ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of The Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143 Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Supreme Court Case No. 13-0521
In the Matter of the Application of Columbus Southern Power Company and Ohio Power company for Approval of Certain Accounting Authority.	))))	Third Appeal from the Public Utilities Commission of Ohio PUCO Case Nos. 11-346-EL-SSO, 11-348-EL-SSO; 11-349-EL-AAM, and 11-350-EL-AAM.

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

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

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OPINION:

I. HISTORY OF THE PROCEEDINGS

A. First 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. The ESP 1 Order 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. 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 incurred after January 1, 2009, on past environmental investments (2001-2008) that were not previously reflected in the Companies' existing rates prior to the ESP 1 Order. In addition, the Commission found that the provider of last resort (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 provider of last resort (POLR_ charges authorized in the ESP Order and file revised tariffs consistent with the order on remand.

B. Initial Proposed 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.

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),[1] 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),[2] PJM Power Providers Group (P3), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

1 Subsequently, OPAE filed a motion to withdraw from the ESP 2 proceedings and the request granted in the Commission's December 14, 2011 Order.

2 On August 4, 2011, DWEA filed a motion to withdraw from the ESP 2 proceedings. DWEA's request to withdraw was granted in the December 14, 2011 Order.

(Constellation), COMPETE Coalition (Compete), Natural Resources Defense Council (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).

On September 7, 2011, numerous parties (Signatory Parties) to the ESP 2 proceedings filed a Joint Stipulation and Recommendation (Stipulation). The Stipulation proposed to resolve the ESP 2 cases as well as a number of other related AEP-Ohio matters pending before the Commission.[3] The evidentiary hearing in the ESP 2 cases was consolidated with the related proceedings for the sole purpose of considering the Stipulation. On December 14, 2011, the Commission issued its Opinion and Order, concluding that the Stipulation, as modified by the order, should be adopted and approved. As part of the December 14, 2011, Order, the Commission approved the merger of CSP with and into OP, with OP as the surviving entity.[4]

Several applications for rehearing of the Commission's December 14, 2011, Order in the ESP 2 and consolidated cases were filed. On February 23, 2012, the Commission issued its Entry on Rehearing finding that the Stipulation, as a package, did not benefit ratepayers and was not in the public interest and, thus, did not satisfy the three-part test for the consideration of stipulations. AEP-Ohio was directed to provide notice to the Commission within 30 days whether it intended to modify or withdraw its ESP.

C. Pending Modified Electric Security Plan

On March 30, 2012, AEP-Ohio filed a modified ESP (modified ESP) for the Commission's consideration. As proposed, the modified ESP would commence June 1, 2012, and continue through May 31, 2015. As proposed in the application, the Company states for all customer classes, customers in the CSP rate zone will experience, on average, an increase of two percent annually and customers in the OP rate zone will experience, on average, an increase of four percent annually. The modified ESP proposes the recovery of other costs through riders during the term of the electric security plan. In addition, the

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3 Including 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 OP in Case No. 10-2376-EL-UNC (Merger Case); the Commission review of the state compensation mechanism for the capacity charge to be assessed on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity 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 (Phase-in Recovery Cases).

4 By entry issued on March 7, 2012, the Commission again approved and confirmed the merger of CSP into OP, effective December 31, 2011, in the Merger Case.

modified ESP contains provisions addressing distribution service, economic development, alternative energy resource requirements, and energy efficiency requirements.

The modified ESP also sets forth that AEP-Ohio will begin an energy auction for 100 percent of its SSO load beginning in 2015, with full delivery and pricing through a competitive auction process for AEP-Ohio's SSO customers beginning in June 2015. Beginning six months after the final order in the modified ESP case, the application states AEP-Ohio will begin conducting energy auctions for five percent of the SSO load. In addition, the modified ESP provides for the elimination of American Electric Power Corporation's East Interconnection Pool Agreement and describes the plan for corporate separation of AEP-Ohio's generation assets from its distribution and transmission assets.

In addition to the parties previously granted intervention in this matter, following AEP-Ohio's submission of its modified ESP, the following parties, were granted intervention on April 26, 2012: Interstate Gas Supply, Inc. (IGS); The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, Ohio Schools); Ohio Farm Bureau Federation; Ohio Restaurant Association; Duke Energy Ohio, Inc. (Duke); Duke Energy Commercial Asset Management Inc. (DECAM); Direct Energy Services, LLC and Direct Energy Business, LLC (Direct); The Ohio Automobile Dealers Association (OADA); The Dayton Power and Light Company; The Ohio Chapter of the National Federation of Independent Business (NFIB); Ohio Construction Materials Coalition; Council of Smaller Enterprises; Border Energy Electric Services, Inc.; University of Toledo Innovation Enterprises Corporation; Summit Ethanol, LLC d/b/a POET Biorefining-Leipsic and Fostoria Ethanol, LLC d/b/a POET Biorefining-Fostoria (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; IBEW Local Union 1466 (IBEW); city of Hillsboro, Ohio; and CPV Power Development, Inc.

D. Summary of the Hearings on Modified Plan

1. Local Public Hearings

Four local public hearings were held in order to allow AEP-Ohio's customers the opportunity to express their opinions regarding the issues raised within the modified application. Public hearings were held in Canton, Columbus, Chillicothe, and Lima. At the local hearings, a total of 67 witnesses[5] offered testimony: 17 witnesses in Canton, 31 witnesses in Columbus, 10 witnesses in Chillicothe, and nine witnesses in Lima. In addition to the public testimony, numerous letters were filed in the docket regarding the proposed ESP applications.

[5] