at least in this proceeding, that the Commission has adopted a state compensation mechanism for AEP-Ohio.

Given that there is, and has continually been, a state compensation mechanism in place for AEP-Ohio from the beginning of this proceeding, the issue for our consideration is whether the state compensation mechanism, on a going-forward basis, must or should be modified such that it is based on cost. AEP-Ohio contends that the state compensation mechanism must be amended so that the Company is able to recover its embedded costs of capacity. All of the intervenors and Staff oppose AEP-Ohio's request and advocate instead that the Commission retain the RPM-based state compensation mechanism, as it was established in the December 8, 2010, entry.

Pursuant to Section 4905.22, Revised Code, all charges for service shall be just and reasonable and not more than allowed by law or by order of the Commission. In this case, AEP-Ohio asserts that its proposed compensation for its FRR capacity obligations is just and reasonable and should be adopted by the Commission. Specifically, AEP-Ohio asserts that its proposed cost-based capacity pricing is consistent with state policy, will promote alternative competitive supply and retail competition, and will ensure the Company's ability to attract capital investment to meet its FRR capacity obligations. All of the intervenors and Staff, on the other hand, recommend that market-based RPM capacity pricing should be approved as the state compensation mechanism for AEP-Ohio. As discussed above, there is a general consensus among these parties that RPM-based capacity pricing is just and reasonable, easily implemented and understood, and consistent with state policy. Staff and intervenors further agree that RPM-based capacity pricing will fulfill the Commission's stated goals of both promoting competition and ensuring that AEP-Ohio has the required capital to maintain service reliability.

As discussed above, the Commission finds that it has jurisdiction to establish a state compensation mechanism in this case pursuant to its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code. We further find, pursuant to our regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code, that it is necessary and appropriate to establish a cost-based state compensation mechanism for AEP-Ohio. Those chapters require that the Commission use traditional rate base/rate of return regulation to approve rates that are based on cost, with the ultimate objective of approving a charge that is just and reasonable consistent with Section 4905.22, Revised Code. Although Chapter 4928, Revised Code, provides for market-based pricing for retail electric generation service, those provisions do not apply because, as we noted earlier, capacity is a wholesale rather than a retail service. The Commission's obligation under traditional rate regulation is to ensure that the jurisdictional utilities receive reasonable compensation for the services that they render. We conclude that the state compensation mechanism for AEP-Ohio should be based on the Company's costs. Although Staff and intervenors contend that RPM-based capacity pricing is just and reasonable, we note that the record indicates that the RPM-based price for capacity has decreased greatly since the December 8, 2010, entry was issued, and that the adjusted RPM

rate currently in effect is substantially below all estimates provided by the parties regarding AEP-Ohio's cost of capacity (AEP-Ohio Ex. 102 at 21, 22; FES Ex. 103 at 55; Staff Ex. 105 at Ex. ESM-4). The record further reflects that, if RPM-based capacity pricing is adopted, AEP-Ohio may earn an unusually low return on equity of 7.6 percent in 2012 and 2.4 percent in 2013, with a loss of $240 million between 2012 and 2013 (AEP-Ohio Ex. 104 at 3-5, Ex. WAA-1; Tr. III at 701). In short, the record reveals that RPM-based capacity pricing would be insufficient to yield reasonable compensation for AEP-Ohio's provision of capacity to CRES providers in fulfillment of its FRR capacity obligations.

However, the Commission also recognizes that RPM-based capacity pricing will further the development of competition in the market (Exelon Ex. 101 at 7; OEG Ex. 102 at 11), which is one of our primary objectives in this proceeding. We believe that RPM-based capacity pricing will stimulate true competition among suppliers in AEP-Ohio's service territory. We also believe that RPM-based capacity pricing will facilitate AEP-Ohio's transition to full participation in the competitive market, as well as incent shopping. RPM-based capacity pricing has been used successfully throughout Ohio and the rest of the PJM region and puts electric utilities and CRES providers on a level playing field (FES Ex. 101 at 50-51; FES Ex. 102 at 3). RPM-based capacity pricing is thus a reasonable means of promoting shopping in AEP-Ohio's service territory and advancing the state policy objectives of Section 4928.02, Revised Code, which the Commission is required to effectuate pursuant to Section 4928.06(A), Revised Code.

Therefore, with the intention of adopting a state compensation mechanism that achieves a reasonable outcome for all stakeholders, the Commission directs that the state compensation mechanism shall be based on the costs incurred by the FRR Entity for its FRR capacity obligations, as discussed further in the following section. However, because the record in this proceeding demonstrates that RPM-based capacity pricing will promote retail electric competition, we find it necessary to take appropriate measures to facilitate this important objective. For that reason, the Commission directs AEP-Ohio to charge CRES providers the adjusted final zonal PJM RPM rate in effect for the rest of the RTO region for the current PJM delivery year (as of today, approximately $20/MW-day), and with the rate changing annually on June 1, 2013, and June 1, 2014, to match the then current adjusted final zonal PJM RPM rate in the rest of the RTO region. Further, the Commission will authorize AEP-Ohio to modify its accounting procedures, pursuant to Section 4905.13, Revised Code, to defer incurred capacity costs not recovered from CRES provider billings during the ESP period to the extent that the total incurred capacity costs do not exceed the capacity pricing that we approve below. Moreover, the Commission notes that we will establish an appropriate recovery mechanism for such deferred costs and address any additional financial considerations in the 11-346 proceeding. We also find that AEP-Ohio should be authorized to collect carrying charges on the deferral based on the Company's weighted average cost of capital, until such time as a recovery mechanism is approved in 11-346, in

order to ensure that the Company is fully compensated. Thereafter, AEP-Ohio should be authorized to collect carrying charges at its long-term cost of debt.

Additionally, the Commission directs that the state compensation mechanism that we approve today shall not take effect until our opinion and order is issued in 11-346, or until August 8, 2012, whichever is sooner. Until that time, the interim capacity pricing mechanism that we approved on March 7, 2012, and extended on May 30, 2012, shall remain in place. In further extending the interim capacity pricing mechanism, we recognize that 11-346 and the present proceeding are intricately related. In fact, AEP-Ohio has put forth an entirely different capacity pricing mechanism in 11-346 as a component of its proposed ESP. Although this case has proceeded separately so that an evidentiary record on the appropriate capacity cost pricing/recovery mechanism could be developed, there is an overlap of issues between the two proceedings. For that reason, we find that the state compensation mechanism approved today should become effective with the issuance of our order in 11-346, which will address AEP-Ohio's comprehensive rate package, including its capacity pricing proposal, or August 8, 2012, whichever occurs first.

We note that the state compensation mechanism, once effective, shall remain in effect until AEP-Ohio's transition to full participation in the RPM market is complete and the Company is no longer subject to its FRR capacity obligations, which is expected to occur on or before June 1, 2015, or until otherwise directed by the Commission.

The Commission believes that the approach that we adopt today appropriately balances our objectives of enabling AEP-Ohio to recover its costs for capacity incurred in fulfilling its FRR capacity obligations, while promoting the further development of retail competition in the Company's service territory.

3. What should the resulting compensation be for AEP-Ohio's FRR capacity obligations?

a. AEP-Ohio

AEP-Ohio's position is that the appropriate cost-based capacity price to be charged to CRES providers is $355.72/MW-day, on a merged company basis, before consideration of any offsetting energy credit. AEP-Ohio notes that the formula rate approach recommended by Company witness Pearce is based upon the average cost of serving the Company's LSE obligation load (both the load served directly by AEP-Ohio and the load served by CRES providers) on a dollar-per-MW-day basis. AEP-Ohio further notes that, because the Company supplies its own generation resources to satisfy these load obligations, the cost to provide this capacity is the actual embedded capacity cost of its generation. AEP-Ohio's formula rate template was modeled after, and modified from, the capacity portion of a FERC-approved template used to derive the charges applied to wholesale sales made by Southwestern Electric Power Company, an affiliate of the Company, to the cities of Minden,

Louisiana and Prescott, Arkansas. AEP-Ohio notes that Dr. Pearce's formula rate approach is transparent and, if adopted, would be updated annually by May 31 to reflect the most current input data, most of which is publicly available and taken directly from the Company's FERC Form 1 and audited financial statements (AEP-Ohio Ex. 102 at 8). AEP-Ohio adds that its proposed formula rate template would promote rate stability and result in a reasonable return on equity of 12.2 percent in 2013, based on a capacity price of $355.72/MW-day (Tr. II at 12-25; AEP-Ohio Ex. 142 at 21-22).

AEP-Ohio contends that its proposed cost-based capacity pricing roughly approximates and is, therefore, comparable to the amount that the Company receives from its SSO customers for capacity through base generation rates (AEP-Ohio Ex. 142 at 19-20; Tr. II at 304, 350).

b. Staff

If the Commission determines that RPM-based capacity pricing is not appropriate for AEP-Ohio, Staff proposes an alternate capacity rate of $146.41/MW-day, which accounts for energy margins as well as certain cost adjustments to the Company's proposed capacity pricing mechanism. Staff notes that its alternate rate may offer more financial stability to AEP-Ohio than RPM-based capacity pricing over the next three years, and is just and reasonable unlike the Company's excessive rate proposal. Staff finds that its alternate rate would appropriately balance the interests of AEP-Ohio in recovering its embedded costs to meet its FRR capacity obligations and attracting capital investment, while also promoting alternative competitive supply and retail competition.

According to Staff, the reduction of AEP-Ohio's proposed rate of $355.72/MW-day to Staff's alternative recommendation of $146.41/MW-day is a result of removing and adjusting numerous items, including return on equity; rate of return; construction work in progress (CWIP); plant held for future use (PHFFU); cash working capital (CWC); certain prepayments, including a prepaid pension asset and the related accumulated deferred income taxes; accumulated deferred income taxes; payroll and benefits for eliminated positions; 2010 severance program cost; income tax expense; domestic production activities; payroll tax expense; capacity equalization revenue; ancillary services revenue; and energy sales margin and ancillary services receipts. In terms of the return on equity, Staff witness Smith used ten percent for CSP and 10.3 percent for OP, because these percentages were adopted by the Commission in AEP-Ohio's recent distribution rate case (Staff Ex. 103 at 12-13).[8] Staff notes that CWIP was properly excluded from rate base because AEP-Ohio has not demonstrated that the requirements of Section 4909.15 or 4928.143, Revised Code, have been met (Staff Ex. 103 at 14-15). Staff also excluded PHFFU from rate base, as the plant in

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[8] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, *et al.*

question is not used and useful and AEP-Ohio has given no indication as to when it will become so (Staff Ex. 103 at 16). CWC was excluded by Staff because AEP-Ohio did not prepare a lead-lag study or otherwise demonstrate a need for CWC (Staff Ex. 103 at 18-21). Staff excluded AEP-Ohio's prepaid pension asset for numerous reasons, mainly because the Company did not demonstrate that it has a net prepaid pension asset and its FERC Form 1 for 2010 suggests that there is actually a net liability; pension funding levels are the result of discretionary management decisions regarding the funding of defined benefit pensions; and pension expense is typically included in the determination of CWC in a lead-lag study, which was not provided (Staff Ex. 103 at 21-31). Staff further excluded nonrecurring costs related to the significant number of positions that were permanently eliminated as a result of AEP-Ohio's severance program in 2010 (Staff Ex. 1-3 at 43-52).

AEP-Ohio responds that Mr. Smith's downward adjustments and elimination of certain costs from Dr. Pearce's calculations are fundamentally flawed in that Dr. Pearce's formula rate approach is based on a formula rate template that was approved by FERC. AEP-Ohio also counters that adjustments made by Mr. Smith to the return on equity, operations and maintenance expenses attributable to severance programs, prepaid pension assets, CWC, CWIP, and PHFFU understate the Company's costs and contradict prior orders and practices of both the Commission and FERC. With respect to the return on equity, AEP-Ohio notes that Mr. Smith's adjustment was inappropriately taken from the stipulation in the Company's recent distribution rate case and that Mr. Smith agreed that the competitive generation business is more risky than the distribution business (Staff Ex. 103 at 12-13; Tr. IX at 1991, 1993; AEP-Ohio Ex. 142 at 17). AEP-Ohio contends that the Commission should adopt a return on equity of 11.15 percent as recommended by Dr. Pearce or, at a minimum, a return on equity of 10.5 percent, which AEP-Ohio claims is consistent with a return on equity that the Commission has recently recognized for certain generating assets of the Company (AEP-Ohio Ex. 142 at 17-18). AEP-Ohio further contends that Mr. Smith's elimination of certain severance costs and prepaid pension expenses is inconsistent with the Commission's treatment of such costs in the Company's recent distribution rate case, and that the $39.004 million in severance costs should be amortized over three years (AEP-Ohio Ex. 142 at 17). AEP-Ohio argues that Mr. Smith's elimination of CWIP and CWC is inconsistent with FERC practice.

Additionally, AEP-Ohio asserts that Staff witnesses Smith and Harter failed to account for nearly $66.5 million in certain energy costs incurred by the Company, including Production-Related Administrative & General Expenses, Return on Production-Related Investments, Production-Related Depreciation Expenses, and Production-Related Income Taxes. According to AEP-Ohio, due to these trapped costs, Mr. Smith's capacity charge is understated by $20.11/MW-day on a merged company basis (AEP-Ohio Ex. 143 at 3, 5-6). AEP-Ohio witness Allen incorporated this amount in his calculation of what Staff's capacity rate would be, as modified by his recommended energy credit and cost-of-service

adjustments, and reached a resulting capacity rate of $291.58/MW-day (AEP-Ohio Ex. 142 at 18; Tr. XI at 2311).

c. Intervenors

If the Commission believes that it is appropriate to consider AEP-Ohio's embedded costs, FES argues that the Company's true cost of capacity is $78.53/MW-day, after adjustments are made to reflect the removal of stranded costs and post-2001 generation investment, as well as an appropriate offset for energy sales. At most, FES contends that it should be $90.83/MW-day, if a further adjustment is made to credit back to AEP-Ohio the capacity equalization payments for the Company's Waterford and Darby plants, which were acquired in 2005 and 2007. FES also recommends that the Commission require AEP-Ohio to unbundle its base generation rate into energy and capacity components, which would ensure that the Company is charging the same price for shopping and non-shopping customers and allow customers to compare offers from CRES providers with the Company's tariff rates (FES Ex. 103 at 22).

The Suppliers note that, if the Commission finds that RPM-based capacity pricing is confiscatory or otherwise fails to compensate AEP-Ohio adequately, a nonbypassable stabilization charge, such as the rate stability rider rate proposed by the Company in 11-346, would be appropriate and should be considered in that case. OMA and OHA respond by arguing that any suggestion that rates should be raised without any justification, other than reaching a level that is high enough to ensure that CRES providers are able to compete with AEP-Ohio, tramples on customer interests and should be rejected by the Commission.

As discussed in greater detail below, OEG recommends that AEP-Ohio's capacity charge should be no higher than $145.79/MW-day, which was the RPM-based price for the 2011/2012 PJM delivery year, and only if the Commission determines that the prevailing RPM price is not sufficient compensation (OEG Ex. 102 at 9-10). OEG argues that a capacity charge of $145.79/MW-day provided a more than sufficient return on equity for AEP-Ohio, as well as fostered retail competition in its service territory (OEG Ex. 102 at 10-11). As part of this recommendation, OEG urges the Commission adopt an earnings stabilization mechanism (ESM) in the form of an annual review to gauge whether AEP-Ohio's earnings are too high or too low (OEG Ex. 102 at 15-21).

(i) Should there be an offsetting energy credit?

a) AEP-Ohio

AEP-Ohio does not recommend that the Commission adopt an energy credit offset to the capacity price, given that PJM maintains separate markets for capacity and energy (AEP-Ohio Ex. 102 at 13). AEP-Ohio witness Pearce, however, offers a recommendation for how an energy credit should be devised, if the Commission determines that an energy

credit is appropriate. Dr. Pearce's template for the calculation of energy costs is derived from the same formula rate template discussed above and approved by FERC (AEP-Ohio Ex. 102 at 14). The energy credit would be calculated as the difference between the revenues that the historic load shapes for CSP and OP, including all shopping and non-shopping load, would be valued at using locational marginal prices (LMP) that settle in the PJM day-ahead market, less the cost basis of this energy (AEP-Ohio Ex. 102 at Ex. KDP-1 through KDP-5). According to Dr. Pearce, the calculation relies upon a fair and reasonable proxy for the energy revenues that could have been obtained by CSP and OP by selling equivalent generation into the market (AEP-Ohio Ex. 102 at 15). AEP-Ohio contends that, if an energy credit is used to partially offset the demand charge, it should reflect actual energy margins for 2010 in order to best match the corresponding cost basis for calculating the demand charge. Dr. Pearce recommends that energy margins from OSS that are properly attributed to capacity sales to CRES providers should be shared on a 50/50 basis between AEP-Ohio and CRES providers (AEP-Ohio Ex. 102 at 18). Additionally, Dr. Pearce recommends that any energy credit be capped at 40 percent of the capacity charge that would be applicable with no energy credit, as a means to ensure that the credit does not grow so large as to reduce greatly capacity payments from CRES providers in times of high prices (AEP-Ohio Ex. 102 at 18).

b) Staff

As discussed above, Staff recommends that AEP-Ohio's compensation for its FRR capacity obligations be based on RPM pricing. Alternatively, Staff proposes a capacity rate of $146.41/MW-day, which includes an offsetting energy credit and ancillary services credit. In calculating its proposed energy credit, Staff developed a forecast of total energy margins for AEP-Ohio's generating assets, using a dispatch market model known as AURORAxmp, which is licensed by Staff's consultant in this case, Energy Ventures Analysis, Inc. (EVA), as well as by AEP-Ohio and others (Staff Ex. 101 at 6; Tr. X at 2146, 2149; Tr. XII at 2637).

AEP-Ohio contends that Staff's black-box methodology for calculation of the energy credit is flawed in several ways and produces unrealistic and grossly overstated results. Specifically, AEP-Ohio argues that the AURORAxmp model used by Staff witnesses Harter and Medine is not well-suited for the task of computing an energy credit and that EVA implemented the model in a flawed manner through use of inaccurate and inappropriate input data and assumptions, which overstates gross energy margins for the period of June 2012 through May 2015 by nearly 200 percent (AEP-Ohio Ex. 144 at 8-25; AEP-Ohio Ex. 142 at 2-14). AEP-Ohio notes that, among other flaws, Staff's proposed energy credit understates fuel costs for coal units, understates the heat rates for gas units, overstates market prices (*e.g.*, use of zonal rather than nodal prices, use of forecasted LMP rather than forward energy prices), fails to account for the gross margins allocable to the Company's full requirements contract with Wheeling Power Company, and fails to account for the fact

that the pool agreement limits the gross margins retained by the Company. AEP-Ohio argues that Company witness Allen proposed a number of conservative adjustments that should, at a minimum, be made to Staff's approach, resulting in an energy credit of $47.46/MW-day (AEP-Ohio Ex. 142 at 4-14). AEP-Ohio adds that the documentation of EVA's approach is incomplete, inadequate, and cannot be sufficiently tested or validated; the data used in the model and the model itself cannot be reasonably verified; EVA's quality control measures are deficient; and the execution of EVA's analysis contains significant errors and has not been performed with requisite care (AEP-Ohio Ex. 144 at 13-18).

Additionally, AEP-Ohio points out that Staff's proposed energy credit wrongly incorporates OSS margins not related to capacity sales to CRES providers and also fails to properly reflect the impact of the pool agreement. Specifically, AEP-Ohio contends that, if an energy credit is adopted, it should reflect only the OSS margins attributable to energy that is freed up due to capacity sales to CRES providers. AEP-Ohio further notes that Staff inappropriately assumes that 100 percent of the margins associated with retail sales to SSO customers are available to be offset against the cost of capacity sold to CRES providers, which is inconsistent with the terms of the pool agreement, pursuant to which the Company's member load ratio share is 40 percent. AEP-Ohio believes that there is no reason to include margins associated with retail sales to SSO customers in an energy credit calculation intended to price capacity for shopping load. In accordance with Mr. Allen's recommendations, AEP-Ohio concludes that, if Staff's proposed energy credit is adopted by the Commission, it should be adjusted to $47.46/MW-day. Alternatively, AEP-Ohio notes that Mr. Allen's proposed adjustments (AEP-Ohio Ex. 142 at 14) to Staff's energy credit could be made individually or in combination to the extent that the Commission agrees with the basis for each adjustment. AEP-Ohio adds that Company witness Nelson also offered additional options for an energy credit calculation, with the various methods converging around $66/MW-day for the energy credit (AEP-Ohio Ex. 143 at 8, 12-13, 17). As a final option, AEP-Ohio states that the Commission could direct Staff to calculate an energy credit that is consistent with the forward prices recommended by Staff for use in the market rate option price comparison test in 11-346, which the Company believes would reduce Staff's energy credit by approximately $50/MW-day.

c) Intervenors

FES argues that AEP-Ohio's formula rate should include an offset for energy-related sales or else the Company would double recover its capacity costs. FES notes that an energy credit is appropriate because AEP-Ohio recovers a portion of its fixed costs through energy-related sales for resale, and is also necessary to avoid an above-market return on equity for the Company. (FES Ex. 103 at 45-46, 49-50.) FES adds that all of AEP-Ohio's OSS revenues should be included as a credit against capacity costs and that no adjustment should be made to account for the pool agreement, given that the pool agreement could have been modified to account for retail shopping, as well as that the Company proposes to recover its

embedded capacity costs both from shopping customers and off-system energy sales (FES Ex. 103 at 47; Tr. I at 29-30). At minimum, FES believes that AEP-Ohio should account for its portion of OSS revenues, after pool sharing, in its capacity price. (FES Ex. 103 at 48-49.) If RPM-based capacity pricing is not required by the Commission, FES recommends that FES witness Lesser's energy credit, which simply uses AEP-Ohio's FERC account information without adjustments to account for the pool agreement, be adopted. FES notes that Dr. Lesser determined that AEP-Ohio overstated its capacity costs by $178.1 million by failing to include an offset for energy sales.

OCC notes that it would be unjust and unreasonable for AEP-Ohio to be permitted to recover any of its embedded generation costs from customers, particularly without any offset for energy sales. OCC argues that, if the Commission adopts a cost-based capacity pricing mechanism, an energy credit that accounts for profits from OSS is warranted to ensure that AEP-Ohio does not recover embedded capacity costs from CRES providers, as well as recover some of those same costs from off-system energy sales, resulting in double recovery.

(ii) Does the Company's proposed cost-based capacity pricing mechanism constitute a request for recovery of stranded generation investment?

a) Intervenors

FES argues that SB 3 required that all generation plant investment occurring after January 1, 2001, be recovered solely in the market. FES notes that AEP-Ohio admits, in its recently filed corporate separation plan,[9] that it can no longer recover stranded costs, as the transition period for recovery of such costs is long over. FES adds that AEP-Ohio witness Pearce failed to exclude stranded costs from his calculation of capacity costs. FES points out that, pursuant to the stipulation approved by the Commission in AEP-Ohio's electric transition plan (ETP) case, the Company waived recovery of its stranded generation costs and, in any event, through depreciation accruals, has already fully recovered such costs. FES also notes that Dr. Pearce's calculation inappropriately includes costs for generation plant investments made after December 31, 2000, and also seeks to recover the costs of assets that will no longer be owned by the Company as of January 1, 2014, but will rather be owned by AEP Generation Resources.

IEU-Ohio agrees with FES that AEP-Ohio agreed to forgo any claim for stranded generation costs, which bars the Company's untimely claim to generation plant-related transition revenues. IEU-Ohio contends that AEP-Ohio seeks to impose what IEU-Ohio considers to be a lost revenue charge on CRES suppliers serving shopping customers.

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9 *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC.

Citing Sections 4928.141, 4928.38, and 4928.40, Revised Code, as well as AEP-Ohio's agreement to forgo recovery of generation transition revenues in its ETP case (Tr. I at 49-50; FES Ex. 106; FES Ex. 107), OMA and OHA likewise contend that Ohio law prohibits the Commission from establishing a state compensation mechanism that would authorize the receipt of transition revenues or any equivalent revenues by AEP-Ohio as a means to recover its above-market capacity costs.

Kroger argues that AEP-Ohio, through its requested compensation for its FRR capacity obligations, seeks recovery of stranded generation transition costs in this case. Kroger contends that such costs must be recovered in the market and that AEP-Ohio should not be permitted to renege on the stipulation in the ETP case. Dominion Retail likewise argues that AEP-Ohio should not be permitted to violate the terms of the ETP stipulation and recover stranded above-market generation investment costs after the statutory period for such recovery has expired. Dominion Retail believes that AEP-Ohio is effectively seeking a second transition plan in this case. IGS adds that the law is meaningless if utilities may continue to require all customers to pay embedded generation costs after the transition period has ended and that approval of AEP-Ohio's proposed capacity pricing mechanism would be contrary to the statutory requirements found in Sections 4928.38, 4928.39, and 4928.40, Revised Code.

b) AEP-Ohio

AEP-Ohio responds that neither the provisions of SB 3 nor the ETP stipulation are applicable to this case. AEP-Ohio notes that the purpose of this proceeding is to establish a wholesale capacity pricing mechanism based on the Company's embedded capacity costs, as opposed to the retail generation transition charges authorized by Section 4928.40, Revised Code, which is what the Company agreed to forgo during the market development period as part of the ETP stipulation. AEP-Ohio asserts that the issue of whether the Company could recover stranded asset value from retail customers under SB 3 is a separate matter from establishing a wholesale price that permits the Company's competitors to use that same capacity. AEP-Ohio adds that a conclusion that SB 3 precludes the Company from recovering its capacity costs through a wholesale rate would conflict with the RAA and be preempted under the FPA.

(iii) Should OEG's alternate proposal be adopted?

a) OEG

OEG recommends that AEP-Ohio's capacity pricing mechanism should be based on RPM prices. As an alternative recommendation, if the Commission determines that AEP-Ohio's capacity pricing should be higher than the prevailing RPM price, OEG suggests that the capacity price should be no higher than $145.79/MW-day, which was the RPM-based

price for the 2011/2012 PJM delivery year. OEG believes that such price has proven effective in providing a more than sufficient return on equity for AEP-Ohio, while still fostering retail competition in the Company's service territory. (OEG Ex. 102 at 10-11). Additionally, OEG witness Kollen recommends that the Commission adopt an ESM to ensure that AEP-Ohio's earnings are neither too high nor too low and instead are maintained within a Commission-determined zone of reasonableness. OEG believes that such an approach is appropriate, given the significant uncertainty regarding both the proper compensation for AEP-Ohio's FRR capacity obligations and the impact of various charges on the Company's earnings. In particular, Mr. Kollen suggests that an earnings bandwidth be established, with a lower threshold return on equity of seven percent and an upper threshold return on equity of 11 percent. If AEP-Ohio's earnings fall below the lower threshold of seven percent, then the Company would be allowed to increase its rates through a nonbypassable ESM charge sufficient to increase its earnings to the seven percent level. If earnings exceed the upper threshold of 11 percent, then AEP- Ohio would return the excess earnings to customers through a nonbypassable ESM credit. If AEP-Ohio's earnings are within the earnings bandwidth, there would be no rate changes other than those that operate to recover defined costs such as through the fuel adjustment clause. Finally, Mr. Kollen notes that the Commission would have the discretion to make modifications as circumstances warrant. (OEG. Ex. 102 at 15-21.) OEG believes that its recommended lower threshold is reasonable as confirmed by the recent actual earned returns of the AEP East affiliates, which averaged 6.8 percent in 2010 and 7.8 percent in 2011 (OEG Ex. 102 at 13). Additionally, AEP-Ohio's adjusted return in 2011 was 11.42 percent, just above its suggested upper threshold (OEG Ex. 102 at Ex. LK-3). Mr. Kollen explained that AEP-Ohio's earned return on equity would be computed in the same manner as under the significantly excessive earnings test (SEET) of Section 4928.143(F), Revised Code, although he believes that OSS margins should be included in the computation to be consistent with certain other parties' recommended approach of accounting for energy margins in the calculation of a cost-based capacity price (OEG Ex. 102 at 10, 15, 18; Tr. VI at 1290.)

b) AEP-Ohio

AEP-Ohio urges the Commission to reject OEG's alternate proposal. AEP-Ohio notes that the upper threshold of 11 percent is significantly lower than any SEET threshold previously applied to the Company and that the proposal would essentially render the statutory SEET obsolete. According to AEP-Ohio, the Commission is without jurisdiction to impose another, more stringent, excessive earnings test on the Company. AEP-Ohio also argues that OEG's proposal would preclude the Company from exercising its right under Section D.8 of Schedule 8.1 of the RAA to establish a cost-based compensation method. AEP-Ohio believes that Mr. Kollen's excessive earnings test would offer no material protection to the Company from undercompensation of its costs incurred to furnish capacity to CRES providers, and that the test would be difficult to administer, cause

prolonged litigation on an annual basis, and create substantial uncertainty for the Company and customers.

d. Conclusion

As discussed above, the Commission believes that AEP-Ohio's capacity costs, rather than RPM-based pricing, should form the basis of the state compensation mechanism established in this proceeding. Upon review of the considerable evidence in this proceeding, we find that the record supports compensation of $188.88/MW-day as an appropriate charge to enable AEP-Ohio to recover its capacity costs for its FRR obligations from CRES providers. We also find that, as a means to encourage the further development of retail competition in AEP-Ohio's service territory, the Company should modify its accounting procedures to defer the difference between the adjusted RPM rate currently in effect and AEP-Ohio's incurred capacity costs, to the extent that such costs do not exceed the capacity charge approved today. We believe that this approach successfully balances the Commission's objectives and the interests of the many parties to this proceeding.

The record reflects a range in AEP-Ohio's cost of capacity from a low of $78.53/MW-day, put forth by FES, to the Company's high of $355.72/MW-day, as a merged entity, with Staff and OEG offering recommendations more in the middle of the range (AEP-Ohio Ex. 102 at 21; FES Ex. 103 at 55; Staff Ex. 105 at Ex. ESM-4; OEG Ex. 102 at 10-11). The Commission finds that Staff's determination of AEP-Ohio's capacity costs is reasonable, supported by the evidence of record, and should be adopted as modified in this order. Initially, we note that no party other than AEP-Ohio appears to seriously challenge Staff's recommended cost-based capacity pricing mechanism in this case. Additionally, we do not believe that AEP-Ohio has demonstrated that its proposed charge of $355.72/MW-day falls within the zone of reasonableness, nor do we believe that FES' proposed charge of $78.53/MW-day would result in reasonable compensation for the Company's FRR capacity obligations.

The Commission believes that the approach used by Staff is an appropriate method for determining AEP-Ohio's capacity costs. In deriving its recommended charge, Staff followed its traditional process of making reasonable adjustments to AEP-Ohio's proposed capacity pricing mechanism, which is based on the capacity portion of a formula rate template approved by FERC for one of the Company's affiliates and was modified by the Company for use in this case with data from its FERC Form 1 (Staff Ex. 103 at 10-12; AEP-Ohio Ex. 102 at 8, 9). As AEP-Ohio notes, FERC-approved formula rates are routinely used by the Company's affiliates in other states (AEP-Ohio Ex. 102 at 8; Tr. II at 253). Given that compensation for AEP-Ohio's FRR capacity obligations from CRES providers is wholesale in nature, we find that AEP-Ohio's formula rate template is an appropriate starting point for determination of its capacity costs. From that starting point, Staff made a number of reasonable adjustments to AEP-Ohio's proposal in order to be consistent with the Commission's ratemaking practices. Staff further adjusted AEP-Ohio's proposed capacity

pricing to account for margins from off-system energy sales and ancillary receipts (Staff Ex. 101 at 4). We agree with Staff, FES, and OCC that an offset for energy-related sales is necessary to ensure that AEP-Ohio does not over recover its capacity costs through recovery of its embedded costs as well as OSS margins (FES Ex. 103 at 45-46).

AEP-Ohio takes issue with the adjustments made by Staff witness Smith as well as with EVA's calculation of the energy credit. The Commission believes that the adjustments to AEP-Ohio's proposed capacity pricing mechanism that were made by Staff witness Smith are, for the most part, reasonable and consistent with our ratemaking practices in Ohio. With regard to AEP-Ohio's prepaid pension asset, however, we agree with the Company that Mr. Smith's exclusion of this item was inconsistent with Staff's recommendation in the Company's recent distribution rate case (AEP-Ohio Ex. 129A; AEP-Ohio Ex. 129B), as well as with our treatment of pension expense in other proceedings.[10] We see no reason to vary our practice in the present case and, therefore, find that AEP-Ohio's prepaid pension asset should not have been excluded. The result of our adjustment increases Staff's recommendation by $3.20/MW-day (AEP-Ohio Ex. 142 at 16, Ex. WAA-R7). Similarly, with respect to AEP-Ohio's severance program costs, we find that Mr. Smith's exclusion of such costs was inconsistent with their treatment in the Company's distribution rate case. Amortization of the severance program costs over a three-year period increases Staff's recommendation by $4.07/MW-day. (AEP-Ohio Ex. 142 at 16-17.) Further, upon consideration of the arguments with respect to the appropriate return on equity, we find that AEP-Ohio's recommendation of 11.15 percent is reasonable and should be adopted. As AEP-Ohio notes, Staff's recommended return on equity was solely based on the negotiated return on equity in the Company's distribution rate case (Staff Ex. 103 at 12-13), which has no precedential effect pursuant to the express terms of the stipulation adopted by the Commission in that case. Our adoption of a return on equity of 11.15 percent increases Staff's recommendation by $10.09/MW-day (AEP-Ohio Ex. 142 at 17). We also agree with AEP-Ohio that certain energy costs were trapped in Staff's calculation of its recommended capacity charge, in that Staff witness Smith regarded such costs as energy related and thus excluded them from his calculations, while EVA disregarded them in its determination of the energy credit. Accordingly, we find that Staff's recommendation should be increased by $20.11/MW-day to account for these trapped costs. (AEP-Ohio Ex. 143 at 5-6.)

Additionally, the Commission finds, on the whole, that Staff's recommended energy credit, as put forth by EVA, is reasonable. AEP-Ohio raises a number of arguments as to why Staff's energy credit, as calculated by EVA, should not be adopted by the Commission. In essence, AEP-Ohio fundamentally disagrees with the methodology used by EVA. Although we find that EVA's methodology should be adopted, we agree with AEP-Ohio

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10 *See, e.g., In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR, *et al.*, Opinion and Order (January 21, 2009), at 16.

that EVA's calculation should have accounted for the Company's full requirements obligation to serve Wheeling Power Company, a point that Staff did not dispute in its briefs. As AEP-Ohio witness Allen testified, the Company's sales to Wheeling Power Company reduce the quantity of generation available for OSS and thus should have been reflected in EVA's calculation of OSS margins. (AEP-Ohio Ex. 142 at 10-11, Ex. WAA-R5). The result of this adjustment reduces Staff's recommended energy credit by $5/MW-day (AEP-Ohio Ex. 142 at 11, Ex. WAA-R5) to $147.41/MW-day. The overall effect of this adjustment, in combination with the adjustments for AEP-Ohio's prepaid pension asset, severance program costs, return on equity, and trapped costs, results in a capacity charge of $188.88/MW-day.

We note that a charge of $188.88/MW-day is fairly in line with OEG's alternate recommendation that the capacity charge not exceed $145.79/MW-day, which was the adjusted RPM rate in effect in the prior PJM delivery year that recently concluded (OEG Ex. 102 at 10-11). The close proximity of our approved charge with OEG's recommendation is further confirmation that the approved charge falls within the zone of reasonableness. Additionally, as OEG notes, a charge of $145.79/MW-day afforded AEP-Ohio an adequate return on equity. In 2011, AEP-Ohio earned a per books, unadjusted return of 10.21 percent, or an adjusted return of 11.42 percent after adjustments for plant impairment expense and certain non-recurring revenue (OEG Ex. 102 at 11, Ex. LK-3). At the same time, the capacity charge was not so high as to hinder retail competition in AEP-Ohio's service territory. In the first quarter of 2011, the RPM price was $220.96/MW-day and only 7.1 percent of AEP-Ohio's total load had switched to a CRES provider. However, by the end of the year, with a lower RPM price of $145.79/MW-day in effect, shopping had significantly increased in AEP-Ohio's service territory, with 19.10 percent of the Company's total load having elected to shop (specifically, 5.53 percent of the residential class, 33.88 percent of the commercial class, and 18.26 percent of the industrial class). (OEG Ex. 102 at 11.) We expect that the approved compensation of $188.88/MW-day for AEP-Ohio's FRR capacity obligations will likewise ensure that the Company earns an appropriate return on equity, as well as enable the further development of competition in the Company's service territory.

Although AEP-Ohio criticizes Staff's proposed capacity pricing mechanism for various reasons, the Commission finds that none of these arguments has merit. First, as a general matter, AEP-Ohio argues that Staff failed to follow FERC practices and precedent. We agree with Staff that FERC has different requirements for items such as CWC and CWIP than are found in Ohio. As Staff notes, the outcome of this case should not be dictated by FERC practices or precedent but should instead be consistent with Ohio ratemaking principles. Although FERC practices and precedent may be informative in some instances, the Commission is bound by Ohio law in establishing an appropriate state compensation mechanism. In response to AEP-Ohio's specific argument regarding the exclusion of CWIP, Staff explained that Section 4909.15(A)(1), Revised Codes, requires that construction projects

must be at least 75 percent complete in order to qualify for a CWIP allowance and that AEP-Ohio failed to demonstrate compliance with this requirement.

As previously mentioned above, AEP-Ohio raises numerous concerns regarding Staff's proposed energy credit and offered the rebuttal testimony of Company witness Meehan in an effort to critique EVA's testimony. Upon review of all of the testimony, the Commission finds that it is clear that the dispute between AEP-Ohio and Staff amounts to a fundamental difference in methodology in everything from the calculation of gross energy margins to accounting for operation of the pool agreement. AEP-Ohio claims that Staff's inputs to the AURORAxmp model result in an overstated energy credit, while Staff argues that the Company's energy credit is far too low. Essentially, AEP-Ohio and Staff have simply offered two quite different approaches in their attempt to forecast market prices for energy. The Commission concludes that AEP-Ohio has not shown that the process used by Staff was erroneous or unreasonable. We further find that the approach put forth by EVA is a proper means of determining the energy credit and produces an energy credit that will ensure that AEP-Ohio does not over recover its capacity costs.

Accordingly, we adopt Staff's proposed energy credit, as modified above to account for AEP-Ohio's full requirements contract with Wheeling Power Company, and find that a capacity charge of $188.88/MW-day is just, reasonable, and should be adopted. The Commission agrees with AEP-Ohio that the compensation received from CRES providers for the Company's FRR capacity obligations should reasonably and fairly compensate the Company and should not significantly undermine the Company's ability to earn an adequate return on its investment. The Commission believes that, by adopting a cost-based state compensation mechanism for AEP-Ohio, with a capacity charge of $188.88/MW-day, in conjunction with the authorized deferral of the Company's incurred capacity costs, to the extent that the total incurred capacity costs do not exceed $188.88/MW-day not recovered from CRES provider billings reflecting the adjusted RPM-based price, we have accomplished those objectives, while also protecting the interests of all stakeholders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) AEP-Ohio is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

(2) On November 1, 2010, AEPSC, on behalf of AEP-Ohio, filed an application with FERC in FERC Docket No. ER11-1995, and on November 24, 2010, refiled its application, at the direction of FERC, in FERC Docket No. ER11-2183. The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism and included proposed formula rate

templates under which AEP-Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the RAA.

(3) By entry issued on December 8, 2010, the Commission initiated an investigation in the present case to determine the impact of AEP-Ohio's proposed change to its capacity charge.

(4) The following parties were granted intervention in this proceeding: OEG, IEU-Ohio, OCC, OPAE, OMA, OHA, Direct Energy, Constellation, FES, Duke, Exelon, IGS, RESA, Schools, OFBF, Kroger, NFIB, Dominion Retail, AICUO, Grove City, and OCMC.

(5) On September 7, 2011, the ESP 2 Stipulation was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in the consolidated cases, including the present case.

(6) On December 14, 2011, the Commission adopted the ESP 2 Stipulation with modifications.

(7) By entry on rehearing issued on February 23, 2012, the Commission revoked its prior approval of the ESP 2 Stipulation, finding that the signatory parties had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest.

(8) By entry issued on March 7, 2012, the Commission approved, with modifications, AEP-Ohio's proposed interim capacity pricing mechanism.

(9) A prehearing conference occurred on April 11, 2012.

(10) A hearing commenced on April 17, 2012, and concluded on May 15, 2012. AEP-Ohio offered the direct testimony of five witnesses and the rebuttal testimony of three witnesses. Additionally, 17 witnesses testified on behalf of various intervenors and three witnesses testified on behalf of Staff.

(11) Initial briefs and reply briefs were filed on May 23, 2012, and May 30, 2012, respectively.

(12) By entry issued on May 30, 2012, the Commission approved an extension of AEP-Ohio's interim capacity pricing mechanism through July 2, 2012.

(13) The Commission has jurisdiction in this matter pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

(14) The state compensation mechanism for AEP-Ohio, as set forth herein, is just and reasonable and should be adopted.

ORDER:

It is, therefore,

ORDERED, That IEU-Ohio's motion to dismiss this case be denied. It is, further,

ORDERED, That the motion for permission to appear *pro hac vice instanter* filed by Derek Shaffer be granted. It is, further,

ORDERED, That the state compensation mechanism for AEP-Ohio be adopted as set forth herein. It is, further,

ORDERED, That AEP-Ohio be authorized to defer its incurred capacity costs not recovered from CRES provider billings to the extent the total incurred capacity costs do not exceed $188.88/MW-day. It is, further,

ORDERED, That the interim capacity pricing mechanism approved on March 7, 2012, and extended on May 30, 2012, shall remain in place until the earlier of August 8, 2012, or such time as the Commission issues its opinion and order in 11-346, at which point the state compensation mechanism approved herein shall be incorporated into the rates to be effective pursuant to that order. It is, further,

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

w/ concurrence

Steven D. Lesser

Andre T. Porter

w/ concurrence

Cheryl L. Roberto

Lynn Slaby

SJP/GNS/sc

Entered in the Journal

OCT 02 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

CONCURRING OPINION
OF COMMISSIONERS ANDRE T. PORTER AND LYNN SLABY

The majority opinion and order balances the interests of consumers, suppliers, and AEP-Ohio. It provides certainty for consumers and suppliers by resolving questions about whether there will be a competitive electricity market in the AEP-Ohio territory, specifically, and across this state, generally. It does so by establishing a state compensation mechanism pursuant to which competitive retail electric suppliers have access to RPM-based market capacity pricing, which will encourage competition among those suppliers, resulting in the benefit to consumers of the lowest and best possible electric generation rates in the AEP-Ohio territory.

Moreover, it recognizes the important function and commitment of AEP-Ohio as a fixed resource requirement entity having dedicated capacity to serve consumers in its service territory. However, these resources are not without cost. Accordingly, the order allows AEP-Ohio to receive its actual costs of providing the capacity through the deferral mechanism described therein, which we have determined, after thorough consideration of the record in this proceeding, to be $188.88/MW-day. This result is a fair balance of all interests because rather than subjecting AEP-Ohio to RPM capacity rates that were derived from a market process in which AEP-Ohio did not participate, the order allows AEP-Ohio to recover the costs of the agreement to which it was a participant—dedicating its capacity to serve consumers in its service territory. Our opinion of this result, in this case, should not be misunderstood as it relates to RPM; *by joining the majority opinion, we do not, in any way, agree to any description of RPM-based capacity rates as being unjust or unreasonable.*

Finally, while we prefer to have the state compensation mechanism effective as of today, we join with the majority in setting the effective date of August 8, 2012, or to coincide with our as-yet unissued opinion and order in Docket No. 11-346-EL-SSO, whichever is earlier. In an attempt to balance the deferral authorization created in this proceeding and

the anticipated mechanism to be considered as part of Docket No. 11-346-EL-SSO to administer the deferral, we agree that it is equitable to tie the decision being made in this order to that in 11-346-EL-SSO. However, we caution that the balance is only achieved within an expeditious resolution of the 11-346-EL-SSO docket by August 8, 2012.

Andre T. Porter

Lynn Slaby

ATP/LS/sc

Entered in the Journal

JUL 02 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

CONCURRING AND DISSENTING OPINION
OF COMMISSIONER CHERYL L. ROBERTO

I join my colleagues in updating the state compensation method for the Fixed Resource Requirement from that originally adopted implicitly in AEP-Ohio's first ESP case, Case No. 08-917-EL-SSO, *et al.*, and explicitly in this matter to a cost-based rate of $188.88/MW-day.

I depart from the majority, however, in the analysis of the nature of the Fixed Resource Requirement and, as a result, the basis for the Commission's authority to update the state compensation method for the Fixed Resource Requirement.

Additionally, I dissent from those portions of the majority opinion creating a deferral of a portion of the authorized cost-based Fixed Resource Requirement rate adopted today.

What is a Fixed Resource Requirement?

In order to assure that the transmission system is reliable, PJM requires any one who wishes to transmit electricity over the system to their customers[1] to provide reliability assurance that they have the wherewithal – or *capacity* – to use the transmission system without crashing it or otherwise destabilizing it for everyone else.[2] The protocols for making this demonstration are contained in the Reliability Assurance Agreement. Each transmission system user must show that they possess Capacity Resources sufficient to meet their own needs plus a margin for safety. These Capacity Resources may include a combination of generation facilities, demand resources, energy efficiency, and Interruptible

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1 These transmission users are known as a "Load Serving Entity" or "LSE." LSE shall mean any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer, (i) serving end-users within the PJM Region, and (ii) that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Region. *Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, PJM Interconnection*, L.L.C., Rate Schedule FERC No. 44 (effective date May 29, 2012) (hereinafter Reliability Assurance Agreement), Section 1.44.

2 Section 5, Capacity Resource Commitment, PJM Open Access Transmission Tariff (effective date June 8, 2012), at 2395-2443.

Load for Reliability.[3] Capacity Resources may even include a transmission upgrade.[4] The Fixed Resource Requirement is nothing more than an enforceable agreement that for a finite period one transmission user will demonstrate on behalf of other transmission users within a specified territory that sufficient Capacity Resources exist to meet all of their respective reliability needs. During this period, the transmission user offering to provide the Fixed Resource Requirement is the sole authorized means by which a transmission user who opts to use this service may demonstrate the adequacy of their Capacity Resources.[5] This demonstration is embodied in a Fixed Resource Requirement Capacity Plan that describes a portfolio of the generation, demand resources, energy efficiency, Interruptible Load for Reliability, and transmission upgrades it plans to use to meet the Capacity Resource requirements for the territory.[6] The Ohio Supreme Court has noted that regional transmission organizations, such as PJM, provide transmission services through FERC approved rates and tariffs.[7] Thus, the Fixed Resource Requirement is a commitment to provide a transmission service pursuant to the tariffs filed by PJM with FERC.

As established in this matter, AEP-Ohio has committed to provide the Fixed Resource Requirement for all transmission users offering electricity for sale to retail customers within the footprint of its system. No other entity may provide this service during the term of the current AEP-Ohio Fixed Resource Requirement Capacity Plan.

Commission Authority to Establish State Compensation Method for the Fixed Resource Requirement Service

Chapter 4928, Revised Code, defines "retail electric service" to mean any service involved in the supply or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For purposes of Chapter 4928, Revised Code, retail electric service includes, among other things, transmission service.[8] As discussed, *supra*, AEP-Ohio is the sole provider of the Fixed Resource Requirement service for other transmission users operating within its footprint until the expiration of its obligation on June 1, 2015. As such, this service is a "noncompetitive retail electric service" pursuant to Sections 4928.01(A)(21) and 4928.03, Revised Code. This Commission is empowered to set rates for noncompetitive retail electric services. While PJM could certainly propose a tariff for FERC adoption directing PJM to

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3 Reliability Assurance Agreement, Schedule 6, Procedures for Demand Resources, ILR, and Energy Efficiency.

4 Reliability Assurance Agreement, Schedule 8.1, Section D.6.

5 Reliability Assurance Agreement, Section 1.29 defines the Fixed Resource Requirement Capacity Plan to mean a long-term plan for the commitment of Capacity Resources to satisfy the capacity obligations of a Party that has elected the FRR Alternative, as more fully set forth in Schedule 8.1 to this Agreement.

6 Reliability Assurance Agreement, Section 7.4, Fixed Resource Requirement Alternative.

7 *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St.3d. 384, 856 N.E.2d 940 (2006).

8 Section 4928.01(A)(27), Revised Code.

establish a compensation method for Fixed Resource Requirement service, it has opted not to do so in favor of a state compensation method when a state chooses to establish one. When this Commission chooses to establish a state compensation method for a noncompetitive retail electric service, the adopted rate must be just and reasonable based upon traditional cost-of-service principles.

This Commission previously established a state compensation method for AEP-Ohio's Fixed Resource Requirement service within AEP-Ohio's initial ESP. AEP-Ohio received compensation for its Fixed Resource Requirement service through both the provider of last resort charges to certain retail shopping customers and a capacity charge levied on competitive retail providers that was established by the three-year capacity auction conducted by PJM.[9] Since the Commission adopted this compensation method, the Ohio Supreme Court reversed the authorized provider of last resort charges,[10] and the auction value of the capacity charges has fallen precipitously, as has the relative proportion of shoppers to non-shoppers.

I agree with the majority that the Commission is empowered pursuant to its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code to establish an appropriate rate for the Fixed Resource Requirement service. I also agree that pursuant to regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code a cost-based compensation method is necessary and appropriate. Additionally, I find that because the Fixed Resource Requirement is a noncompetitive retail electric service, the Commission must establish the appropriate rate based upon traditional cost of service principles. Finally, I find specific authority within Section 4909.13, Revised Code, for a process by which the Commission may cause further hearings and investigations and may examine into all matters which may change, modify, or affect any finding of fact previously made. Given the change in circumstances since the Commission adopted the initial state compensation for AEP-Ohio's Fixed Resource Requirement service, it is appropriate for the Commission to revisit and adjust that rate to reflect current circumstances as we have today.

"Deferral"

In prior cases, this Commission has levied a rate or tariff on a group of customers but deferred collection of revenues due from that group until a later date. In this instance, the majority proposes to establish a rate for the Fixed Resource Requirement service provided

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9 *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009), Entry on Rehearing (July 23, 2009); *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry (December 8, 2010).

10 *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011).

by AEP-Ohio to other transmission users but then to discount that rate such that the transmission users will never pay it. The difference between the authorized rate and that paid by the other transmission users will be booked for future payment not by the transmission users but by retail electricity customers. The stated purpose of this device is to promote competition.

As an initial matter, I am not convinced on the record before us that competition has suffered sufficiently or will suffer sufficiently during the remaining term of the Fixed Resource Requirement as the result of the state compensation method to warrant intervention in the market. If it did, the Commission could consider regulatory options such as shopping credits granted to the consumers to promote consumer entry into the market. With more buyers in the market, in theory, more sellers should enter and prices should fall. The method selected by the majority, however, attempts to entice more sellers to the market by offering a significant, no-strings-attached, unearned benefit. This policy choice operates on faith alone that sellers will compete at levels that drop energy prices while transferring the unearned discount to consumers. If the retail providers do not pass along the entirety of the discount, then consumers will certainly and inevitably pay twice for the discount today granted to the retail suppliers. To be clear, unless every retail provider disgorges 100 percent of the discount to consumers in the form of lower prices, shopping consumers will pay more for Fixed Resource Requirements service than the retail provider did. This represents the first payment by the consumer for the service. Then the deferral, with carrying costs, will come due and the consumer will pay for it all over again -- plus interest.

I find that that the mechanism labeled a "deferral" in the majority opinion is an unnecessary, ineffective, and costly intervention into the market that I cannot support. Thus, I dissent from those portions of the majority opinion adopting this mechanism.

Cheryl L. Roberto

Cheryl L. Roberto

CLR/sc

Entered in the Journal JUL 02 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

ATTACHMENT D

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY ON REHEARING

The Commission finds:

(1) On March 18, 2009, in Case No. 08-917-EL-SSO, *et al.*, the Commission issued its opinion and order regarding the application for an electric security plan (ESP) for Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),[1] pursuant to Section 4928.143, Revised Code (ESP 1 Order).[2] The ESP 1 Order was appealed to the Ohio Supreme Court and subsequently remanded to the Commission for further proceedings.

(2) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of AEP-Ohio, filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA) for the regional transmission organization, PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.

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

2 *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO; *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case No. 08-918-EL-SSO.

(3) By entry issued on December 8, 2010, in the above-captioned case, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge (Initial Entry). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism (SCM) were appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities within PJM; (2) the degree to which AEP-Ohio's capacity charge was currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. Additionally, in light of the change proposed by AEP-Ohio, the Commission explicitly adopted as the SCM for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

(4) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(5) On January 7, 2011, AEP-Ohio filed an application for rehearing of the Initial Entry. Memoranda contra AEP-Ohio's application for rehearing were filed by Industrial Energy Users-Ohio (IEU-Ohio); FirstEnergy Solutions Corp. (FES); Ohio Partners for Affordable Energy (OPAE)[3]; and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (jointly, Constellation).

(6) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.*, AEP-Ohio filed an application for a standard service offer

[3] On November 17, 2011, OPAE filed a notice of withdrawal from this case.

(SSO) in the form of a new ESP, pursuant to Section 4928.143, Revised Code (ESP 2 Case).[4]

(7) By entry dated February 2, 2011, the Commission granted rehearing of the Initial Entry for further consideration of the matters specified in AEP-Ohio's application for rehearing. The Commission noted that the SCM adopted in the Initial Entry would remain in effect during the pendency of its review.

(8) By entry issued on August 11, 2011, the attorney examiner set a procedural schedule in order to establish an evidentiary record on a proper SCM. The evidentiary hearing was scheduled to commence on October 4, 2011, and interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism, including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism.

(9) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in the ESP 2 Case and several other cases pending before the Commission (consolidated cases),[5] including the above-captioned case. Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the sole purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedules in the

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4 *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 and 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 and 11-350-EL-AAM.

5 *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(10) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation, including its two-tier capacity pricing mechanism (Initial ESP 2 Order). On January 23, 2012, the Commission issued an entry clarifying certain aspects of the Initial ESP 2 Order (Initial ESP 2 Clarification Entry). Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (Initial ESP 2 Entry on Rehearing). Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved SCM established in the present case.

(11) By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012 (Interim Relief Entry). Specifically, the Commission approved a two-tier capacity pricing mechanism modeled after the one recommended in the ESP 2 Stipulation. Approval of the interim capacity pricing mechanism was subject to the clarifications contained in the Initial ESP 2 Clarification Entry issued in the consolidated cases, including the clarification to include mercantile customers as governmental aggregation customers eligible to receive capacity pricing based on PJM's RPM. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class was entitled to tier-one, RPM-based capacity pricing. All customers of governmental aggregations approved on or

before November 8, 2011, were also entitled to receive tier-one, RPM-based capacity pricing. For all other customers, the second-tier charge for capacity was $255/megawatt-day (MW-day). In accordance with the Interim Relief Entry, the interim rate was to remain in effect until May 31, 2012, at which point the charge for capacity under the SCM would revert to the current RPM price in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

(12) On March 14, 2012, an application for rehearing of the Interim Relief Entry was filed by the Retail Energy Supply Association (RESA). Applications for rehearing were also filed by FES and IEU-Ohio on March 21, 2012, and March 27, 2012, respectively. Memoranda contra the applications for rehearing were filed by AEP-Ohio.

(13) By entry issued on April 11, 2012, the Commission granted rehearing of the Interim Relief Entry for further consideration of the matters specified in the applications for rehearing filed by RESA, FES, and IEU-Ohio.

(14) The evidentiary hearing in this case commenced on April 17, 2012, and concluded on May 15, 2012.

(15) On April 30, 2012, AEP-Ohio filed a motion for extension of the interim relief granted by the Commission in the Interim Relief Entry. By entry issued on May 30, 2012, the Commission approved an extension of the interim capacity pricing mechanism through July 2, 2012 (Interim Relief Extension Entry).

(16) On June 15, 2012, an application for rehearing of the Interim Relief Extension Entry was filed by FES. Applications for rehearing were also filed by IEU-Ohio and the Ohio Manufacturers' Association (OMA) on June 19, 2012, and June 20, 2012, respectively. A memorandum contra the applications for rehearing was filed by AEP-Ohio on June 25, 2012.

(17) By opinion and order issued on July 2, 2012, the Commission approved a capacity pricing mechanism for AEP-Ohio (Capacity Order). The Commission established

$188.88/MW-day as the appropriate charge to enable AEP-Ohio to recover its capacity costs pursuant to its FRR obligations from CRES providers. However, the Commission also directed that AEP-Ohio's capacity charge to CRES providers should be the RPM-based rate, including final zonal adjustments, on the basis that the RPM-based rate will promote retail electric competition. The Commission authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers, with the recovery mechanism to be established in the ESP 2 Case.

(18) By entry on rehearing issued on July 11, 2012, the Commission granted rehearing of the Interim Relief Extension Entry for further consideration of the matters specified in the applications for rehearing filed by FES, IEU-Ohio, and OMA.

(19) On July 20, 2012, AEP-Ohio filed an application for rehearing of the Capacity Order. The Ohio Energy Group (OEG) filed an application for rehearing and a corrected application for rehearing of the Capacity Order on July 26, 2012, and July 27, 2012, respectively. On August 1, 2012, applications for rehearing of the Capacity Order were filed by IEU-Ohio; FES; Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council (collectively, Schools); and the Ohio Consumers' Counsel (OCC). OMA and the Ohio Hospital Association (OHA) filed a joint application for rehearing on August 1, 2012. Memoranda contra the various applications for rehearing were filed by Duke Energy Retail Sales, LLC (Duke); IEU-Ohio; FES; Schools; OMA; OCC; OEG; AEP-Ohio; RESA; and Interstate Gas Supply, Inc. (IGS). Joint memoranda contra were filed by Constellation and Exelon Generation Company, LLC (Exelon)[6]; and by Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy), along with RESA.

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6 The joint memorandum contra was also signed on behalf of Exelon Energy Company, Inc., which has not sought intervention in this proceeding. As a non-party, its participation in the joint memorandum contra was improper and, therefore, will not be afforded any weight by the Commission.

(20) On August 7, 2012, OEG filed a motion for leave to reply and reply to the memorandum contra filed by AEP-Ohio on August 6, 2012. On that same date, AEP-Ohio filed a motion to strike OEG's motion and reply on the grounds that Rule 4901-1-35, Ohio Administrative Code (O.A.C.), does not provide for the filing of a reply to a memorandum contra an application for rehearing.

The Commission finds that OEG's motion is procedurally deficient in several respects. First, as we have recognized in prior cases, Rule 4901-1-35, O.A.C., does not contemplate the filing of a reply to a memorandum contra an application for rehearing.[7] Additionally, although OEG's filing is styled as a motion and reply, the filing is essentially a reply only, lacking a motion and memorandum in support. OEG, therefore, also failed to comply with the requirements for a proper motion, as specified in Rule 4901-1-12, O.A.C. In any event, the Commission has reviewed OEG's filing and finds that OEG merely reiterates arguments that it has already raised elsewhere in this proceeding. Accordingly, OEG's motion for leave to file a reply should be denied and its reply should not be considered as part of the record in this proceeding. Further, AEP-Ohio's motion to strike should be denied as moot.

(21) On August 15, 2012, the Commission issued an entry on rehearing, granting rehearing of the Capacity Order for further consideration of the matters specified in the applications for rehearing filed by AEP-Ohio, OEG, IEU-Ohio, FES, Schools, OMA, OHA, and OCC.

(22) The Commission has reviewed and considered all of the arguments raised in the applications for rehearing of the Initial Entry, Interim Relief Entry, Interim Relief Extension Entry, and Capacity Order. In this entry on rehearing, the Commission will address all of the assignments of error by subject matter as set forth below. Any arguments on rehearing not specifically discussed herein have been

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7 *See, e.g., In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI, Entry on Rehearing (July 8, 2009).

thoroughly and adequately considered by the Commission and are being denied.

Initial Entry

Jurisdiction and Preemption

(23) AEP-Ohio asserts that the Initial Entry is unreasonable and unlawful because the Commission, as a creature of statute, lacks jurisdiction under both federal and state law to issue an order that affects wholesale rates regulated by FERC. According to AEP-Ohio, the provision of generation capacity to CRES providers is a wholesale transaction that falls within the exclusive ratemaking jurisdiction of FERC. AEP-Ohio adds that no provision of Title 49, Revised Code, authorizes the Commission to establish wholesale prices for the Company's provision of capacity to CRES providers. Additionally, AEP-Ohio believes that Section D.8 of Schedule 8.1 of the RAA does not allow the Commission to adopt RPM-based capacity pricing as the SCM. AEP-Ohio argues that RPM-based capacity pricing, as the default option, is an available pricing option only if there is no SCM.

(24) On a related note, AEP-Ohio also contends that the portions of the Initial Entry relating to the establishment of an SCM are in direct conflict with, and preempted by, federal law. AEP-Ohio notes that Section D.8 of Schedule 8.1 of the RAA is a provision of a FERC-approved tariff that is subject to FERC's exclusive jurisdiction. AEP-Ohio further notes that the provision of capacity service to CRES providers is a wholesale transaction that falls exclusively within FERC's jurisdiction. Accordingly, AEP-Ohio argues that the Commission's initiation of this proceeding was an attempt to delay or derail FERC's review of the Company's FERC filing and to usurp FERC's role in resolving this matter, and that the Commission has acted without regard for the supremacy of federal law.

(25) In its memorandum contra, IEU-Ohio contends that the Commission has not exercised jurisdiction over any subject that is within FERC's exclusive jurisdiction. According to IEU-Ohio, because AEP-Ohio's POLR charge was proposed

and approved as a distribution charge and distribution service is subject to the exclusive jurisdiction of the Commission, the Commission's determination as to what compensation is provided by the POLR charge raises no issue that is subject to FERC's jurisdiction. IEU-Ohio also notes that the Commission has previously rejected the argument that a specific grant of authority from the General Assembly is required before it can make a determination that has significance for purposes of implementing a requirement approved by FERC.

(26) FES argues that, pursuant to Section D.8 of Schedule 8.1 of the RAA, AEP-Ohio, as an FRR Entity, has no option to seek wholesale recovery of capacity costs associated with retail switching, if an SCM is in place. Additionally, FES asserts that the Commission has jurisdiction to review AEP-Ohio's rates. FES emphasizes that AEP-Ohio admits that the Commission has broad authority to investigate matters involving Ohio utilities and that the Commission may explore such matters even as an adjunct to its own participation in FERC proceedings.

(27) As stated in the Initial Entry, Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction. The Commission's explicit adoption of an SCM for AEP-Ohio was well within the bounds of this broad statutory authority. Additionally, we stated in the Initial Entry that, in light of AEPSC's FERC filing, a review was necessary to evaluate the impact of the proposed change to AEP-Ohio's existing capacity charge. Section 4905.26, Revised Code, provides the Commission with considerable authority to initiate proceedings to investigate the reasonableness of any rate or charge rendered or proposed to be rendered by a public utility, which the Ohio Supreme Court has affirmed on several occasions.[8] We therefore, grant rehearing for the limited purpose of clarifying that the investigation initiated by the Commission in this proceeding was consistent with Section

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8 *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979).

4905.26, Revised Code, as well as with our authority under Sections 4905.04, 4905.05, and 4905.06, Revised Code.

The Commission disagrees with AEP-Ohio that we have acted in an area that is reserved exclusively to FERC or that our actions are preempted by federal law. Although wholesale transactions are generally subject to the exclusive jurisdiction of FERC, the Commission exercised jurisdiction in this case for the sole purpose of establishing an appropriate SCM upon review of AEP-Ohio's proposed capacity charge. In doing so, the Commission acted consistent with the governing section of the RAA, which, as a part of PJM's tariffs, has been approved by FERC. Section D.8 of Schedule 8.1 of the RAA acknowledges the authority of the Commission to establish an SCM that, once established, prevails over the other compensation methods addressed in that section. In fact, following issuance of the Initial Entry, FERC rejected AEPSC's proposed formula rate in light of the fact that the Commission had established the SCM.[9] Therefore, we do not agree that we have intruded upon FERC's domain.

Provider of Last Resort (POLR) Charge

(28) AEP-Ohio contends that the Initial Entry is unlawful and unreasonable in finding that the POLR charge approved in the ESP 1 Order reflected the Company's cost of supplying capacity for retail loads served by CRES providers and that the POLR charge was based upon the continued use of RPM pricing to set the capacity charge for CRES providers. AEP-Ohio notes that the POLR charge related to an entirely different service and was based on an entirely different set of costs than the capacity rates provided for under Section D.8 of Schedule 8.1 of the RAA. Specifically, AEP-Ohio points out that the POLR charge was based on the right of retail customers to switch to a CRES provider and subsequently return to the Company for generation service under SSO rates, whereas the capacity charge compensates the Company for its wholesale FRR capacity obligations to CRES providers that serve shopping customers. AEP-Ohio argues that its retail POLR charge was not the SCM

9 *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011).

envisioned under the RAA and did not compensate the Company for the wholesale capacity that it makes available as an FRR Entity under the RAA.

(29) In its memorandum contra, IEU-Ohio argues that AEP-Ohio's POLR charge, as it was proposed by the Company and largely approved by the Commission in the ESP 1 Order, included compensation for capacity costs. FES agrees with IEU-Ohio that the POLR charge recovered capacity costs associated with retail switching. Both IEU-Ohio and FES note that AEP-Ohio's testimony in support of the POLR charge indicated that the charge would compensate the Company for the challenges of providing capacity and energy on short notice. FES adds that AEP-Ohio's POLR charge and its wholesale capacity charge were both intended to recover capacity costs associated with accommodating retail choice and ultimately pay for the same generating capacity. FES and Constellation assert that AEP-Ohio's POLR charge was the SCM, contrary to the Company's claim.

(30) In the Initial Entry, the Commission noted that it had approved retail rates for AEP-Ohio, including recovery of capacity costs through the POLR charge to certain retail shopping customers, based upon the continuation of the current capacity charges established by PJM's capacity auction. We find no error in having made this finding. The Commission approved AEP-Ohio's retail rates, including the POLR charge, in the ESP 1 Order. For the most part, the POLR charge was approved by the Commission as it was proposed by AEP-Ohio.[10] AEP-Ohio's testimony in support of the POLR charge indicates that various inputs were used by the Company to calculate the proposed charge.[11] One of these inputs was the market price, a large component of which was intended to reflect AEP-Ohio's capacity obligations as a member of PJM. Although the purpose of the POLR charge was to compensate AEP-Ohio for the risk associated with its POLR obligation, we nonetheless find that the POLR charge was approved, in

10 ESP 1 Order at 38-40.

11 Cos. Ex. 2-A at 12-14, 31-32; Tr. XI at 76-77; Tr. XIV at 245.

part, to recover capacity costs associated with customer shopping. Accordingly, we find that AEP-Ohio's request for rehearing should be denied.

Due Process

(31) AEP-Ohio argues that the Initial Entry was issued in a manner that denied the Company due process and violated various statutes, including Sections 4903.09, 4905.26, and 4909.16, Revised Code. AEP-Ohio notes that, absent an emergency situation under Section 4909.16, Revised Code, the Commission must provide notice and a hearing before setting a rate. AEP-Ohio argues that there is no emergency in the present case and that the Commission was, therefore, required to provide notice and a hearing pursuant to the procedural requirements of Section 4905.26, Revised Code, prior to imposing a capacity pricing mechanism that is different from the mechanism proposed by the Company in its FERC filing. Additionally, AEP-Ohio argues that the Initial Entry was issued in the absence of any record and that it provides little explanation as to how the Commission arrived at its decision to establish a capacity rate, contrary to Section 4903.09, Revised Code.

(32) IEU-Ohio responds that the Initial Entry did not establish or alter any of AEP-Ohio's rates or charges and that the entry merely confirmed what the Commission had previously determined.

(33) The Commission finds no merit in AEP-Ohio's due process claims. The Initial Entry upheld a charge that had been previously established in the ESP 1 Order. The Initial Entry did not institute or even modify AEP-Ohio's capacity charge, which was based on RPM pricing both before and after issuance of the entry. The purpose of the Initial Entry was to expressly establish the SCM and maintain RPM pricing as the basis for the SCM during the pendency of the review of AEP-Ohio's proposed change to its capacity charge. Additionally, we find that the rationale behind the Initial Entry was sufficiently explained, consistent with the requirements of Section 4903.09, Revised Code. The Commission clearly indicated that it was necessary to explicitly establish the SCM based on RPM capacity pricing

in light of AEPSC's FERC filing proposing a cost-based capacity charge. Thus, AEP-Ohio's request for rehearing should be denied.

Interim Relief Entry

Jurisdiction

(34) IEU-Ohio argues that the Interim Relief Entry is unlawful because the Commission is without subject matter jurisdiction to establish a cost-based capacity charge in this proceeding. IEU-Ohio notes that the Commission's ratemaking authority under state law is governed by statute. According to IEU-Ohio, this case is not properly before the Commission, regardless of whether capacity service is considered a competitive or noncompetitive retail electric service.

(35) As discussed above with respect to the Initial Entry and addressed further below in regard to the Capacity Order, the Commission finds that it has jurisdiction under state law to establish an SCM, pursuant to the general supervisory authority granted by Sections 4905.04, 4905.05, and 4905.06, Revised Code, and that our review was consistent with our broad investigative authority under Section 4905.26, Revised Code. The Ohio Supreme Court has recognized the Commission's authority to investigate an existing rate and, following a hearing, to order a new rate.[12] Additionally, we believe that a cost-based SCM may be established for AEP-Ohio's FRR capacity obligations, pursuant to our regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code, which enable the Commission to use its traditional regulatory authority to approve rates that are based on cost. We find, therefore, that IEU-Ohio's request for rehearing should be denied.

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12 *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979).

Process

(36) FES and IEU-Ohio contend that the Interim Relief Entry is unreasonable, unlawful, and procedurally defective because it effectively allowed AEP-Ohio to avoid the statutory procedures to seek the relief granted by the entry.[13] FES and IEU-Ohio argue that there is no remedy or procedure to seek relief from a Commission order other than to file an application for rehearing pursuant to Section 4903.10, Revised Code, and that the Commission, in granting AEP-Ohio's motion for relief, allowed the Company to bypass the rehearing process. IEU-Ohio adds that the Commission abrogated its prior order directing the Company to implement RPM-based capacity pricing upon rejection of the ESP 2 Stipulation, without determining that the prior order was unjust or unwarranted.

(37) IEU-Ohio also asserts that the Interim Relief Entry is unlawful and unreasonable because the Commission failed to comply with the emergency rate relief provisions found in Section 4909.16, Revised Code. IEU-Ohio adds that AEP-Ohio has not invoked the Commission's emergency authority pursuant to that statute and, in any event, the Company failed to present a case supporting emergency rate relief.

(38) AEP-Ohio responds that its motion for relief did not seek to revise the Initial ESP 2 Entry on Rehearing, which rejected the ESP 2 Stipulation. Rather, AEP-Ohio submits that the motion was filed, pursuant to Rule 4901-1-12, O.A.C., for the purpose of seeking interim relief during the pendency of the ESP 2 Case and the present proceedings. AEP-Ohio adds that the motion for relief was properly granted based on the evidence and that arguments to the contrary have already been considered and rejected by the Commission.

(39) The Commission finds that no new arguments have been raised regarding the process by which AEP-Ohio sought, and the Commission granted, interim relief. Although we recognized in the Interim Relief Entry that AEP-Ohio may

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13 IEU-Ohio joins in the application for rehearing filed by FES, in addition to raising its own assignments of error.

have other means to challenge or seek relief from an interim SCM based on RPM capacity pricing, we also found that the Commission is vested with the authority to modify the SCM that we established in the Initial Entry. We continue to believe that, just as we have the necessary authority to establish the SCM, as discussed elsewhere in this entry, so too may we modify the SCM. Accordingly, FES' and IEU-Ohio's assignments of error should be denied.

Evidentiary Record and Basis for Commission's Decision

(40) FES asserts that the Interim Relief Entry is unlawful and unreasonable in that it authorized AEP-Ohio to recover a capacity rate allegedly based on its full embedded costs, which costs are not authorized by the RAA, are not recoverable under Ohio law, and do not reflect an offset for energy revenues. FES contends that, because the ESP 2 Stipulation was rejected, the Commission lacks a record basis to approve the negotiated rate of $255/MW-day as an element of the interim SCM.

(41) FES further argues that the Interim Relief Entry is not based on probative evidence that AEP-Ohio would suffer immediate or irreparable financial harm under RPM-based capacity pricing. FES adds that the Commission erred in relying on AEP-Ohio's loss of revenues from its unlawful POLR charge as further justification for the tier-two rate of $255/MW-day.

(42) AEP-Ohio replies that FES' arguments regarding the two-tiered capacity pricing structure have already been considered and rejected by the Commission on more than one occasion.

(43) IEU-Ohio asserts that the Interim Relief Entry is unlawful and unreasonable because there is no record to support the Commission's finding that the SCM could risk an unjust and unreasonable result. Like FES, IEU-Ohio argues that it was unreasonable for the Commission to rely on the fact that AEP-Ohio is no longer recovering its POLR costs as support for the interim SCM, when the Commission previously determined that the POLR charge was not

justified. Further, IEU-Ohio contends that the Commission unreasonably relied on evidence supporting the ESP 2 Stipulation, given that the Commission rejected the stipulation and elected instead to restart this proceeding. Finally, regarding the Commission's reasoning that AEP-Ohio must share off-system sales (OSS) revenues with its affiliates pursuant to the AEP East Interconnection Agreement (pool agreement), IEU-Ohio notes that there is no evidence addressing any shortfall that may occur.

(44) AEP-Ohio contends that its motion for relief was properly made and properly granted by the Commission based on probative evidence in the record. According to AEP-Ohio, the Commission recognized that the Company's ability to mitigate capacity costs with off-system energy sales is limited. AEP-Ohio adds that the Commission's eventual determination that the Company may not assess a POLR charge does not contradict the fact that the Commission initially relied upon the Company's POLR charge in setting RPM-based capacity pricing as the SCM in the Initial Entry.

(45) IEU-Ohio also argues that the Interim Relief Entry is unlawful and unreasonable because the rate increase is not based on any economic justification as required by Commission precedent. According to IEU-Ohio, the Commission stated, in the ESP 1 Order, that AEP-Ohio must demonstrate the economic basis for a rate increase in the context of a full rate review. IEU-Ohio argues that, contrary to this precedent, AEP-Ohio made no showing, and the Commission made no finding, that the Company was suffering an economic shortfall.

(46) The Commission again rejects claims that the relief granted in the Interim Relief Entry was not based on record evidence. The present case was consolidated with the ESP 2 Case and the other consolidated cases for the purpose of considering the ESP 2 Stipulation. As we noted in the Interim Relief Entry, the testimony and exhibits admitted into the record for that purpose remain a part of the record in this proceeding. Although the Commission subsequently rejected the ESP 2 Stipulation, that action did not purge the evidence from the record in this case. It was thus appropriate for the Commission to rely upon that

evidence as a basis for granting AEP-Ohio's motion for interim relief.

In the Interim Relief Entry, the Commission cited three reasons justifying the interim relief granted, specifically the elimination of AEP-Ohio's POLR charge, the operation of the pool agreement, and evidence indicating that RPM-based capacity pricing is below the Company's capacity costs. With respect to the POLR charge, we merely noted that AEP-Ohio was no longer receiving a revenue stream that was intended, in part, to enable the Company to recover capacity costs. Although the Commission determined that AEP-Ohio's POLR charge was not supported by the record on remand, nothing in that order negated the fact that there are capacity costs associated with an electric distribution utility's POLR obligation and that such costs may be properly recoverable upon a proper record.[14] Having noted that AEP-Ohio was no longer receiving recovery of capacity costs through the POLR charge, the Commission next pointed to evidence in the record of the consolidated cases indicating that the Company's capacity costs fall somewhere within the range of $57.35/MW-day to $355.72/MW-day, as a merged entity. Finally, we noted that, although AEP-Ohio may sell its excess supply into the wholesale market when retail customers switch to CRES providers, the pool agreement limits the Company's ability to fully benefit from these sales, as the margins must be shared with its affiliates.[15] Although IEU-Ohio argues that AEP-Ohio failed to demonstrate any shortfall resulting from the operation of the pool agreement or any other economic justification for the interim rate relief, IEU-Ohio offers insufficient support for its theory that the Company must make such a showing. We have previously rejected IEU-Ohio's argument that the Commission broadly stated in the ESP 1

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14 *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Order on Remand (October 3, 2011).

15 AEP-Ohio Ex. 7 at 17.

Order that AEP-Ohio must demonstrate the economic basis for a rate increase in the context of a full rate review.[16]

In light of the evidence discussed above, the Commission reasonably concluded that an SCM based on the current RPM pricing could risk an unjust and unreasonable result for AEP-Ohio. We determined that the two-tier capacity pricing mechanism, as proposed by AEP-Ohio and modified by the Commission, should be approved on an interim basis, with the first tier based on RPM pricing, and the second tier fixed at $255/MW-day, representing a reasonable charge in the mid portion of the range reflected in the record. Upon review of the arguments raised on rehearing, we continue to believe that our rationale for granting AEP-Ohio's interim relief was thoroughly explained, warranted under the unique circumstances, and supported by the evidence of record in the consolidated cases. Accordingly, FES' and IEU-Ohio's requests for rehearing should be denied.

Discriminatory Pricing

(47) FES argues that the Interim Relief Entry established an interim SCM that imposed on certain customers a capacity price that was two times more than other customers paid, contrary to the Commission's duty to ensure nondiscriminatory pricing and an effective competitive market, and in violation of Sections 4905.33, 4905.35, 4928.02, and 4928.17, Revised Code.

(48) Similarly, IEU-Ohio contends that the Interim Relief Entry is unlawful because the resulting rates were unduly discriminatory and not comparable. IEU-Ohio notes that the interim SCM authorized two different capacity rates without any demonstration that the difference was justified. IEU-Ohio adds that there has been no showing that the capacity rates for CRES providers were comparable to the capacity costs paid by SSO customers.

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16 *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Entry on Rehearing (December 14, 2011), at 5-6.

(49) In response to many of IEU-Ohio's various arguments, including its discrimination claim, AEP-Ohio contends that IEU-Ohio improperly attempts to relitigate issues that have already been considered and rejected by the Commission.

(50) The Commission does not agree that the interim capacity pricing authorized by the Interim Relief Entry was unduly discriminatory or otherwise unlawful. We recognize that customers who acted earlier than others to switch to a CRES provider benefitted from their prompt action. However, as we have determined on prior occasions, this does not amount to undue preference nor create a case of discrimination, given that all customers had an equal opportunity to take advantage of the allotted RPM-based capacity pricing.[17] Rehearing on this issue should thus be denied.

Transition Costs

(51) IEU-Ohio maintains that the Interim Relief Entry is unlawful and unreasonable because it permitted AEP-Ohio to recover transition costs in violation of state law. According to IEU-Ohio, AEP-Ohio's opportunity to recover transition costs has ended, pursuant to Section 4928.38, Revised Code. AEP-Ohio responds that IEU-Ohio merely repeats an argument that the Commission has previously rejected.

(52) The Commission disagrees that the Interim Relief Entry authorized the recovery of transition costs. We do not believe that the capacity costs associated with AEP-Ohio's FRR obligations constitute transition costs. Pursuant to Section 4928.39, Revised Code, transition costs are costs that, among meeting other criteria, are directly assignable or allocable to retail electric generation service provided to electric consumers in this state. AEP-Ohio's provision of capacity to CRES providers, as required by the Company's FRR capacity obligations, is not a retail electric service as

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17 *See, e.g., In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating Assets to an Exempt Wholesale Generator*, Case No. 99-1658-EL-ETP, *et al.*, Opinion and Order (August 31, 2000), at 41.

defined by Section 4928.01(A)(27), Revised Code. The capacity service in question is not provided directly by AEP-Ohio to retail customers, but is rather a wholesale transaction between the Company and CRES providers. Because AEP-Ohio's capacity costs are not directly assignable or allocable to retail electric generation service, they are not transition costs by definition. IEU-Ohio's assignment of error should be denied.

Allocation of RPM-Based Capacity Pricing

(53) RESA requests that the Commission grant rehearing for the purpose of clarifying that the Interim Relief Entry did not authorize AEP-Ohio to revoke RPM-based capacity pricing to any customer who received such pricing pursuant to the Commission's approval of the ESP 2 Stipulation. RESA asserts that, in order to maintain the status quo, commercial customers that have been receiving RPM-based capacity pricing should have continued to receive such pricing. According to RESA, the Interim Relief Entry did not direct AEP-Ohio to decrease the number of commercial customers that were receiving RPM-based capacity pricing. RESA notes that the Interim Relief Entry states that the first 21 percent of each class shall receive RPM-based capacity pricing, but it did not require that only 21 percent can receive such pricing.

RESA argues that it would be unjust and unreasonable to charge customers that were shopping and receiving RPM-based capacity pricing prior to the Commission's rejection of the ESP 2 Stipulation, and while the ESP 2 Stipulation was in place, the tier-two price for capacity. RESA also argues that it is unjust and unreasonable to decrease the amount of RPM-based capacity pricing for the commercial class from the level authorized in the Initial ESP 2 Order, in light of the fact that the Commission ordered an expansion of RPM-based capacity pricing for governmental aggregation. RESA concludes that the Commission should clarify that any customer that began shopping prior to September 7, 2012, and received RPM-based capacity pricing shall be charged such pricing during the period covered by the Interim Relief Entry.

(54) Like RESA, FES also notes that AEP-Ohio has interpreted the Interim Relief Entry to allow RPM-based capacity pricing to be taken away from a significant number of customers that were shopping as of September 7, 2011, when the ESP 2 Stipulation was filed. FES notes that both the ESP 2 Stipulation and the Initial ESP 2 Order recognized that all shopping customers qualifying for RPM-based capacity pricing as of September 7, 2011, would be entitled to continue to receive such pricing. FES argues that the Commission should have established an interim SCM based on RPM prices or, alternatively, should confirm that, during the interim period, all customers that were shopping as of September 7, 2011, should receive RPM-based capacity pricing.

(55) AEP-Ohio contends that the applications for rehearing of RESA and FES should be denied, because they are essentially untimely applications for rehearing of the Initial ESP 2 Clarification Entry in the consolidated cases. AEP-Ohio asserts that the Interim Relief Entry merely confirmed that the capacity pricing requirements of the Initial ESP 2 Clarification Entry were to continue on an interim basis, even though the Commission rejected the ESP 2 Stipulation. AEP-Ohio believes that RESA and FES should have raised their objections to the capacity pricing requirements by seeking rehearing of the Initial ESP 2 Clarification Entry. AEP-Ohio further argues that RESA and FES ignore the fact that the ESP 2 Stipulation was rejected by the Commission in its entirety, which eliminated all of the benefits of the stipulation, and, therefore, RESA and FES have no basis upon which to claim that CRES providers should receive those benefits.

Next, AEP-Ohio disputes RESA's characterization of the status quo, and argues that the Commission maintained the status quo by retaining the capacity pricing set forth in the Initial ESP 2 Clarification Entry. Finally, AEP-Ohio asserts that the Initial ESP 2 Clarification Entry, which remained in effect pursuant to the Interim Relief Entry, required that each customer class receive an allocation of RPM-based capacity pricing for 21 percent of its load, and did not permit the reallocation of capacity from one customer class

to another. AEP-Ohio argues that RESA has misconstrued the Interim Relief Entry in representing the 21 percent as a minimum, not a maximum.

(56) Initially, the Commission disagrees with AEP-Ohio's argument that RESA's and FES' applications for rehearing of the Interim Relief Entry are essentially untimely applications for rehearing of the Initial ESP 2 Clarification Entry. Although the Interim Relief Entry was subject to the clarifications in the Initial ESP 2 Clarification Entry, the entries are otherwise entirely distinct and were issued for different purposes. Whereas the Initial ESP 2 Clarification Entry was issued to clarify the terms of our approval of the ESP 2 Stipulation, the Interim Relief Entry was issued to approve an interim SCM in light of our subsequent rejection of the ESP 2 Stipulation. We find that the applications for rehearing of RESA and FES were appropriate under the circumstances.

Further, the Commission clarifies that all customers that were shopping as of September 7, 2011, should have continued to receive RPM-based capacity pricing during the period in which the interim SCM was in effect. Pursuant to the terms of the ESP 2 Stipulation as approved by the Commission in the Initial ESP 2 Order, customers that were taking generation service from a CRES provider as of the date of the ESP 2 Stipulation (*i.e.*, September 7, 2011) were to continue to be served under the RPM rate applicable for the remainder of the contract term, including renewals.[18] In the Initial ESP 2 Clarification Entry, the Commission confirmed that it had modified the ESP 2 Stipulation to prohibit the allocation of RPM-based capacity pricing from one customer class to another and that this modification dated back to the initial allocation among the customer classes based on the September 7, 2011, data. This clarification was not intended to adversely impact customers already shopping as of September 7, 2011. Likewise, the Interim Relief Entry, which was subject to the clarifications in the Initial ESP 2 Clarification Entry, was not intended to discontinue RPM-based capacity

18 Initial ESP 2 Order at 25, 54.

pricing for customers shopping as of September 7, 2011. AEP-Ohio is directed to make any necessary adjustments to CRES billings that occurred during the interim period, consistent with this clarification.

Interim Relief Extension Entry

Evidentiary Record and Basis for Commission's Decision

(57) FES argues that the Interim Relief Extension Entry is unreasonable and unlawful because it is not based on probative or credible evidence that AEP-Ohio would suffer immediate or irreparable financial harm under RPM-based capacity pricing. FES asserts that AEP-Ohio's claims regarding the purported harm that would result from RPM-based capacity pricing are overstated and unsupported by any evidence in the record. FES adds that AEP-Ohio made no attempt to comply with the requirements for emergency rate relief.

Additionally, FES contends that the Interim Relief Extension Entry is unreasonable and unlawful because it is in direct conflict with the RAA and RPM, pursuant to which capacity pricing is not based on a traditional cost-of-service ratemaking methodology, but is instead intended only to compensate RPM participants, including FRR Entities, for ensuring reliability. According to FES, capacity pricing is not intended to compensate AEP-Ohio for the cost of its generating assets and only the Company's avoidable costs are relevant.

FES also argues that the Interim Relief Extension Entry is unreasonable and unlawful because it imposed capacity pricing above the RPM-based price on tier-one customers that have always been entitled to RPM-based capacity pricing, without any explanation or supporting evidence. FES adds that tier-one customers and CRES providers will be severely prejudiced by the Commission's modification.

Finally, FES argues that the Interim Relief Extension Entry is unreasonable and unlawful because it extended an improper interim SCM without sufficient justification as to why the Commission elected to continue above-market

capacity pricing, despite its earlier determination that the interim rates should only remain in effect though May 31, 2012. FES contends that the Commission relied on traditional cost-of-service concepts that have no relevance in this proceeding.

(58) OMA argues that the Commission's approval of AEP-Ohio's proposal to increase and extend the Company's interim capacity pricing is not supported by record evidence. OMA adds that a majority of the Commission was unable to agree on a rationale for granting the extension. OMA concludes that the Commission should reverse its decision to grant the extension or, in the alternative, retain the interim capacity pricing adopted in the Interim Relief Entry.

(59) AEP-Ohio responds that the majority of the arguments raised by FES and OMA have already been considered and rejected by the Commission on numerous occasions during the course of the proceeding and should again be rejected. Regarding the remaining arguments, AEP-Ohio notes that the Commission thoroughly addressed all of the arguments that were raised in response to the Company's motion for extension.

(60) As discussed above, the Commission finds that we thoroughly explained the basis for our decision to grant interim relief and approve an interim capacity pricing mechanism as compensation for AEP-Ohio's FRR obligations. In granting an extension of the interim relief, the Commission found that the same rationale continued to apply. In the Interim Relief Extension Entry, we explained that, because the circumstances prompting us to grant the interim relief had not changed, it was appropriate to continue the interim relief, in its current form, for an additional period while the case remained pending. The Commission also specifically noted that various factors had prolonged the course of the proceeding and delayed a final resolution, despite the Commission's considerable efforts to maintain an expeditious schedule. We uphold our belief that it was reasonable and appropriate to extend the interim capacity pricing mechanism under these circumstances. Therefore, rehearing should be denied.

Extension of Interim SCM

(61) FES argues that the Interim Relief Extension Entry is unreasonable and unlawful because it authorized the extension of an interim SCM that is unlawful, as demonstrated in FES' application for rehearing of the Interim Relief Entry. Similarly, IEU-Ohio reiterates the arguments raised in its briefs and application for rehearing of the Interim Relief Entry. AEP-Ohio replies that the Commission has already addressed intervenors' arguments in the course of this proceeding.

(62) As addressed above, the Commission does not agree that the interim SCM was unlawful. For the same reasons enumerated above with respect to the Interim Relief Entry, the Commission finds nothing improper in our extension of the interim SCM for a brief period.

Due Process

(63) IEU-Ohio contends that the totality of the Commission's actions during the course of this proceeding violated IEU-Ohio's due process rights under the Fourteenth Amendment. IEU-Ohio believes the Commission's conduct throughout this proceeding has subjected the positions of parties objecting to AEP-Ohio's demands to condemnation without trial. In its memorandum contra, AEP-Ohio argues that IEU-Ohio's lengthy description of the procedural history of this proceeding negates its due process claim.

(64) The Commission finds no merit in IEU-Ohio's due process claim. Pursuant to the procedural schedule, all parties, including IEU-Ohio, were afforded ample opportunity to participate in this proceeding through means of discovery, a lengthy evidentiary hearing with cross-examination of witnesses and presentation of exhibits, and briefing. IEU-Ohio was also afforded the opportunity to respond to AEP-Ohio's motion for interim relief, as well as its motion for an extension of the interim relief. As the record reflects, IEU-

Ohio took full advantage of its opportunities and, accordingly, its request for rehearing should be denied.

Requests for Escrow Account or Refund

(65) OMA asserts that the Interim Relief Extension Entry undermined customer expectations and substantially harmed Ohio manufacturers and other customers. OMA notes that, as a result of the Interim Relief Extension Entry, all customers, including customers in tier one, were required to pay capacity rates that were substantially higher than the current RPM-based capacity price, contrary to their reasonable expectations, and to the detriment of their business arrangements and the competitive market. OMA adds that the Commission failed to consider its recommendation that AEP-Ohio deposit the difference between the two-tiered interim relief and the RPM-based capacity price in an escrow account.

(66) IEU-Ohio asserts that the Commission should direct AEP-Ohio to refund all revenue collected above RPM-based capacity pricing, or at least to credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges.

(67) In response to IEU-Ohio, AEP-Ohio asserts that many of IEU-Ohio's arguments are irrelevant to the Interim Relief Extension Entry and thus inappropriate for an application for rehearing. Further, AEP-Ohio disagrees with OMA that there is no evidence that the Company would suffer harm from RPM-based capacity pricing. AEP-Ohio also contends that neither customers nor CRES providers can claim a continuing expectation of such pricing or rely upon the now rejected ESP 2 Stipulation.

(68) For the reasons previously discussed, the Commission finds that the brief extension of the interim capacity pricing mechanism, without modification, was reasonable under the circumstances. Accordingly, we do not believe that IEU-Ohio's request for a refund of any amount in excess of RPM-based capacity pricing and OMA's request that an escrow account be established are necessary or appropriate. Further, if intervenors believed that extraordinary relief

from the Interim Relief Extension Entry was required, the appropriate course of action would have been to seek a stay of the entry.

We do not agree that the Interim Relief Extension Entry undermined customer expectations or caused substantial harm to customers. This case was initiated by the Commission nearly two years ago for the purposes of reviewing AEP-Ohio's capacity charge and determining whether the SCM should be modified in order to promote competition and to enable the Company to recover the costs associated with its FRR capacity obligations. In any event, as with any rate, there is no guarantee that the rate will remain unchanged in the future. We find that the Interim Relief Extension Entry appropriately balanced the interests of AEP-Ohio, CRES providers, and customers, which has been the Commission's objective throughout this proceeding.

Capacity Order

Jurisdiction

(69) IEU-Ohio argues that the Capacity Order is unlawful and unreasonable because the Commission is prohibited from applying cost-based ratemaking principles or resorting to Chapters 4905 and 4909, Revised Code, to supervise and regulate generation capacity service from the point of generation to the point of consumption. IEU-Ohio contends that it makes no difference whether the service is termed wholesale or retail, because retail electric service includes any service from the point of generation to the point of consumption. IEU-Ohio asserts that the Commission's authority with respect to generation service is limited to the authorization of retail SSO rates that are established in conformance with the requirements of Sections 4928.141 to 4928.144, Revised Code.

(70) The Schools contend that the Commission lacks authority to set cost-based capacity rates, because AEP-Ohio's capacity service is a deregulated generation-related service. The Schools believe the Commission's authority regarding

capacity service is limited to effectuating the state's energy policy found in Section 4928.02, Revised Code.

(71) In the Capacity Order, the Commission determined that it has authority pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code, to establish the SCM. We determined that AEP-Ohio's provision of capacity to CRES providers is appropriately characterized as a wholesale transaction rather than a retail electric service. We noted that, although wholesale transactions are generally subject to the exclusive jurisdiction of FERC, our exercise of jurisdiction in this case was for the sole purpose of establishing an appropriate SCM and is consistent with Section D.8 of Schedule 8.1 of the FERC-approved RAA. Additionally, we noted that FERC had rejected AEPSC's proposed formula rate in light of the fact that the Commission had established an SCM in the Initial Entry.[19] The Commission further determined, within its discretion, that it was necessary and appropriate to establish a cost-based SCM for AEP-Ohio, pursuant to our regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code, which authorized the Commission to use its traditional regulatory authority to approve rates that are based on cost, such that the resulting rates are just and reasonable, in accordance with Section 4905.22, Revised Code. Because the capacity service at issue is a wholesale rather than retail electric service, we found that, although market-based pricing is contemplated in Chapter 4928, Revised Code, that chapter pertains solely to retail electric service and is thus inapplicable under the circumstances. The Commission concluded that we have an obligation under traditional rate regulation to ensure that the jurisdictional utilities receive just and reasonable compensation for the services that they render. However, rehearing is granted to clarify that the Commission is under no obligation with regard to the specific mechanism used to address capacity costs. Such costs may be addressed through an SCM that is specifically crafted to meet the stated needs of a particular utility or through a rider or other mechanism.

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19 *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011).

The Commission carefully considered the question of whether we have the requisite statutory authority in this matter. We affirm our findings in the Capacity Order that capacity service is a wholesale generation service between AEP-Ohio and CRES providers and that the provisions of Chapter 4928, Revised Code, that restrict the Commission's regulation of competitive retail electric services are inapplicable. The definition of retail electric service found in Section 4928.01(A)(27), Revised Code, is more narrow than IEU-Ohio would have it. As we discussed in the Capacity Order, retail electric service is "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption." Because AEP-Ohio supplies the capacity service in question to CRES providers, rather than directly to retail customers, it is not a retail electric service, as IEU-Ohio appears to contend, or a deregulated service, as the Schools assert.

Additionally, as discussed above, we note that Section 4905.26, Revised Code, grants the Commission considerable authority to review rates[20] and authorizes our investigation in this case. The Commission properly initiated this proceeding, consistent with that statute, to examine AEP-Ohio's existing capacity charge for its FRR obligations and to establish an appropriate SCM upon completion of our review. We grant rehearing for the limited purpose of clarifying that the Capacity Order was issued in accordance with the Commission's authority found in Section 4905.26, Revised Code, as well as Sections 4905.04, 4905.05, and 4905.06, Revised Code.

Cost-Based SCM

(72) OCC argues that the Commission erred in adopting a cost-based SCM rather than finding that the SCM should be based on RPM pricing. Similarly, the Schools argue that the Commission failed to find that RPM-based capacity

20 *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979).

pricing is reasonable and lawful and should be reinstated as the SCM. AEP-Ohio replies that the arguments raised by OCC and the Schools are unsupported and have already been considered and rejected by the Commission. AEP-Ohio notes that the Commission determined that it has the authority to establish an SCM based on the costs associated with the Company's FRR capacity obligations.

(73) FES contends that the Capacity Order unlawfully and unreasonably established an SCM based on embedded costs. Specifically, FES argues that, pursuant to the language and purpose of the RAA, the only costs that can possibly be considered for pricing capacity in PJM are avoidable, not embedded, costs and that AEP-Ohio's avoidable costs would be fully recovered using RPM-based pricing. FES asserts that AEP-Ohio's FRR capacity obligations are not defined by the cost of its fixed generation assets but are instead valued based on PJM's reliability requirements. FES believes that the Capacity Order provides a competitive advantage to AEP-Ohio in that the Company will be the only capacity supplier in PJM that is guaranteed to recover its full embedded costs for generation. FES notes that AEP-Ohio's status as an FRR Entity does not justify different treatment, as there is no material difference between the FRR election and participation in PJM's base residual auction.

(74) AEP-Ohio argues that the Commission appropriately determined that cost, as the term is used in Section D.8 of Schedule 8.1 of the RAA, refers to embedded cost. AEP-Ohio notes that no reference to avoided cost is contained within Section D.8 of Schedule 8.1 of the RAA and that, as a participant in the drafting of the RAA, the Company understood that the reference to cost was intended to mean embedded cost. AEP-Ohio contends that, because avoided costs are bid into the RPM's base residual auction, FES' argument renders the option to establish a cost-based capacity rate under Section D.8 of Schedule 8.1 of the RAA meaningless.

(75) Like FES, IEU-Ohio argues that the Capacity Order is in conflict with the RAA for numerous reasons, including that the order does not account for Delaware law; ignores the

RAA's focus on the entire PJM region and the RAA's objective to support the development of a robust competitive marketplace; finds that use of the term "cost" in the RAA means embedded cost; and is based on AEP-Ohio's flawed assumptions that the Company is an FRR Entity with owned and controlled generating assets that are the source of capacity provided to CRES providers serving retail customers in the Company's certified electric distribution service area.

(76) In its memorandum contra, AEP-Ohio notes that IEU-Ohio fails to explain how the application of Delaware law would make any practical difference with respect to the Commission's interpretation of the RAA. AEP-Ohio argues that the RAA cannot be interpreted to mean that state commissions are constrained by Delaware law in establishing an SCM. AEP-Ohio also contends that, if the reference to cost in Section D.8 of Schedule 8.1 of the RAA is interpreted as avoidable cost, it would render the provision meaningless. AEP-Ohio adds that IEU-Ohio relies on inapplicable U.S. Supreme Court precedent in support of its argument that cost does not mean embedded cost.

(77) The Commission finds that the arguments raised by the Schools, OCC, FES, and IEU-Ohio have already been thoroughly considered by the Commission and should again be denied. As discussed above, the Commission has an obligation to ensure that AEP-Ohio receives reasonable compensation for the capacity service that it provides. We continue to believe that the SCM for AEP-Ohio should be based on the Company's costs and that RPM-based capacity pricing would prove insufficient to yield reasonable compensation for the Company's provision of capacity to CRES providers in fulfillment of its FRR capacity obligations.

Initially, the Commission finds no merit in IEU-Ohio's claim that AEP-Ohio is not an FRR Entity. Although AEPSC signed the RAA, it did so on behalf of the Company. The Commission also disagrees with FES' contention that the Capacity Order affords an undue competitive advantage to AEP-Ohio over other capacity

suppliers in PJM. The Commission initiated this proceeding solely to review AEP-Ohio's capacity costs and determine an appropriate capacity charge for its FRR obligations. We have not considered the costs of any other capacity supplier subject to our jurisdiction nor do we find it appropriate to do so in this proceeding. Further, the Commission does not agree that the SCM that we have adopted is inconsistent with the RAA. Section D.8 of Schedule 8.1 of the RAA provides only that, where the state regulatory jurisdiction requires that the FRR Entity be compensated for its FRR capacity obligations, such SCM will prevail. There are no requirements or limitations for the SCM in that section or elsewhere in the RAA. Although Section D.8 of Schedule 8.1 of the RAA specifically contemplates that an SCM may be established by the state regulatory jurisdiction, neither that section nor any other addresses whether the SCM may provide for the recovery of embedded costs, nor would we expect it to do so, given that the FRR Entity's compensation is to be provided by way of a state mechanism. The Commission finds that we appropriately adopted an SCM that is consistent with Section D.8 of Schedule 8.1 of the RAA and state law and that nothing in the Capacity Order is otherwise contrary to the RAA.

Energy Credit

(78) AEP-Ohio raises numerous issues with respect to the energy credit recommended by Staff's consultant in this case, Energy Ventures Analysis, Inc. (EVA), which was adopted by the Commission in the Capacity Order. In its first assignment of error, AEP-Ohio contends that the Commission's adoption of an energy credit of $147.41/MW-day was flawed, given that EVA assumed a static shopping level of 26.1 percent throughout the relevant timeframe. AEP-Ohio notes that, according to Staff's own witness, the energy credit should be lower based upon the established shopping level of thirty percent as of April 30, 2012. AEP-Ohio adds that the energy credit should be substantially lower based upon the increased levels of shopping that will occur with RPM-based capacity pricing. AEP-Ohio believes that there is an inconsistency

between the Commission's recognition in the Capacity Order that RPM-based pricing will cause shopping to increase and the Commission's adoption of EVA's methodology without an adjustment to reflect a higher level of shopping. At a minimum, AEP-Ohio argues that the Commission should account for the actual shopping level as of the date of the Capacity Order.

(79) IEU-Ohio responds that the arguments raised by AEP-Ohio in its application for rehearing assume that the Commission may act beyond its statutory jurisdiction to set generation rates and that the Commission may unlawfully authorize the Company to collect transition revenue. IEU-Ohio also contends that all of AEP-Ohio's assignments of error that relate to the energy credit are based on the flawed assumption that the Company identified and established the incurred cost of satisfying the FRR Entity's capacity obligations. IEU-Ohio notes that AEP-Ohio's cost-based methodology relies on the false assumption that the Company's owned and controlled generating assets are the source of capacity available to CRES providers serving customers in the Company's distribution service territory.

(80) AEP-Ohio also argues that there are a number of errors in EVA's energy credit, resulting in an energy credit that is unreasonable and against the manifest weight of the evidence. AEP-Ohio contends that the Commission adopted EVA's energy credit without meaningful explanation or analysis and abdicated its statutory duty to make reasonable findings and conclusions, in violation of Section 4903.09, Revised Code.

Specifically, AEP-Ohio asserts that EVA's methodology does not withstand basic scrutiny and is largely a black box that cannot be meaningfully tested or evaluated by others; EVA failed to calibrate its model or otherwise account for the impact of zonal rather than nodal prices; EVA erred in forecasting locational marginal prices (LMP) instead of using available forward energy prices, which were used by Staff in the ESP 2 Case; EVA used inaccurate and understated fuel costs; EVA failed to use correct heat rates to capture minimum and start time operating constraints and associated cost impacts; EVA wrongly incorporated

traditional OSS margins and otherwise failed to properly reflect the impact of the pool agreement; and EVA's estimate of gross margins that AEP-Ohio will earn from June 2012 through May 2015 are overstated by nearly 200 percent. AEP-Ohio argues that, at a minimum, the Commission should conduct an evidentiary hearing on rehearing to evaluate the accuracy of EVA's energy credit compared to actual results. In support of its request, AEP-Ohio proffers that EVA's forecasted energy margins for June 2012 were more than three times higher than the Company's actual margins, resulting in an energy credit that is overstated by $91.52/MW-day, and that provisional data for July 2012 confirms a similar degree of error in EVA's projections.

AEP-Ohio also points out that Staff admitted to significant, inadvertent errors in Staff witness Harter's testimony regarding calculation of the energy credit and that Staff was granted additional time to present the supplemental testimony of Staff witness Medine in an attempt to correct the errors. AEP-Ohio notes that Staff presented three different versions of EVA's calculation of the energy credit, which was revised twice in order to address errors in the calculation. AEP-Ohio asserts that the Commission nevertheless adopted EVA's energy credit without mention of these procedural irregularities. In any event, AEP-Ohio believes that Ms. Medine's testimony only partially and superficially addressed Mr. Harter's errors. According to AEP-Ohio, the Commission should grant the Company's application for rehearing and address the remaining fundamental deficiencies in EVA's methodology in order to avoid a reversal and remand from the Ohio Supreme Court.

(81) FES responds that the Commission already considered and rejected each of AEP-Ohio's arguments. FES adds that there are flaws in the energy credit calculated by AEP-Ohio's own witness and that the Company's criticisms of EVA's approach lack merit.

(82) The Commission finds that AEP-Ohio's assignments of error regarding the energy credit should be denied. First, with respect to EVA's shopping assumption, we find

nothing inappropriate in EVA's use of a static shopping level of 26 percent, which reflects the actual level of shopping in AEP-Ohio's service territory as of March 31, 2012, which was around the time of EVA's analysis. We recognize that the level of shopping will continually fluctuate in both directions. For that reason, we believe that it was appropriate for EVA to use the actual level of shopping as of a recent date, rather than a projection, and find that EVA's figure is a reasonable approximation. EVA's use of a static shopping level provides certainty to the energy credit and capacity rate. The alternative would be to review the level of shopping at regular intervals, an option that would unreasonably necessitate continual recalculations of the energy credit to reflect the shopping level of the moment, while introducing uncertainty into the capacity rate. The Commission also notes that, contrary to AEP-Ohio's assertion, Staff witness Medine did not testify that the energy credit should be adjusted to reflect the current level of shopping. Rather, Ms. Medine testified only that EVA assumed a shopping level of 26 percent, which was the level of shopping as of March 31, 2012, and that this figure was used as a conservative approach.[21]

Regarding the alleged errors in EVA's approach, the Commission notes initially that we explained the basis for our adoption of EVA's energy credit in the Capacity Order, consistent with the requirements of Section 4903.09, Revised Code. A review of the testimony of Staff witnesses Medine and Harter reflects that EVA sufficiently described its methodology, including the fuel costs and heat rates applied in this case; its decision to use zonal prices and forecasted LMP; and its accounting for OSS margins and operation of the pool agreement.[22] We affirm our finding that, as a whole, EVA's energy credit, as adjusted by the Commission, is reasonable. Although AEP-Ohio contends that EVA should have used different inputs in a number of respects, we do not believe that the Company has demonstrated that the inputs actually used by EVA are unreasonable. AEP-Ohio's preference for other inputs that

21 Tr. X at 2189, 2194; Staff Ex. 105 at 19.

22 Staff Ex. 101 at 6-11, 105 at 4-19.

would result in an outcome more to its liking is not a sufficient ground for rehearing. Neither do we find any relevance in AEP-Ohio's claimed procedural irregularities with respect to EVA's testimony. Essentially, the Commission was presented with two different methodologies for calculating the energy credit, both of which were questioned and criticized by the parties. Overall, the Commission believes that EVA's approach is the more reasonable of the two in projecting AEP-Ohio's future energy margins and that it will best ensure that the Company does not over recover its capacity costs.

Authorized Compensation

(83) OCC argues that the Commission erred in finding that compensation of $188.88/MW-day is an appropriate charge to enable AEP-Ohio to recover its capacity costs for its FRR obligations from CRES providers. OCC notes that there is no evidence to support the Commission's finding, given that no party recommended a charge of $188.88/MW-day. OCC further notes that the Commission adopted AEP-Ohio's unsupported return on equity (ROE), without explanation, in violation of Section 4903.09, Revised Code.

(84) In response to OCC, as well as similar arguments from OMA and OHA, AEP-Ohio asserts that the ROE approved by the Commission is supported by relevant and competent evidence and that the ROE is appropriate for the increased risk associated with generation service. Given the considerable evidence in the record, AEP-Ohio contends that the rationale for the Commission's rejection of Staff's proposed downward adjustment to the Company's proposed ROE is evident.

(85) In the Capacity Order, the Commission explained thoroughly based on the evidence in the record how it determined that $188.88/MW-day is an appropriate capacity charge for AEP-Ohio's FRR obligations. We also explained that we declined to adopt Staff's recommended ROE, given that it was solely based on a stipulated ROE from an unrelated case, and concluded that the ROE proposed by AEP-Ohio was reasonable under the

circumstances in the present case. The evidence of record reflects that AEP-Ohio's proposed ROE is consistent with the ROEs that are in effect for the Company's affiliates for wholesale transactions in other states.[23] Therefore, the requests for rehearing should be denied.

Deferral of Difference Between Cost and RPM

Deferral Authority

(86) IEU-Ohio argues that the Commission is prohibited under Section 4928.05(A), Revised Code, from regulating or otherwise creating a deferral associated with a competitive retail electric service under Section 4905.13, Revised Code, and that the Commission may only authorize a deferral resulting from a phase-in of an SSO rate pursuant to Section 4928.144, Revised Code. IEU-Ohio further notes that, under generally accepted accounting principles (GAAP), only an incurred cost can be deferred for future collection, and not the difference between two rates. IEU-Ohio also asserts that the Commission unreasonably and unlawfully determined that AEP-Ohio might suffer financial harm if it charged RPM-based capacity pricing and established compensation for generation capacity service designed to address the financial performance of the Company's competitive generation business, despite the Commission's prior confirmation that the Company's earnings do not matter for purposes of establishing generation rates.

(87) AEP-Oho asserts that it was unreasonable and unlawful for the Commission to adopt a cost-based SCM and then order the Company to charge CRES providers the lower RPM-based capacity pricing. Specifically, AEP-Ohio contends that it was unreasonable and unlawful to require the Company to charge any price other than $188.88/MW-day, which the Commission established as the just and reasonable cost-based rate. AEP-Ohio argues that the Commission has no statutory authority to require the Company to charge CRES providers less than the cost-

23 Tr. II at 305.

based capacity rate that the Commission determined was just and reasonable.

(88) In its memorandum contra, IEU-Ohio argues that AEP-Ohio assumes that the Commission may act beyond its statutory jurisdiction to set generation rates and that the Commission may unlawfully authorize the Company to collect transition revenue. IEU-Ohio adds that customer choice will be frustrated if the Commission grants the relief requested by AEP-Ohio in its application for rehearing.

(89) The Schools respond that AEP-Ohio should not complain that the Commission lacks authority to order a deferral, given that the Company has refused to accept the ratemaking formula and related process contained in Sections 4909.15, 4909.18, and 4909.19, Revised Code. The Schools add, however, that the Commission has wide discretion to issue accounting orders under Section 4905.13, Revised Code, in cases where the Commission is not setting rates pursuant to Section 4909.15, Revised Code.

(90) RESA and Direct Energy argue that the Commission's approach is consistent with Ohio's energy policy, supported by the record, and reasonable and lawful. RESA and Direct Energy believe that the Commission pragmatically balanced the various competing interests of the parties in establishing a just and reasonable SCM.

(91) Noting that nothing prohibits the Commission from bifurcating the means of recovery of a just and reasonable rate, Duke replies that AEP-Ohio's argument is not well founded, given that the Company will be made whole through the deferral mechanism to be established in the ESP 2 Case.

(92) In the Capacity Order, the Commission authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers and indicated that a recovery mechanism for the deferred capacity costs would be established in the ESP 2 Case. We find nothing unlawful or unreasonable in this approach. We continue to believe that it appropriately balances our objectives of enabling AEP-Ohio to fully recover its

capacity costs incurred in carrying out its FRR obligations, while encouraging retail competition in the Company's service territory.

The Commission finds no merit in the arguments that we lack the authority to order the deferral. As we noted in the Capacity Order, the Commission relied upon the authority granted to us by Section 4905.13, Revised Code, in directing AEP-Ohio to modify its accounting procedures to defer a portion of its capacity costs. Having found that the capacity service at issue is not a retail electric service and thus not a competitive retail electric service, IEU-Ohio's argument that the Commission may not rely on Section 4905.13, Revised Code, is unavailing. Neither do we find that authorization of the deferral was contrary to GAAP or prior Commission precedent, as IEU-Ohio contends. The requests for rehearing of IEU-Ohio and AEP-Ohio should, therefore, be denied.

Competition

(93) AEP-Ohio contends that it was unreasonable and unlawful for the Commission to require the Company to supply capacity to CRES providers at a below-cost rate to promote artificial, uneconomic, and subsidized competition that is unsustainable and likely to harm customers and the state economy, as well as the Company.

(94) Duke disagrees, noting that the evidence is to the contrary. Duke adds that the other Ohio utilities use RPM-based capacity pricing without causing a flood of unsustainable competition or damage to the economy in the state. FES responds that the deferral authorized by the Commission is an appropriate way to spur real competition and to prevent the chilling effect on competition that would result from above-market capacity pricing. FES contends that there is nothing artificial in allowing customers to purchase capacity from willing sellers at market rates. RESA and Direct Energy agree, noting that the Capacity Order will promote real competition among CRES providers to the benefit of customers.

(95) As the Commission thoroughly addressed in the Capacity Order, we believe that a capacity charge assessed to CRES providers on the basis of RPM pricing will advance the development of true competition in AEP-Ohio's service territory. We do not agree with AEP-Ohio that there is anything artificial in charging CRES providers the same market-based pricing that is used throughout PJM. Lacking any merit, AEP-Ohio's assignment of error should be denied.

Existing Contracts

(96) AEP-Ohio argues that it was unreasonable and unlawful, as well as unnecessary, for the Commission to extend RPM-based pricing to customers that switched to a CRES provider at a capacity price of $255/MW-day. AEP-Ohio asserts that CRES providers will enjoy a significant windfall to the Company's financial detriment. According to AEP-Ohio, the Capacity Order should not apply to existing contracts with a capacity price of $255/MW-day.

(97) Duke responds that AEP-Ohio offers no evidence that these contracts prohibit renegotiation of pricing for generation supply. IEU-Ohio asserts that AEP-Ohio's argument must be rejected because the Company may not charge a rate that has not been authorized by the Commission, and the Company has not demonstrated that it has any valid basis to charge $255/MW-day for capacity supplied to CRES providers. IEU-Ohio adds that there is likewise no basis to conclude that CRES providers will enjoy a windfall, given the fact that the Commission earlier indicated that RPM-based capacity pricing would be restored and such pricing comprised the first tier of the interim capacity pricing mechanism. FES also contends that there is no justification for discriminating against customers formerly charged $255/MW-day for capacity by requiring them to continue to pay above-market rates. RESA and Direct Energy add that customers that were charged $255/MW-day elected to shop with the expectation that they would eventually be charged RPM-based capacity pricing. OMA agrees that customers had a reasonable expectation of RPM-based capacity pricing, regardless of when they elected to shop.

OMA notes that AEP-Ohio's argument is contrary to state policy, which requires that nondiscriminatory retail electric service be available to consumers.

(98) The Commission finds no merit in AEP-Ohio's argument and its request for rehearing should, therefore, be denied. The contracts in question are between CRES providers and their customers, not AEP-Ohio. It is for the parties to each contract to determine whether the contract pricing will be renegotiated in light of the Capacity Order. As between AEP-Ohio and CRES providers, the Company should charge the applicable RPM-based capacity pricing as required by the Capacity Order.

State Policy

(99) IEU-Ohio believes the deferral mechanism is in conflict with the state policy found in Section 4928.02, Revised Code, which generally supports reliance on market-based approaches to set prices for competitive services such as generation service and strongly favors competition to discipline prices of competitive services.

(100) AEP-Ohio asserts that it was unreasonable and unlawful for the Commission to rely on the state policies set forth in Sections 4928.02 and 4928.06(A), Revised Code, as justification for reducing CRES providers' price of capacity to RPM-based pricing, after the Commission determined that Chapter 4928, Revised Code, does not apply to the capacity charge paid by CRES providers to the Company. AEP-Ohio argues that the Commission determined that the chapter is inapplicable to the Company's capacity service but then unreasonably relied upon it anyway.

(101) Duke disagrees, noting that the impact of AEP-Ohio's capacity charge on retail competition in Ohio is an issue for Commission review in this proceeding and that the issue cannot be considered without reference to state policy. IEU-Ohio adds that AEP-Ohio has urged the Commission in this proceeding to rely on the state policy found in Section 4928.02, Revised Code. IEU-Ohio also points out that the Commission is required to apply the state policy in making decisions regarding generation capacity service.

FES contends that, if the Commission has the authority to create a cost-based SCM, then it also has the authority to follow the express guidance of Chapter 4928, Revised Code, and encourage competition through the use of market pricing. RESA and Direct Energy note that Section 4928.02, Revised Code, contains the state's energy policy, parts of which are not limited to retail electric services. RESA and Direct Energy contend that the Capacity Order is consistent with Section 4928.02(C), Revised Code, which requires a diversity of electricity supplies and suppliers.

(102) Initially, the Commission notes that, although we determined that Chapter 4928, Revised Code, has no application in terms of the Commission's authority to establish the SCM, we have made it clear from the outset that one of the objectives in this proceeding was to determine the impact of AEP-Ohio's capacity charge on CRES providers and retail competition in Ohio. The Commission cannot accomplish that objective without reference to the state policy found in Section 4928.02, Revised Code. Further, as the Commission stated in the Capacity Order, we believe that RPM-based capacity pricing is a reasonable means to promote retail competition, consistent with the state policy objectives enumerated in Section 4928.02, Revised Code. We do not agree with IEU-Ohio that the deferral of a portion of AEP-Ohio's capacity costs is contrary to any of the state policy objectives identified in that section. The assignments of error raised by AEP-Ohio and IEU-Ohio should be denied.

Evidentiary Record and Basis for Commission's Decision

(103) OCC contends that there is no evidence in the record that supports or even addresses a deferral of capacity costs and that the Commission, therefore, did not base its decision on facts in the record, contrary to Section 4903.09, Revised Code. OCC also asserts that the Commission erred in authorizing carrying charges based on the weighted average cost of capital (WACC) until such time as a recovery mechanism was approved in the ESP 2 Case.

OCC believes that any carrying charges should be calculated based on AEP-Ohio's long-term cost of debt.

(104) AEP-Ohio responds that OCC's argument is moot. AEP-Ohio explains that the SCM and associated deferral did not take effect until August 8, 2012, which was the date on which the Commission approved a recovery mechanism in the ESP 2 Case, and, therefore, the WACC rate did not apply.

(105) Like OCC, IEU-Ohio contends that the Commission's authorization of carrying charges lacks any supporting evidence in the record and that the carrying charge rates approved are excessive, arbitrary, capricious, and contrary to Commission precedent.

(106) The Commission notes that OCC appears to assert that the Commission may not authorize a deferral unless it has first been proposed by a party to the proceeding. We find no basis for OCC's apparent contention that the Commission may not authorize a deferral on our own initiative. As discussed above, the Commission has the requisite authority pursuant to Section 4905.13, Revised Code. Further, the reasons prompting our decision were thoroughly explained in the Capacity Order and supported with evidence in the record, as reflected in the order. We thus find no violation of Section 4903.09, Revised Code.

Regarding the specific carrying cost rates authorized, the Commission finds that it was appropriate to approve the WACC rate until such time as the recovery mechanism was established in the ESP 2 Case, in order to ensure that AEP-Ohio was fully compensated, and to approve the long-term debt rate from that point forward. As we have noted in other proceedings, once collection of the deferred costs begins, the risk of non-collection is significantly reduced. At that point, it is more appropriate to use the long-term cost of debt rate, which is consistent with sound regulatory practice and Commission precedent.[24] In any event, as

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24 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider*, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008); *In the Matter of the Application of Columbus Southern Power Company and Ohio*

AEP-Ohio notes, OCC's argument is moot. Because the SCM took effect on the same date on which the deferral recovery mechanism was approved in the ESP 2 Case, there was no period in which the WACC rate applied. Accordingly, OCC's and IEU-Ohio's assignments of error should be denied.

Recovery of Deferred Capacity Costs

(107) OCC argues that the Commission erred in allowing wholesale capacity costs, which should be the responsibility of CRES providers, to be deferred for potential collection from customers through the Company's rates for retail electric service established as part of its ESP. OCC asserts that the Commission has no jurisdiction to authorize AEP-Ohio to collect wholesale costs for capacity service from retail SSO customers. OCC contends that nothing in either Chapter 4905 or 4909, Revised Code, enables the Commission to authorize a deferral of wholesale capacity costs that are to be recovered by AEP-Ohio through an ESP approved for retail electric service pursuant to Section 4928.143, Revised Code.

(108) IGS responds that OCC's argument should be addressed in the ESP 2 Case, which IGS believes is the appropriate venue in which to determine whether the deferred capacity costs may be collected through an ESP.

(109) OEG argues that the Commission has no legal authority to order future retail customers to repay the wholesale capacity cost obligations that unregulated CRES providers owe to AEP-Ohio. OMA and OHA agree with OEG that the Commission has neither general ratemaking authority nor any specific statutory authority that applies under the circumstances to order the deferral of costs that the utility is authorized to recover, and that retail customers may not lawfully be required to pay the wholesale costs owed by

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Power Company for Authority to Modify Their Accounting Procedure for Certain Storm-Related Services Restoration Costs, Case No. 08-1301-EL-AAM, Finding and Order (December 19, 2008); *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Case No. 11-4920-EL-RDR, *et al.*, Finding and Order (August 1, 2012).

CRES providers to AEP-Ohio. OEG contends that the deferral authorized by the Commission will result in future customers paying hundreds of millions of dollars in above-market capacity rates as well as interest on the deferral. According to OEG, CRES providers should pay the full cost-based capacity price of $188.88/MW-day as AEP-Ohio incurs its capacity costs. Noting that shopping occurred in AEP-Ohio's service territory with a capacity charge of $255/MW-day, OEG asserts that the record does not indicate that a capacity charge of $188.88/MW-day will hinder retail competition and, therefore, there is no reason to transfer the wholesale capacity payment obligation from CRES providers to future retail customers.

Alternatively, OEG requests that the Commission clarify that customers that have reasonable arrangements and certify that they did not shop during the three-year ESP period are exempt from repayment of AEP-Ohio's deferred capacity costs; any deferred capacity costs will be allocated and recovered on the same basis as if the CRES providers were charged the full capacity rate in the first place (*i.e.*, on the basis of demand); and the Company is required to reduce any deferred capacity costs by the relevant accumulated deferred income tax during the recovery period so that the interest expense reflects its actual carrying costs. OEG asserts that payment of the deferred capacity costs should be collected only from CRES providers or shopping customers, which are the entities that will have benefitted from the initial RPM-based capacity pricing.

(110) AEP-Ohio and numerous intervenors disagree with OEG's characterization of the Capacity Order as having represented that the deferral is an amount owed by CRES providers to the Company. AEP-Ohio asserts that the Commission clearly indicated that all customers, including customers with reasonable arrangements, should pay for the deferral because they benefit from the opportunity to shop that is afforded by RPM-based capacity pricing. AEP-Ohio offers a similar response to the contentions of OCC and OMA/OHA that the deferral is solely the obligation of CRES providers. AEP-Ohio notes that all customers benefit

from the provided capacity, which was developed or obtained years ago for all connected load based on the Company's FRR obligations. AEP-Ohio argues that, if the Commission does not permit recovery of the deferred capacity costs from retail customers, the deferred amount should be recovered from CRES providers. AEP-Ohio also requests that the Commission create a backstop remedy to ensure that the full deferred amount is collected from CRES providers, in the event the Company is not able to recover the deferred costs from retail customers as a result of an appeal.

In response to arguments that the Commission lacks statutory authority to approve the deferral, AEP-Ohio asserts, as an initial matter, that such arguments should be raised in the ESP 2 Case, because recovery of the deferral is to be addressed in those proceedings. AEP-Ohio adds that the Commission explained in the Capacity Order that it may authorize an accounting deferral, pursuant to Section 4905.13, Revised Code, and also noted, in the ESP 2 Case, that it may order a just and reasonable phase-in, pursuant to Section 4928.144, Revised Code, for rates established under Section 4928.141, 4928.142, or 4928.143, Revised Code.

(111) FES responds to OEG that the only amount that AEP-Ohio can charge CRES providers for capacity is the RPM-based price and that the deferral does not reflect any cost obligation on the part of CRES providers. FES adds that the deferral authorized by the Commission is an above-market subsidy intended to provide financial benefits to AEP-Ohio and that should thus be paid for by all of the Company's customers, if it is maintained as part of the SCM. FES also asserts that OEG's argument regarding the Commission's lack of statutory authority to order the deferral is flawed, because the Commission's authority to establish the SCM is not based on Chapter 4909, Revised Code, but rather on the RAA.

(112) RESA agrees with FES that the deferred amount is not owed by CRES providers and that the Commission clearly indicated that CRES providers should only be charged RPM-based capacity pricing. RESA notes that, practically

speaking, the deferral authorized by the Commission is the only way in which to maintain RPM-based capacity pricing in AEP-Ohio's service territory, while also ensuring the Company recovers its embedded costs until corporate separation occurs. RESA adds that all customers should pay for the deferral, because all customers have the opportunity to shop and receive the benefit of the RPM-based capacity pricing. RESA contends that the fact that some level of competition may still occur is not justification alone to charge CRES providers $188.88/MW-day. According to RESA, the Commission has the necessary authority to establish the deferral and design the SCM as it did.

(113) According to Duke, OEG misconstrues the nature of a deferral. Duke points out that OEG incorrectly characterizes the deferral as an amount owed to the FRR Entity, rather than an amount reflecting costs incurred but not recovered. Duke also notes that the Commission has specifically directed that CRES providers not be charged more than the RPM-based price. Duke argues that the deferred amount is, therefore, not the obligation of CRES providers. Duke disagrees with OEG's argument that the Commission has no authority to authorize a deferral, noting that, although the Ohio Supreme Court has held that the Commission must fix rates that will provide a utility with appropriate annual revenues, it has not determined that the Commission is barred from ordering a deferral.

(114) The Schools contend that collection of the deferral from CRES providers or customers would cause Ohio's schools serious financial harm. The Schools believe that CRES providers may pass the increase through to their shopping customers under existing contracts or terminate the contracts altogether. The Schools add that, pursuant to AEP-Ohio's proposal for a retail stability rider (RSR) in the ESP 2 Case, the capacity charge adopted by the Commission in this case could result in an increase to the RSR of approximately $550 million, which could lead to rate shock for Ohio's schools.

(115) OMA and OHA contend that the authorized deferral is so large that it will substantially harm customers. They assert that, if AEP-Ohio's shopping projections come to fruition, the amount of the deferral will be approximately $726 million, plus carrying charges, which renders the capacity charge unjust and unreasonable, contrary to Section 4905.22, Revised Code. OMA and OHA conclude that, on rehearing, the Commission should revoke the deferral authority granted to AEP-Ohio or, at a minimum, find that Staff's recommended ROE is reasonable and reduce the cost of the Company's capacity charge by $10.09/MW-day.

(116) AEP-Ohio replies that the arguments of the Schools and OMA and OHA regarding the size and impact of the deferral are premature and speculative, given that their projections are based on a number of variables that are uncertain, such as future energy prices, future shopping levels, and the ultimate outcome in the ESP 2 Case.

(117) FES asserts that, if AEP-Ohio is permitted to recover its full embedded costs, the Commission should clarify that the deferral recovery mechanism is nonbypassable because the excess cost recovery serves only as a subsidy to the Company and, therefore, all of its customers should be required to pay for it. FES believes that a nonbypassable recovery mechanism is necessary to fulfill the Commission's goal of promoting competition. FES also asserts that the Commission should recognize AEP-Ohio's impending corporate separation and direct that the SCM will remain in place only until January 1, 2014, or transfer of the Company's generating assets to its affiliate, in order to avoid an improper cross-subsidy to a competitive, unregulated supplier.

(118) OEG asserts that FES mischaracterizes the Capacity Order in describing the deferral as an above-market subsidy. OEG also contends that the SCM established by the Commission does not consist of a wholesale market-based charge and a cost-based retail charge, as FES believes. According to OEG, the Capacity Order explicitly states that $188.88/MW-day is an appropriate charge to enable AEP-Ohio to recover its capacity costs for its FRR obligations from CRES providers. OEG also notes that the RAA does

not permit capacity costs to be recovered from non-shopping customers pursuant to the SCM. Because the Commission established a wholesale cost-based capacity charge of $188.88/MW-day, OEG believes that the charge must be paid by CRES providers. OEG argues that state law does not authorize the Commission to assess a wholesale charge directly to shopping customers. OEG concludes that the SCM can only apply to CRES providers and that the Commission has no authority to direct that deferred capacity costs be recovered on a nonbypassable basis. OCC agrees with the arguments made by OEG and notes that there is no statutory basis upon which the Commission may order recovery of the deferred capacity costs from all customers under the provisions of an ESP.

(119) OCC also argues that FES' argument for a nonbypassable cost recovery mechanism should be rejected because CRES providers should be responsible for paying capacity costs. OCC notes that, if a wholesale charge applies to retail customers, the result will be unfair competition, double payments, and discrimination in violation of Sections 4905.33, 4905.35, 4928.02(A), 4928.02(L), and 4928.141, Revised Code. OCC argues that non-shopping customers should not have to pay for an anticompetitive subsidy for the sake of competition, which is contrary to Section 4928.02(H), Revised Code. OCC also disagrees with FES' characterization of the Capacity Order as providing a subsidy to AEP-Ohio. According to OCC, there can be no subsidy where AEP-Ohio is receiving compensation for its cost of capacity, as determined by the Commission.

(120) IEU-Ohio also urges the Commission to reject FES' request for clarification and argues that an unlawful and unreasonable charge cannot be made lawful and reasonable simply by making it a nonbypassable charge.

(121) AEP-Ohio argues, in response to FES, that it is lawful and reasonable to continue recovery of the deferral after corporate separation occurs. AEP-Ohio notes that the Commission already rejected FES' arguments in the ESP 2 Case. AEP-Ohio notes that, because its generation affiliate will be obligated to support SSO service through the

provision of adequate capacity and energy, it is appropriate that the affiliate receive the associated revenues.

(122) IEU-Ohio asserts that the Capacity Order does not ensure comparable and non-discriminatory capacity rates for shopping and non-shopping customers, contrary to Sections 4928.02(B), 4928.15, and 4928.35(C), Revised Code. According to IEU-Ohio, the Commission must recognize that AEP-Ohio has maintained that non-shopping customers are, on average, paying nearly twice the $188.88/MW-day price for generation capacity service. IEU-Ohio contends that the Commission must eliminate the excessive compensation embedded in the SSO or credit the amount of such compensation above $188.88/MW-day against any amount deferred based on the difference between RPM-based capacity pricing and $188.88/MW-day. IEU-Ohio also believes that the Commission's approval of an above-market rate for generation capacity service will unlawfully subsidize AEP-Ohio's competitive generation business by allowing the Company to recover competitive generation costs through its noncompetitive distribution rates, which is contrary to Section 4928.02(H), Revised Code.

(123) Similarly, OCC argues that both shopping and non-shopping customers will be forced to pay twice for capacity in violation of Sections 4928.141, 4928.02(A), and 4928.02(L), Revised Code, and that non-shopping customers will pay more for capacity than shopping customers in violation of Sections 4928.141, 4928.02(A), 4905.33, and 4905.35, Revised Code. OCC believes that, if the deferral is collected from retail customers, the Commission will have granted an unlawful and anticompetitive subsidy to CRES providers in violation of Section 4928.02(H), Revised Code.

(124) In response to OCC, IGS replies that the Capacity Order does not result in a subsidy to CRES providers. IGS notes that the capacity compensation authorized by the Commission is for AEP-Ohio, not CRES providers.

(125) The Commission notes that several of the parties have spent considerable effort in addressing the mechanics of

the deferral recovery mechanism, such as whether CRES providers or retail customers should be responsible for payment of AEP-Ohio's deferred capacity costs, whether such costs should be paid by non-shopping customers as well as shopping customers, and whether the deferral results in subsidies or discriminatory pricing between non-shopping and shopping customers. We find that all of these arguments were prematurely raised in this case. The Capacity Order did not address the deferral recovery mechanism. Rather, the Commission merely noted that an appropriate recovery mechanism would be established in the ESP 2 Case and that any other financial considerations would also be addressed by the Commission in that case. The Commission finds it unnecessary to address arguments that were raised in this proceeding merely as an attempt to anticipate the Commission's decision in the ESP 2 Case. Accordingly, the requests for rehearing or clarification should be denied.

Process

(126) AEP-Ohio asserts that it was unreasonable and unlawful for the Commission to authorize the Company to collect only RPM-based pricing and require deferral of expenses up to $188.88/MW-day without simultaneously providing for recovery of the shortfall. AEP-Ohio argues that the Commission's decision to establish an appropriate recovery mechanism for the deferral in the ESP 2 Case rather than in the present case was unreasonable, because the two proceedings involve unrelated issues and each will be subject to a separate rehearing and appeal process.

(127) OCC agrees that the Commission's decision to address the issue of recovery of the deferral in the ESP 2 Case was unreasonable and unlawful. OCC argues that there is no evidence in the ESP 2 Case related to an appropriate recovery mechanism, which is a separate and distinct proceeding, and that it was particularly unreasonable to defer the issue for decision just one week prior to the filing of reply briefs in the ESP 2 Case.

(128) IGS disagrees with OCC and argues that the Commission's decision to address the deferral in the ESP 2 Case was not unreasonable. IGS points out that the Commission has discretion to decide how to manage its dockets and that it should consider the deferral in the context of AEP-Ohio's total package of rates, which is at issue in the ESP 2 Case.

(129) Constellation and Exelon respond that AEP-Ohio's argument is contrary to its position in September 2011, when the Company sought to consolidate this case and the ESP 2 Case for the purpose of hearing in light of related issues. Duke agrees that AEP-Ohio has invited the review of one issue in multiple dockets and adds that the Commission is required to consider the deferral mechanism in the ESP 2 Case.

(130) RESA and Direct Energy argue that there is no statute or rule that requires the Commission to establish a deferral and corresponding recovery mechanism in the same proceeding. They add that, because recovery of the deferral will require an amendment to AEP-Ohio's retail tariffs, the proper forum to establish the recovery mechanism is the ESP 2 Case.

(131) Additionally, the Schools argue that the Capacity Order is unlawful, because the Commission failed to follow the traditional ratemaking formula and related processes prescribed by Sections 4909.05, 4909.15, 4909.18, and 4909.19, Revised Code. The Schools add that neither Section 4905.22, Revised Code, nor the Commission's general supervisory authority contained in Sections 4905.04, 4905.05, and 4905.06, Revised Code, authorizes the Commission to establish cost-based rates. FES and IEU-Ohio raise similar arguments.

(132) AEP-Ohio responds that arguments that the Commission and the Company were required to conduct a traditional base rate case, following all of the procedural and substantive requirements in Chapter 4909, Revised Code, relevant to applications for an increase in rates, are without support, given that the Commission was acting under its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code, and pursuant to

Section D.8 of Schedule 8.1 of the RAA. AEP-Ohio asserts that the adjudicatory process used by the Commission was more than sufficient, consisting of extensive discovery, written and oral testimony, cross-examination, presentation of evidence through exhibits, and briefs. AEP-Ohio adds that, even if the ratemaking requirements were strictly applicable, the Commission could have determined that these proceedings involve a first filing of rates for a service not previously addressed in a Commission-approved tariff, pursuant to Section 4909.18, Revised Code. AEP-Ohio argues that the process adopted by the Commission in this case far exceeded the requirements for a first filing.

(133) IEU-Ohio argues that the Commission failed to restore RPM-based capacity pricing, as required by Section 4928.143(C)(2)(b), Revised Code, due to its rejection of the ESP 2 Stipulation. IEU-Ohio contends that the Commission was required to restore the prior provisions, terms, and conditions of AEP-Ohio's prior SSO, including RPM-based capacity pricing, until such time as a new SSO was authorized for the Company.

On a related note, IEU-Ohio asserts that, because the Commission was obligated to restore RPM-based capacity pricing upon rejection of the ESP 2 Stipulation, the Commission should have directed AEP-Ohio to refund all revenue collected above RPM-based capacity pricing, or at least to credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges. AEP-Ohio responds that the Commission has recently rejected similar arguments in other proceedings.

(134) Upon review of the parties' arguments, the Commission finds that rehearing should be denied. The Commission believes that the process followed in this proceeding has been proper and well within the bounds of our discretion. As the Ohio Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets so as to avoid undue delay and the duplication of effort, including the discretion to decide how, in light of its internal organization and docket considerations, it may

best proceed to manage and expedite the orderly flow of its business, avoid undue delay, and eliminate unnecessary duplication of effort.[25] We, therefore, find no error in our decision to address the recovery mechanism for the deferral in the ESP 2 Case, as a means to effectively consider how the deferral recovery mechanism would fit within the mechanics of AEP-Ohio's ESP.

Additionally, we find no merit in the various arguments that the Commission or AEP-Ohio failed to comply with Chapters 4905 and 4909, Revised Code. This proceeding is not a traditional rate case requiring an application from AEP-Ohio under Section 4909.18, Revised Code. Rather, this proceeding was initiated by the Commission in response to AEPSC's FERC filing for the purpose of reviewing the capacity charge associated with AEP-Ohio's FRR obligations. As clarified above, the Commission's initiation of this proceeding was consistent with Section 4905.26, Revised Code, which requires only that the Commission hold a hearing and provide notice to the applicable parties. The Commission has fully complied with the requirements of the statute. We also note that the Ohio Supreme Court has recognized that Section 4905.26, Revised Code, enables the Commission to change a rate or charge, without compelling the public utility to apply for a rate increase pursuant to Section 4909.18, Revised Code.[26]

Finally, the Commission does not agree with IEU-Ohio's arguments that the rejection of the ESP 2 Stipulation necessitated the restoration of RPM-based capacity pricing until such time as a new SSO was authorized for AEP-Ohio, or that the Company should have been directed to refund any revenue collected above RPM-based capacity pricing. As addressed elsewhere in this entry on rehearing, the Commission finds that we have the requisite authority to modify the SCM and the rejection of the ESP 2 Stipulation has no bearing on that authority.

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25 *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982).

26 *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006).

Constitutional Claims

(135) AEP-Ohio argues that the SCM, particularly with respect to the energy credit adopted by the Commission, is unconstitutionally confiscatory and constitutes an unconstitutional taking of property without just compensation, given that the energy credit incorporates actual costs for the test period and then imputes revenues that have no basis in actual costs. AEP-Ohio points out that the Commission has recognized that traditional constitutional law questions are beyond its authority to determine; however, the Company raises the arguments so as to preserve its rights on appeal.

(136) In its memorandum contra, OMA argues that the Capacity Order does not result in confiscation or an unconstitutional taking and that AEP-Ohio has not made the requisite showing for either claim. IEU-Ohio responds that neither the applicable law nor the record or non-record evidence cited by AEP-Ohio supports the Company's claims. FES points out that FERC has determined that RPM-based capacity pricing is just and reasonable and, therefore, such pricing is not confiscatory or a taking without just compensation. The Schools argue that AEP-Ohio's constitutional issues would be avoided if the Commission were to recognize that capacity service is a competitive generation service and that market-based rates should apply. The Schools also note that AEP-Ohio, in making its partial takings claim, relies on extra-record evidence from the ESP 2 Case and that the Company's reference to such evidence should be stricken. OCC argues that the Commission does not have jurisdiction to resolve constitutional claims and that, in any event, AEP-Ohio's arguments are without merit and should be denied.

(137) IEU-Ohio also asserts a constitutional claim, specifically contending that the Capacity Order unreasonably impairs the value of contracts entered into between CRES providers and customers under a justified assumption that RPM-based capacity pricing would remain in effect. IEU-Ohio believes that the capacity pricing adopted in the Capacity Order should not apply to such contracts.

(138) AEP-Ohio replies that it is noteworthy that neither the intervenors that are actually parties to the contracts nor OCC seeks rehearing on this issue. AEP-Ohio further notes that IEU-Ohio identifies no specific contract that has allegedly been unconstitutionally impaired. According to AEP-Ohio, the lack of any such contract in the record is fatal to IEU-Ohio's impairment claim. AEP-Ohio adds that customers and CRES providers have long been aware that the Commission was in the process of establishing an SCM that might be based on something other than RPM pricing. Finally, AEP-Ohio points out that IEU-Ohio makes no attempt to satisfy the test used to analyze impairment claims.

(139) The Commission agrees that it is the province of the courts, and not the Commission, to judge constitutional claims. As the Ohio Supreme Court is the appropriate forum for the constitutional challenges raised by AEP-Ohio and IEU-Ohio, they will not be considered here.

Transition Costs

(140) IEU contends that the Commission, in approving an above-market rate for generation capacity service, authorized AEP-Ohio to collect transition revenue or its equivalent, contrary to Section 4928.40, Revised Code, and the stipulation approved by the Commission in the Company's electric transition plan case. AEP-Ohio responds that this argument has already been considered and rejected by the Commission.

(141) As previously discussed, the Commission does not believe that AEP-Ohio's capacity costs fall within the category of transition costs. Section 4928.39, Revised Code, defines transition costs as costs that, among meeting other criteria, are directly assignable or allocable to retail electric generation service provided to electric consumers in this state. As we have determined, AEP-Ohio's provision of capacity to CRES providers is not a retail electric service as defined by Section 4928.01(A)(27), Revised Code. It is a wholesale transaction between AEP-Ohio and CRES

providers. IEU-Ohio's request for rehearing should thus be denied.

Peak Load Contribution (PLC)

(142) IEU-Ohio contends that the Commission unlawfully and unreasonably failed to ensure that AEP-Ohio's generation capacity service is charged in accordance with a customer's PLC factor that is the controlling billing determinant under the RAA. IEU-Ohio argues that AEP-Ohio should be required to disclose publicly the means by which the PLC is disaggregated from AEP East down to AEP-Ohio and then down to each customer of the Company. IEU-Ohio adds that calculation of the difference between RPM-based capacity pricing and $188.88/MW-day will require a transparent and proper identification of the PLC.

(143) The Commission notes that IEU-Ohio is the only party that has identified or even addressed the PLC factor as a potential issue requiring resolution in this proceeding. Additionally, the Commission finds that IEU-Ohio has not provided any indication that there are inconsistencies or errors in capacity billings. In the absence of anything other than IEU-Ohio's mere conclusion that the issue requires the Commission's attention, we find no basis upon which to consider the issue at this time. If IEU-Ohio believes that billing inaccuracies have occurred, it may file a complaint pursuant to Section 4905.26, Revised Code. Therefore, IEU-Ohio's request for rehearing should be denied.

Due Process

(144) IEU-Ohio argues that the totality of the Commission's actions during the course of this proceeding violated IEU-Ohio's due process rights under the Fourteenth Amendment. Specifically, IEU-Ohio believes that the Commission has repeatedly granted applications for rehearing, indefinitely tolling them to prevent parties from taking an unobstructed appeal to the Ohio Supreme Court; repeatedly granted AEP-Ohio authority to temporarily impose various forms of its two-tiered, shopping-blocking capacity charges without record support; failed to address

major issues raised by parties in violation of Section 4903.09, Revised Code; authorized a deferral mechanism without record support and then addressed the details of the deferral mechanism in a separate proceeding where the evidentiary record had already closed; and authorized carrying charges on the deferral at the WACC rate without record support. AEP-Ohio responds that the various due process arguments raised by IEU-Ohio are generally misguided.

(145) In a similar vein, IEU-Ohio contends that the Commission violated Section 4903.09, Revised Code, in that it failed to address all of the material issues raised by IEU-Ohio, including its arguments related to transition revenue; PLC transparency; non-comparability and discrimination in capacity rates; the Commission's lack of jurisdiction to use cost-based ratemaking to increase rates for generation service or through the exercise of general supervisory authority; the anticompetitive subsidy resulting from AEP-Ohio's above-market capacity pricing; and the conflict between the Company's cost-based ratemaking proposal and the plain language of the RAA. AEP-Ohio disagrees, noting that the Commission has already responded to IEU-Ohio's arguments on numerous occasions and has done so in compliance with Section 4903.09, Revised Code.

(146) The Commission again finds no merit in IEU-Ohio's due process claim. This proceeding was initiated by the Commission for the purpose of reviewing AEP-Ohio's capacity charge for its FRR obligations. From the beginning, IEU-Ohio was afforded the opportunity to participate, and did participate, in this proceeding, including the evidentiary hearing. Contrary to IEU-Ohio's claims, the Commission has, at no point, intended to delay this proceeding, but has rather proceeded carefully to establish a thorough record addressing the SCM and AEP-Ohio's capacity costs. Additionally, as discussed throughout this entry on rehearing, the Commission was well within its authority to initiate and carry out its investigation of AEP-Ohio's capacity charge in this proceeding. We find no merit in IEU-Ohio's claim that we acted without evidence in the record. The evidence in this

proceeding is quite extensive, consisting of considerable testimony and exhibits submitted in this proceeding, as well as the consolidated cases. Finally, we do not agree that we have failed to address any of the material issues in violation of Section 4903.09, Revised Code. The Commission believes that the findings of fact and written opinion found in the Capacity Order provide a sufficient basis for our decision. The Commission concludes that we have appropriately explained the basis for each of our orders in this case based on the evidence of record and that IEU-Ohio has been afforded ample process. Its request for rehearing should be denied.

Pending Application for Rehearing

(147) AEP-Ohio argues that it was unreasonable and unlawful for the Commission to fail to address in the Capacity Order the merits of the Company's application for rehearing of the Initial Entry.

(148) In light of the fact that the Commission has addressed AEP-Ohio's application for rehearing of the Initial Entry in this entry on rehearing, we find that the Company's assignment of error is moot and should, therefore, be denied.

It is, therefore,

ORDERED, That OEG's motion for leave to reply filed on August 7, 2012, be denied. It is, further,

ORDERED, That the applications for rehearing of the Initial Entry, Interim Relief Entry, and Capacity Order be granted, in part, and denied, in part, as set forth herein. It is, further,

ORDERED, That the applications for rehearing of the Interim Relief Extension Entry be denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

SJP/sc

Entered in the Journal
OCT 17 2012

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

CONCURRING OPINION
OF COMMISSIONER ANDRE T. PORTER

I concur with the majority on the reasoning and result on all issues addressed in this opinion and entry on rehearing except to the extent that my May 30, 2012 statement stands.

Andre T. Porter

ATP/sc

Entered in the Journal
OCT 17 2012

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

CONCURRING AND DISSENTING OPINION
OF COMMISSIONER CHERYL L. ROBERTO

I dissent from the findings and conclusions in the following paragraphs of the rehearing order: 71, 92, 95,98, 102, 106, 125, and 134.

As I have expressed previously, to the extent that the Commission has authority to determine capacity costs it is because these costs compensate noncompetitive retail electric service. Chapter 4928, Revised Code, defines "retail electric service" to mean any service involved in the supply or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For purposes of Chapter 4928, Revised Code, retail electric service includes, among other things, transmission service.[1] As discussed, *supra*, AEP-Ohio is the sole provider of the Fixed Resource Requirement service for other transmission users operating within its footprint until the expiration of its obligation on June 1, 2015. As such, this service is a "noncompetitive retail electric service" pursuant to Sections 4928.01(A)(21) and 4928.03, Revised Code. This Commission is empowered to set rates for noncompetitive retail electric services. While PJM could certainly propose a tariff for FERC adoption directing PJM to establish a compensation method for Fixed Resource Requirement service, it has opted not to do so in favor of a state compensation method when a state chooses to establish one. When this Commission chooses to establish a state compensation method for a noncompetitive retail electric service, the adopted rate must be just and reasonable based upon traditional cost-of-service principles.

This Commission previously established a state compensation method for AEP-Ohio's Fixed Resource Requirement service within AEP-Ohio's initial ESP. AEP-Ohio received compensation for its Fixed Resource Requirement service through both the provider of last resort charges to certain retail shopping customers and a capacity charge levied on competitive retail providers that was established by the three-year

1 Section 4928.01(A)(27), Revised Code.

capacity auction conducted by PJM.[2] Since the Commission adopted this compensation method, the Ohio Supreme Court reversed the authorized provider of last resort charges,[3] and the auction value of the capacity charges has fallen precipitously, as has the relative proportion of shoppers to non-shoppers.

I agree with the majority that the Commission is empowered pursuant to its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code to establish an appropriate rate for the Fixed Resource Requirement service. I also agree that pursuant to regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code a cost-based compensation method is necessary and appropriate. Additionally, I find that because the Fixed Resource Requirement is a noncompetitive retail electric service, the Commission must establish the appropriate rate based upon traditional cost of service principles. Finally, I find specific authority within Section 4909.13, Revised Code, for a process by which the Commission may cause further hearings and investigations and may examine into all matters which may change, modify, or affect any finding of fact previously made. Given the change in circumstances since the Commission adopted the initial state compensation for AEP-Ohio's Fixed Resource Requirement service, it is appropriate for the Commission to revisit and adjust that rate to reflect current circumstances.

Additionally, I continue to find that the "deferral" is unlawful and inappropriate. In prior cases, this Commission has levied a rate or tariff on a group of customers but deferred collection of revenues due from that group until a later date. In this instance, the majority proposes to establish a rate for the Fixed Resource Requirement service provided by AEP-Ohio to other transmission users but then to discount that rate such that the transmission users will never pay it. The difference between the authorized rate and that paid by the other transmission users will be booked for future payment not by the transmission users but by retail electricity customers. The stated purpose of this device is to promote competition.

As an initial matter, I am not convinced on the record before us that competition has suffered sufficiently or will suffer sufficiently during the remaining

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2 *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009), Entry on Rehearing (July 23, 2009); *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry (December 8, 2010).

3 *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011).

term of the Fixed Resource Requirement as the result of the state compensation method to warrant intervention in the market. If it did, the Commission could consider regulatory options such as shopping credits granted to the consumers to promote consumer entry into the market. With more buyers in the market, in theory, more sellers should enter and prices should fall. The method selected by the majority, however, attempts to entice more sellers to the market by offering a significant, no-strings-attached, unearned benefit. This policy choice operates on faith alone that sellers will compete at levels that drop energy prices while transferring the unearned discount to consumers. If the retail providers do not pass along the entirety of the discount, then consumers will certainly and inevitably pay twice for the discount today granted to the retail suppliers. To be clear, unless every retail provider disgorges 100 percent of the discount to consumers in the form of lower prices, shopping consumers will pay more for Fixed Resource Requirements service than the retail provider did. This represents the first payment by the consumer for the service. Then the deferral, with carrying costs, will come due and the consumer will pay for it all over again --plus interest.

I find that that the mechanism labeled a "deferral" in the majority opinion is an unnecessary, ineffective, and costly intervention into the market for which no authority exists and that I cannot support.

To the extent that these issues were challenged in rehearing, I would grant rehearing.

Cheryl L. Roberto

Cheryl L. Roberto

CLR/sc

Entered in the Journal
OCT 17 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

ATTACHMENT E

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY ON REHEARING

The Commission finds:

(1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA) for the regional transmission organization, PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.

(2) By entry issued on December 8, 2010, in the above-captioned case, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge (Initial Entry). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism (SCM) were appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities within PJM; (2) the degree to which AEP-Ohio's capacity

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

charge was currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. Additionally, in light of the change proposed by AEP-Ohio in the FERC filing, the Commission explicitly adopted as the SCM for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

(3) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.*, AEP-Ohio filed an application for a standard service offer in the form of a new electric security plan (ESP), pursuant to Section 4928.143, Revised Code (ESP 2 Case).[2]

(4) By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012 (Interim Relief Entry).

(5) By entry issued on May 30, 2012, the Commission approved an extension of the interim capacity pricing mechanism through July 2, 2012 (Interim Relief Extension Entry).

(6) By opinion and order issued on July 2, 2012, the Commission approved a capacity pricing mechanism for AEP-Ohio (Capacity Order). The Commission established $188.88/megawatt-day as the appropriate charge to enable AEP-Ohio to recover its capacity costs pursuant to its FRR obligations from CRES providers. However, the Commission also directed that AEP-Ohio's capacity charge to CRES providers should be the RPM-based rate, including final zonal adjustments, on the basis that the RPM-based rate will promote retail electric competition. The Commission authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs

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2 *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 and 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 and 11-350-EL-AAM.

not recovered from CRES providers, with the recovery mechanism to be established in the ESP 2 Case.

(7) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(8) By entry on rehearing issued on October 17, 2012, the Commission granted, in part, and denied, in part, applications for rehearing of the Initial Entry, Interim Relief Entry, and Capacity Order, and denied applications for rehearing of the Interim Relief Extension Entry (Capacity Entry on Rehearing).

(9) On November 15, 2012, Industrial Energy Users-Ohio (IEU-Ohio) filed an application for rehearing of the Capacity Entry on Rehearing. The Ohio Consumers' Counsel (OCC) and FirstEnergy Solutions Corp. (FES) filed applications for rehearing on November 16, 2012. AEP-Ohio filed a memorandum contra the applications for rehearing on November 26, 2012.

(10) In its first assignment of error, IEU-Ohio claims that the Capacity Entry on Rehearing is unlawful and unreasonable, because the Commission cannot rely on Section 4905.26, Revised Code, to apply a cost-based ratemaking methodology in establishing AEP-Ohio's capacity charge for its FRR obligations. Citing Section 4928.05(A)(1), Revised Code, IEU-Ohio contends that AEP-Ohio's capacity service is a competitive retail electric service that cannot be regulated by the Commission under Chapter 4905, Revised Code. IEU-Ohio adds that the Ohio Supreme Court has determined that the Commission cannot use its general supervisory powers to circumvent the statutory ratemaking process enacted by the General Assembly. IEU-Ohio also notes that Section 4905.26, Revised Code, is a procedural statute that does not delegate substantive authority to the Commission to increase a utility's rates. IEU-Ohio asserts that the Commission has found that rates can only be established under Section 4905.26, Revised Code, in limited circumstances, and in

accordance with other ratemaking statutes. According to IEU-Ohio, the determination as to whether a particular rate is unjust or unreasonable can only be made by reference to other provisions of Title 49, Revised Code. IEU-Ohio argues that the Commission neglected to identify any statutory ratemaking criteria for determining whether AEP-Ohio's prior capacity compensation was unjust or unreasonable. IEU-Ohio contends that there is no statute that authorizes the Commission to apply a cost-based ratemaking methodology to increase rates for a competitive retail electric service.

(11) Similarly, OCC's first assignment of error is that the Commission erred in finding that it had authority under Section 4905.26, Revised Code, to initiate this proceeding and investigate AEP-Ohio's wholesale capacity charge. OCC points out that Section 4905.26, Revised Code, governs complaint proceedings that fall within the Commission's general authority under Chapter 4905, Revised Code. OCC contends that Chapter 4905, Revised Code, does not permit the Commission to establish a wholesale capacity charge or an SCM and, therefore, Section 4905.26, Revised Code, is not a source of authority that enables the Commission to investigate and fix AEP-Ohio's wholesale capacity rate. OCC adds that the various procedural requirements of Section 4905.26, Revised Code, were not followed by the Commission in the course of this proceeding. Specifically, OCC notes that the Commission did not find that there were reasonable grounds for complaint prior to the hearing, nor did it find that AEP-Ohio's existing capacity charge was unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law.

(12) Like IEU-Ohio and OCC, FES asserts that the Capacity Entry on Rehearing is unlawful and unreasonable, because it relied on Section 4905.26, Revised Code, as a source of authority to establish a cost-based SCM. FES contends that, although Section 4905.26, Revised Code, provides the Commission with authority to investigate and set a hearing to review a rate or charge that may be unjust or unreasonable, the statute does not confer jurisdiction to establish a cost-based rate. FES also disputes the

Commission's clarification in the Capacity Entry on Rehearing that the Commission is under no obligation with regard to the specific mechanism used to address capacity costs.

(13) In its memorandum contra, AEP-Ohio notes that the Ohio Supreme Court has repeatedly held that the Commission has broad authority to change utility rates in proceedings under Section 4905.26, Revised Code. In response to IEU-Ohio's argument that the Commission authorizes rates under Section 4905.26, Revised Code, only in limited circumstances, AEP-Ohio asserts that Commission precedent indicates that is the case for self-complaint proceedings, but not for Commission-initiated investigations. AEP-Ohio also points out that IEU-Ohio and OCC offer no authority in support of their contention that Chapter 4905, Revised Code, does not permit the Commission to set wholesale rates. AEP-Ohio notes that nothing in Chapter 4905, Revised Code, limits its application to retail rates. AEP-Ohio further notes that the Commission has often regulated wholesale rates and that its orders have been upheld by the Ohio Supreme Court.

(14) With respect to OCC's argument that the Commission failed to find that reasonable grounds for complaint exist in this case, AEP-Ohio replies that OCC's position is overly technical and without basis in precedent. AEP-Ohio notes that there is no requirement that the Commission must make a rote finding of reasonable grounds for complaint in proceedings initiated pursuant to Section 4905.26, Revised Code. AEP-Ohio believes that, in initiating this proceeding, the Commission implicitly found that there were reasonable grounds for complaint. Similarly, in response to OCC's and IEU-Ohio's argument that the Commission did not comply with Section 4905.26, Revised Code, because it failed to find that RPM-based capacity pricing is unjust or unreasonable, AEP-Ohio notes that the statute does not require the Commission to make such a finding. According to AEP-Ohio, the statute requires the Commission to conduct a hearing, if there are reasonable grounds for complaint that a rate is unreasonable, unjust, unduly discriminatory or preferential, or otherwise in violation of law. AEP-Ohio adds that the Commission

found in the Capacity Order and the Capacity Entry on Rehearing that RPM-based capacity pricing would produce unjust and unreasonable results.

(15) In its second assignment of error, IEU-Ohio asserts that the Capacity Entry on Rehearing is unlawful and unreasonable, because the Commission cannot regulate a wholesale rate, pursuant to Section 4905.04, 4905.05, 4905.06, or 4905.26, Revised Code. Specifically, IEU-Ohio contends that the Commission's regulatory authority under Chapter 4905, Revised Code, extends only to the retail services provided by an electric light company, when it is engaged in the business of supplying electricity for light, heat, or power purposes to consumers within the state. IEU-Ohio notes that the Commission determined in the Capacity Order that the capacity service provided by AEP-Ohio to CRES providers is a wholesale transaction rather than a retail service.

(16) In its memorandum contra, AEP-Ohio notes that IEU-Ohio's argument is contrary to its initial position in this case, which was that the Commission does have jurisdiction to establish capacity rates, pursuant to the option for an SCM under Section D.8 of Schedule 8.1 of the FERC-approved RAA. AEP-Ohio argues that IEU-Ohio's current position is based on an overly restrictive statutory interpretation. AEP-Ohio points out that the characteristics of an entity that determine whether it is a public utility subject to the Commission's jurisdiction do not necessarily establish the extent of, or limitations on, the Commission's jurisdiction over the entity's activities, which is a separate matter. AEP-Ohio reiterates that the Commission's authority under Section 4905.26, Revised Code, is considerable and encompasses regulation of wholesale rates in Ohio.

(17) In its second assignment of error, FES argues that, even if the Commission has authority under Chapter 4905, Revised Code, to establish an SCM, the Commission must nonetheless observe the procedural requirements of Chapter 4909, Revised Code. FES asserts that the Capacity Entry on Rehearing is unreasonable and unlawful, because the Commission upheld a cost-based SCM without

adherence to the mandatory ratemaking formula of Section 4909.15, Revised Code, which requires determinations regarding property valuation, rate of return, and so forth.

(18) AEP-Ohio responds that the Commission already rejected, in the Capacity Entry on Rehearing, the argument that a traditional base rate case was required under the circumstances. AEP-Ohio notes that, although the Commission may elect to apply Chapter 4909, Revised Code, following a complaint proceeding, there is no requirement that it must do so. AEP-Ohio also points out that the Commission has not adjusted retail rates in this case.

(19) In its second assignment of error, OCC contends that the Commission unlawfully and unreasonably determined that OCC's arguments in opposition to the deferral of capacity costs were prematurely raised in this proceeding and should instead be addressed in the ESP 2 Case. OCC asserts that, in declining to resolve OCC's arguments in the present case, the Commission violated Section 4903.09, Revised Code, and unreasonably impeded OCC's right to take an appeal. OCC notes that the Commission has not yet ruled on its application for rehearing in the ESP 2 Case, which has delayed the appellate review process, while AEP-Ohio has nevertheless begun to account for the deferred capacity costs on its books to the detriment of customers.

(20) In response, AEP-Ohio notes that the Commission has already rejected OCC's argument and found that issues related to the creation and recovery of the deferral are more appropriate for consideration in the ESP 2 Case, in which the Commission adopted the retail stability rider (RSR), in part to compensate the Company for its deferred capacity costs. AEP-Ohio adds that, because the Commission did not adjust retail rates in the present case, and the RSR was adopted in the ESP 2 Case, there is no harm resulting from the Commission's decision in this docket.

(21) In the Capacity Entry on Rehearing, the Commission clarified that our initiation of this proceeding for the purpose of reviewing AEP-Ohio's capacity charge was

consistent with Section 4905.26, Revised Code.[3] In relevant part, the statute provides that, upon the initiative or complaint of the Commission that any rate or charge is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, if it appears that reasonable grounds for complaint are stated, the Commission must schedule, and provide notice of, a hearing. The Ohio Supreme Court has found that the Commission has considerable discretion under the statute, including the authority to conduct an investigation and fix new utility rates, if the existing rates are unjust and unreasonable. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979). The Court has also stated that utility rates may be changed by the Commission in a complaint proceeding under Section 4905.26, Revised Code, without compelling the utility to apply for a rate increase under Section 4909.18, Revised Code. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006). The Commission, therefore, disagrees with the arguments of IEU-Ohio, FES, and OCC that are counter to this precedent.

(22) Further, we find no requirement in Ohio Supreme Court precedent or anywhere else that the Commission must first invoke Chapter 4909, Revised Code, or some other ratemaking authority, prior to fixing new utility rates, if the Commission finds that the existing rates are unjust and unreasonable following a proceeding under Section 4905.26, Revised Code. As noted above, precedent is to the contrary.

(23) With respect to IEU-Ohio's interpretation of Commission precedent, we disagree that rates can only be established under Section 4905.26, Revised Code, in limited circumstances. The Commission precedent cited by IEU-Ohio is inapplicable here, as it specifically pertains to self-complaint proceedings initiated by a public utility. *In the Matter of the Self-Complaint of Suburban Natural Gas*

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3 Capacity Entry on Rehearing at 9-10, 13, 29, 54.

Company Concerning its Existing Tariff Provisions, Case No. 11-5846-GA-SLF, Opinion and Order, at 6 (August 15, 2012).

(24) Additionally, we find no merit in the argument that the procedural requirements of Section 4905.26, Revised Code, were not followed in this case, which was initiated by the Commission in response to AEP-Ohio's FERC filing. In the Initial Entry, the Commission noted that this proceeding was necessary to review and determine the impact of the proposed change to AEP-Ohio's capacity charge.[4] We believe that the Initial Entry provided sufficient indication of the Commission's finding of reasonable grounds for complaint that AEP-Ohio's capacity charge may be unjust or unreasonable. We agree with AEP-Ohio that there is no precedent requiring the Commission to use rote words tracking the exact language of the statute in every complaint proceeding. In any event, to the extent necessary, the Commission clarifies that there were reasonable grounds for complaint that AEP-Ohio's proposed capacity charge may have been unjust or unreasonable. Also, as previously discussed, the Commission may establish new rates under Section 4905.26, Revised Code, if the existing rates are unjust and unreasonable, which is exactly what has occurred in the present case. In the Interim Relief Entry, the Commission determined that RPM-based capacity pricing could risk an unjust and unreasonable result for AEP-Ohio and subsequently confirmed, in the Capacity Order, that such pricing would be insufficient to yield reasonable compensation for the Company's capacity service.[5]

(25) We find no merit in the parties' arguments that the Commission is precluded from regulating wholesale rates under Chapter 4905, Revised Code, or Section 4905.26, Revised Code, in particular, and the parties offer no precedent in support of their position. Neither Section 4905.26, Revised Code, nor any other provision of Chapter 4905, Revised Code, prohibits the Commission from initiating a review of a wholesale rate. For its part, IEU-

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4 Initial Entry at 2.

5 Interim Relief Entry at 16-17; Capacity Order at 23; Capacity Entry on Rehearing at 18, 31.

Ohio contends that the Commission's regulatory authority under Chapter 4905, Revised Code, is limited to an electric light company engaged in the business of supplying electricity to consumers (*i.e.*, as a retail service). Because the Commission determined that the capacity service provided by AEP-Ohio to CRES providers is a wholesale, not retail, transaction, IEU-Ohio believes that the Commission's reliance on Section 4905.26, Revised Code, as well as Sections 4905.04, 4905.05, 4905.06, Revised Code, is unreasonable and unlawful. However, from the outset of this proceeding, the Commission clearly indicated that the review of AEP-Ohio's proposed capacity charge would be comprehensive in scope and include consideration of other related issues, including the impact on retail competition and the degree to which the Company's capacity costs were already being recovered through retail rates.[6]

(26) Next, we find no error in our clarification that, although the Commission must ensure that the jurisdictional utilities receive just and reasonable compensation for the services that they render, the Commission is under no obligation with regard to the specific mechanism used to address capacity costs.[7] We did not find, as FES contends, that the Commission's ratemaking powers are unbounded by any law. Rather, we clarified only that the Commission has discretion to determine the type of mechanism implemented to enable a utility to recover its capacity costs, and that the recovery mechanism may take the form of an SCM, rider, or some other mechanism.

(27) In its remaining arguments, IEU-Ohio contends that AEP-Ohio's capacity service is a competitive retail electric service, rather than a wholesale transaction, and again disputes our reliance on the Commission's general supervisory powers under Sections 4905.04, 4905.05, and 4906.06, Revised Code, as authority to establish the SCM. These arguments were already rejected by the Commission in the Capacity Entry on Rehearing,[8] and IEU-Ohio has

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6 Initial Entry at 2.

7 Capacity Entry on Rehearing at 28.

8 Capacity Entry on Rehearing at 28-29.

raised nothing new for our consideration with respect to these issues.

(28) Finally, we do not agree with OCC that it was unreasonable and unlawful, or in violation of Section 4903.09, Revised Code, to find that arguments regarding the mechanics of the deferral recovery mechanism should be raised and addressed in the ESP 2 Case. The Commission did not outline the mechanics of, or even establish, the deferral recovery mechanism in the Capacity Order. Rather, we indicated that an appropriate recovery mechanism for AEP-Ohio's deferred costs would be established, and any additional financial considerations addressed, in the ESP 2 Case.[9] Although numerous parties, including OCC, attempted to predict how the deferral mechanism would be implemented and what its impact would be on ratepayers, the Commission continues to find that it would have been meaningless to address such anticipatory arguments in the Capacity Entry on Rehearing. We, therefore, find no error in having determined that OCC's claims of unfair competition, unlawful subsidies, double payments, and discriminatory pricing were premature, given that the Commission had not yet determined how and from whom AEP-Ohio's deferred capacity costs would be recovered.[10] The Commission notes that we thoroughly addressed OCC's other numerous arguments with respect to the deferral of capacity costs in the Capacity Entry on Rehearing.

(29) For the above reasons, we find no error in our clarifications in the Capacity Entry on Rehearing, or in determining that arguments related to the mechanics of the deferral recovery mechanism should be resolved in the ESP 2 Case. Any other arguments raised on rehearing that are not specifically discussed herein have been thoroughly and adequately considered by the Commission and are being denied. Accordingly, the Commission finds that the applications for rehearing filed by IEU-Ohio, OCC, and FES should be denied in their entirety.

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9 Capacity Order at 23.

10 Capacity Entry on Rehearing at 50-51.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio, OCC, and FES be denied in their entirety. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

SJP/sc

Entered in the Journal DEC 12 2012

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY ON REHEARING

The Commission finds:

(1) On November 1, 2010, AEP Electric Power Service Corporation (AEP), on behalf of Ohio Power Company and Columbus Southern Power Company (AEP-Ohio or the Companies), filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. The application proposes to change the basis for compensation for capacity costs to a cost-based mechanism and includes proposed formula rate templates under which the Companies would calculate their respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement. At the direction of FERC, AEP-Ohio refiled its application in FERC Docket No. ER11-2183 on November 24, 2010.

(2) On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges and sought public comments on three issues. All interested stakeholders were directed to file written comments with the Commission by January 7, 2011 and to file written reply comments by January 22, 2011. By entry issued January 21, 2011, the due date for reply comments was extended to February 7, 2011.

(3) On January 7, 2011, AEP-Ohio filed an application for rehearing of the Commission's December 8, 2010 entry asserting that the entry was unjust, unreasonable or in violation of law in four respects. First, AEP-Ohio argues that the entry is unlawful and unreasonable to the extent that it finds that the provider of last resort (POLR) charges, approved in the Companies' electric security plan (ESP) cases,[1] cover the

[1] *In re AEP-Ohio*, Case No. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order (March 18, 2009).

Companies' cost of supplying capacity for retail loads served by competitive retail electric service (CRES) providers. AEP-Ohio asserts that the Commission also erred in finding that the approved POLR charges were based upon the continued use of Reliability Pricing Model auction prices to set capacity charges for CRES providers.

(4) Second, AEP-Ohio argues that the entry establishing an interim wholesale capacity rate is unreasonable and unlawful because the Commission is a creature of statute and lacks jurisdiction under both federal and Ohio law to issue an order affecting wholesale rates regulated by FERC.

(5) Third, according to AEP-Ohio, the entry was issued in a manner that denied AEP-Ohio due process and violated statutes within Title 49 of the Revised Code, including Sections 4903.09, 4905.26, and 4909.16, Revised Code.

(6) Finally, AEP-Ohio argues that Finding (4) and subpart (1) of Finding (5) of the December 8, 2010 entry must be reversed and vacated because they are in direct conflict with, and preempted by, federal law.

(7) Memoranda contra the application were filed by Industrial Energy Users-Ohio, FirstEnergy Solutions Corp., and Ohio Partners for Affordable Energy and jointly by Constellation Newenergy, Inc. and Constellation Energy Commodities Group, Inc.

(8) The Commission grants AEP-Ohio's application for rehearing. We believe that sufficient reason has been set forth by AEP-Ohio to warrant further consideration of the matters specified in the application for rehearing. However, the Commission notes that the state compensation mechanism adopted in our December 8, 2010, Finding and Order will remain in effect during the pendency of our review.

It is, therefore,

ORDERED, That AEP-Ohio's application for rehearing be granted for further consideration of the matters specified in the application. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Steven D. Lesser, Chairman

Paul A. Centolella

Valerie A. Lemmie

Cheryl L. Roberto

GNS/vrm

Entered in the Journal FEB 02 2011

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	)	Case No. 10-2376-EL-UNC
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
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Amend their Emergency Curtailment Service Riders.	)	Case No. 10-343-EL-ATA Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	)	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Mechanisms to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Revised Code.	)	Case No. 11-4920-EL-RDR Case No. 11-4921-EL-RDR

ENTRY ON REHEARING

The Commission finds:

(1) On January 27, 2011, Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP-Ohio or

the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM. This original application was for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code. As filed, AEP-Ohio's SSO application for ESP 2 would commence on January 1, 2012, and continue through May 31, 2014.

(2) On September 7, 2011, numerous parties (Signatory Parties)[1] to the proceedings filed a Joint Stipulation and Recommendation (Stipulation) proposing to resolve the issues raised in AEP-Ohio's ESP 2 cases and related matters pending before the Commission in several other AEP-Ohio cases which include: an emergency curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Cases); a request for the merger of CSP with and into OP in Case No. 10-2376-EL-UNC (Merger Case); a determination of the capacity charge that the Companies will assess on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity Charges Case); and a request for approval of a mechanism to recover deferred fuel costs and accounting treatment in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (Fuel Deferral Cases). Pursuant to entry issued September 16, 2011, the hearing in the ESP 2 case was consolidated with the above listed cases for the sole purpose of considering the Stipulation.

(3) On December 14, 2011, the Commission issued its Opinion and Order in this proceeding, finding that the Stipulation, as modified by the order, should be adopted and approved. On December 22, 2011, AEP-Ohio filed its compliance tariffs and, on December 29, 2011, AEP-Ohio filed its revised detailed

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1 The Signatory Parties to the Stipulation are: AEP-Ohio, Staff, Ohio Energy Group, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Ohio Hospital Association (OHA), Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Company, the city of Hilliard, the city of Grove City, Association of Independent Colleges and Universities of Ohio, Exelon Generation Company, LLC, Duke Energy Retail Sales, LLC, AEP Retail Energy Partners LLC (AEP Retail), Wal-Mart Stores East, LP and Sam's East, Inc., Retail Energy Supply Association (RESA), Paulding Wind Farm II LLC, Ohio Environmental Council, Environmental Law and Policy Center , EnerNOC, Inc., Natural Resources Defense Council, and PJM Power Providers Group.

implementation plan (DIP), as modified by the Opinion and Order.

(4) 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 order upon the Commission's journal.

(5) On January 13, 2012, AEP-Ohio, Ormet Primary Aluminum Corporation (Ormet), Industrial Energy Users-Ohio (IEU-Ohio), Retail Energy Supply Association (RESA), OMA Energy Group (OMAEG), Ohio Hospital Association (OHA), FirstEnergy Solutions Corp. (FES), 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 the Ohio Environmental Council (OEC), FES, OCC/APJN, IEU-Ohio, OMAEG, RESA, and AEP-Ohio on January 23, 2012.

(6) On January 23, 2012, the Commission issued an entry that provided a number of clarifications regarding its December 14, 2011, Opinion and Order (Clarification Entry).

(7) By entry dated February 1, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the ESP 2 Opinion and Order.

(8) On February 10, 2012, AEP-Ohio filed an application for rehearing of the Commission's Clarification Entry, arguing among other things that the Clarification Entry exceeds the Commission's jurisdiction and violates the statutory rehearing process by expanding the Opinion and Order outside the statutory rehearing process. Further, AEP-Ohio argues the Clarification Entry is not supported by the record, forces AEP-Ohio to involuntarily provide a below-cost subsidy, and unreasonably retreats from the RPM-priced capacity set-aside limitations without an explanation. In addition, AEP-Ohio asserts that the Clarification Entry unreasonably imposes long-term obligations on AEP-Ohio while preserving the option to further modify the RPM set-aside levels in the future. Memoranda contra the application were filed by FES on February 17, 2012, IEU-Ohio on February 17, 2012, as revised

on February 21, 2012, and by Ormet and OCC/APJN on February 21, 2012. Memoranda in response to AEP-Ohio's second application for rehearing were filed by OEG and RESA on February 21, 2012.

(9) On February 17, 2012, IEU-Ohio filed an application for rehearing of the Commission's Clarification Entry, arguing the entry was unreasonable by not allowing all governmental aggregation programs that complete the necessary process by December 31, 2012, to have access to RPM-priced capacity. IEU-Ohio also asserts that the December 31, 2012, deadline to complete the government aggregation process is unreasonable. AEP-Ohio filed a memoranda contra IEU-Ohio's application for rehearing on February 21, 2012.

(10) In this Entry on Rehearing, the Commission has reviewed and considered all of the arguments on rehearing regarding the ESP 2 Order as well as the Clarification Entry. As discussed below, upon review of the applications for rehearing, the Commission has determined that the Stipulation, as a package, does not benefit ratepayers and the public interest and, thus, does not satisfy our three-part test for the consideration of stipulations. Accordingly, the Commission will reject the Stipulation. Further, the Commission notes that any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission but are moot in light of our rejection of the Stipulation for the reasons stated below.

(11) FES alleges the Commission unreasonably failed to modify the Stipulation to impose specific conditions on the Companies' corporate separation and subsequent pool termination. FES proposes that the Commission require AEP-Ohio to provide more detail regarding what it expects from AEP-Ohio in future proceedings involving corporate separation and pool termination. FES also requests that the Commission require AEP-Ohio to provide all details in the corporate separation case regarding the corporate separation plan, including the fair market and book value, and an explanation of how fair market value was determined, for of all property that will be transferred. FES suggests the commission impose a penalty in the event that AEP-Ohio fails to achieve corporate separation and should encourage AEP-Ohio to be more diligent in

completing its corporate separation and pool termination. IEU-Ohio believes the Commission's generation asset divestiture is unlawful in that the transfer of generation assets was prematurely approved without determining that the requirements contained in Section 4928.17, Revised Code, were met.

(12) AEP-Ohio responds that the proposed modifications would add additional confusion to the corporate separation issue, and would take an extensive amount of time.

(13) In its application for rehearing, AEP-Ohio argues that the Commission's corporate separation modification is unlawful and unreasonable in that it applies Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., in an inconsistent manner with the corporate separation approved by the Commission in the Duke ESP proceeding. AEP-Ohio claims the Opinion and Order had discriminatory impact on AEP-Ohio. As a result, AEP-Ohio argues that the modification violates state policy of ensuring effective competition under Sections 4928.17, 4928.06, and 4928.02(H), Revised Code.

(14) FES challenges AEP-Ohio's arguments, noting the Signatory Parties provided no details on the generation asset transfer, and the Commission properly determined that additional time was necessary. FES notes that while AEP-Ohio claims it is receiving discriminatory treatment as compared to the Commission's ruling on Duke's corporate separation, the Stipulations in the Duke ESP case and this case are materially different, as evidenced by the extensive amount of detail Duke provided in its stipulation as compared to AEP-Ohio's Stipulation.

OCC/APJN also oppose AEP-Ohio's request for rehearing, explaining that the Commission's decision to take additional time was reasonable and in compliance with its statutory obligations. OCC/APJN contend that AEP-Ohio's arguments about inconsistent treatment are not ripe for Commission consideration. Further, even if the arguments were ripe for consideration, OCC/APJN point out that the Commission is not statutorily obligated to handle each corporate separation application in the same manner.

IEU-Ohio explains that the differences between the Duke and AEP-Ohio stipulations do not support AEP-Ohio's assertion that corporate separation should be approved through rehearing. IEU-Ohio points out that the Duke proceeding was resolved through an unopposed ESP stipulation, while this proceeding was contested, as were the waiver requests filed by AEP-Ohio. Further, IEU-Ohio states that the Companies have failed to demonstrate how the Commission's decision to provide further review of the corporate separation will injure the public interest, and assert that it unnecessary for the Commission to rush its judgment on the corporate separation proceedings.

(15) In approving the generation asset divestiture pursuant to Section 4928.17(E), Revised Code, the Commission authorized AEP-Ohio to divest its generation assets from its noncompetitive electric distribution utility (EDU) to a separate competitive retail generation subsidiary (AEP GenCo) and directed AEP-Ohio to notify PJM that the utility intends to enter its auction process for the delivery year 2015. However, as FES correctly points out in its application for rehearing, there is significant uncertainty regarding AEP-Ohio's plan to divest its generation assets, as evidenced by AEP-Ohio's recent filings with the Federal Energy Regulation Commission (FERC)[2] and conflicting interpretations of the Stipulation contained in the record. Because of the contradictory testimony and FERC filings of what AEP-Ohio's responsibilities were in its generation asset divestiture, we grant FES's application for rehearing.

The Stipulation provides that upon the Commission's approval of full legal corporate separation, AEP-Ohio's transmission and distribution assets will be held by the EDU, while any generation resource rider (GRR) assets will also remain with the EDU. Regarding the transfer of generation assets, AEP-Ohio's generation, fuel, and other assets would be transferred to AEP GenCo. This transfer of generation assets includes AEP-Ohio's existing generating units and contractual

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2 On February 10, 2012, AEP-Ohio and other AEP operating companies made filings with FERC regarding corporate separation and the generation asset divestiture in docket numbers: EC12-71; EC12-70; EC12-69; ER12-1041, ER12-1047, 1048, 1049; ER12-1042,1043,1044, 1045, and 1046 . The Commission hereby takes administrative notice of those filings.

entitlements, as well as renewable energy purchase agreements, existing fuel-related assets and contracts, and other assets related to the generation business. (See Joint Ex. 1 at 11, AEP-Ohio Exhibit 7 at PJN-1)[3]. However, at the hearing, AEP witness Nelson testified that the Companies had not determined which of AEP-Ohio's existing generation assets would be bid into the RPM base residual auction. He further claimed that, while the first step would be to transfer all generation assets to AEP GenCo, there were numerous subsequent possibilities, including transferring a plant to an AEP affiliate to shore up their reserve margin or transferring the generation to a third party. In addition, Mr. Nelson explained that AEP-Ohio did not know whether all of its generating units, once transferred, would be bid into the base residual auction (Tr. V. at 690, 697-699, 751).

We note that, Mr. Nelson's testimony was presented under unique circumstances which undermine its credibility. On September 29, 2011, AEP-Ohio filed an expedited request and motion to substitute the testimony of its original witness, Richard Munczinski, with Mr. Nelson's testimony, due to an unforeseen conflict. While the substance and content between both sets of direct testimony were the same, on cross-examination Mr. Nelson testified that Mr. Munczinski was his "boss" at AEP Service Corporation, and that he had no role in the preparation of the direct testimony he was adopting (Tr. V at 681-682). Further, Mr. Nelson's testimony is inconsistent with Attachment PJN-1 to his direct testimony, which confirms that all of AEP-Ohio's existing generating units and contractual entitlements as referenced in Exhibit WAA-1 would be transferred to a newly-created AEP generation affiliate (AEP-Ohio Ex. 4). Moreover, Mr. Nelson speculated on cross-examination that there were many options available to AEP-Ohio for the disposition of its generation assets and claimed that the ultimate disposition of AEP-Ohio's generation assets was an "open question."

Mr. Nelson's testimony is contradicted by the testimony of two other Signatory Parties' witnesses. RESA witness Ringenbach

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3 In AEP-Ohio Ex. 7, Mr. Nelson states that the detailed description of the generation asset divestiture is contained in exhibit REM-1, however the attached exhibit is labeled as PJN-1, which Mr. Nelson corrected on the record (Tr. V. 675-676).

testified that the "[s]tipulation calls for AEP-Ohio to provide notice to PJM by March of 2012, that it intends to end its term as a Fixed Resource Requirement (FRR) entity and bid all of its load into the next base residual auction under the RPM construct," (RESA Ex. 1 at 6). Similarly, on cross-examination, Constellation witness Fein affirmed that AEP GenCo would be required to bid all the generation it owns into the RPM base residual auction (Tr. VI at 977).

The Commission's intent in approving the generation asset divestiture was based on our understanding that AEP-Ohio would place all of its current (as of September 7, 2011) generation assets into the 2015 base residual auction, pursuant to the plain language of the Stipulation. Our intent is supported by not only the language within the Stipulation but also the testimony of two of the Signatory Parties' primary witnesses. However, AEP-Ohio's FERC filing is inconsistent with the intent of the Commission in that it fails to ensure that all generation assets currently owned by AEP-Ohio will be bid into the upcoming base residual auction.

Based upon the contradictory testimony presented by the Signatory Parties' witnesses, AEP-Ohio's witness Nelson's claim that the ultimate disposition of AEP-Ohio's generation assets was an "open question," and the fact that AEP-Ohio's FERC filing regarding divestiture is inconsistent with the Commission's intent in approving the Stipulation, the Commission finds that there are fundamental disagreements regarding important issues allegedly resolved by the Stipulation. The resolution of these issues is critical to the underlying question of whether the Stipulation benefits ratepayers and the public interest; therefore, we find, upon review of the record of this proceeding, that the Signatory Parties have not met their burden of demonstrating that the Stipulation, as a package, benefits ratepayers and the public interest as required by the second prong of our three-part test for the consideration of stipulations. Accordingly, we must reject the Stipulation. Therefore, the Commission's approval of AEP-Ohio's generation asset divestiture pursuant to Section 4928.17(E), Revised Code, is revoked.

(16) IEU-Ohio contends that the market transition rider (MTR) does not satisfy the requirements contained within Section

4928.143(B)(2)(d), Revised Code, as the Companies did not meet their burden of showing the MTR would have the effect of stabilizing or providing rate certainty for retail electric service. IEU-Ohio claims the MTR distorts purchasing decisions of customers by lowering rates of customers more likely to shop, and raising rates for customers less likely to shop, in direct violation of state policy. Further, IEU-Ohio argues that because the MTR is being collected though a non-bypassable charge, it is essentially a generation charge that is being collected as a distribution charge. IEU-Ohio further opines that the Commission's order is unlawful and unreasonable in that AEP-Ohio will receive an additional $24 million in revenue from the MTR without any evidence to support it, in violation of Section 4903.09, Revised Code, and fails to follow Commission precedent which requires cost-justification for generation rate increases.

FES states that, even if the MTR provides rate certainty and stability to AEP-Ohio customers, the MTR is still not justified as a non-bypassable rider, and there was insufficient evidence in the record to support the MTR. In addition, FES claims that there is no statutory basis to permit AEP-Ohio to receive an additional $24 million in MTR revenues for 2012.

OMAEG argues in that the Commission's Order modified the shopping credit provision in a way that unreasonably fails to maximize the benefits available to GS-2 customers. In its request to further review the GS-2 shopping credit provision, OMAEG raises concerns that while some GS-2 customers may already be shopping, many may realize significant and unavoidable price increases. OMAEG recommends that along with the Commission's expansion of the shopping credit to GS-2 customers, any unused portions of the credit should be given to GS-2 customers who are currently shopping and have had distribution rate increases of thirty percent or more. OMAEG opines that it is in the public interest to allow the unused portion to be accessed by GS-2 customers with notable increases as opposed to just rolling the GS-2 credit over into the next year. OMAEG claims this will also mitigate the impact of the rate increases to the GS-2 customers and provide the necessary rate stability to ensure business retention in Ohio.

(17) AEP-Ohio responds to IEU-Ohio, and FES, stating that the MTR is a rate design tool that is a valuable part of the Stipulation for customers by facilitating the transition from current generation rates to the market-based SSO generation service rates. AEP-Ohio asserts that IEU-Ohio's argument that the MTR is effectively a distribution charge because it is non-bypassable is flawed. AEP-Ohio argues that the MTR is clearly a generation related charge that the Commission may adopt pursuant to Section 4928.143(B)(2)(d), Revised Code. Further, AEP-Ohio argues there is more than sufficient evidence in the record to support the MTR. Specifically, AEP-Ohio points to AEP-Ohio witness Roush's testimony explaining the MTR was designed to limit changes in rates for all customer classes.

(18) In its application for rehearing on the Commission's clarification entry, AEP-Ohio raises similar proposals to OMAEG's suggestion to re-allocate the GS-2 shopping credit, as well as other alternatives to address any rate increases for GS-2 customers. In addition to expanding eligibility for the shopping credit as OMAEG proposed, AEP-Ohio raises the possibility of earmarking funds within the Ohio Growth Fund (OGF) to mitigate the impact on the GS-2 customer rate increase. AEP-Ohio also suggests the creation of a revenue neutral phase-in of the GS-2 load factor provision (LFP) demand charge, such that the GS-2 LFP demand charge is 25 percent of the approved non-bypassable demand charge of $3.29/kW in 2012, 50 percent in 2013, 75 percent in 2014, and 100 percent in 2015. AEP-Ohio suggests that the phase-in of the GS-2 LFP be offset by a commensurate reduction to the GS-3 and GS-4 customers LFP energy credit.

(19) The Commission finds that rehearing should be granted with respect to the assignments of error raised by IEU-Ohio and FES. Upon review of the record of this proceeding, we find that the Signatory Parties have not demonstrated that the MTR and LFP provisions of the Stipulation promote rate certainty and stability as required by Section 4928.143.(B)(2)(d), Revised Code. We further find that the Signatory Parties have not demonstrated these provisions benefit ratepayers and the public interest as required by the second prong of our three part test for the consideration of stipulations.

At the hearing, AEP-Ohio presented testimony regarding the rate impacts of the Stipulation upon customers, including small commercial customers in the GS-2 class (AEP-Ohio Ex. 2, Exhibit DMR-5). In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand.

Due to the evidence that some commercial customers were going to receive significant total bill increases in approaching 30 percent, we modified the shopping credits provision to provide additional relief to GS-2 customers in the form of an additional allocation of shopping credits to new shopping customers. However, the actual impacts suffered by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at hearing. Since we issued the Opinion and Order, numerous customers have filed, in the case record of this proceeding, actual bills containing total bill rate increases disproportionately higher than the 30 percent predicted by AEP-Ohio. The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties that the MTR and LFP provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code. We note that the parties seeking rehearing acknowledge that customers in the GS-2 class have received significant total bill rate increases and that it is appropriate to provide relief to these customers. However, the Commission is not persuaded that the actual total bill impacts inherent in the MTR and the LFP can be cured by a phase-in of the LFP or an additional allocation of shopping credits as recommended by AEP-Ohio. We find that the Signatory Parties have not met their burden of proof of demonstrating that the MTR and LFP provisions meet the statutory requirement of Section 4928.143(B)(2)(d), Revised Code, to provide rate certainty and stability, and that Signatory Parties have not demonstrated that the MTR and LFP benefit ratepayers and the public interest. Accordingly, pursuant to our three-part test for the consideration of stipulations, we must reject the Stipulation.

(20) In this Entry on Rehearing, the Commission has determined, on two independent grounds, that the Stipulation submitted by the Signatory Parties does not benefit ratepayers and the public interest. Thus, we find that the Stipulation must be rejected and the application, as modified by the Stipulation, must be disapproved. Section 4928.143(C)(2)(b), Revised Code, provides that:

> If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or Section 4928.142, Revised Code, respectively.

Therefore, we direct AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to the base generation rates as approved in ESP I, along with the current uncapped fuel costs and the environmental investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.

(21) According to the Stipulation, in the event that the Stipulation is materially modified or rejected by the Commission, this proceeding shall go forward at the procedural point at which the Stipulation was filed; therefore, AEP-Ohio should be provided an opportunity to modify or withdraw its original application for an ESP filed in this proceeding. AEP-Ohio is directed to file a notice in this docket within 30 days stating whether it is prepared to proceed on its application as filed or whether it intends to modify or withdraw such application.

> Further, the attorney examiners are directed to establish a new procedural schedule consistent with AEP-Ohio's notice along with a new intervention deadline to enable interested persons who had not previously participated in this proceeding to intervene. In addition, in light of our rejection of the Stipulation, the attorney examiners are directed to establish a procedural schedule in the Capacity Charge Case.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio and FES be granted, in part, and denied, in part. Further, the applications for rehearing filed by AEP-Ohio, Ormet, OCC/APJN, RESA, OHA, and OMAEG be denied. It is, further,

ORDERED, That the Companies shall file proposed tariffs consistent with this order by February 28, 2012. It is, further,

ORDERED, That a copy of this entry on rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

GAP/JJT/GNS/vrm

Entered in the Journal

FEB 23 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY

The Commission finds:

(1) Ohio Power Company and Columbus Southern Power Company (AEP-Ohio or the Companies) are electric light companies as defined in Section 4905.03(A)(3), Revised Code, and public utilities as defined in Section 4905.02, Revised Code. As such, the Companies are subject to the jurisdiction of the Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.

(2) Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction.

(3) On November 1, 2010, AEP Electric Power Service Corporation, on behalf of AEP-Ohio, filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEP refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposes to change the basis for compensation for capacity costs to a cost-based mechanism and includes proposed formula rate templates under which the Companies would calculate their respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement.

(4) Prior to the filing of this application, the Commission approved retail rates for the Companies, including recovery of capacity costs through provider-of-last-

resort charges to certain retail shopping customers, based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM, Inc., under the current fixed resource requirement (FRR) mechanism. *In re Columbus Southern Power Company*, Case No. 08-917-EL-SSO; *In re Ohio Power Company*, Case No. 08-917-EL-SSO. See also, *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 05-1194-EL-UNC et al. However, in light of the change proposed by the Companies, the Commission will now expressly adopt as the state compensation mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review.

(5) Further, the Commission finds that a review is necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. As an initial step, the Commission seeks public comment regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine the Companies' FRR capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio.

(6) All interested stakeholders are invited to submit written comments in this proceeding within 30 days of the issuance of this entry and to submit reply comments within 45 days of the issuance of this entry.

It is, therefore,

ORDERED, That written comments be filed within 30 days after the issuance of this order and that reply comments be filed within 45 days of the issuance of this entry. It is, further,

ORDERED, That a copy of this entry be served on AEP-Ohio and all parties of record in the Companies' most recent standard service offer proceedings, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GAP/sc

Entered in the Journal
DEC 0 8 2010

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY ON REHEARING

The Commission finds:

(1) By opinion and order issued on July 2, 2012, the Commission approved a capacity pricing mechanism for Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio).[1]

(2) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(3) On July 20, 2012, AEP-Ohio filed an application for rehearing of the Commission's July 2, 2012, opinion and order. The Ohio Energy Group (OEG) filed an application for rehearing and a corrected application for rehearing of the July 2, 2012, opinion and order on July 26, 2012, and July 27, 2012, respectively. On August 1, 2012, Industrial Energy Users-Ohio (IEU-Ohio); FirstEnergy Solutions Corp. (FES); Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council (collectively, Schools); Ohio Manufacturers' Association (OMA); Ohio Hospital Association (OHA); and the Ohio Consumers' Counsel (OCC) filed applications for rehearing of the July 2, 2012, opinion and order.

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

(4) The Commission believes that sufficient reason has been set forth by AEP-Ohio, OEG, IEU-Ohio, FES, Schools, OMA, OHA, and OCC to warrant further consideration of the matters specified in the applications for rehearing. Accordingly, the applications for rehearing filed by AEP-Ohio, OEG, IEU-Ohio, FES, Schools, OMA, OHA, and OCC should be granted.

It is, therefore,

ORDERED, That the applications for rehearing filed by AEP-Ohio, OEG, IEU-Ohio, FES, Schools, OMA, OHA, and OCC be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

SJP/sc

Entered in the Journal

AUG 15 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

ENTRY ON REHEARING

The Commission finds:

(1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement for the regional transmission organization, PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.

(2) By entry issued on December 8, 2010, in the above-captioned case, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge (Initial Entry). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism (SCM) were appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities

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

within PJM; (2) the degree to which AEP-Ohio's capacity charge was currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. Additionally, in light of the change proposed by AEP-Ohio in the FERC filing, the Commission explicitly adopted as the SCM for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

(3) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.*, AEP-Ohio filed an application for a standard service offer in the form of a new electric security plan (ESP), pursuant to Section 4928.143, Revised Code (ESP 2 Case).[2]

(4) By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012 (Interim Relief Entry).

(5) By entry issued on May 30, 2012, the Commission approved an extension of the interim capacity pricing mechanism through July 2, 2012 (Interim Relief Extension Entry).

(6) By opinion and order issued on July 2, 2012, the Commission approved a capacity pricing mechanism for AEP-Ohio (Capacity Order). The Commission established $188.88/megawatt-day as the appropriate charge to enable AEP-Ohio to recover its capacity costs pursuant to its FRR obligations from CRES providers. However, the Commission also directed that AEP-Ohio's capacity charge to CRES providers should be the RPM-based rate, including final zonal adjustments, on the basis that the RPM-based rate will promote retail electric competition. The Commission authorized AEP-Ohio to modify its

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2 *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 and 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 and 11-350-EL-AAM.

accounting procedures to defer the incurred capacity costs not recovered from CRES providers, with the recovery mechanism to be established in the ESP 2 Case.

(7) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(8) By entry on rehearing issued on October 17, 2012, the Commission granted, in part, and denied, in part, applications for rehearing of the Initial Entry, Interim Relief Entry, and Capacity Order, and denied applications for rehearing of the Interim Relief Extension Entry (October Capacity Entry on Rehearing).

(9) On December 12, 2012, the Commission issued an entry on rehearing, denying applications for rehearing of the October Capacity Entry on Rehearing that were filed by the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and FirstEnergy Solutions Corp. (FES) (December Capacity Entry on Rehearing).

(10) On January 11, 2013, OCC filed an application for rehearing of the December Capacity Entry on Rehearing. AEP-Ohio filed a memorandum contra on January 22, 2013.

(11) In its single assignment of error, OCC asserts that the Commission unlawfully and unreasonably clarified in the December Capacity Entry on Rehearing that there were reasonable grounds for complaint, pursuant to Section 4905.26, Revised Code, that AEP-Ohio's proposed capacity charge in this case may have been unjust or unreasonable. OCC contends that the Commission's clarification attempts to cure an error after the fact, is not supported by sufficient evidence, and is procedurally flawed. According to OCC, the Commission's clarification is not supported by its findings in the Initial Entry. OCC argues that the Commission has not satisfied the requirements of Section 4905.26, Revised Code, and, thus, has no jurisdiction in this case to alter AEP-Ohio's capacity charge.

OCC also notes that reasonable grounds for complaint must exist before the Commission orders a hearing, pursuant to Section 4905.26, Revised Code. OCC emphasizes that the Commission did not find reasonable grounds for complaint in the Initial Entry, but rather made its clarification two years later in the December Capacity Entry on Rehearing. OCC adds that the Commission's clarification is inconsistent with its earlier procedural ruling directing the parties to develop an evidentiary record on the appropriate capacity pricing mechanism for AEP-Ohio. OCC believes that reasonable grounds for complaint were intended to be developed through the evidentiary hearing.

OCC further argues that the Commission did not properly determine, upon initiation of this proceeding, that AEP-Ohio's capacity charge may be unjust and unreasonable. Accordingly, OCC believes that the Commission lacked jurisdiction to modify AEP-Ohio's capacity charge. Finally, OCC asserts that the Commission failed to find that RPM-based capacity pricing is unjust and unreasonable, as required before a rate change is implemented, pursuant to Section 4905.26, Revised Code.

(12) In its memorandum contra, AEP-Ohio responds that OCC's application for rehearing merely raises arguments that have already been considered and rejected by the Commission. AEP-Ohio adds that the Commission properly clarified in the December Capacity Entry on Rehearing that there were reasonable grounds for complaint under Section 4905.26, Revised Code, in this proceeding.

(13) In the December Capacity Entry on Rehearing, the Commission denied, in their entirety, the applications for rehearing of the October Capacity Entry on Rehearing that were filed by OCC, IEU-Ohio, and FES (December Capacity Entry on Rehearing at 11-12). Section 4903.10, Revised Code, does not allow parties to repeat, in a second application for rehearing, arguments that have already been considered and rejected by the Commission. *In the Matter of the Applications of The East Ohio Gas Company d.b.a. Dominion East Ohio and Columbia Gas of Ohio Inc. for*

> *Adjustment of their Interim Emergency and Temporary Percentage of Income Payment Plan Riders*, Case No. 05-1421-GA-PIP, *et al.*, Second Entry on Rehearing (May 3, 2006), at 4. The December Capacity Entry on Rehearing denied rehearing on all assignments of error and modified no substantive aspect of the October Capacity Entry on Rehearing, and OCC is not entitled to another attempt at rehearing. Accordingly, the application for rehearing filed by OCC on January 11, 2013, should be denied as procedurally improper.

It is, therefore,

ORDERED, That the application for rehearing filed by OCC on January 11, 2013, be denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

SJP/sc

Entered in the Journal
JAN 30 2013

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	)	Case No. 10-2376-EL-UNC
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
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Amend their Emergency Curtailment Service Riders.	)	Case No. 10-343-EL-ATA Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	)	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Mechanisms to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code.	)	Case No. 11-4920-EL-RDR Case No. 11-4921-EL-RDR

OPINION AND ORDER

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The Commission, considering the above-entitled applications, the Stipulation and Recommendation, and the record in these proceedings, hereby issues its opinion and order in these matters.

APPEARANCES:

Steven T. Nourse, Mathew J. Satterwhite, and Anne M. Vogel, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215-2373, and Porter, Wright, Morris & Arthur, LLP, by Daniel R. Conway, 41 South High Street, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

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SNR Denton US, LLP, by Emma F. Hand and Douglas G. Bonner, 1301 K Street NW, Suite 600 East Tower, Washington, D.C. 20005, on behalf of Ormet Primary Aluminum Corporation.

Bricker & Eckler, by Christopher L. Montgomery and Terrence O'Donnell, 100 South Third Street, Columbus, Ohio 43215-4291, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of Paulding Wind Farm II.

Henry W. Eckhart, 1200 Chambers Road, Suite 106, Columbus, Ohio 43212, on behalf of the Sierra Club and Natural Resources Defense Council.

Gregory J. Poulos, 101 Federal Street, Suite 1100, Boston, Massachusetts 02110, on behalf of EnerNOC Inc.

Tara C. Santarelli, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of the Environmental Law and Policy Center.

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OPINION:

I. HISTORY OF THE PROCEEDINGS

A. Prior Electric Security Plan

On March 18, 2009, the Commission issued its opinion and order regarding Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP Ohio or the Companies) application for an electric security plan (ESP 1 Order) in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. By entries on rehearing issued July 23, 2009 (First ESP EOR) and November 4, 2009, the Commission affirmed and clarified certain issues raised in the ESP 1 Order. As ultimately modified and adopted by the Commission, AEP-Ohio's ESP 1 decisions directed, among other things, that AEP-Ohio be permitted to recover the incremental capital carrying costs that would be incurred after January 1, 2009, on past environmental investments (2001-2008) and approved a provider of last resort (POLR) charge for the ESP period.[1]

The Commission's ESP 1 decision was appealed to the Supreme Court of Ohio (Court). On April 19, 2011, the Court affirmed the ESP Order in numerous respects, but remanded the proceedings to the Commission with regard to two aspects of the Commission's decision. The Court determined that Section 4928.143(B)(2), Revised Code, does not authorize the Commission to allow recovery of items not enumerated in the section. The Court remanded the cases to the Commission for further proceedings in which the Commission may determine whether any of the listed categories set forth in Section 4928.143(B)(2), Revised Code, authorize recovery of environmental investment carrying charges.[2] Regarding the POLR charge, the Court concluded that the Commission's decision that the POLR charge is cost-based was against the manifest weight of the evidence, an abuse of the Commission's discretion, and reversible error. The Court noted two methods by which the Commission may consider the POLR charge on remand, specifically, as either a non-cost-based POLR charge or by way of evidence of AEP-Ohio's actual POLR costs.[3]

By entry issued May 25, 2011, the Commission directed AEP-Ohio to file revised tariffs by May 27, 2011, making the POLR and environmental investment carrying charges subject to refund, as of the first billing cycle of June 2011, until the Commission specifically ordered otherwise on remand. The Commission issued its order on remand on October 3, 2011. In the order on remand, the Commission found that AEP-Ohio should be authorized to continue its recovery of incremental capital carrying costs that are incurred after January 1, 2009, on past environmental investments (2001-2008) that were not previously

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1 AEP-Ohio ESP Order at 24-28, 38-40; First ESP EOR at 10-13, 24-27.

2 *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St.3d 512, 520.

3 *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St.3d 512, 519.

reflected in the Companies' existing rates prior to the ESP 1 Order. In addition, the Commission found that the POLR charges authorized by the ESP 1 Order were not supported by the record on remand, and directed the Companies to eliminate the amount of the POLR charges authorized in the ESP Order and file revised tariffs, consistent with the order on remand.

B. Pending Electric Security Plan

On January 27, 2011, AEP-Ohio filed the instant application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code. As filed, AEP-Ohio's SSO application for ESP 2 would commence on January 1, 2012, and continue through May 31, 2014.

By entry issued February 9, 2011, a procedural schedule was established, including the scheduling of a technical conference, prehearing conference and the evidentiary hearing. The technical conference was held on AEP-Ohio's ESP application on March 8, 2011. The Commission also scheduled five local public hearings throughout AEP-Ohio's service territory. As a result of the Court's remand of AEP-Ohio's ESP 1 Order, the evidentiary hearing was rescheduled. Prehearing conferences were held on July 6, 2011 and August 9, 2011. Initially, the evidentiary hearing was called on August 15, 2011, and continued until September 7, 2011, to allow for settlement negotiations.

On September 7, 2011, numerous parties (Signatory Parties) to the proceedings filed a Joint Stipulation and Recommendation (Stipulation). A new procedural schedule was adopted at the September 7, 2011 hearing, which rescheduled the evidentiary hearing to October 4, 2011. At the Commission's request, the Companies made a presentation to the Commissioners on the Stipulation on September 19, 2011.

The following parties were granted intervention by entries dated March 23, 2011, and July 8, 2011: Industrial Energy Users-Ohio (IEU), Duke Energy Retail Sales, LLC (Duke Retail), Ohio Energy Group (OEG), Ohio Hospital Association (OHA), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE),[4] The Kroger Company (Kroger), FirstEnergy Solutions Corporation (FES), Paulding Wind Farm II LLC (Paulding), Appalachian Peace and Justice Network (APJN), Ohio Manufacturers' Association Energy Group (OMAEG), AEP Retail Energy Partners LLC (AEP Retail), Distributed Wind Energy Association (DWEA),[5] PJM Power Providers Group (P3), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation), COMPETE Coalition (Compete), Natural Resources Defense Council

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4 On November 17, 2011, OPAE filed a motion to withdraw from the consolidated Stipulation proceedings.

5 On August 4, 2011, DWEA filed a motion to withdraw from the ESP 2 proceedings.

(NRDC), The Sierra Club (Sierra), city of Hilliard, Ohio (Hilliard), Retail Energy Supply Association (RESA), Exelon Generation Company, LLC (Exelon), city of Grove City, Ohio (Grove City), Association of Independent Colleges and Universities of Ohio (AICUO), Wal-Mart Stores East, LP and Sam's East, Inc., (Wal-Mart), Dominion Retail, Inc. (Dominion Retail), Environmental Law and Policy Center (ELPC), Ohio Environmental Council (OEC), Ormet Primary Aluminum Corporation (Ormet) and EnerNOC, Inc. (Enernoc).

Pursuant to entry issued September 16, 2011, the hearing in the ESP 2 case was consolidated with a number of other related matters for purposes of considering the Stipulation. The consolidated cases include: an emergency curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Cases); a request for the merger of Columbus Southern Power Company with Ohio Power Company in Case No. 10-2376-EL-UNC (Merger Case); a determination of the capacity charge that the Companies will assess on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity Charges Case); and a request for approval of a mechanism to recover deferred fuel costs and accounting treatment in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (Fuel Deferral Cases).

At the hearing on the Stipulation, the Signatory Parties offered the testimony of 23 witnesses in support of the Stipulation and seven witnesses provided testimony in opposition to the Stipulation. Initial briefs were filed by the Signatory Parties, Ormet, IEU, FES, OCC and APJN,[6] Staff, Exelon, Constellation, and RESA, on November 10, 2011, and reply briefs were filed on November 18, 2011.

C. Summary of the Local Public Hearings

Five local public hearings were held in order to allow CSP's and OP's customers the opportunity to express their opinions regarding the issues raised in the Companies' ESP 2 application. Two local public hearings were held in Columbus, and hearings were also held in Canton, Lima, and Marietta. At the local hearings, a total of 61 witnesses offered testimony. In addition to the public testimony, numerous letters were filed in the docket regarding the proposed ESP applications.

A principal concern of many customers in opposition of the proposed ESP 2 both at the public hearings and in letters was the impact the proposed rate increase would have on unemployed, low-income, and fixed income customers who are already having difficulty paying their utility bills. Witnesses also argued that the proposed nonbypassable riders would prevent customers from being able to reduce or control their electric bill through the selection of a CRES provider. Several witnesses at the public

6 OPAE was included as a party to the joint brief at the time the initial brief was filed but subsequently withdrew from the consolidated Stipulation proceedings.

hearings also emphasized that an increase in the cost of electric service may further strain the community resources available to assist unemployed and low-income customers.

However, the vast majority of the testimony offered at the public hearings was to endorse the proposed ESP 2 and establish support for AEP-Ohio based on its charitable corporate citizenship and economic development endeavors in Ohio. Numerous witnesses praised AEP-Ohio as a good corporate citizen that supported a cross-section of community and charitable organizations through the AEP Foundation, volunteerism and grants, including but not limited to youth organizations, food banks, hunger prevention programs, homelessness prevention assistance programs, utility assistance, and educational programs. A number of witnesses also endorsed the Companies' Turning Point solar project. The witnesses stated that the Turning Point solar project will bring 325 permanent jobs to Noble County. Witnesses also explained that the project is reusing land previously mined for the facility, and provisions of the project require the manufacturer to produce the solar panels in Ohio and to support in-state commerce. Several witnesses also praised AEP-Ohio for their commitment to economic development. Testimony was repeatedly offered expressing the importance of reasonable electric rates and rate stability to attract and retain investments in Ohio. Witnesses stated that AEP-Ohio willingly participates and supports local community councils and organizations to attract new businesses to Ohio.

D. Procedural Matters

1. Motions to Withdraw

On September 1, 2011, DWEA filed a notice requesting to withdraw as an intervenor from the ESP 2 case. After initial briefs were filed, on November 17, 2011, OPAE filed a notice requesting to withdraw from the consolidated Stipulation proceedings and further states it no longer takes a position for or against the Stipulation. The Commission finds DWEA's and OPAE's requests to withdraw from the applicable proceedings to be reasonable and that the requests be granted.

2. IEU's Motion to Dismiss

On October 12, 2011, IEU made an oral motion to dismiss this proceeding and raised it again in its initial brief filed on November 10, 2011. In support of its motion, IEU argues: (1) only an electric distribution utility (EDU) may file an application for an ESP can apply for an ESP; (2) the ESP must relate to the terms, charges or services of the EDU; (3) that the record evidence does not support the provisions of the original application that were incorporated into the Stipulation since the original application is not part of the record. IEU asserts the Companies have failed to comply with the statutory and administrative requirements to file an application for an ESP and therefore the application and the Stipulation should be dismissed. The Commission lacks subject matter

jurisdiction to consider either the original application or the Stipulation. The Attorney Examiners took the motion under advisement. (Tr. VI at 956-958, Tr. XI at 1944-1945, IEU Br. at 7-17.)

First we note, as IEU asserts, AEP-Ohio, is not in and of itself an EDU. AEP-Ohio is a notation referring to both CSP and OP, and CSP and OP are the EDUs. The Commission commonly uses the AEP-Ohio notation and interprets applications and pleadings using the reference to refer to both CSP and OP. For this reason, we recognize that the application and the Stipulation to affect CSP and OP. The ESP proposed in the Stipulation relates to the terms, charges, and services of CSP and OP, in addition to negotiated items which the Commission could not have required, pursuant to the statutes, be included in an ESP and are a benefit to the public and the Companies ratepayers. The Commission finds that sufficient and adequate evidence has been provided in the record by the Companies and the Signatory Parties that indicates that this matter is within the Commission's jurisdiction, and should be further considered by the Commission. Accordingly, IEU's motion to dismiss is denied.

3. Signatory Parties' Motion to Admit Stipulation

On October 12, 2011, the Signatory Parties moved to admit the Stipulation as Signatory Parties' Exhibit 1, and the implementation plan as Signatory Parties' Exhibit 2. IEU, FES, and OCC objected to the admission of the Stipulation, arguing that no witness sponsored the exhibits, making it improper to admit the exhibits. The Attorney Examiners took the motion under advisement. (Tr. VI at 952-953, 1941-1942.)

The Commission finds that witnesses for the Companies and other Signatory Parties submitted testimony and were subject to cross examination on the various provisions of the Stipulation, including its appendices and the detailed implementation plan. Further, AEP-Ohio's witness Hamrock was the Companies' witness offering testimony that the Stipulation complies with the three-part test for adoption by the Commission. Accordingly, we find that the Stipulation, including the appendices, Signatory Parties Exs. 1 and 2, should be admitted into the record.

4. Interstate Gas Supply, Inc.'s Application for Interlocutory Appeal

On October 11, 2011, Interstate Gas Supply, Inc. (IGS) filed a motion to intervene in these proceedings. AEP-Ohio filed a memorandum contra on October 13, 2011. IGS filed a response on October 14, 2011. On October 26, 2011, the Attorney Examiners' denied IGS's motion to intervene, stating that IGS's motion was filed a week after the hearing had begun (Tr. XII at 1968). On October 31, 2011, IGS filed an application for interlocutory appeal. AEP-Ohio filed a memorandum contra IGS's application for interlocutory appeal on November 2, 2011.

In its interlocutory appeal and motion to intervene IGS asserts that the Commission has been directed to liberally construe the statutes and rules governing intervention in favor of granting intervention, including late request for intervention. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 384. IGS notes that it filed its CRES application with the Commission on September 29, 2011,[7] and argues that extraordinary circumstances exist, as the Stipulation includes provisions not contemplated by the ESP 2 application. Specifically, IGS points to provisions within the Stipulation that provide that AEP-Ohio will conduct stakeholder meetings to discuss and address implementation issues with interested Signatory Parties. Further, IGS notes that the Commission has granted late intervention requests in AEP-Ohio's previous ESP proceeding[8] and in AEP-Ohio's significantly excessive earnings test (SEET) case.[9]

In its memorandum contra, AEP-Ohio and the argues that, pursuant to Rule 4901-1-11(F), Ohio Administrative Code (O.A.C.), untimely motions for intervention will only be granted under extraordinary circumstances. AEP-Ohio asserts neither that merely because IGS had recently applied for authority to be a certified CRES provider, or the provisions of the Stipulation constitute extraordinary circumstances that justify granting IGS's motion for intervention.

The Commission notes that IGS's motion was untimely. IGS's motion to intervene was filed seven months after the deadline for intervention. Further, at the time the motion was filed, the hearing on the Stipulation had been in progress for one week. We do not find that IGS presents any extraordinary circumstances which justify granting its untimely motion. While IGS cites to two cases in which intervention was granted after the deadline, the two intervenors were granted intervention after the intervention deadline, both were granted well before the hearing began.

In AEP-Ohio's SEET proceeding, as IGS states, Kroger's untimely request for intervention was granted. Kroger filed its motion for limited intervention after the hearing ended. Initially AEP-Ohio, and other intervenors opposed Kroger's motion for limited intervention, however, AEP-Ohio subsequently withdrew its opposition to Kroger's intervention as part of a Stipulation resolving the issues raised in the SEET case and another proceeding pending before the Commission at the time.[10] Ultimately, the SEET Stipulation was withdrawn and the SEET case for 2009 earnings was ultimately decided by the Commission as a litigated matter.

IGS's application for CRES certification and the Stipulation's proposed stakeholder processes do not constitute extraordinary circumstances sufficient to justify IGS's request

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7 In Case No. 11-5326-EL-CRS, IGS was granted a certificate effective October 30, 2011.

8 *In re AEP-Ohio*, Case Nos. 08-917-EL-SSO and 08-917-EL-SSO, Entry (October 29, 2008) at Finding (4).

9 *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Entry (December 1, 2010) at Finding (14).

10 *In re AEP-Ohio*, Case Nos. 09-872-EL-UNC and 09-873-EL-UNC.

for untimely intervention in the middle of the hearing. Further, numerous CRES providers have been granted intervention in these matters, some in support of the Stipulation, and others in opposition, such that the Commission believes the interest of CRES providers, like IGS, are adequately represented in these matters and the subsequent stakeholder processes. Accordingly, the Commission affirms the ruling to deny IGS's untimely motion to intervene.

5. FES' Motion for a Protective Order

Along with its initial brief, FES filed a motion for a protective order pursuant to Rule 4901-1-24(D), O.A.C. The information for which FES seeks protective treatment, as produced by AEP-Ohio pursuant to a confidentiality agreement, relates to forecasted fuel expenditures and related analyses.

AEP-Ohio has consistently asserted that the redacted forecasted fuel expenditures and related information constitutes competitively sensitive, proprietary and confidential, trade secret information pursuant to Section 1333.61, Revised Code, that requires protection from public disclosure. Pursuant to a confidentiality agreement between AEP-Ohio and FES, FES states that it is obligated to seek confidential treatment of the designated information. AEP-Ohio asserts that redacted projected forecast for fuel expenditures information and related analyses has been kept confidential and as a result retains substantial economic value to the Companies. Public access to the information, according to AEP-Ohio, would significantly reduce the value of the information causing harm to AEP-Ohio. Thus, AEP-Ohio requests that the confidentiality of the information be maintained consistent with Section 149.43, Revised Code, and Rule 4901-1-24, O.A.C.

The Commission finds that the forecasted fuel information and related analyses for which AEP-Ohio and FES requests a protective order constitutes confidential, proprietary, competitively sensitive and trade secret information. Accordingly, the request for a protective order is reasonable and should be granted. Further, pursuant to Rule 4901-1-24(F), O.A.C, the forecasted fuel expenditures information and related analyses, filed under seal in this matter, shall be granted protective treatment for 18 months from the date this Order is issued. Any request to extend a protective order must be filed at least 45 days before the order expires.

6. OCC/APJN's Request for Review of Procedural Rulings

(a) Motion to Strike Rebuttal of Hamrock and Baker

In its initial brief, OCC/APJN explains that the rebuttal testimony of AEP-Ohio witness Hamrock and Staff witness Baker includes references to Case No. 09-756-EL-ESS (Reliability Standards Case), wherein the customer average interruption duration index (CAIDI) and the system average interruption frequency index (SAIFI) were established

pursuant to a Stipulation. While OCC objected to the use of the Stipulation during the rebuttal testimony of AEP Ohio witness Hamrock, only the CAIDI and SAIFI indices established in the Reliability Standards Case were recognized in the proceeding (Tr. XII at 1991).

OCC/APJN allege that the Reliability Standards Case Stipulation specifically includes language which precludes the use of the Stipulation for certain purposes (OCC/APJN Br. at 15-16). The Reliability Standards Case Stipulation specifically states:

> Except for purposes of enforcement of *the terms of this Stipulation, this Stipulation, the information and data contained therein or attached, and any Commission rulings adopting it, shall not be cited as precedent in any future proceeding for or against any party* or the Commission itself. The Parties' agreement to this Stipulation in its entirety shall not be interpreted in a future proceeding before the Commission as agreement to any isolated provision of this stipulation. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in the Stipulation as the results that any party might support or seek but for this Stipulation. (Emphasis added)

OCC/APJN argues that the denial of its motion to strike the rebuttal testimony of Mr. Hamrock and Mr. Baker was unreasonable and unjustifiable, as the ruling breaches the settlement.

In their reply brief, the Signatory Parties argue that OCC's participation in the Reliability Standards Case and Stipulation are already matters of fact in the public record. Further, the Signatory Parties contend that neither Mr. Hamrock nor Mr. Baker testified to the content or any provisions of the Reliability Standards Case Stipulation. As such, the Signatory Parties argue that neither AEP-Ohio nor Staff violated the boilerplate language in the Reliability Standards Case Stipulation prohibiting citing to the Stipulation as precedent of the terms, information, and data contained in the stipulation. The Signatory Parties explain that the information provided was not cited against OCC, nor did the Companies or Staff seek to use any term of that stipulation as precedent. AEP-Ohio and Staff simply offered the proceeding and its resolution to demonstrate that Staff and OCC have actively participated in monitoring each company's reliability and service quality (Signatory Parties Reply Br. at 109-110).

We disagree with OCC and APJN that the acknowledgement that the reliability indices applicable to CSP and OP is an attempt to use the indices as precedent, or to use the terms, information, and data contained in the Reliability Standards Case stipulation as precedent or against a party to the proceeding. The reliability indices are not a basis for

answering a similar issue of law in the ESP 2 Stipulation cases. We find OCC/APJN's claim, that recognizing the mere establishment of the indices developed as part of a Stipulation, will have a chilling effect on future settlements, to be without merit, as there was no discussion towards the content of the Reliability Standards Stipulation, nor was there an attempt to establish it as precedent. Accordingly, the Commission affirms that Attorney Examiner's ruling.

(b) Motion to strike statutory reference in the rebuttal of Hamrock

In AEP-Ohio witness Hamrock's rebuttal testimony he indicated, upon the advice of counsel, that certain statutory provisions support the distribution investment rider (DIR) (AEP-Ohio Ex. 19 at 3). At the hearing, OCC made a motion to strike that the above-referenced portion of Mr. Hamrock's rebuttal testimony. In support of its motion, OCC argued that: (1) As a non-attorney, Mr. Hamrock was not qualified to give a legal opinion; (2) The advice of counsel was hearsay; and, (3) In an earlier discovery request propounded to the Companies by OCC, the Companies had cited only one provision of the statute to support the authority for the DIR, Section 4928.143(B)(2)(h), Revised Code, and the Companies had failed to supplement their response to the interrogatory. OCC's motion was denied (Tr. XII at 1990-1991). OCC/APJN request that denial of OCC's motion to strike be reversed (OCC/APJN Br. at 15-18).

In response, the Signatory Parties state that numerous other parties to these matters noted that their respective understanding of the statutory basis for certain provisions was based on "the advice of counsel" including the testimony of OCC witness Duann. Next, the Signatory Parties retort that OCC/APJN's request to reverse the Attorney Examiners' ruling on the basis that it was hearsay, should also be denied, noting that the Commission and the Supreme Court of Ohio have consistently recognized that Commission hearings are not strictly bound by the Ohio Rules of Evidence. Finally, the Companies submit that its reliance on Section 4928.143(B)(2)(d), Revised Code, did not arise until October 3, 2011, when the Entry on Remand Order was issued in the ESP 1 case. AEP-Ohio reasons that its failure to supplement its discovery response should not be held against the Companies in light of the extraordinary number of discovery requests propounded by OCC, coupled with the fact that the additional basis for statutory support of the DIR was offered during rebuttal in the course of the hearing (Signatory Parties Reply Br. at 112-114).

First, we find OCC/APJN's arguments, that the testimony of a non-attorney witness who admits that his legal understanding is based on the advice of counsel should be struck, are without merit. Numerous parties in this proceeding were permitted to acknowledge that their understanding of the various statutory provisions was based on the advice of counsel. The Companies were afforded the same treatment. The Commission and its Attorney Examiners recognize that non-attorneys are not qualified to offer a legal opinion. However, we do not find it necessary to strike the testimony but to accord the testimony its proper weight.

The Signatory Parties state that the Commission is not strictly bound by the Ohio Rules of Evidence. *Greater Cleveland Welfare Rights Org., Inc., v. Pub. Util. Comm.*, 2 Ohio St.3d 62 (1982). When the Commission has deemed it appropriate, it has allowed the admission of hearsay testimony. We note that hearsay rules are designed, in part, to exclude evidence, not because it is not relevant or probative, but because of concerns regarding jurors' inability to weigh evidence appropriately. These concerns are inapplicable to administrative proceedings before the Commission, as the Commission has the expertise to give the appropriate weight to testimony and evidence. Thus, the Commission will not overturn the Attorney Examiners' ruling in this instance on the basis that it is hearsay.

Finally, the Commission will not overturn the Attorney Examiners' ruling on the basis that the Companies failed to supplement their discovery response. In reaching this decision, we find that OCC/APJN have not been prejudiced by additional statutory support. Mr. Hamrock's rebuttal testimony was filed October 21, 2011, and he was cross-examined on his rebuttal testimony on October 26, 2011. OCC and APJN were afforded an opportunity to challenge the Companies' claim that Section 4928.143(B)(2)(d), Revised Code, supports the DIR in its cross examination of Mr. Hamrock, as well as in its briefs.

(c) Motion to Strike Customer Survey Results

At the hearing, OCC made a motion to strike portions of the rebuttal testimony of Mr. Hamrock (Companies Ex. 19 at 4) and Mr. Baker (Staff Ex. 5 at 4) on the grounds that each witness's discussion of customer survey results was inadmissible hearsay under the Ohio Rules of Evidence. OCC's motions to strike were denied (Tr. XII at 1986; Tr. XIII at 2367-2368).

OCC/APJN contend that the testimony relating to customer survey results was improperly permitted into the record and was prejudicial to OCC. OCC/APJN argue that Mr. Hamrock's discussion of the survey results do not meet the business records exception under Ohio Rule of Evidence 803(6). Regarding Staff's use of the survey results, OCC/APJN state the survey results do not meet the requirements of the public records exception under Ohio Rule of Evidence 803(8). Further, OCC/APJN alleges that the customer survey results were prepared in anticipation of this litigation and thus cannot be within the scope of the hearsay business records exception (OCC/APJN Br. at 18-21).

The Signatory Parties reiterate that the hearsay provision of the Ohio Rules of Evidence are not strictly applicable to Commission proceedings and that the survey results should not be stricken from the testimony for that reason. Further, the Signatory Parties reason that the customer survey results are, as was argued at hearing, a business record and public record. In addition, Mr. Baker's testimony as to AEP-Ohio's compliance with the reliability standards for 2010 is not hearsay, but rather, is Mr. Baker's expert opinion.

For these reasons, the Signatory Parties believe the Attorney Examiners' ruling should be affirmed (Signatory Parties Reply Br. at 110-112).

For the same reasons offered in response to OCC/APJN's claim of hearsay as to the other motions to strike Mr. Hamrock and Mr. Baker's testimony, we reject the claim in this instance. The Commission notes that Rule 4901:1-10-10(B)(4)(b), O.A.C., provides that the customer surveys "shall be conducted under staff oversight." We find that Mr. Baker, as the section chief of the Reliability and Service Analysis Division of the Commission, is vested with the responsibility and has the experience to offer an expert opinion on the customer survey results as well as to offer an opinion regarding the Companies compliance with Rule 4901:1-10-10, O.A.C. Accordingly, we affirm the Attorney Examiners' ruling on this issue.

(d) Motion to strike references to 2009, 2010, and 2011 customer reliability surveys

Staff witness Baker testified that AEP-Ohio had met the Companies applicable reliability standards established for the year 2010 (Staff Ex. 5 at 5). OCC moved to strike the testimony arguing that it was hearsay and the motion to strike was denied (Tr. XIII at 2370). In its brief, OCC/APJN reiterates the arguments of OCC: that the cited portion of Mr. Baker's testimony is hearsay; that statements made by AEP-Ohio customers in the survey cannot be a business record as it relates to the Commission Staff; and the survey results were prepared in anticipation of litigation, and is not a business record created or retained as a regular operation of the Commission's business. OCC/APJN also claim that because the reliability standards were established as a part of the Reliability Standards Case Stipulation, the testimony is improper. OCC/APJN requests that the decision to deny the motion to strike be overturned.

RESA and the Signatory Parties assert that no harm or prejudice has been demonstrated by OCC/APJN. RESA states that unlike cases tried to a jury, Commission proceedings are tried and considered to Attorney Examiners with the knowledge and experience to give the contested evidence the appropriate weight. Accordingly, RESA and the Joint Signatories argue the motion to overturn the Attorney Examiners' ruling should be denied. (RESA Brief at 2; Signatory Parties Reply Br. at 107-108, 110-112.)

As previously noted, the Commission is not strictly bound by the Ohio Rules of Evidence and, in this instance, no prejudice has been demonstrated by OCC and APJN regarding the admission of the customer reliability surveys. These concerns are inapplicable to administrative proceedings before the Commission, as the Commission has the expertise to give the appropriate weight to testimony and evidence. Further, we note that with the implementation of Rule 4901:1-10-10, O.A.C., Staff was actively involved in the development of the survey. Thus, the Commission will not overturn the Attorney Examiners' ruling in this instance on the basis that it is hearsay.

7. Ormet's Motions to Strike

On November 15, 2011, and November 22, 2011, Ormet filed motions to strike portions of the Signatory Parties' brief and reply brief. Ormet requests that portions of pages 47-48 and pages 43-46 of the initial brief and portions of pages 22-23 and the last full sentence on page 24 of the Signatory Parties' reply brief be stricken.

The cited portions of the initial and reply briefs relate to Ormet's kilowatt hour (kWh) tax exemption and Ormet's contractual history with AEP-Ohio and another electric cooperative. Ormet asserts that the cited portions of the Signatory Parties' initial brief were not supported by evidence in the record and are irrelevant to this proceeding. Ormet notes that the bench sustained its objection on redirect regarding testimony sought on the kWh tax exemption (Tr. Vol. III at 267-268). Ormet asserts that its electric service history is irrelevant to whether the load factor provision (LFP) is unduly discriminatory going forward. Ormet contends that Signatory Parties did not request that administrative notice be taken of its prior applications for reasonable service arrangements filed with the Commission. As such, Ormet requests that the information be stricken from the brief or given no weight by the Commission.

The Signatory Parties filed memoranda contra Ormet's motions on November 21, 2011, and November 28, 2011. In their memoranda contra, the Signatory Parties argue that Ormet's history as an AEP-Ohio customer and its exemption from the kWh tax demonstrate that Ormet has frequently been treated as unique in relation to other AEP-Ohio customers. The Signatory Parties offer that the issue is not, as Ormet alleges, whether there is a difference in the services furnished to Ormet, but whether the LFP of the Stipulation is unduly discriminatory to Ormet. The Signatory Parties retort that, although the rates determined as a part of the prior unique arrangements may not be applicable, the prior unique arrangements demonstrate that Ormet has historically been treated differently from than customers. The Signatory Parties calculation of Ormet's kWh tax exemption is based on Ormet's peak demand of 520 MW, as offered by Ormet in its brief and in testimony (Tr. I at 263). The Signatory Parties reason that the information presented in the statute, Section 5727.81, Revised Code, need not be entered into the record and, together with the record evidence, provide sufficient information for the Signatory Parties to make the arguments on the kWh tax. The Signatory Parties note that the Attorney Examiners' ruling did not go to whether the kWh tax exemption was irrelevant or unsupported. The Signatory Parties note that it is not necessary that administrative notice be taken for a Commission order to be cited on brief. Finally, the Signatory Parties opine that the petitions and one of the applications which Ormet request be stricken, were actually filed by Ormet, and presumably contained information that was accurate and reliable. Thus, the Signatory Parties recommend that the Commission reject Ormet's motion to strike any portion of the briefs and assign the arguments their appropriate weight.

Ormet filed replies reiterating its requests to strike. Further, Ormet submits that any rate differential in the service to similarly situated customers must be based on some actual and measurable differences in the furnishing of services. Ormet asserts that the Signatory Parties have not presented a nexus in this proceeding to justify excluding Ormet from the LFP. *Mahoning Cnty. Township*, 388 N.E.2d at 742.

The Commission denies Ormet's motions to strike the Signatory Parties' briefs regarding the kWh tax exemption. The kWh tax exemption is clearly set forth in Section 5727.81, Revised Code, and the Signatory Parties have cited sufficient information to make claims as to Ormet's kWh tax status. Accordingly, we deny Ormet's motion to strike the first full paragraph on page 47 through the end of the second paragraph on page 48 of the Signatory Parties' initial brief and references in the reply brief as to the kWh tax exemption.

In addition, we deny Ormet's motion to strike the portion of the Signatory Parties' initial brief which discusses Ormet's electric service history. As the Signatory Parties point out, it is not necessary that a party request administrative notice of a Commission order to use the order in its brief. As such, we reject Ormet's request to strike. We recognize that, often at Ormet's request, Ormet has historically been treated differently than other OP customers. Prior to the filing of this ESP 2 case, Ormet had requested and been approved to receive a special rate based on the London Metal Exchange (Ormet 2009 Unique Arrangement). However, most persuasive to the Commission in this proceeding is Ormet's current unique arrangement for electric service effective through 2018, which covers the term of the proposed ESP Stipulation and beyond. The fact that Ormet is currently provided service pursuant to a unique arrangement effectively puts Ormet in a service class by itself. As such, the Commission finds it inappropriate to strike that portion of the initial brief discussing Ormet's electric service history.

8. FES's Request to Strike

In its reply brief, FES requests that two portions of Staff's brief, which reference transmission cost savings, be stricken and disregarded. FES asserts that claims in the brief of transmission cost savings are not supported by evidence within the record, are refuted by Staff's own testimony, and are not supported by any witness to the Stipulation proceedings. Further, FES notes that Staff's brief offers no citations to support the claimed transmission cost savings. Accordingly, FES reasons that the Commission should disregard Staff's assertion. (Staff Brief at 8, 10; FES Reply Brief at 30.)

Staff did not file a memorandum contra FES's motion to strike. In light of the fact that Staff did not support its claim with any record evidence nor refute FES's assertions, the Commission finds it is improper to rely on claims in the brief which are unsupported

by evidence within the record. As such, the references in Staff's initial brief to any transmission cost savings shall be stricken.

II. DISCUSSION

A. Applicable Law

Chapter 4928 of the Revised Code provides an integrated system of regulation in which specific provisions were designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In reviewing AEP-Ohio's application and the Signatory Parties' Stipulation, the Commission is cognizant of the challenges facing Ohioans and the electric industry and will be guided by the policies of the state as established by the General Assembly in Section 4928.02, Revised Code, which was amended by Senate Bill 221 (SB 221).

Section 4928.02, Revised Code, states that it is the policy of the state, *inter alia*, to:

(1) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.

(2) Ensure the availability of unbundled and comparable retail electric service.

(3) Ensure diversity of electric supplies and suppliers.

(4) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure (AMI).

(5) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality.

(6) Ensure effective retail competition by avoiding anticompetitive subsidies.

(7) Ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power.

(8) Provide a means of giving incentives to technologies that can adapt to potential environmental mandates.

(9) Encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering.

(10) Protect at-risk populations including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

In addition, SB 221 enacted Section 4928.141, Revised Code, which provides that effective January 1, 2009, electric utilities must provide consumers with an SSO, consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default SSO.

AEP-Ohio's application in this proceeding proposes an ESP, pursuant to Section 4928.141, Revised Code. Paragraph (B) of Section 4928.141, Revised Code, requires the Commission to hold a hearing on an application filed under Section 4928.143, Revised Code, to send notice of the hearing to the electric utility, and to publish notice in a newspaper of general circulation in each county in the electric utility's certified territory.

Section 4928.143, Revised Code, sets out the requirements for an ESP. Under paragraph (B) of Section 4928.143, Revised Code, an ESP must include provisions relating to the supply and pricing of generation service. The ESP, according to paragraph (B)(2) of Section 4928.143, Revised Code, may also provide for the automatic recovery of certain costs, a reasonable allowance for certain construction work in progress (CWIP), an unavoidable surcharge for the cost of certain new generation facilities, conditions or charges relating to customer shopping, automatic increases or decreases, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission-related costs, provisions related to distribution service, and provisions regarding economic development.

The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply in an MRO under Section 4928.142, Revised Code. In addition, the Commission must reject an ESP that contains a surcharge for CWIP or for new generation facilities if the benefits derived for any purpose for which the surcharge is established are not reserved or made available to those that bear the surcharge.

B. Summary of the Stipulation

Pursuant to an Attorney Examiner entry issued August 30, 2011, the hearing in the ESP 2 case reconvened on September 7, 2011. Immediately prior to the commencement of the hearing, AEP-Ohio and certain parties to the proceedings filed the Stipulation (Joint Ex. 1) asserting to resolve all the issues raised in the ESP 2 case and several other AEP-Ohio cases pending before the Commission. The Signatory Parties to the Stipulation are: AEP-Ohio, Staff, OEG, Constellation, OHA, OMAEG, Kroger, Hilliard, Grove City, AICUO, Exelon, Duke Retail, AEP Retail, Wal-Mart, RESA, Paulding, OEC, ELPC, Enernoc, NRDC, and P3.[11]

The remaining parties in the proceedings include: OCC, OPAE, FES, APJN, Compete, Sierra, Dominion, and Ormet (jointly Non-Signatory Parties).

The Stipulation consists of numerous provisions and three appendices', as well as a detailed implementation plan. Pursuant to the terms of the Stipulation, the ESP would establish SSO rates commencing on January 1, 2012 through May 31, 2016. The Companies would file their next SSO application no later than February 1, 2015 (Signatory Parties' Jt. Ex. 1 at 4). The Stipulation includes, *inter alia*, the following provisions:

1. AEP-Ohio agrees to drop its proposals for the Facilities Closure Cost Recovery Rider, NERC Compliance Cost Recovery Rider, Carbon Capture and Sequestration Rider, Provider of Last Resort Rider, Environmental Investment Carrying Charge Rider, and Rate Security Rider. The nonbypassable environmental unit conversion/re-dedication structure is also being eliminated. (Stipulation at IV.1.a.)

2. The Stipulation contains a market transition rider (MTR) which establishes for demand metered customer classes on a revenue neutral basis, a nonbypassable energy credit. The energy credit, known as the load factor provision (LFP), is designed to stabilize electric service during the transition to deregulation of generation services by retaining some of the benefits associated with high load factor customers under current rates. There will be a nonbypassable demand charge of $3.29/kW-month and an initial energy credit of $0.00228/kWh to be adjusted quarterly to produce a net charge of $0 per quarter for GS-2 customers. The LFP only applies to customers whose monthly peak demand is less than 250 MW. In addition, AEP-Ohio shall

[11] By letter filed September 9, 2011, as supplemented on September 15, 2011, P3 expressed its intent to be a Signatory Party to the Stipulation.

maintain an interruptible credit of $8.21/kw/month through the term of proposed ESP 2 for existing IRP-D customers, with the incremental costs of approximately $5 million to be collected through the economic development rider. (Stipulation at IV.1.b.)

3. All GS-1 and GS-2 schools that are currently shopping, as well as GS-2 customers that switch to a CRES provider after September 6, 2011, will receive a shopping credit of $10/MWh for the first one million MWh of usage per calendar year. Customers that obtain this shopping credit retain it for the entire term of the ESP. This credit will be included in the MTR over/under recovery calculation. Further, the MTR shall be modified so that only 50 percent is phased out by May 31, 2015, with the MTR ceasing to existing beginning with the June 1, 2015 billing cycle. (Stipulation at IV.1.c.)

4. AEP-Ohio shall establish a nonbypassable Generation Resource Rider (GRR), which will act as a placeholder for any project specific costs that the Commission may approve at a later date. If and when AEP- Ohio seeks recovery through the GRR, AEP-Ohio will be required to demonstrate how the proposed project complies with Section 4928.143(B)(2), Revised Code. AEP-Ohio states that the only projects that it will seek approval for under the GRR are Turning Point and the Muskingum River 6 (MR6) project. The Signatory Parties reserve their right to contest or otherwise take positions in the separate future cases that will determine whether to establish a nonbypassable charge and the appropriate level of the charge through the GRR. (Stipulation at IV.1.d.)

5. Customers that have waived POLR charges who return from shopping during the ESP term will be served at the applicable SSO rate and Case No. 11-531-EL-ATA shall be dismissed upon approval of the Stipulation. (Stipulation at IV.1.e.)

6. The Stipulation provides for automatic increases or decreases to the non-fuel bypassable base generation rate. Adjustments will be made as necessary in order to achieve an average rate of $.0245/kWh starting in January of 2012, $.0272/kWh in January 2013, and finally $.0274/kWh in January 2014, which would be in effect through May 31, 2015. (Stipulation at IV.1.f.)

7. The SEET return on equity (ROE) threshold will be 13.5 percent, as calculated in a manner consistent with the 2009 Commission order. (Stipulation at IV.1.g.)

8. AEP-Ohio will not file a separate application to initiate Phase 2 and beyond for the gridSMART project until completion and review of Phase 1. (Stipulation at IV.1.h.)

9. AEP-Ohio may establish its proposed Plug-in Electric Vehicle (PEV) tariff and absorb through shareholder funds the $2,500 allowance proposal provided that the costs associated with this offering shall not be collected from customers. (Stipulation at IV.1.i.)

10. The Stipulation provides for a one-time up front approval for the Timber Road Renewable Energy Purchase Agreement (REPA). This would allow for automatic recovery of costs through the fuel adjustment clause (FAC) and/or the alternative energy rider (AER) subject to financial audit. (Stipulation at IV.1.j.)

11. The revenue received pursuant to AEP-Ohio's Green Power Portfolio Rider (GPPR) will not be credited against REC expense or otherwise used to reduce the rate charged to customers that do not participate in the GPPR. The GPPR revenue will be used to procure and retire RECs solely on behalf of the participants in the GPPR rider. (Stipulation at IV.1.k.)

12. The Alternative Energy Rider (AER) will be subject to annual review in the FAC proceeding, including review by the FAC auditors. The initial FAC proceeding under this ESP shall include a determination of the methodology for valuation of RECs for bundled purchases and for self-generation. AEP-Ohio will be entitled to full recovery of prudently-incurred compliance costs through the AER. (Stipulation at IV.1.l.)

13. The current FAC mechanism continues through May 31, 2015. Upon implementation of full legal corporate separation and pool modification/termination and until May 31, 2015, the FAC will accommodate pass through of bilateral contractual

arrangements between AEP-Ohio (or the successor electric distribution utility entity) and an AEP affiliate as needed to supply generation services. A modified FAC mechanism will continue after May 31, 2015, in connection with a nonbypassable charge, if any, that is authorized for inclusion in the GRR. (Stipulation at IV.1.m.)

14. The Signatory Parties propose the establishment of the distribution investment rider (DIR) based on net capital additions made post-2000 as adjusted for accumulated depreciation. The associated carrying charge rate will include components to recover property taxes, commercial activity tax and income taxes, as well as a return on and a return of plant in service for net distribution investments on Federal Energy Regulatory Commission (FERC) accounts 360-374. The Stipulation provides that the return earned on distribution plants will be based on the cost of debt of 5.34 percent, a cost of preferred stock of 4.40 percent, and a return on common equity of 10.50 percent utilizing a 47.06 percent debt, 0.19 percent preferred stock, and 52.75 percent common equity capital structure. The net capital additions included for recognition under the DIR will reflect gross plant-in-service incurred post-2000, adjusted for growth in accumulated depreciation. As proposed, the DIR will be adjusted quarterly and audited on an annual basis for prudency. The annual DIR revenues collected will be capped at $86 million for 2012, $104 million for 2013, and $124 million for 2014 through May 2015. (Stipulation at IV.1.n.)

15. Continue the Enhanced Service Reliability Rider (ESR) as proposed. (Stipulation at IV.1.o.)

16. Establish the Storm Damage Recovery mechanism (deferral and liability accounting) with a baseline of $5 million per Staff's testimony beginning with calendar year 2011. (Stipulation at IV.1.p.)

17. Approval of the Stipulation will result in the Commission's approval of full legal corporate separation. This would result in the transmission and distribution assets of AEP-Ohio to be held by the electric distribution utility (EDU), while the GRR assets would remain with the EDU. Upon approval of full legal

corporate separation, AEP-Ohio will provide notice to PJM that it intends to participate in the Base Residual Auction for 2015-2016. In addition, the Stipulation notes that generation-related costs associated with the corporate separation will not be recoverable from customers. (Stipulation at IV.1.q.)

18. The Stipulation provides that AEP-Ohio will use a competitive bidding process (CBP) to meet its SSO obligation beginning June 1, 2015 through May 31, 2016. The CBP calls for an initial auction for the first 20 tranches of SSO load in 2013, the next 40 tranches in 2014, and the remainder of the SSO load no later than 2015. The auction-clearing prices shall be accepted by the Commission unless the Commission determines that one of the conditions set forth in the Stipulation was not met. Details relating to recovery of auction clearing prices through retail rates, as well as other matters such as the inclusion of GRR dedicated resources and procurement of renewables, are to be addressed in the stakeholder process. (Stipulation at IV.1.r.)

19. The Companies agree to make changes relating to competition and interaction with CRES providers. AEP-Ohio will add capacity and transmission information to the master customer list by or before January 1, 2012. The Companies will modify tariff switching rules and notice provisions, including the elimination of the 90-day notice requirement that certain customers must give before they can enroll with a CRES provider, the 12-month minimum stay requirements for industrial or large commercial customers by June 1, 2015, as well as the provision that residential and small commercial customers that return in summer must stay until April 15 of the following year. The Companies agree to discuss reducing the $10 switching fee associated with enrollment with a CRES provider. (Stipulation at IV.1.s.)

20. AEP-Ohio will collaborate with Staff to achieve FERC approval of the corporate separation and subsequent pool modification and termination prior to the first scheduled auction. Should FERC deny AEP-Ohio's application, then AEP-Ohio is relieved of its obligation to conduct auctions as provided for in the Stipulation. The Signatory Parties may file a motion to enforce the Stipulation in this docket, if they believe AEP-Ohio caused undue delay in the FERC proceedings. If the Commission finds

AEP-Ohio failed to appropriately handle matters within its control, AEP-Ohio shall conduct its auctions as provided for in the Stipulation. (Stipulation at IV.1.t.)

21. The Companies shall provide funding for the Partnership With Ohio (PWO) initiative of $3 million annually for the benefit of low-income customers during the term of the ESP, provided AEP-Ohio's return on equity exceeds ten percent for the prior calendar year. AEP-Ohio will collaborate with Staff todetermine the uses of the PWO fund. (Stipulation at IV.1.u.)[12]

22. The Companies will provide funding for the Ohio Growth Fund (OGF) initiative of $5 million annually for the benefit of economic development during the ESP term, provided AEP-Ohio's return on equity exceeds 10 percent for the prior calendar year, with funding not to be recoverable from customers. Further, an initial commitment of $50,000 annually over the next three years will be given to AICUO to utilize either for scholarships or alternative energy upgrades on its college campuses. (Stipulation at IV.1.v.)

23. The Signatory Parties and Companies will work to further develop opportunities for customer-sited resources and initiatives in exchange for incentive payments to the customers or exemptions from certain cost recovery mechanisms. The Companies commit incentives for LED traffic signals and street lighting to the cities of Grove City and Hilliard to develop pilot programs. The Companies commit to fund Grove City and Hilliard an amount not to exceed $100,000 for each municipality, pursuant to cost recovery that the Companies shall include in its 2012-2014 portfolio plan. (Stipulation at IV.1.w.)

24. AEP-Ohio shall commit to the acceleration of Ohio shale gas development through fleet transformation and fuel diversification. (Stipulation at IV.2.a.)

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12 While the Stipulation does not provide that this provision shall not be recoverable from customers, the Commission notes that the Companies testified that this provision comes from shareholder funding (AEP-Ohio Presentation Tr. at 54-55).

25. The capacity charge for CRES providers will be set at an interim rate of $255 per megawatt-day (MW-day) effective January 1, 2012, for all shopping above 21 percent of AEP-Ohio's total retail load in 2012, 29 percent in 2013 until securitization is completed, 31 percent for all or the remaining portion of 2013, and 41 percent in 2014. The capacity charge below the established percentages will be the PJM RPM-based rate. After May 31, 2015, the state compensation mechanism will expire and the capacity charge will be the PJM RPM-based capacity rate. As of the date of the Stipulation, customers who receive their generation service from a CRES provider shall continue to be served under the RPM rate applicable for the remainder of the contract term, including renewals. The load of current CRES provider customers is included in the RPM set asides during the term of this ESP. (Stipulation at IV.2.b, Appendix C and Jt. Signatory Parties Ex. 2.)

26. AEP-Ohio agrees to pursue development of up to 350 MW of customer-sited combined heat and power (CHP), waste energy recovery (WER), and distributed generation resources in its service territory, with costs to be recovered under an appropriate rider. (Stipulation at IV.2.c.)

27. The Signatory Parties recommend that the Commission approve the merger, with the closing to occur after Commission approval of the Stipulation by the end of 2011. The Companies agree to maintain separate rate zones for distribution rates until the issue is subsequently addressed by the Commission in a separate proceeding. Effective January 1, 2012, CSP and OP transmission rates will be consolidated and CSP and OP generation rates (including the FAC rates) will also be consolidated. (Stipulation at IV.3.)

28. In Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Service Riders), the current ECS and PCS, as well as the proposed ECS will be withdrawn, and AEP-Ohio shall permit retail customer participation in PJM demand response programs. Any customer already receiving an incentive from the applicable tariff rates, and is currently or would like to participate in PJM programs must agree to commit to the EDU, the peak demand response attributes that have cleared in the

PJM market, at no cost to the utility for the duration of the arrangement. (Stipulation at IV.4.)

29. The Signatory Parties agree to the pool termination/modification that will be filed with FERC. A pool modification rider (PMR) will be established with an initial rate of zero, and should the pool modification/termination's impact on AEP-Ohio exceed $50 million prior to May 31, 2015, AEP-Ohio may request cost recovery of the entire impact throughout the ESP term by a separate RDR application. The Signatory Parties reserve the right to challenge this recovery before the Commission and FERC. (Stipulation at IV.5.)

30. The Signatory Parties recommend the adoption of the Phase-In Recovery Rider (PIRR), a mechanism to recover accumulated deferred fuel costs, including carrying costs, to be effective with the first billing cycle of January 2012, as well as securitization of the PIRR regulatory asset.[13] The Stipulation includes a clause that, after securitization, should the Commission or the Court issue a decision that impacts the amount of PIRR regulatory assets, AEP-Ohio shall use a mechanism to make the appropriate adjustment ordered by the Commission or the Court that prospectively adjusts rates through a credit or charge. (Stipulation at IV.6.)

31. The Signatory Parties agree that the ESP package included as part of the Stipulation is more favorable in the aggregate than the expected results under an MRO (Stipulation at IV.7).

C. Standard of Review

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into Stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the Stipulation is unopposed by any party and resolves almost all of the issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a Stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas &*

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13 Although a signatory party to the Stipulation, Wal-Mart neither supports nor opposes this provision of the Stipulation.

Electric Co., Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of a Stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547 (1994) (citing *Consumers' Counsel*, supra, at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a Stipulation, even though the Stipulation does not bind the Commission (*Id.*).

In addition to taking into consideration the advancement of state policies set forth in Section 4928.02, Revised Code, and determining the reasonableness of the Stipulation, because the proposed Stipulation includes the Companies' ESP 2 application, the Commission must determine whether the ESP is more favorable in the aggregate than MRO, pursuant to Section 4928.143(C)(1), Revised Code. The Commission has thoroughly reviewed the Stipulation, as well as the issues raised by the Non-Signatory parties, and we believe that, with the modifications set forth herein, we have appropriately reached a conclusion advancing the public's interest.

III. IS THE PROPOSED ESP MORE FAVORABLE IN THE AGGREGATE AS COMPARED TO THE RESULTS THAT WOULD OTHERWISE APPLY UNDER SECTION 4928.142, REVISED CODE.

Section 4928.143(C)(1), Revised Code, provides that the Commission should approve, or modify and approve, an application for an ESP if it finds that the ESP, including its pricing and all other terms and conditions, including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code (statutory test).

The Signatory Parties contend that the proposed ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results under an MRO. According to the Signatory Parties, there are three aspects to the ESP test, the first being price comparison. AEP-Ohio witness Thomas estimated the ESP impact as compared to a price of an MRO amounts to $0.71/MWH, which AEP-Ohio witness Allen quantified as the proposed ESP being less favorable than the results that would otherwise apply under the statutory test by $108 million for non-shopping customers (Signatory Parties Br. at 137-38, citing to AEP-Ohio Ex. 4 and Ex. 5).

The Signatory Parties provide the second part of the test involves the evaluation of other quantifiable non-price benefits that would result from the proposed ESP that are unavailable under results that would otherwise apply as set forth in the statutory test. In support of this part of the test, Mr. Allen's testimony provides that the discounted capacity provided to CRES providers is an $856 million benefit, the reduced carrying cost rate for the PIRR is a $104 million benefit, and the net present value of the PWO and OGF initiatives is $27 million. Mr. Allen also believes that the SEET ROE threshold is a potential benefit, noting the last AEP-Ohio SEET threshold approved by the Commission was 4.1 percent higher than the threshold agreed to in the Stipulation (AEP-Ohio Ex. 4 at 18-20).

Third, the Signatory Parties explain that there are benefits of significant value that are not yet quantifiable. In support of the non-quantifiable benefits, the Signatory Parties provide that the ESP creates an earlier transition to market than is otherwise possible, and allows for the elimination of POLR charges. The Signatory Parties also assert that the commitment to pursue distribution revenue decoupling and alternative customer-sited generation resources are additional benefits. (Signatory Parties Br. at 145-147.)

FES counters that AEP-Ohio has failed to meet its burden of proving the proposed ESP is more favorable in the aggregate as compared to the results that would otherwise apply under Section 4928.142, Revised Code. In support of its assertion, FES points out that every witness, including AEP-Ohio witness Thomas and Staff witness Fortney, along with the Non-Signatory Parties' witnesses, found the proposed ESP price is higher than the projected MRO price. FES further claims that the Signatory Parties attempt to distort the statutory test by ignoring certain terms of the proposed ESP. (FES Br. at 7-12.)

FES also believes that, although AEP-Ohio witness Thomas's ESP vs. MRO price test correctly indicated that an MRO would cost less than the proposed ESP, it contains several material flaws. Specifically, FES claims that she failed to include values for the GRR, PMR, DIR, and MTR, did not use AEP-Ohio's own estimates of fuel costs, and assumed above market capacity prices, resulting in the competitive benchmark price being overstated. In addition, FES claims that Staff witness Fortney incorrectly calculated the

market price in his statutory price test by using the wrong comparable market rate. (*Id.* at 13-20).

FES also opines that the benefits that AEP-Ohio uses to support the proposed ESP are non-existent. First, FES claims that AEP-Ohio cannot use the fact that it agrees to provide capacity to CRES providers at a significant discount as a benefit. FES states that this is not a benefit, as AEP-Ohio has not shown that it would have ever been entitled to use the original capacity charge as proposed in its application, and no Signatory Party, including Staff, found the reduction from the original capacity price to be a benefit to the proposed ESP (*Id.* at 43-45). FES also asserts that the Mr. Allen's claim that the PIRR's effect of lowering carrying costs is incorrectly calculated, as were the benefits associated with the PWO and OGF. FES also believes that the transition to market cannot be considered a benefit, as the Commission has the authority to waive any blending after two years under an MRO option. Further, FES states that the benefits associated with AEP-Ohio's investment in natural gas and solar generation are speculative, as there is no guarantee they will ever happen. (*Id.* at 80.)

IEU expresses similar concerns, stating that Ms. Thomas, as well as Mr. Fortney's comparison analyses are flawed (IEU Br. at 21-29). In addition, IEU and OCC/APJN claim that the non-price benefits touted by the Signatory Parties either do not exist or are speculative (OCC/APJN Br. at 34-35). Specifically, OCC/APJN claim the Signatory Parties' assertion that the removal of POLR charges from the ESP is a benefit is incorrect. OCC/APJN explain that both the Court and the Commission found there was no evidentiary support for the POLR charges (*Id.* at 37, citing to *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St. 3d 512; Remand Order at 22-24).

Staff provides that the Non-Signatory Parties are incorrect in arguing that the Stipulation is not more favorable in the aggregate than the MRO option. Staff notes that its witness, Mr. Fortney, testified that while the Stipulation would fail on a strictly quantitative basis, the Stipulation provides numerous benefits that are impossible to quantify. Specifically, Mr. Fortney explains that the change in AEP-Ohio's business model which would allow for a competitively bid SSO by 2015, as well as the possibility of a new generation plant in Ohio that operates on Ohio shale natural gas are tremendous benefits of the proposed ESP. (Staff Br. at 19-20, Tr. Vol. X at 1714, 1751-1752.)

RESA asserts that the differences in methodologies and projected prices calculated under the statutory test, even from Non-Signatory Parties' experts, demonstrate that the pure numeric price analysis is too imprecise and uncertain to be conclusive. These differences, RESA notes, are useful and informative, but, because of the vast differences, it cannot be the sole determinative factor in this proceeding's outcome. Further, pursuant to Section 4928.143(C)(1), Revised Code, the Commission should consider a number of factors, both qualitative and quantitative, to determine in the aggregate whether the

proposed ESP is more favorable than an MRO. Thus, RESA proclaims, that the Non-Signatory Parties fail to understand that the statutory test requires the Commission to weigh a number of factors, and thus it should not base its decision on a single strict numeric test. (RESA Br. at 19-24.)

In response to criticisms by the Non-Signatory Parties, the Signatory Parties explain that it is not necessary to include forecasted fuel charges in the price test, noting that Section 4928.142(D), Revised Code, provides the option of adjusting 2011 prices for changes in fuel and note that the Commission has not required forecasted data to be reflected in the price test (Signatory Parties Br. at 148 citing to Opinion and Orders in Case Nos. 08-917-EL-SSO et al. (AEP-Ohio SSO Case), and 08-920-EL-SSO (Duke Energy Ohio SSO Case). The Signatory Parties argue that the Stipulation's capacity prices are appropriate to use in the competitive benchmark price, as they represent a negotiated price for capacity available to CRES providers and CBP bidders. Further, the Signatory Parties explain that it is not necessary to include the 2015-2016 auction year in the price test, as all SSO generation in this period is being supplied through wholesale power purchased through competitive markets. The Signatory Parties also believe it is not necessary to include the GRR and PMR in the test, as both are placeholder mechanisms that would be established with initial rates of zero. (*Id.* at 149-159.)

The Commission finds that, pursuant to Section 4928.143, Revised Code, modifications must be made to the Stipulation for the proposed ESP to be more favorable in the aggregate than the expected results that would occur under Section 4928.142, Revised Code. In order to determine what modifications need to be made, we must first analyze which ESP/MRO comparison to use as the foundation for our analysis. Witnesses providing testimony on the statutory test include AEP-Ohio witnesses Thomas, Allen and Hamrock, Staff witness Fortney, FES witnesses Lesser and Schnitzer, IEU witness Murray, and OCC witness Duann.

We believe there are several material flaws in AEP-Ohio's testimony for determining whether the proposed ESP meets the statutory test. First, we believe Ms. Thomas erred by failing to include a cost for the GRR in her price comparison. As Staff witness Fortney testified, it is reasonable to include an estimated charge for the GRR, as AEP-Ohio has produced a revenue requirement for the Turning Point project, and AEP-Ohio has claimed the Turning Point project as a benefit of the proposed ESP (Tr. X at 1694-1695).

Second, we find that AEP-Ohio wrongly identified the removal of POLR charges as non-quantifiable benefit, as this was mandated the Commission in the remand proceeding. Third, we believe the Signatory Parties and AEP-Ohio cannot claim the discounted capacity price to CRES providers as a benefit. As Mr. Fortney appropriately stated in his testimony, AEP-Ohio's requested capacity price in its application was never certain, and

therefore, it cannot be considered as either a benefit or meaningful number for the purposes of conducting the statutory test (Tr. X at 1707-1708).

Although we note the Non-Signatory Parties concerns that the PMR was not included in the price analysis, we believe it would have been speculative because there is no estimate on what the potential PMR costs could be (Tr. V at 678-679). We also agree with the Signatory Parties in their assertion that forecasted fuel costs do not need to be included in the price test based on Section 4928.143(D), Revised Code, as well as Commission precedent in the ESP 1 case and Duke Energy SSO Case (*In Re AEP Ohio*, Case Nos. 08-917 and 08-918-EL-SSO, Staff Ex. 1A, and Opinion and Order, at 71-72; *In Re Duke Energy Ohio*, Case No. 08-920-EL-SSO, Opinion and Order, at 11-13 and Attachment 2). Regarding the MTR, while Ms. Thomas did not include it in her cost analysis, AEP-Ohio appropriately recognized it as a cost when considering other non-price benefits from the proposed ESP (AEP-Ohio Ex. 4 at 18). Further, we note that the Non-Signatory Parties concerns about the DIR not being present in the price analysis are unwarranted, because AEP-Ohio would otherwise be entitled to seek an increase in distribution rates pursuant to Section 4909.19, Revised Code.

As Staff witness Fortney testified in this proceeding, due to the elimination of POLR charges out of the current generation rate as a result of the remand proceeding, the numeric price analysis changed in the statutory test (Tr. X at 1695-1697). As a result, Mr. Fortney explained that an MRO was more favorable than the proposed ESP by approximately $276 million (*Id.*). While many Signatory Parties correctly point out that the numeric price test is only a factor and should not be the sole consideration pursuant to Section 4928.142, Revised Code, the fact that there is a gap of over $325 million between the proposed ESP and MRO is significant enough that we believe it is necessary to make modifications to the proposed ESP.

The Stipulation provides that the proposed ESP includes automatic annual adjustments to the bypassable base generation rate to achieve average rates of $0.0245/kWh in January 2012, $0.0257/kWh in January 2013, and $0.0272/kWh in January 2014, to be in effect through May 31, 2015 (Stipulation at IV.1.f). Based on Mr. Fortney's testimony in the record and in looking to Mr. Fortney's statutory test Attachment A, it is apparent that the base generation rates are a significant factor in the MRO being more favorable than the proposed ESP in the numeric price test (Staff Ex. 4).

The Commission finds that we must modify the Stipulation to adjust the proposed automatic base generation rate increases in order for the proposed ESP to meet the statutory provisions of Section 4928.143, Revised Code. While FES correctly points out that the market price errors in Mr. Fortney's test reflect the proposed ESP being less favorable by approximately $325 million as opposed to $276 million, we note that FES's Table 3 reflects that in the June 2014 to May 2015 period, the proposed ESP is actually

more favorable than results that would otherwise apply under the statutory test (FES Br. at 19). Using the values established by Mr. Fortney in the record in this proceeding, and noting FES's corrections, if we reduce the proposed increase in base generation rates by half to achieve annual average annual rates of $0.0227/kWh in January 2012, $0.0233/kWh in January 2013, and to $0.0241 for January 2014, the proposed ESP will be more favorable than the MRO by $42,453,616. Accordingly, with these modifications to the base generation rate adjustments, we find that the proposed ESP is quantitatively better than the results that would otherwise apply under Section 4928.142, Revised Code. However, as RESA correctly pointed out in their brief, we are required, pursuant to Section 4928.143(C)(1), to consider other factors, including qualitative factors, as the pure numeric test should not be conclusive of our analysis.

As we previously stated, the Commission agrees with the Non-Signatory Parties that the removal of POLR charges and the discounted capacity rate cannot be considered benefits of the Stipulation's proposed ESP. However, the Commission finds that Staff, along with the Signatory Parties and AEP-Ohio, are correct in their assertions that the ESP, as proposed, creates an earlier transition to market than is otherwise possible. The record demonstrates that the redesign of AEP-Ohio's corporate structure will be smoother if steps are taken prior to the transition to a competitively bid SSO. Further, the MR6 and Turning Point projects contribute the diversity of supply as is consistent with Section 4928.02, Revised Code, and allow the Commission to determine the need for construction of additional generation facilities in the event needed capacity additions are not developed by the market. In addition, the PWO and OGF initiatives are significant benefits that should be included when considering this proposed ESP in the aggregate. Further, our modification to remove the contingency relating to AEP-Ohio's ten percent on equity, as described below, removes any doubt that these initiatives will occur. PWO and OGF, are significant benefits that should be included when considering this proposed ESP in the aggregate. These benefits, coupled with the additional modifications to the Stipulation discussed below and with the fact that the quantitative analysis now favors the proposed ESP by over $35 million, ensure that, in the aggregate, the proposed ESP is more favorable than the results that would otherwise apply under Section 4928.142, Revised Code.

IV. STIPULATION THREE PRONG TEST

A. Is the Stipulation the Result of Serious Bargaining Among Capable, Knowledge Parties?

The first prong of the Commission's test in evaluating the reasonableness of a Stipulation requires an analysis of whether the settlement is a product of serious bargaining among capable, knowledgeable parties. There is disagreement among the Signatory Parties and Non-Signatory Parties as to whether the first prong was met.

The Signatory Parties provide that the Stipulation is the result of an extensive process involving experienced parties with diverse interests ranging from "industrial, commercial, and residential customers, to competitive generation suppliers, CRES providers, municipalities, alternative and advanced energy providers, curtailment service providers, and environmental groups," (Signatory Parties Br. at 19). The Signatory Parties explain that the discovery process enabled parties to gather extensive information about issues relating to the cases in this matter, noting that AEP-Ohio responded to over 2,187 requests for discovery (*Id.* at 20). The Signatory Parties provide that the creation of the Stipulation was the result of a process that was transparent and included representatives from all intervening stakeholders (Exelon Ex. 1 at 2). In addition, parties met five times throughout the month of August to resolve disputes among parties, with Staff conducting meetings several times with intervening parties without the Companies present, to facilitate the negotiation process (AEP-Ohio Ex. 8 at 8-9). Staff notes that the Signatory Parties have an extensive history of participating in matters before the Commission (Staff Ex. 4 at 2). Further, when emphasizing the seriousness of the bargaining that occurred among parties, Mr. Fortney explained that it was also very lengthy and extensive *(Id.)*.

Following the August 30, 2011, joint motion for continuance, the Signatory Parties maintain that OCC, IEU, and FES were in opposition to the motion, and chose to stop participating in settlement negotiations. These parties established a joint defense agreement following the motion, while the resulting Signatory Parties continued to meet and circulate draft proposals until the Stipulation was filed on September 7, 2011 (AEP-Ohio Ex. 8 at 8-10, Tr. VII at 1284). AEP-Ohio also maintains that it continued to reach out to all parties even after some of the Non-Signatory Parties chose not to participate in settlement negotiations (Signatory Parties Br. at 22, citing to AEP-Ohio Ex. 8 at 9-10, Tr. VI at 941-942). Further, the Companies assert that prior to the Stipulation being finalized, a draft of the Stipulation was sent to all parties, including those who entered into a joint defense agreement, and solicited all parties to provide input (*Id.* at 22).

OCC disputes that all of the Signatory Parties were knowledgeable about the contents of the Stipulation. As an example, OCC notes that Signatory Party Grove City, did not perform an independent analysis but rather relied on analysis provided by other parties (Tr. IV at 508-512). OCC also points to Exelon's use of financial analysts to formulate its opinion on the Stipulation (Exelon Ex. 1 at 7, Tr. VI at 1016-1034). OCC opines that these examples indicate that not all parties were knowledgeable to the effects of the Stipulation, but rather were focused on their own parochial interests (OCC Br. at 22-24).

IEU raises similar concerns, noting that multiple Signatory Parties did not perform an independent analysis on whether the proposed ESP was more favorable in the aggregate than what would otherwise apply under the statutory test (IEU Ex. 9A at 6-7). In addition, IEU states some of the parties were not knowledgeable on all parts of the

Stipulation as evidenced by several parties having differing interpretations on key provisions, such as the pool modification or termination rider (Tr. IV at 492-494, 554, Tr. V at 708, Tr. IX at 1639). IEU also argues that some of the Signatory Parties committed to provisions in the Stipulation without any knowledge of the provisions (IEU Ex. 14).

FES states that the first prong cannot be met because the Stipulation was the result of exclusionary settlement discussions, and the Signatory Parties conducted little analysis of the actual terms of the Stipulation. FES witness Banks asserts that it, along with OCC and OPAE, were excluded from settlement negotiations after August 30, 2011 (FES Br. at 139-140, citing to FES Ex. 1 at 57-59, FES Reply Br. at 70-71). FES maintains that its exclusion from negotiations is significant because while some CRES providers support the Stipulation, FES is the only CRES provider currently active in AEP-Ohio's service territory (*Id.*). FES maintains that this is the type of situation that the Supreme Court was concerned with in *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233 fn.2 (1996), in which the Court expressed concerns about the Commission adopting a partial Stipulation arising from exclusionary settlement meetings in which an entire customer class was excluded. FES contends that a similar situation arose in the creation of the partial Stipulation in this matter, because while the Signatory Parties contained CRES providers, none of their interests are comparable to FES's interests (FES Ex. 1 at 57-59).

The Signatory Parties counter that all parties, including FES, were kept engaged in the settlement process, even after they stopped participating in negotiations (Signatory Parties Br. at 24-25). Further, in response to IEU's argument that each signatory party focused on its own area of self-interest, Exelon notes that "the fact that each of the various settling parties focused on and fought for the particular items about which it was most knowledgeable and in which it was most interested, makes the overall settlement better, not worse, as it assures that detailed attention and consideration were given to all pertinent issues," (Exelon Br. at 5, citing Exelon Ex. 1 at 1-2, Staff Ex. 4 at 2).

The Commission finds assertions that the Stipulation was not the result of serious bargaining among capable, knowledgeable parties, to be unpersuasive. The Signatory Parties are represented by experienced counsel, who have appeared before the Commission in many cases. Further, the Signatory Parties represent a diversity of interests including the Companies, CRES providers, industrial and commercial customers, and Staff. While certain parties to the Stipulation are more experienced on certain provisions and subject matters within the Stipulation, this does not indicate that parties were not capable or knowledgeable on the Stipulation. It is inevitable that when multiple diverse parties with differing interests and objectives come together to bargain and negotiate a Stipulation such as the one proposed in this proceeding, various settling parties may have more background knowledge and experience in particular parts of the Stipulation than others. We agree with the assertion that this is a benefit to the negotiation process, as it allows for detailed analysis on the individual provisions within the

Stipulation by those parties who are experts on it, while allowing parties who may not be as familiar with a certain subject matters to provide new insights, raise questions, and challenge the product as it evolves. Thus, it appears insincere for some parties to proclaim that there were not diverse enough interests involved in the negotiation process, but then in turn state that the Stipulation should not be adopted because not all of the parties were knowledgeable on every specific aspect of the Stipulation.

Further, there is sufficient evidence in the record to support that the Stipulation is the product of serious bargaining. Numerous meetings were held throughout the month of August by both Signatory and Non-Signatory Parties, and additional discussions were conducted by Staff without the Companies present. In addition, the record supports that these discussions were open and transparent, and the settlement dialogue remained open even after some parties determined that the likely result would not be in their best interests.

With respect to the concerns raised by FES, the Commission believes there is insufficient evidence to determine that FES was actually excluded from settlement discussions or that the concerns the Court had in *Time Warner* are applicable here. FES's claim that other parties, including OCC and OPAE, were excluded from settlement negotiations, is inaccurate and misleading. In their initial brief[14], the Customer Parties acknowledge that "...it became apparent to several intervenors, including Customer Parties, that the proposed settlement would not result in an acceptable resolution...These intervenors expressed their desire to no longer participate in the negotiations at various stages of the process," (OCC/APJN Br. at 3). Such misleading statements undermine FES's credibility in presenting its arguments on all issues in this proceeding rather than just this issue.

The Court's language in *Time Warner* is inapplicable to this proceeding. The fact that other CRES providers were actively engaged in this proceeding provides ample support CRES providers as a group were not excluded from the negotiations that led to the Stipulation. Further, while FES may feel their interests are significant in comparison to the multiple CRES providers that signed the Stipulation, FES has not demonstrated that its interests are unique from other CRES providers.

Accordingly, the Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties and meets the first prong of our test for considering the Stipulation.

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[14] The Initial Brief filed by Customer Parties on November 10, 2011, was prior to OPAE's motion to withdraw from this proceeding.

B. Does the Stipulation Violate Any Important Regulatory Practices or Principle?

1. Market Transition Rider

The Commission finds that the Signatory Parties provide sufficient support for the MTR, however, we believe a modification is necessary. The Signatory Parties state the MTR's rate design will facilitate the transition from the Companies' current generation rates to the market-based SSO generation service rates by limiting the first, second, and third year changes in rates in a uniform manner to all customer classes, ultimately accomplishing 50 percent of the transition from current to market-based rates (AEP Ex. 2 at 9). The Signatory Parties also note that the interruptible credit reflects the Companies' efforts to restructure its interruptible service offering to aid in the transition to the Companies' participation in the competitive bid process (*Id.* at 6). Further, AEP-Ohio witness Roush claims that the MTR will actually result in a reduction in rates when compared to the change in rates before the MTR (AEP-Ohio Ex. 22 at Ex. DMR-R4). The Signatory Parties believe that, rather than waiting until the market transition in June 2015, which could subject customers to abrupt rate changes, the MTR design provides a reasonable glide path, and is reasonable based on both cost and market relationships (Signatory Parties Br. at 40).

The Signatory Parties assert that the MTR is designed to create stability for commercial and industrial customers, as is appropriate under Section 4928.143(B)(2)(d), Revised Code (OEG Ex. at 7-9). AEP-Ohio witness Roush maintains that this certainty is essential to commercial and industrial customers, as it will keep pricing consistent during the transition towards the deregulation of generation service pricing (AEP-Ohio Ex. 2 at 9). Further, OEG witness Baron proclaims that the stability in pricing for these customer classes will encourage economic development in these industries (OEG Ex. at 7-9). The Signatory Parties explain that the MTR will actually result in a reduction in rates when compared to the change in rates before the MTR, by uniformly transitioning any above or below average charges (AEP-Ohio Ex. 22 at Ex. DMR-R4). Further, Mr. Roush explains that GS-1 and GS-2 customer schools taking service under the standard service offer are not subject to the MTR and that such schools, as well as other GS-2 customers, may be eligible for shopping credits of $10/MWh (AEP-Ohio Ex. 2 at 11-12). Mr. Roush explained that the exemption from the MTR will reduce schools' rates (Tr. I at 95).

Regarding the LFP, the Signatory Parties maintain that the Companies have authorization to implement the provision pursuant to Section 4928.143(B)(2), Revised Code, and the results of the LFP are consistent with state policy by allowing for rate certainty for retail electric service (Signatory Parties Br. at 41). The Signatory Parties claim the stability created by the LFP also promotes state economic development (OEG Ex. 1 at 6-7). Mr. Baron points out that, as AEP-Ohio does not earn any profit from the LFP, it is appropriate for it to be nonbypassable, and it will not effect residential customers." (*Id.*)

The Signatory Parties also note that the LFP is not discriminatory towards Ormet, as Ormet has historically been treated differently than other AEP-Ohio customers, and thus, it is not discriminatory to continue to do so in this case (OEG Ex. 1 at 7-8). Further, Mr. Baron notes because Ormet's peak demand is 530 MW and its load factor is typically around 98 percent, to apply the LFP to Ormet would significantly skew results and result in a significant rate increase to every other GS-2, GS-3, and GS-4 customer in Ohio (*Id.*).

IEU asserts that the MTR design, which lowers rates for customers more likely to shop and raises rates for those less likely to shop, is an attempt by AEP-Ohio to restrict customer choice and limit competition (IEU Br. at 31 citing to FES Ex. 2 at 39 and Tr. IV at 532-39). FES believes this is unreasonable in that it subsidizes customer classes in an unfair manner (FES Ex. 42-44). Specifically, FES witness Lesser explains that the school shopping provision of the MTR creates an incentive for customers that may be less profitable to the Companies to switch to CRES providers, allowing AEP-Ohio to focus on its more profitable customers. This incentive, FES argues, is anti-competitive, and forces one set of ratepayers to subsidize shopping by another set of ratepayers (*Id.* at 43-44). FES witness Banks argues that the shopping credit for GS-2 customers and GS-1 and GS-2 schools of $10/MWh for the first 1,000,000 MWh, may potentially harm customers who would be eligible for the credit, but may never receive it because it is capped at 1,000,000 MWh of usage per calendar year (FES Ex. 1 at 19-20). Mr. Banks states that this limit may also discriminate against any new customers to AEP-Ohio's territory (*Id*).

Ormet argues that the LFP is discriminatory, explaining the rate structure of the LFP deliberately exclude Ormet from its benefits. The LFP, Ormet asserts, would leave Ormet as the only GS-3 or GS-4 customer to pay a rate that other parties consider to be unjust and unreasonable to high load factor customers (Tr. V at 648-649, Ormet Exs. 4, 5, and 13). Ormet points out that if the LFP is approved, it would be required to subsidize other customers, including competitors, at a cost of $17 million per year (Ormet Ex. 7, Tr. I at 125). Ormet cites to two Court cases, which provide that for there to be an inequality in rates, the difference must be based upon an actual differences in furnishing services to a customer, and the reasonableness must be determined from evidence within the Commission's record. (Ormet Br. at 9 citing to 388 N.E.2d, 739, 742, Ohio 1979, and 592 N.E.2d 1370, 1373, Ohio 1992). In addition, Ormet states that under Section 4905.33, Revised Code, a utility is forbidden from charging different rates to like customers (Ormet Br. at 8). Ormet believes that the record indicates that the Signatory Parties have not provided a reasonable justification for the discriminatory treatment. Further, Ormet stresses that the LFP undermines the current reasonable arrangement the Commission approved in Case No. 09-919-EL-AEC (Ormet Unique Arrangement Case).

The Commission finds that the proposed MTR is consistent with state policy by providing rate certainty and stability to AEP-Ohio customers while AEP-Ohio transitions

its rate structure. The Commission believes that rate stability is an essential tool in order to promote economic development and ensure business retention in Ohio and the MTR ensures that customers will not face any uncertainty or abrupt changes through June 2015. However, we believe a modification to the Stipulation is necessary. The record indicates the shopping credit for GS-1 and GS-2 schools who are currently shopping and GS-2 customers that switch, is too small and has the potential to exclude many eligible customers with the 1,000,000 annual MWh limit. This may slow economic development by excluding new customers who move into AEP-Ohio's service territory but are capped out. Accordingly, the Commission finds that the customer credit should be modified to $10/MWh for the first 2,000,000 MWh of usage per calendar year, with any unused MWh to carry over to the next calendar year. We also note that the increased shopping credit will serve to mitigate the increase to the rates of the GS-2 customers.

In addition, the Commission finds the LFP does not violate any regulatory principle or practice. Pursuant to Section 4928.143, Revised Code, EDUs may create provisions to promote economic development and provide rate stability to high load customers. The record sufficiently establishes that the proposed 250 MW peak threshold was created to ensure that rates would be stable enough to retain existing high load customers and promote economic development, without creating a dramatic provision that would actually lead to a rate increase for AEP-Ohio's industrial and commercial customers. The LFP, as proposed in the Stipulation, appropriately strikes such balance.

The Commission finds Ormet's arguments to be without merit. While it is true that Ormet is not eligible to receive the LFP, the provision is not discriminatory towards Ormet, as Ormet's rates are set pursuant to its Unique Arrangement Case, not AEP-Ohio's SSO rates that other high load industrial and commercial customers fall under. Accordingly, as Ormet has its own unique arrangement plan which runs through the entire term of the proposed ESP, it is disingenuous for Ormet to proclaim it is being treated differently from similarly situated customers when there are no similarly situated customers. Further, as a result of Ormet's Unique Arrangement Case, Ormet is already a beneficiary of the rate stability benefits the LFP is designed to create. Therefore, the Commission finds that the MTR provision of the Stipulation, including the LFP contained within the MTR, does not violate any important regulatory principle or practice.

2. Generation Resource Rider

AEP-Ohio witness Allen explains that the inclusion of the GRR in the Stipulation will provide AEP-Ohio with a placeholder mechanism to recover, if necessary, for costs associated with either the Turning Point solar project and the MR 6 shale gas project (AEP-Ohio Ex. 4 at 4-5). The Signatory Parties state that Sections 4928.143(B)(2)(b) and (c), Revised Code, make it permissible for the Commission to establish the GRR with an initial rate of zero, and it will only change if the Commission later approves a project-specific charge in a separate proceeding. The Signatory Parties reiterate that all of the parties to

the Stipulation will reserve the right to oppose or support the establishment of any charge to be included in the GRR, and the costs would ultimately be subject to Commission review and approval under Section 4928.143(B)(2)(b) and (c), Revised Code (Signatory Parties Br. at 51, OEG Ex. 1 at 12-13). The Signatory Parties note that the rejection of the GRR would preclude the Commission from later deciding on the MR 6 shale gas project or Turning Point solar project (*Id.* at 52).

FES asserts that AEP-Ohio has failed to provide evidence to establish that costs associated with MR 6 and Turning Point meet the requirements in Section 4928.143(B)(2)(b) or (c), Revised Code (FES Ex. 2 at 45-46). FES opines that the approval of a placeholder rider like GRR would "cast a cloud of uncertainty over competitive markets." (*Id.* at 55). Accordingly, FES believes that based on the record, the GRR cannot be approved. Similarly, IEU asserts that the Companies have made no attempt to justify the GRR, but simply noted that the recovery under the rider is subject to future Commission proceedings (IEU Br. at 47 citing Tr. IV at 598).

Upon review of the record, we agree with the Signatory Parties that the language of Section 4928.143(B)(2), Revised Code, allows for a reasonable allowance for construction of an electric generating facility, and the establishment of a nonbypassable surcharge for the life of an electric generation facility. The Commission also notes that in order to consider the Turning Point and/or MR 6 projects we need to approve the placeholder mechanism pursuant to Section 4928.143, Revised Code. However, the Commission explicitly notes that in permitting the creation of the GRR, it is not authorizing the recovery of any costs for the Companies but is allowing for the establishment of a placeholder mechanism, and, as the Signatory Parties correctly assert in the Stipulation and in their brief, any recovery under the GRR must be authorized by the Commission. The Commission cannot and will not approve any recovery unless the Companies meet their burden set forth in Section 4928.143(B)(2), Revised Code, nor are any of the Signatory Parties obligated to take a position in support or opposition to any potential nonbypassable charges by sponsoring the Stipulation. The concerns expressed by FES and IEU are premature and will be addressed in a subsequent hearing if and when the Companies request a charge through the GRR. Accordingly, the Commission finds the establishment of the placeholder mechanism, GRR, does not violate any important regulatory principles or practices.

We are not persuaded by claims that the GRR casts a cloud of uncertainty over competitive markets in Ohio. Although we will first look to the market to build needed capacity, the proposed GRR provides a lifeline in the event that market-based solutions do not emerge for this state's generation needs. While Section 4928.143(b)(2), Revised Code, provides the Commission with authority to order construction of new generation facilities in Ohio, such new generation or capacity projects will only be authorized when generation needs cannot be met through the competitive market. Therefore, generation projects under the GRR, or any other surcharge authorized by Section 4928.143(b)(2), Revised

Code, must be based upon a demonstration of need under the integrated resource planning process and be narrowly tailored to advance the policy provisions contained in Section 4928.02, Revised Code, or the statutory mandates contained in Section 4928.64, Revised Code.

For example, with respect to Turning Point, AEP-Ohio will have the opportunity in subsequent proceedings to demonstrate that the Turning Point project is necessary to comply with the solar renewable energy resource provisions contained in Section 4928.64, Revised Code, and that sufficient solar energy resources are not available through competitive markets. The Commission notes that we have previously determined that solar energy resources have not been available through competitive markets in sufficient quantities in Ohio to comply with the statutory mandates. *In re Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company* , Case No. 11-2479-EL-ACP, Finding and Order (August 3, 2011) (granting *force majeure* determination for in-state solar energy resource requirement for 2010); *In re FirstEnergy Solutions Corp.*, Case No.10-467-EL-ACP, Finding and Order (February 23, 2011) (granting *force majeure* determination for in-state solar energy resource requirement for 2009). Regarding the proposed MR6 facility, AEP-Ohio will need to demonstrate, in subsequent proceedings, that the proposed facility is necessary to meet policy directives contained in Section 4928.02, Revised Code, such as maintaining adequate, reliable, efficient, and reasonably-priced retail generation service and ensuring the diversity of supply, and that the policy mandates cannot be met through market-based solutions.

Finally, the concerns expressed by FES and IEU are premature and will be addressed in a subsequent proceeding if and when the Companies request a charge through the GRR. Accordingly, the Commission finds the establishment of the placeholder mechanism, GRR, does not violate any important regulatory principles or practices.

3. Base Generation Rates

The Signatory Parties support the proposed fixed base generation rates during the pre-auction term of the proposed ESP. In support of the base generation rates, AEP-Ohio witness Hamrock testifies that the implementation of a fixed base generation rate will shift the risk from customers to the Companies. Mr. Hamrock opines that the plan will allow for rate stability and predictability for customers, noting there are no variable rate mechanisms (AEP-Ohio Ex. 8 at 14). Further, Mr. Hamrock explains that AEP-Ohio's significant environmental compliance investments will not be associated with a rider designed to track those investments (*Id.*). In addition, Mr. Hamrock notes that AEP-Ohio will not have a nonbypassable rider for the recovery of plant closure costs. The Signatory Parties also point out that the establishment of fixed base generation rates is consistent with the state policy goals in Section 4928.02, Revised Code.

The Signatory Parties provide that the proposed base generation rates were established by determining the market-based price relationship for customer usage, and then total generation rates were subsequently designed to produce prices consistent with the Stipulation. In Mr. Roush's testimony, he asserts that the base generation prices in the Stipulation rationalize the rate relationships "based upon the manner in which the market would price such loads..." Further, Mr. Roush explains that the proposed generation rates not only allow for transition into market-designed rates, but also eliminate historical cross-subsidization among tariff classes (AEP-Ohio Ex. 2 at 4-6, 8-9, Tr. XIII at 2308).

In support of the base generation rates, the Companies compare the proposed base generation rates to FirstEnergy's generation service rates. Mr. Roush asserts that the proposed generation rates in the Stipulation are much more closely aligned with FirstEnergy's market based pricing rates than are AEP-Ohio's rates before the Stipulation. As the Stipulation will result in a competitive bid process being used to determine SSO rates in June 2015, the Companies emphasize the importance of adjusting its generation rates to create an efficient transition to market based pricing (AEP-Ohio Ex. 22 at 3).

IEU asserts there is no justification for the proposed base generation rate increases. In support of its assertion, IEU claims there is no cost basis for the increase, rather, the only justification the Signatory Parties provide is that the proposed generation rates would be similar to market rates. Further, IEU states that the Companies have made no efforts to establish a cost basis for an increase in rates and revenues, thus failing to show the rates are reasonably priced (IEU Br. at 35-37, citing Tr. I at 113-114).

OCC/APJN provide that the Signatory Parties have not met their burden of showing the proposed generation rates are reasonable, but rather have only shown that the proposed base generation rates in the Stipulation are lower than what was proposed in the original application (OCC/APJN Br. at 39, citing Grove City Ex. 1 at 2, OHA Ex. 1 at 2). In addition, OCC/APJN provide that not only are the rates unjustified, but they harm residential customers in that they increase rates for CSP customers by 5.68 percent for winter usage and 7.89 percent for summer usage, based on 1,000 kWh of usage per month, by 9.23 percent for OP customers (OCC/APJN Br. at 25 citing to Tr. I at 59-61).

FES witness Lesser argues that the base generation rates proposed by the Signatory Parties are an attempt to foreclose market competition by reducing allocated costs to large commercial and industrial customers who are more likely to switch to a CRES supplier, and increasing costs to residential customers who are less likely to switch (FES Ex. 2 at 39-40). While AEP-Ohio claims the proposed generation rates are market based, FES believes the proposed generation rates do not represent actual market prices (FES Br. at 114).

The Commission finds the proposed fixed base generation rates, as we modified in accordance with statutory requirements contained in Section 4928.143, Revised Code, by

cutting the proposed revenue increases in half to reflect annual average annual rates of $0.0227/kWh in January 2012, $0.0233/kWh in January 2013, and to $0.0241 for January 2014 are reasonable and do not violate any important regulatory principle or practice. The Commission has the authority to approve these modified automatic rate changes pursuant Section 4928.143(B)(2)(e), Revised Code, and believes the record demonstrates the automatic base generation rate increases are reasonable. The Non-Signatory Parties' arguments that the base generation increases lack justification are meritless, as there is not a statutory requirement nor is there a Commission mandate to require that the Companies conduct a cost of service study.

Furthermore, the automatic increases replace the provisions of the EICRR and are fully bypassable, which should promote competition in conformance with the state's policies set forth in Section 4928.02, Revised Code. We believe the proposed base generation rate increases will also ensure rate stability and certainty for customers throughout the transition period. In addition, OCC's concerns about harm to residential customers are meritless, as the Commission has reduced the automatic rate increases in the Stipulation half in order to meet the statutory requirements within Section 4928.143, Revised Code. Accordingly, based on our modifications to the base generation rates, as well as the elimination of historical subsidies and provisions of the EICRR, we find this section does not violate any important regulatory principle or practice.

4. Timber Road

The Signatory Parties provide that AEP-Ohio conducted a diligent and thorough RFP process to competitively bid and secure additional renewable resources. Due to AEP-Ohio's need for in-state renewables, AEP-Ohio witness Simmons explains that the Companies only considered bids for Ohio sited projects, and ultimately selected the proposal from Paulding, for its Timber Road wind farm. Specifically, AEP-Ohio witness Simmons explains that the REPA will supply a 99 MW portion of Timber Road's attributes for 20 years. AEP-Ohio witness Simmons testified that the REPA is necessary in order for the Companies to meet their increasing renewable energy benchmarks (AEP-Ohio Ex. 1 at 9-13).

The 20-year agreement, according the Signatory Parties, secures long-term financing, reduces up front costs, and allows for price certainty (*Id.*). While Paulding witness Irvin notes that the project is capital intensive, the fact that there are no fuel costs equates to no significant cost variables creating long-term risk for customers (Paulding Ex. 1 at 5). The Signatory Parties believe that its RFP process and 20-year term, as well as furthering the Companies' compliance with the renewable energy benchmarks, represents that the costs incurred are prudent (AEP-Ohio Br. at 61).

IEU asserts that the approval of up-front of costs associated with Timber Road violates Rule 4901-1-35-09(C), O.A.C., which requires that the Companies conduct an

annual review demonstrating the costs are prudently incurred. IEU claims that, as the rule requires an annual review, the Signatory Parties are essentially asking for a suspension of the rule without providing any support for such action (*Id.*). Thus, IEU believes Commission approval of this provision would be unreasonable and unlawful. (IEU Br. at 65.)

The Commission finds that the Timber Road REPA does not violate any regulatory principle or practice by allowing for approval of a long-term agreement. IEU-Ohio's claim that the long-term agreement be subject to annual prudence reviews is impractical and misapplies Rule 4901-35-09(C), O.A.C. Further, we find that this long-term agreement promotes diversity of supply, as is consistent with state policies set forth in Section 4928.02, Revised Code. Accordingly, the Commission finds that the Timber Road REPA does not violate any regulatory principle or practice.

5. Distribution Investment Rider

In support of the DIR, the Signatory Parties offer that an ESP may include charges relating to carrying costs, pursuant to Section 4928.143(B)(2)(d), Revised Code, which the Commission recognized in the Entry on Remand, for environmental carrying costs.[15] The Signatory Parties state that the DIR will enable AEP-Ohio to target infrastructure investment to improve reliability for customers (AEP-Ohio Ex. 19 at 3-4). In addition, the Signatory Parties contend that after the Commission examines an electric utility's reliability to ensure that the electric utility's customers and service expectations are aligned, an ESP may include cost recovery and a reasonable return on distribution infrastructure modernization, pursuant to Section 4928.143(B)(2)(h), Revised Code.

Witnesses for IEU and OCC testified that neither the Companies nor Staff examined the reliability of AEP-Ohio's distribution system as a part of the ESP 2 proceeding. IEU and OCC also claim the record lacks support that the alignment of the service expectations of AEP-Ohio's customers and the electric utility are sufficient to meet the requirements of Section 4928.143(B)(2)(h), Revised Code. (OCC Ex. 1 at 31, IEU Ex. 8 at 7, IEU Ex. 9A at 22.)

On rebuttal, AEP-Ohio and Staff offered testimony that the reliability of the Companies are under constant review by Staff through performance standards and compliance filings (AEP-Ohio Ex. 19 at 3, Staff Ex. 5 at 4). The Signatory Parties emphasize that the Commission is statutorily required to examine the utility's reliability. AEP-Ohio claims aging infrastructure is the primary cause of customer outages and reliability issues, and the current level of funding is insufficient to improve increasing failure rates. As part of the DIR, AEP-Ohio states it will analyze its pole inspection, underground cable diagnostics and detection for deteriorated distribution facilities and equipment to target infrastructure investments to improve the distribution system and reliability for customers

[15] In re AEP-Ohio, Remand Order at 13 (October 3, 2011).

(AEP-Ohio Ex. 19 at 4.; Staff Br. at 13-15; Signatory Parties Reply Br. at 43-44, Tr. XII at 2005-2006).

OCC/APJN, FES, and IEU oppose the adoption of the DIR as set forth in the Stipulation. The Non-Signatory Parties argue that there is potential for double recovery of capital investments, given that AEP-Ohio has a pending distribution rate case wherein the Companies have requested the opportunity to collect a return on incremental net plant-in-service post-2000 through the date certain, August 31, 2010 (OCC Ex. 1 at 30, FES Ex. 2 at 49). OCC/APJN contend that the DIR costs of $314 million over the term of the ESP is in excess of any cost-based analysis presented by the Companies in its pending distribution rate case. The Non-Signatory Parties believe that approving the DIR will result in unreasonable and excessive rate increases for customers in conflict with the state policy in Section 4928.02(A), Revised Code (OCC/APJN Br. at 54, IEU at 55-56; FES Br. at 33).

OCC/APJN and IEU emphasize that the Court has held that if a provision of an ESP does not fit within one of the enumerated categories listed in Section 4928.143(B)(2), Revised Code, it is not authorized by statute. Further, according to OCC/APJN, the Companies have failed to meet the requirements of Section 4928.143(B)(2)(h), Revised Code, as the Companies have not indicated any specific investments to maintain or improvements to reliability performance associated with the DIR in this case. IEU notes that Staff did not perform any analysis for this case regarding AEP-Ohio's distribution system reliability (Tr. IX at 1656-1657).

OCC/APJN recommends that the Commission reject the Staff and the Companies' use of customer reliability surveys to demonstrate the alignment of their expectations and compliance with the statutory requirements. OCC/APJN reason that based on the survey results for 2009, 2010, and 2011, the vast majority of residential and commercial customers surveyed, 64 percent, stated that their reliability needs over the next five years would either stay the same, decrease, or decrease significantly. IEU states that the surveys did not include any information regarding the expectations of the industrial class. OCC/APJN reason that the Companies have met the more stringent reliability standards in 2010, with $140 million included in current rates, along with $24 million per year approved in ESP I for vegetation management. Thus, OCC/APJN opine, the additional funding requested via the DIR is unnecessary and should be rejected by the Commission. IEU argues that the requirements set forth in Rule 4901:1-35-03(C)(9)(g), O.A.C., have not been met and, therefore, request that the DIR be rejected (OCC/APJN Br. at 42-56; IEU Br. at 52-55; FES Br. at 33).

According to OCC/APJN, the DIR is authorized pursuant to Section 4928.143(B)(2)(d), Revised Code, and, this permits the recovery of carrying cost for provisions that have the effect of stabilizing or providing certainty of retail electric service. OCC/APJN contend that the Companies have not met their burden of demonstrating that

the DIR carrying charges will provide certainty of service for the Companies and their customers (OCC/APJN Br. at 56-58).

IEU explains that the DIR carrying costs are excessive and unrelated to the Companies' risks, especially as the DIR is proposed to be a single-issue nonbypassable rider based on investments already made by the Companies. IEU argues that the carrying charge based on the weighted average cost of capital (WACC) is excessive in light of the fact that the DIR reduces the Companies' financial and business risk. IEU recommends that if the Commission approves the DIR, a carrying cost based on the cost of debt would be more commensurate with the Companies' risk including a lower equity component, if any, require that the Companies properly demonstrate and quantify distribution investments and to adjust DIR investment balances on which a utility earns a return to reflect accumulated deferred income taxes (ADIT) liabilities or assets (IEU Br. 56-58.)

AEP-Ohio admits that if the DIR is approved, a revenue credit in the distribution case would be appropriate such that only incremental distribution investments after the date certain would be excluded from the DIR cap. The Companies' support that the DIR does not violate any regulatory principle or practice, as it is the Companies intent, as supported by the Stipulation and testimony in the distribution rate case proceeding, to only recover the associated investment in one proceeding. The Signatory Parties reiterate that the Stipulation includes annual recovery limits on the DIR and a rate application stay-out provision such that the Companies can not file a distribution rate case to take effect prior to June 1, 2015. (Tr. XII 2055-56; Signatory Parties Reply Br. at 34-36).

The Commission recognizes that Section 4928.143(B)(2)(h), Revised Code, permits an ESP to include provisions regarding the utility's distribution service. These include single issue ratemaking or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives. A provision for distribution infrastructure and modernization incentives may, but need not, include a long-term energy delivery infrastructure modernization plan. We find that the DIR is an incentive ratemaking to accelerate recovery of the Companies' investment in distribution service. It is not and need not be a "long-term energy delivery infrastructure modernization plan." In deciding whether to approve an ESP that contains any provision for distribution service, Section 4928.143(B)(2)(h), Revised Code, directs the Commission, as part of its determination, to examine the reliability of the electric utility's distribution system and ensure that customers' and the electric utility's expectations are aligned and that the electric utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

AEP-Ohio claims Staff has confirmed, that in 2010, the Companies were in compliance with their CAIDI and SAFI performance standards established in the Reliability Standards Cases. As the Companies and Staff emphasized, Staff continuously

monitors each electric utility's distribution system reliability through service complaints, electric outage reports, and compliance with Rule 4901:1-10-10, O.A.C., among other provisions of Chapter 4901:1-10, O.A.C. The record supports that for 2011 to present, 20 percent of AEP-Ohio residential customers surveyed and 21 percent of commercial customers surveyed expected their future electric service reliability expectations to increase. The Commission has also been presented extensive testimony at the local public hearings that reliable electric service is crucial to attracting large commercial and industrial business to the state. Reliable service is also critical to the service satisfaction of residential customers.

The Commission finds that, upon examination of the reliability of the Companies' distribution system and upon consideration of the customers' and utility's expectations, the Companies are placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. Having made such a finding, the Commission approves the DIR as an appropriate incentive to accelerate recovery of the Companies' prudently incurred costs.

Nonetheless, Commission finds that granting such an incentive requires enhanced Commission oversight. We believe that it is detrimental to the state's economy to require the utility to be reactionary or allow the performance standards to take a negative turn before we encourage the electric utility to proactively and efficiently replace and modernize infrastructure and permit the recovery of prudently incurred costs. Companies are correct to aspire to move from a reactive to a proactive distribution service. Companies are directed to work with staff to develop a plan to emphasize proactive distribution maintenance that focus spending on where it will have the greatest impact on maintaining and improving reliability for customers. Accordingly, Companies shall work with Staff to prepare this plan by June 1, 2012. Further, Companies shall submit its plan for Commission review in a separate docket.

Finally, the Commission understands the concerns relating to the potential for double recovery through the DIR and the pending rate distribution case. However, the possibility of double recovery can best be addressed as an adjustment in the pending distribution rate case because double recovery will not occur unless and until the Commission approves the Companies application in the pending rate case. Accordingly, as that the matter will be addressed in the pending distribution rate case proceeding, the policy concerns are without merit in consideration of the Stipulation.

Accordingly, we find that approval of the DIR does not violate ay important regulatory principle or policies and therefore approve the DIR as proposed in the Stipulation and direct Staff to monitor, as part of the prudence review of an independent auditor for in-service net capital additions.

6. Competitive Bidding Process

AEP-Ohio witness LaCasse explained there would be two unique processes within the stakeholder process. The first would deal with issues relating to rate design, treatment of the GRR and EDU owned generation, as well as the procurement of renewables. The second process would relate to the procurement process and details in the SSO (AEP-Ohio Ex. 6 at 16-18).

There is no material opposition by any Non-Signatory Parties to the incorporation of a CBP as part of an auction-based SSO. However, FES asserts that, while there are clear benefits to the CBP, it creates an unnecessary delay, as there would not be any competitive market supply in Ohio until June 1, 2015. FES proclaims that there is no need to delay the process, as the record does not reflect any evidence that AEP-Ohio cannot hold a CBP for its load beginning in 2012. FES argues that AEP-Ohio's unjustified delay of an additional three and half years, in addition to a potential contingency in the auction process caused by the pool termination provision, violates state policy by preventing AEP-Ohio's customers from accessing the benefits of wholesale competition (FES Br. at 92-94, 150).

The Signatory Parties retort that FES fails to understand the need for a transition period to restructure AEP-Ohio's business model (Signatory Parties Reply Br. at 56-61). Exelon witness Dominguez explains that while he would have preferred an early auction date, it is not feasible for AEP-Ohio to have entered the PJM market, as the PJM auctions are held three years in advance of the delivery date of capacity, and thus while it would have been preferable for AEP-Ohio to participate in PJM's competitively bid auctions as opposed to its FRR plan, it cannot change what happened in the past (Exelon Ex. 1 at 3). AEP-Ohio witness Nelson notes that conducting an auction before corporate separation occurs may create financial exposure for the Companies by displacing cost recovery for generation assets that currently exist, and would remove the Companies generation from participating in the auction, as the post-separation generation affiliate would not yet own the assets to be able to support bids (AEP-Ohio Ex. 7 at 24).

After reviewing the record, the Commission finds that the Signatory Parties' CBP proposal contained within the Stipulation is consistent with state policy under Section 4928.02, Revised Code. The Commission believes that it is reasonable for AEP-Ohio to utilize a transition period in order to adapt its corporate structure to achieve an auction based SSO. However, the Commission notes that we reserve the right to modify and alter any feature of the CBP process for future auctions as the Commission deems necessary based upon our continuing review of the CBP process, including the reports on the auctions provided to the Commission by the third party bid manager, the Companies, and Staff. Further, with regard to the CBP process, the Commission may reject the results of the auction upon a recommendation from the third party bid manager that the auction violated the competitive bidding process rules. The Commission notes that this provision

does not circumscribe the authority which the Commission possesses to oversee the CBP process.

As we have already established in this opinion and order, in order to promote competition, AEP-Ohio should first divest its generation assets, begin to modify or terminate its membership in the AEP generation pool, and transition into PJM. While the Commission understands FES's interest in expediting the process, it is appropriate to allow AEP-Ohio the opportunity to change its corporate structure. However, to ensure a smooth transition to market based rates, we believe the Stipulation should be modified to require AEP-Ohio to file its next SSO application by June 1, 2014. Accordingly, the Signatory Parties' agreement in the Stipulation to establish a CBP under the timeframe set forth is appropriate and not inconsistent with state policy, nor does it violate any important regulatory principle or practice.

7. CRES Provider Information

The Signatory Parties opine that these improvements will promote competition in AEP-Ohio's service territory (Constellation Ex. 1 at 11, RESA Ex. 1 at 10). Constellation witness Fein states the provisions within the Stipulation will remove barriers to retail competition and facilitate the ability of CRES providers to provide service for retail customers (Constellation Ex. at 11). Further, the Signatory Parties provide that AEP-Ohio's 12-month minimum stay and switching fee cannot be classified as barriers to competition, as they were reflected in Commission approved tariffs. The Signatory Parties cite to Commission precedent, noting that the Commission has refused to establish a general prohibition of shopping rules (Signatory Parties Reply Br. at 61-62).

FES asserts that the Stipulation allows AEP-Ohio to maintain its barriers to competition until at least June 2015. FES witness Banks states that these minimum stay requirements will continue to make it difficult for customers to switch, and ultimately hinders competition (FES Ex. 1 at 53-54). Mr. Banks also explains that not only is AEP-Ohio's switching fee higher than any other Ohio EDU, but also that the Stipulation lacks any language to ensure that the switching fee is reduced or eliminated (*Id.*). FES also expresses concerns that AEP-Ohio does not offer rate ready consolidated billing, and does not propose to offer it in the Stipulation (*Id.* at 55-56).

The Commission takes concerns of anti-competitive behavior seriously, but finds that FES's arguments do not indicate any violation of Commission or state regulatory requirements. Regarding FES's concerns about the minimum stay requirements, we find that the proposed provisions in the Stipulation are not excessive when compared with those of other electric distribution utilities. *In re Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010) (granting application for electric security plan); *In re Duke Energy Ohio*, Case No. 08-920-EL-SSO, Opinion and Order (December 17, 2008)

(granting application for electric security plan). While the provisions providing for the removal of shopping barriers may not be to FES's liking, the Commission notes that they appear to be the result of good faith negotiations between the parties, and the compromise set forth within the Stipulation will promote competition in Ohio. Therefore, we find this provision to be reasonable.

8. Pool Modification and Termination

AEP-Ohio witness Nelson testifies that this provision in the Stipulation is necessary, as pool termination or modification and corporate separation are imperative when AEP-Ohio separates its generation function, and for AEP to conduct its auction based SSO (AEP-Ohio Ex. 7 at 23). Further, Mr. Nelson provides that an auction based SSO cannot be established as long as it owns generation assets and is a member within the AEP family generation pool (*Id.* at 24).

Mr. Nelson further testified that the PMR is reasonable in that it will be set an initial rate of zero, and cannot be triggered unless the impact of the pool modification/termination on AEP-Ohio exceeds $50 million prior to May 31, 2015. Further, Mr. Nelson explains that, as the Stipulation sets out, the Signatory Parties and any parties may oppose any such request for recovery of these costs, and whether AEP-Ohio can ever ultimately recover these costs is the subject of a future Commission proceeding, if necessary (AEP-Ohio Ex. 7 at 25). The Signatory Parties assert that Section 4928.143(B)(2)(d), Revised Code, supports the recovery of pool costs during the ESP, and notes that arguments to the contrary are not ripe and would be addressed accordingly should AEP-Ohio seek recovery any of pool modification impact (Signatory Parties Reply Br. at 55).

FES asserts that the PMR is unauthorized under Section 4928.143(B)(2), Revised Code, as it does not relate to any construction or work in process costs, environmental investments, or new generating facility surcharges. In addition, FES opines that the record lacks evidence indicating that the PMR will stabilize its retail electric rates or provide rate certainty. Therefore, FES concludes that as there is no statutory basis for the PMR (FES Br. at 131-135).

Similarly, IEU opposes the PMR, noting the Companies have failed to link it to any of the categories contained in Section 4928.143(B)(2), Revised Code. IEU expresses concerns that the PMR may lead to unintended consequences, noting that the Companies have not presented an estimate of the expected costs associated with the pool modification/termination (IEU Br. at 59, citing to Tr. Vol. V at 710). IEU also raises arguments that the consideration of the pool termination/modification costs in this proceeding is premature (*Id.* at 59).

Upon consideration of the evidence in the record, the Commission finds that the PMR should be approved pursuant to Section 4928.143(B), Revised Code. As such, the PMR placeholder mechanism at a zero rate level does not violate any regulatory principle or practice.

However, we believe that the language in the Stipulation regarding the PMR needs to be modified. The Stipulation states that if the impact of the pool modification or termination exceeds $50 million, AEP-Ohio may pursue cost recovery of the *entire* impact during the ESP term. For example, if costs of the pool modification impact were $55 million, the Stipulation, as proposed, would permit AEP-Ohio to request recovery of $55 million, not $5 million. The Stipulation, as proposed, appears to create a disincentive to AEP-Ohio to minimize the costs related to pool modification. Accordingly, we believe this section should be modified to permit AEP-Ohio to request cost recovery of potential pool modification or termination costs in excess of $50 million, as opposed to the entire pool modification or termination impact.

Accordingly, as modified, the Companies may file a request to recover costs of any pool modification or termination impact over $50 million. The Commission notes that in permitting the creation of the PMR, it is not authorizing the recovery of any costs for the Companies, but is allowing for the establishment of a placeholder mechanism, and, as the Signatory Parties correctly assert in the Stipulation and in their brief, any recovery under the PMR must be authorized by the Commission. If and when AEP-Ohio seeks recovery under the PMR, it will maintain the burden set forth in Section 4928.143, Revised Code. In addition, the Commission finds that in the event AEP-Ohio seeks recovery under the PMR, AEP-Ohio must first demonstrate the extent that the pool modification or termination benefitted the ratepayers and the extent that these costs and/or revenues should be allocated to Ohio ratepayers. Further, AEP-Ohio must demonstrate to the Commission that any recovery it seeks under the PMR is based upon costs which were prudently incurred and are reasonable.

9. Capacity Plan

OCC/APJN argue that the percentage of capacity set-aside at the RPM rate as proposed in the Stipulation, is insufficient, as the set aside for 2012 has already been surpassed. OCC/APJN, FES, and IEU claim the capacity charge of $255/MW-day will deter customers from shopping. (OCC/APJN Br. at 30; FES Ex. 1 at 10; IEU Ex. 9A at 9, 14, 17-18; AEP-Ohio Ex. 4 at 14; Tr. at 918-919.)

The Signatory Parties assert that these claims, overlook the potential headroom available to CRES providers to make an offer, and the ability to offer long-term contracts. The Signatory Parties note that at least one CRES provider is making competitive offers in the market based on the capacity price in the Stipulation. (Tr. IV at 544; Tr. at XI 1863, 1886-1887.)

(a) Capacity price

The bulk of the opposition to the capacity plan is in regard to the capacity price for all shopping above the designated set-aside percentages. FES argues that this Commission specifically adopted RPM pricing as the state compensation mechanism. In FES's opinion, capacity should always be priced at RPM, as it is economically efficient, avoids the distortion of incentives, encourages the development of new CRES providers, and does not give AEP-Ohio a competitive advantage. While FES acknowledges that AEP-Ohio can pursue, under Section 205 of the Federal Power Act, a change in the capacity compensation mechanism, FES reasons that PJM's Reliability Assurance Agreement (RAA) does not authorize AEP-Ohio, as an Fixed Resource Requirement (FRR) participant, to recover its full embedded cost. Rather, FES claims that capacity rates are usually set using the RPM auction process for PJM's capacity market subject to price caps based on what FES terms avoidable costs. FES acknowledges that under certain requirements an eligible load serving entity (LSE), including a CRES provider, may establish its own FRR plan but only after AEP-Ohio's FRR plan ends on May 31, 2015. Accordingly, FES reasons that the capacity price proposed in the Stipulation is unreasonable. FES estimates the RPM clearing price for June 2011-May 2012 to be approximately $116.16/MW-day; $16.52/MW-day for June 2012-May 2013; $27.73/MW-day for June 2013-May 2014; $125.94/MW-day for June 2014-May 2015. (FES Ex. 14 at 7-8, 11; FES Ex. 3 at 20-21; FES Br. at 43-57.)

FES contends that AEP-Ohio has historically charged CRES providers RPM pricing and, as part of the Stipulation, seeks to change the system to charge a capacity rate above RPM from January 1, 2012 through May 31, 2015. FES argues that this aspect of the Stipulation is anti-competitive and discriminatory against shopping customers, particularly since CRES providers no longer have the ability to make their own FRR election and supply their own capacity until June 1, 2015. CRES providers, according to FES, will be effectively precluded from offering savings to customers in AEP-Ohio's service territory. Further, FES asserts that AEP-Ohio is not entitled to its claimed full embedded costs nor does any capacity charge below AEP-Ohio's embedded cost mean a subsidy to CRES providers. (Tr. at 236, 539-540, 970-971, 982-983, 1043-1044; FES Ex. 14 at 17; FES Br.at 57-60.)

Finally, FES states that, even if cost based capacity pricing were permissible, AEP-Ohio has overstated its embedded capacity cost. FES reasons that under Amended Substitute Senate Bill No. 3 (SB 3) all generation plant investments after January 1, 2001 were to be recovered in the market. The transition period implemented in SB 3 to allow the electric utility to recover stranded costs has passed making AEP-Ohio's stranded generation costs no longer recoverable. Therefore, FES reasons that the Commission is prohibited from authorizing recovery of any transition revenues in accordance with Sections 4928.38 and 4928.141, Revised Code. FES notes that in the Companies' electric transition plan proceedings, CSP and OP waived the recovery of stranded generation costs

through generation transition costs (GTC) or other equivalent recovery mechanisms other than competitive market pricing.[16] FES also argues that AEP-Ohio's calculation of its capacity costs is overstated to the extent that it fails to adjust for that portion of its embedded capacity costs recovered from off-system sales. FES witness Lesser calculates AEP-Ohio's capacity costs to be $57.35/MW-day (on a combined company basis, $179.60/MW-day for CSP and ($44.88)/MW-day for OP) which eliminates post-2000 investments, eliminates depreciation of existing generation plant in service as of January 1, 1 2001, adjusting income tax and accounting for any investment tax credit to be received. However, FES witness Schnitzer admitted that if he accounted for deferred fuel cost in his computation his maximum capacity rate would increase to more than $200/MW-day (Tr. VII 1457-1459; FES Ex. 2 at 23-29; FES Br. at 68-69).

AEP-Ohio admits that, since it has been a part of PJM, the Companies have been an FRR entity. The Signatory Parties emphasize that, as an FRR entity, AEP-Ohio has three options for pricing capacity provided to CRES providers: (a) a retail state compensation mechanism and in the absence of such a mechanism; (b) default rates based on the PJM RPM capacity auction price; or (c) a method based on the FRR entity's costs or such other cost basis shown to be just and reasonable. Historically, AEP-Ohio has been compensated at the adjusted PJM RPM auction price. The Companies argue that with the increased level of shopping and the falling auction prices over the next several years, the Companies are prevented from recovering from CRES providers the Companies' capacity costs. The Companies reason that CRES providers are utilizing AEP-Ohio's capacity resources but are avoiding paying the embedded generation capacity costs on the Companies books. Utilizing a formula method accepted by FERC to establish wholesale prices, in the Capacity Charges Case, AEP-Ohio advocates a capacity charge of $355/MW-day, as a merged company, based on FERC form 1 data for 2010. (AEP-Ohio Ex. 3 at 8-10; Signatory Parties Br. at 87-95.)

According to the Signatory Parties, the proposed RPM price capacity set-asides preserve and expand retail shopping, and result in a fully competitive standard service offer earlier than could otherwise be achieved under a MRO. AEP-Ohio considers the availability of capacity at the RPM rate as part of the Stipulation to be significant concession. AEP-Ohio witness Nelson calculated that in total, considering the RPM priced capacity with the $255/MW-day capacity price under the Stipulation, the blended capacity price is $201/MW-day. The Signatory Parties note that, as FES witness Shanker admits, CRES providers who utilize AEP-Ohio's capacity avoid the risk of certain penalties and charges. The Signatory Parties argue that while FES witness Shanker acknowledges AEP-Ohio's position as a FRR entity and ultimately wants an auction-based SSO, as offered by the Stipulation, immediately. Further, the Signatory Parties argue that FES witness Shanker's rationale regarding capacity resources and pricing is flawed and ignores the

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16 *In re AEP-Ohio*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Order at 15-16, 18 (September 28, 2000).

prospect of encouraging investments in capacity resources in Ohio. Signatory Parties claim that FES witness Lesser's energy credit is grossly overstated and incorporates several mistakes, including a reduction to include actual expenditures for fuel, and an adjustment to reflect only that portion of the off-system sales margins retained by AEP-Ohio, inappropriately crediting OSS margins to capacity sales. Thus, the Signatory Parties endorse the energy credit calculation of the Companies of $7.73/MW-day for CSP, $9.94/MW-day for OP, and $17.58/MW-day as a merged company. (Signatory Parties Br. at 96- 107; AEP-Ohio Ex. 3 at Ex. KPD-3, KPD-4; AEP-Ohio Ex. 7 at 13-14; AEP-Ohio Ex. 21 at 6; Tr. VI at 1094-1097; Tr. VII at 1308-1311, 1368-1369.)

As to FES's and IEU's claims that the cost-based capacity charge conflict with the requirements of SB 3 and the Companies electric transition plan cases, the Signatory Parties answer that FES witness Lesser admitted that capacity charges are wholesale transactions and that any generation transition charges established in the ETP cases would have been retail charges. As such, the Signatory Parties argue that SB 3 and the ETP cases have no bearing on the wholesale capacity charge in the Stipulation consistent with Commission proceedings since the ETP cases. Further, the Signatory Parties note that AEP-Ohio, as an FRR, avoided the volatility and uncertainty of the RPM for capacity, which the Commission applauded at the time, since market prices were relatively high and reason that it would be unfair for the Commission to now find that AEP-Ohio's cost-based capacity charge is barred by virtue of the Non-Signatory Parties' out-of-date analysis under the previously-effective provisions of SB 3. (Tr. VII at 1338-1339; AEP-Ohio Ex. 21 at 2-3, 7-11; Signatory Parties Br. at 118-123.)

FES witness Schnitzer estimated a cost-based capacity price maximum of $162/MW-day for AEP-Ohio based on 2009 data (FES Ex. 3 at Ex. MMS-5). The Signatory Parties challenge this estimate arguing that, like the other calculations by the Non-Signatory Parties, this computation fails to account for deferred fuel costs, ignored the shared margins under the existing pool agreement between AEP-Ohio and its affiliates, and incorrectly credited AEP-Ohio with all the capacity payments from other pool members. Correcting for such oversights, the Signatory Parties assert that cost-based capacity would be $303/MW-day, which is more than the $255/MW-day in the Stipulation and supports the reasonableness of the capacity price in the Stipulation. (Signatory Parties Br. at 108-109; AEP-Ohio Ex. 21 at 4-6.)

The Signatory Parties advocate that as an FRR entity, AEP-Ohio has the option to seek cost-based capacity pricing. Further, RESA notes the Stipulation provides for a transition to a competitive wholesale procurement of capacity and energy faster than could be achieved under an MRO. RESA, Exelon, and Constellation emphasize that the Stipulation resolves the capacity pricing issue pending before the FERC and the Commission bringing regulatory certainty. Constellation reasons that the two-tiered pricing will not, as asserted by FES, eliminate "meaningful opportunities" for customers to

save money. Constellation admits that while the two-tiered capacity prices might tend to limit shopping to some extent, customers consider more than price when making a decision to shop including the length of the contract and other services or options offered by the CRES provider. Further, AEP-Ohio argues that the Commission's decision in ETP cases affected retail rates not wholesale rates and, therefore, the ETP case is of no effect on the wholesale rate to be charged to CRES providers. (RESA Br. at 5; Exelon Ex. 1 at 5; Constellation Ex. 1 at 8-9; AEP-Ohio Ex. 21 at 2; AEP-Ohio Ex. 7 at 3-7; Signatory Parties Br. at 118-121).

The Commission finds section IV.2.a of the Stipulation is reasonable. The Companies' commitment to Ohio shale gas development and use will support Ohio's resources and the state's economy. The Non-Signatory Parties did not offer any significant opposition to this provision of the Stipulation. Accordingly, we find that this aspect of the capacity plan is reasonable and does not violate any important regulatory principle or practice.

However, the Commission finds it necessary to modify the capacity set-asides during the term of this ESP in two respects: to accommodate governmental aggregation and to ensure a fair share of RPM capacity for the residential class. AEP-Ohio admits that most, if not all, of the capacity set-aside available for 2012 has already been assigned. Significant testimony was presented in the evidentiary hearing that the RPM set-asides for 2012, for the commercial and industrial classes had been surpassed such that the commercial and industrial customer classes were cutting in to the residential class pro-rata share of the RPM set-asides. Although currently shopping customers will not be adversely affected by the capacity set-aside provisions, the Commission is greatly concerned that governmental aggregations approved by communities across the state in the November 2011 election will be foreclosed from participation by the September 7, 2011 Stipulation. It is the state policy to ensure the availability of unbundled and comparable retail electric service to all customer classes, including residential customers, and governmental aggregation programs have proven to be the most likely means to get substantial numbers of residential customers to become the customer of a CRES provider. For these reasons, we find it necessary to modify the proposed Stipulation to adjust the RPM set-aside levels to accommodate the load of any community that approved a governmental aggregation program in the November 8, 2011, election to ensure that any customer located in a governmental aggregation community will qualify for the RPM set aside, so long as the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012. The RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP, to the extent, and only, if necessary. We note that customers in a non-governmental aggregation communities still have the ability to pursue a shopping rate within the RPM set aside to the extent it is available. (OCC Ex. 5; Tr. 111 at 331-340).

We also find it necessary to modify the Stipulation to ensure that residential customers are not foreclosed from their share of the capacity at RPM rates. To that end, the Commission notes that the Stipulation provides "any kWhs of RPM-priced capacity that have not been consumed by a customer class will be available for customers in any customer class based upon the priority as set forth in Appendix C." (Stipulation IV.2.b.3.) We are modifying the Stipulation such that RPM-priced capacity allocation determined for each customer class is only available for customers in the particular customer class, no RPM-priced capacity can be allocated to a customer in another customer class.

Further, we reject the Non-Signatory Parties' claims that SB 3 or the ETP cases foreclosed or conflicts with AEP-Ohio's ability to pursue cost-based capacity rates, at this time. We agree with the Signatory Parties that the ETP cases affected retail transactions rather than wholesale transactions. The Stipulation resolves pending litigation at the Federal Energy Regulatory Commission. Moreover, the Commission is persuaded that the $255/MW-day capacity price negotiated in the Stipulation is a reasonable compromise given the evidence presented in this proceeding. It is clear from FES's arguments challenging the interim capacity price included in the Stipulation that they endorse the continuation for all CRES capacity at the RPM price. We note that several of the Signatory Parties are CRES providers active in AEP-Ohio's service territory as is FES. Among the Signatory Parties, the CRES providers as well as other Signatory Parties endorse the two-tiered capacity pricing and the transition to market faster than could otherwise be accomplished as part of an MRO, as part of the rationale for entering into and supporting the Stipulation. Further, the record in this proceeding provides a range of possible capacity costs, from a low of $57.35/MW-day, according to FES, to a high of $355/MW-day, claimed by AEP-Ohio. However, one of the key aspects of the record evidence demonstrating the reasonableness of the $255/MW-day interim capacity charge of the Stipulation is the testimony of one of FES's witness. The witness specifically acknowledges that with an adjustment for deferred fuel his "maximum" capacity charge for AEP-Ohio would be more than $200/MW-day (Tr. VII at 1457-1459). Thus, the evidence presented at hearing demonstrates that the $255/MW-day interim capacity charge is within the range of reasonableness, particularly in light of the fact that it is one component of an extensive settlement package that includes components which benefit the public and could not otherwise be achieved in a fully litigated proceeding.

(b) Customer-sited combined heat and power

IEU argues that the Stipulation creates a placeholder rider that cannot be lawfully authorized as part of an ESP because the costs of customer-sited combined heat and power, waste energy recovery, and distributed energy resources are not mentioned within any of the nine provisions that may be addressed pursuant to Section 4928.143(B)(2), Revised Code. Additionally, IEU contends that the failure to attribute likely costs associated with these 350 MW of customer-sited resources unreasonably biases the ESP versus MRO analysis in favor of the proposed ESP.

Upon review of the record, the Commission agrees with the Signatory Parties that this provision of the Stipulation encourages the development and implementation of distributed and small generation facilities pursuant to the state policy directives set forth in Section 4928.02(C) and (K), Revised Code. Further, we find that IEU's reliance on Section 4928.143(B)(2), Revised Code, is misplaced. There is nothing which precludes recovery of generation costs through Section 4928.143(B)(1), Revised Code, provided such costs are necessary to serve SSO customers and that such costs are recovered solely from SSO customers. In any event, the Stipulation does not propose a recovery mechanism at this time. We also note that it is a benefit of the Stipulation that likely could not have resulted from litigation.

Accordingly, the Commission will approve this aspect of the Stipulation. We emphasize, however, that approving this aspect of the Stipulation is not authorizing the recovery of any costs for the Companies but is allowing for the establishment of a placeholder mechanism. The legal basis and any recovery must be established and authorized by the Commission in a separate proceeding. We find the concerns expressed by IEU are premature and may be addressed in the subsequent application proceeding for authority to established customer-sited distributed and small generation facilities. The Commission finds the establishment of the placeholder mechanism for customer-sited combined heat and power does not violate any important regulatory principles or practices and encourages the development of distributed generation in compliance with state policy.

10. Authority to Merge

The Companies assert that the merger will promote the public interest by eliminating the need for separate records, financial statements, tax returns, and other financial and regulatory reports, reduce administrative costs and fees, and reduce labor expense. Further, the Companies reason that the merger will not adversely rates as the pre-merger distribution rates, terms, and conditions of service presently in effect for each company will continue until otherwise ordered by the Commission. The Companies explain that the consolidation of transmission and generation rates, as of January 2012, will not adversely affect any customer class of either company. (AEP-Ohio Ex. 8 at 30-31.)

None of the commenters to the Merger Case, nor the Non-Signatory Parties to the Stipulation offer any substantive challenge to this provision of the Stipulation recommending approval of CSP and OP's authority to merge.

The Commission has considered the comments and reply comments in the Merger Case and the merger provision of the Stipulation. In consideration of the issues raised, the Commission concludes, pursuant to our general supervisory authority, that the merger will not adversely affect any customer class of CSP or OP within the Commission's

jurisdiction, and will promote the public interest. Accordingly, we find this provision of the Stipulation reasonable.

11. Phase-in Recovery Rider and Securitization

IEU raises four issues in regard to the phase-in recovery rider (PIRR). First, IEU states, as AEP-Ohio acknowledges, that the fuel deferral expense to be recovered through the PIRR as of December 31, 2011, has been accumulated by OP customers, and the fuel cost deferral accrued by CSP customers over the term of ESP 1 has been paid off (IEU Br. at 60). IEU argues that collecting the PIRR on a merged company basis (from both CSP and OP) is unjust and unreasonable, as it misaligns cost responsibility and benefits between OP and CSP customers (IEU Ex. 9A at 21-22).

The Companies and other Signatory Parties reiterate that with the adoption of the Stipulation as proposed, CSP will be merged with and into OP, to become a merged, single entity. The Signatory Parties reason that recovery of the PIRR from all customers of the merged entity is no different than the merger of the Monongahela Power Company into CSP, where the Litigation Termination Rider and the Power Acquisition Rider were charged to all post-merger CSP customers.[17] Further, the Companies offer that CSP customers will likely benefit from a reduced fuel adjustment clause (FAC) as a result of the merger which will offset any perceived burden imposed by the PIRR (AEP-Ohio Ex. 22 at 7).

As a part of the proposed Stipulation, the Commission recognizes that the Signatory Parties support the merger of CSP and OP. As such, OP, as the surviving entity, will succeed to the rights, privileges, and powers of CSP as well as be subject to all of the restrictions, disabilities, liabilities, and duties of CSP. It is not uncommon or unreasonable for the new entity to levelize the liabilities and benefits of the merger across all former CSP and OP customers.

Second, IEU argues that the PIRR fails to address the requirements of Section 4928.20(I), Revised Code, that requires nonbypassable charges arising from a phase-in deferral, and applicable to customers in governmental aggregation programs, be proportionate to the benefit customers derive from the phase-in (IEU Ex. 9A at 22).

IEU's claim that the PIRR violates Section 4928.20(I), Revised Code, is misdirected, according to the Signatory Parties. We agree. As the Signatory Parties argue, the phase-in is not part of this proceeding but was the order of the Commission in the Companies' previous ESP case. Therefore, the Commission reasons that Section 4928.144, Revised

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[17] See, *In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company*, Case No. 05-765-EL-UNC, Order at 18- 20 (November 9, 2005).

Code, is irrelevant to this ESP proceeding and the merger of CSP and OP is the salient issue.

Third, IEU claims the proposed PIRR is excessive, as the carrying charge is not reduced to a proper debt rate during the amortization period. IEU asserts that newly issued seven-year BBB rated corporate bonds are being issued at an interest rate of 3.75 percent. Thus, according to IEU, there is no valid reason to authorize the higher carrying charge rate recommended in the Stipulation (IEU Ex. 8 at 14-15).

The Companies offer that the carrying charge rate on deferred fuel expense was argued extensively by the parties to the ESP 1 case, and the Commission ultimately decided that the WACC, as proposed by the Companies, was reasonable. The Signatory Parties contend that the Companies concession to the 5.34 percent debt carrying charge as compared to the WACC, adds value to the Stipulation. As such, Signatory Parties ask the Commission to reject IEU's attempt to further compromise the positions reflected in the Stipulation.

The Commission agrees with the Signatory Parties that the carrying charge on the deferred fuel expenses accrued was established in the ESP 1 proceeding. Thus, the 5.34 percent debt carry charge represents a significant compromise by the Companies as a part of the Stipulation as a package which we will not revise based on IEU's claims that there exists a basis for arguing for a better deal.

Finally, IEU notes that the Stipulation provides that the "carrying charge will be calculated with no adjustment to the book balance as of year-end 2011." IEU argues that the carrying charge on the deferral balance should be net of accumulated deferred income taxes (ADIT) (IEU Ex. 8 at 14-15; IEU Ex. 4).

The Signatory Parties state that the order of the Commission in the ESP 1 case did not require that the deferral balance be adjusted for ADIT. As such, Signatory Parties ask the Commission to reject IEU's attempt to further compromise the positions reflected in the Stipulation.

The Commission considered similar arguments of the intervenors in AEP-Ohio's ESP 1 case. In the ESP 1 order, the Commission rejected request to calculate the deferrals net of taxes. We again reject the request in this case. As we concluded in ESP 1, if carrying charges on the FAC deferrals are calculated on a gross of tax rather than a net of tax basis, it violates the clear directive to the Commission. Section 4928.144, Revised Code, states that if a phase-in is ordered, the order shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount.

Finally, the Commission clarifies that prior to securitization of the PIRR, if the Commission or the Court issues a decision that impacts the amount of PIRR regulatory assets, AEP-Ohio shall appropriately adjust the book balance of the PIRR regulatory assets or use a mechanism to make the appropriate adjustment ordered by the Commission or the Court that prospectively adjusts rates through a credit or charge of the PIRR. With this clarification the Commission finds that the provisions of the Stipulation are reasonable and should be approved.

12. Generation Asset Divestiture

On September 30, 2011, AEP-Ohio filed an application to amend the corporate separation plan, in Case No. 11-5333-EL-UNC, *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan* (Corporate Separation Case). In addition, the Signatory Parties filed a joint motion to consolidate the amendment to its corporate separation plan in its Corporate Separation Case, with the cases in the Stipulation. On October 11, 2011, the Attorney Examiners denied the motion to consolidate, and provided that there needs to be additional review on the amendment to the corporate separation plan.

The Signatory Parties maintain that the Commission's approval of a full corporate separation by the Companies is a necessary requirement to several provisions within the Stipulation. Specifically, the Signatory Parties explain that the divesture of generation assets will lead AEP-Ohio to amend or dissolve AEP's generation pool. Therefore, the Signatory Parties assert that the approval of the corporate separation as proposed by the Stipulation is essential to begin the transition of AEP-Ohio into an auction-based SSO (Signatory Parties Br. at 69-70, Constellation Ex. 1 at 12).

While other parties may request extensive details of the process prior to approving the corporate separation, the Signatory Parties assert that the details are not necessary to proceed. In support of this assertion, the Signatory Parties maintain that, as the ESP rates are known and established through the transition period until 2015, the impact of generation divesture on ratepayers will be established between the requirements of Section 4928.17, Revised Code, and the adoption of the Stipulation. The Signatory Parties argue the Commission has the necessary information it needs to approve corporate separation under Section 4928.17, Revised Code. Therefore, the Signatory Parties' state, Commission approval of corporate separation does not violate any regulatory practice or principle (Signatory Parties Br. at 70-74).

IEU claims that approving the full legal corporate separation through the Stipulation would prevent any parties of interest in the corporate separation proceeding to file comments or objections to the plan, as is permitted by Section 4928.17(B), Revised Code. In addition, IEU expresses concerns that the Commission may inadvertently

"empower the Companies to fill in the blanks later," if it were to proceed without the necessary terms and conditions of the sale or transfer (IEU Br. at 66-68).

FES fears that the approval of the corporate separation as described in the Stipulation would give AEP-Ohio too much discretion in carrying out the corporate separation. Specifically, FES claims that the Stipulation would allow the Companies to make the corporate separation contingent on pool termination, and that there are no remedies available should AEP-Ohio choose not to meet the corporate separation deadlines set forth in Appendix B to the Stipulation. (FES Br. at 126, citing to Tr. VI at 977-978). FES concludes that too many questions remain in the corporate separation process, and to not fully investigate them would allow AEP-Ohio to structure the transition in its own manner (*Id.* at 126-27). FES witness Banks notes that the manner in which assets are transferred, such as the valuation and accounting procedures, could ultimately hurt competitive markets and customers if done improperly (FES Ex. 1 at 42).

Section 4928.17, Revised Code, provides that a utility shall not sell or transfer any generating asset it owns or partially owns without Commission approval. In considering approval of a corporate separation, the Commission must determine whether an application for corporate separation clearly sets forth the objective and purpose of the sale or transfer and the terms and conditions relating to the sale or transfer, how the sale or transfer will effect the proposed standard service offer proposed by the Companies, how the sale or transfer will affect the public interest, and evaluate the fair market value and book value of the property to be sold or transferred, pursuant to Rule 4901:1-37-09, O.A.C.

There is no dispute that the purpose and objective of the corporate separation provision is to provide competitive retail electric service through a fully separated affiliate of the utility in order to effectuate state policy within Section 4928.02, Revised Code. Nor is there any disagreement among either the Signatory Parties or Non-Signatory Parties that the corporate separation will benefit the public interest by contributing to the creation of a competitive marketplace in Ohio. Further, we understand that the transfer of generation assets will impact the standard service offer through the established rates being in effect through the transition period until 2015, when the generation rates will be determined by the competitive bidding process.

However, as Non-Signatory Parties have correctly asserted, the Commission still needs additional time to determine and understand the terms and conditions relating to the sale and/or transfer of the generation assets from the electric distribution utility to the AEP subsidiary. Further, in the Corporate Separation Case, the Companies requested a waiver of the requirement contained within Rule 4901:1-37-09, O.A.C., which provides that an application should provide the fair market value and book value of the assets to be sold or transferred. In addition, as IEU correctly asserted, Section 4928.17, Revised Code, requires due process for parties with real and substantial interests in the corporate

separation plan to provide any comments or objections regarding the corporate separation plan.

Accordingly, the Commission finds that, subject to our approval of the corporate separation plan, the Companies should divest its competitive generation assets from its noncompetitive electric distribution utility to its separate competitive retail generation subsidiary. Further, the Commission directs the Companies to notify PJM that it intends to enter PJM's auction process for the delivery year 2015-2016, as the Stipulation indicates. In addition, as there is still the need for additional analysis of the corporate separation plan's terms and conditions surrounding the sale, the Commission will continue to review the corporate separation plan's remaining issues in an expeditious manner in the Corporate Separation Case. Therefore, with these clarifications, the Commission finds that the corporate separation plan proposal within the Stipulation does not violate any regulatory principle or practice.

13. GridSMART

As part of the Stipulation AEP-Ohio agrees not to file a separate application to initiate Phase 2 of the gridSMART project until Phase 1 has been completed and reviewed. The Commission modifies paragraph IV.1.h of the Stipulation to enable AEP-Ohio to file further applications related to its gridSMART project prior to completion and review of Phase 1 of the project. We find that this provision of the Stipulation is unduly restrictive with respect to the further deployment of successful individual smart grid systems and technologies used in the project and for ensuring effective experimental design in testing consumer acceptance of pricing and program alternatives. Any expansion of the gridSMART project will be considered in future Commission proceedings in which Signatory Parties, and other interested stakeholders, may raise their concerns.

C. Does the Stipulation, Taken as a Package, Benefit Ratepayers and the Public Interest?

The Signatory Parties contend that the Stipulation benefits ratepayers and the public interest. In support, the Signatory Parties explain that AEP-Ohio agreed to drop seven rider proposals as part of the settlement (Signatory Parties Br. at 134). The Signatory Parties state that the agreement to drop the rider proposals transfers substantial risk from customers to AEP-Ohio, while providing rate certainty and stability for customers (*Id.* a 134, citing to AEP-Ohio Ex. 8 at 14-15).

In addition, the Signatory Parties point out that the Stipulation promotes state policy and retail competition by providing a clear path for customers to receive their electricity from fully competitive markets. This, the Signatory Parties claim, achieves a long term result benefiting both competitive markets and customers. Further, the Signatory Parties explain that the Stipulation's market transition process facilitates a

competitive market based SSO significantly faster than is possible under an MRO. The Signatory Parties note that the Stipulation moves the SSO process to competitive market in three and half years, while an MRO may take over six years (*Id.* at 133).

The Signatory Parties contend that AEP-Ohio's agreement to provide $3 million annually for the PWO initiative and $5 million annually for the OGF initiative benefits residential customers and promotes economic development. The Signatory Parties also note that AEP-Ohio has committed to provide reliability improvements to hospitals by working with OHA and providing investment commitments of up to $5 million per year throughout the term of the ESP (*Id.* at 133, OHA Ex. 1 at 2).

According to the Signatory Parties, the Stipulation's benefits also include AEP-Ohio's commitment to fleet transformation and fuel diversification, including an endeavor to enter into long-term shale gas contracts for AEP-Ohio generation plants. The Signatory Parties maintain that this will contribute to investment and employment growth in Ohio. The Signatory Parties also note the benefits associated with AEP-Ohio's development and commitment to customer-sited resources in exchange for incentive payments not only benefits AEP-Ohio's energy mandates, but also benefits customers (*Id.* 135).

Staff also provides that the Stipulation taken as a package benefits the public interest and ratepayers. In support of its conclusion, Staff points to the CBP process leading to a fully competitive SSO rate. Staff explains that the transition to full market pricing is not only materially quicker than would otherwise be possible, but also provides for stable and transparent pricing throughout the transition. Staff also asserts that AEP-Ohio's agreement to utilize a long term debt interest rate instead of a weighted average cost of capital will result in a substantially reduced carrying cost on the unamortized balance of deferred fuel cost. Further, Staff agrees that the fuel diversification utilizing shale gas, AEP-Ohio's development of alternate capacity resources, and commitment to work with OHA, PWO, and OGF are benefits resulting from the Stipulation. In addition, Staff finds that the fact that the Stipulation enhances the distribution system, provides rate stability, promotes economic development with commitments to low income residential customers, and promotes energy efficiency in one grouping is extremely advantageous, enhancing stability in the state despite the future market being unknown (Staff Br. at 6-8).

Constellation states that the transition to a competitive market will create a better means for setting the rates for SSO customers, and gives customers options in choosing their electric supply, which may include the opportunity to choose options that may be less costly that AEP-Ohio (Constellation Br. at 7). Further, Constellation expects the transition to competitive market to encourage investment in Ohio by retail and wholesale providers. Constellation notes that the Stipulation rejects AEP-Ohio's automatic recovery for new generation under the GRR, and now requires the Companies to show a need for new generation. (*Id.* at 12)RESA and Exelon also note that the transition to a competitive

market is beneficial for ratepayers and the public interest (RESA Br. at 9-13, Exelon Br. at 7-9).

OCC/APJN provide that while the Signatory Parties have quantified various parts of the Stipulation to indicate public benefits, its capacity set-aside plan would actually deter customers. In support of its assertion, OCC/APJN explain that the set-aside for 2012 has been surpassed, thus any new shopping would be priced at the higher capacity charge provided for in the Stipulation, making customers in a race to claim lower priced capacity (OCC/APJN at 30-31). OCC/APJN also respond to the Signatory Parties benefit of dropping seven rider proposals is illusory, as there was no guarantee that any of the riders would have ultimately been approved by the Commission, thus there is no real benefit from dropping them (OCC/APJN Reply Br. at 11).

IEU claims that the Stipulation does not advance the public interest or benefit consumers. IEU asserts that customers and CRES suppliers currently have access to capacity priced at RPM, thus the Stipulation's set capacity price takes away benefits that currently exist (IEU Br. at 27-28, citing IEU Ex. 9A at 44-49). Further, IEU opines that the benefits of the CBP may never fully occur, as the Stipulation does not require the Companies' next ESP application to include a CBP, and no certainty the Stipulation will result in a full transition to a competitive market (*Id.* at 29). IEU also notes that it is speculative to consider a potential shale gas generating facility as a benefit (IEU- Reply Br. at 17).

FES states that the transition to a competitive market is not beneficial to the public interest because it delays competition at least three and a half years (FES Br. at 93-94). FES asserts that the proposed capacity caps contained within the Stipulation would t harm customers, as it would not allow for CRES providers to provide customers with opportunities to shop at prices lower than the Companies SSO (*Id.* at 95-100). FES disagrees that the Stipulation promotes economic development, and states it would actually harm customers by destroying jobs in Ohio (*Id.* at 123 citing to FES Ex. 2 at 61-62). In addition, FES claims the proposed benefits associated with PWO and OGF are contingent on the Companies achieving a ten percent return on equity, and thus uncertain and not a benefit (FES Reply Br. at 28).

The Commission finds that, the Stipulation, as modified, advances the public interest and will benefit ratepayers. The transition to competitive markets in just three and a half years, as opposed to over five years, is beneficial to ratepayers because customers will be able to shop for electric suppliers that may have lower rates than AEP-Ohio. Further, while the Commission notes that market is subject to fluctuations and may be at times unpredictable, the rate design, as modified by the Commission in previous sections, enable for a smooth transition to the market by providing not only reasonable and transparent rates, but also by allowing for rate certainty and stability such that customers

know what to expect. Also, the Commission notes that this Stipulation's removal of shopping barriers will not only allow CRES providers to benefit by easier access to customers, but customers potentially benefit from rates lower than the standard service offer.

While, as we stated earlier in this opinion and order, we understand that FES wants this transition to competitive markets to occur as soon as possible, we firmly believe that transition plan as set forth by the Stipulation and modified by this opinion and order, will achieve the end results in a much faster manner than was otherwise possible through an MRO. To the contrary, were we to adopt FES's suggestion to reject this Stipulation in its entirety, the transition to be market would inevitably be longer than the time frame the Stipulation sets forth.

Further, we believe the Stipulation, as modified, will also enhance Ohio's economy and promote economic development opportunities in AEP-Ohio's service region. As discussed above, rate stability and certainty, which is achieved through mechanisms such as the LFP and MTR, will allow for AEP-Ohio's industrial and commercial customers who have been hardest hit by the economic downturn to receive incentives and discounts on their peak loads, and will ensure that when the transition to market is complete, these customers will be less likely to face rate shock. Further, if there is an established need for additional generation in the future, the GRR provides a mechanism to enable the Commission to allow for the construction of generation facilities, while committing to the diversity of state supply, as is consistent with Section 4928.02, Revised Code. In addition, AEP-Ohio's agreement to provide annual contribution of $3 million and $5 million to PWO and OGF, respectively, are beneficial to low income, residential customers, and will aid in economic development by enhancing economic stability for the Companies industrial customers. Further, to ensure these provisions are not speculative, we find it necessary to modify the Stipulation and remove the contingency on the Companies achieving a ten percent return on equity. We find this modification furthers the public interest.

In addition, we note that OCC/APJN's concerns relating to shopping capacity caps were appropriately addressed in the Commission's modification to the capacity case, which addressed these public interest concerns by modifying the Stipulation to include governmental aggregation ballots that passed this November. Moreover, the Stipulation provides the Commission with flexibility to order recovery under the GRR or PMR only if the Commission determines that such recovery is necessary. The testimony in the record also indicates the Stipulation promotes energy efficiency programs and renewable energy resource development. We note that while the Stipulation does not state whether AEP-Ohio's next application will include a CBP, the Commission expects a CBP provision will be included in AEP-Ohio's next application.

In addition, the modifications the Commission has made to the Stipulation further benefit the ratepayers and public interest. First, the automatic base generation rate increases have been lowered to half of what the Stipulation originally proposed. This will benefit ratepayers by having less significantly lower rate increases, while still allowing for a smooth transition to competitive market pricing in 2015. Further, the modification of the capacity plan allows for all of the communities and municipalities that recently passed governmental aggregation initiatives this November to take advantage of CRES suppliers' offers that may be lower than what AEP-Ohio is offering to its customers. The Commission's modification to the Stipulation which extends the credit offered to AEP-Ohio's GS-2 customers to $10/MWh for the first 2,000,000 MWh of usage per calendar year will ensure GS-2 customers are not closed out of the incentive, and will provide the opportunity for new customers in AEP-Ohio's territory to take advantage of the incentive. Further, any unused megawatt hours will be rolled over to the next calendar year.

Finally, in our modifications to the corporate separation plan for the Companies, we believe that a balance was struck as the Commission allows for the process to move forward to ensure no delay in AEP-Ohio's corporate transition, while ensuring there is opportunity for interested parties to provide comments and suggestions to assure the corporate separation plan's details are implemented in a manner that will be in the public and ratepayers best interests. Accordingly, we find that the Stipulation, as modified, benefits the public interest.

V. CONCLUSION

As a result of the Commission's adoption of the Stipulation filed in these matters, the stay of the inter-related cases addressed in the Stipulation shall be continued until the Commission specifically orders otherwise or there is a final non-appealable order in the case on the Stipulation.

Furthermore, the Commission finds that the Companies should file revised final tariffs consistent with this order by December 23, 2011. In light of the short timeframe remaining before these tariffs by necessity must go into effect, the Commission finds that the revised final tariffs shall be approved effective January 1, 2012, subject to final review by the Commission.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, the companies are subject to the jurisdiction of this Commission.

(2) On January 27, 2011, CSP and OP filed applications for an SSO in accordance with Section 4928.141, Revised Code.

(3) On March 8, 2011, a technical conference was held regarding AEP-Ohio's applications.

(4) Pursuant to published notice, public hearings were held in Canton, Lima, Marietta, and Columbus, in which a total of 61 witnesses offered testimony.

(5) On July 6, 2011 and August 9, 2011, prehearing conferences were held in these matters.

(6) The following parties filed for and were granted intervention in AEP-Ohio's ESP 2 proceeding: IEU, Duke Retail, OEG, OHA, OCC, OPAE, Kroger, FES, Paulding, APJN, OMA-EG, AEP Retail, DWEA, P3, Constellation, Compete, NRDC, Sierra Club, Hilliard, RESA, Exelon, Grove City, AICUO, Wal-Mart, Dominion Retail, ELPC, OEC, Ormet, and Enernoc.

(7) On September 7, 2011, a Stipulation was filed in these cases. The Stipulation was signed by AEP-Ohio, Staff, OEG, Constellation, OHA, OMAEG, Kroger, Hilliard, Grove City, AICUO, Exelon, Duke Retail, AEP Retail, Wal-Mart, RESA, Paulding, OEC, ELPC, Enernoc, NRDC, and P3.

(8) On September 19, 2011, the Companies held a public presentation before the Commission on the proposed Stipulation and Recommendation.

(9) The evidentiary hearing on the Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(10) Briefs and reply briefs were filed on November 10, 2011, and November 18, 2011, respectively.

(11) The Stipulation presents an ESP pursuant to Section 4928.143, Revised Code, which authorizes the electric utilities to file an ESP as their SSO.

(12) The Commission finds that the Stipulation, as modified, meets the three criteria for adoption of Stipulations, is reasonable, and should be adopted.

(13) The proposed ESP, as modified by this opinion and order, including its pricing and all other terms and conditions is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VII. ORDER:

It is, therefore,

ORDERED, That the Stipulation, as modified by the Commission, be adopted and approved. It is, further,

ORDERED, That DWEA's request to withdraw from AEP-Ohio's ESP 2 and OPAE's request to withdraw from the consolidated Stipulation proceedings are granted. It is, further,

ORDRED, That IEU's motion to dismiss the Stipulation is denied. It is, further,

ORDERED, That the Stipulation is admitted into the record evidence. It is, further,

ORDERED, That IGS's interlocutory appeal for intervention is denied. It is, further,

ORDERED, That FES's and AEP-Ohio's motion for a protective order is granted for 18 months from the date of this Order. It is, further,

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

ORDERED, That FES's request to strike a portion of Staff's brief is granted. It is, further,

ORDERED, That the Companies shall file revised final tariffs consistent with this order by December 23, 2011, and that the revised final tariffs shall be approved to be effective January 1, 2012, subject to final review by the Commission. The new tariffs shall be effective for bills rendered on or after the effective date. It is, further,

ORDERED, That the Companies file in final form four complete copies of tariffs consistent with this Opinion and Order. One copy shall be filed with this case docket, one shall be filed with each company's TRF docket, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. The Companies shall also update their respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

ORDERED, That the Companies shall notify their customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date. A copy of this notice shall be submitted to the Commission's Service Monitoring and Enforcement Department at least 10 days prior to its distribution to customers. 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

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

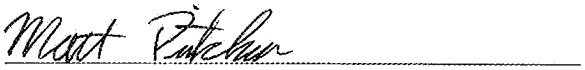
GNS/JJT/vrm

Entered in the Journal
DEC 14 2011

Betty McCauley
Secretary

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Appendix of Appellant/Cross-Appellee Industrial Energy Users-Ohio, Volume 1 of 2,* was served upon the parties of record this 15th day of July 2013 *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.



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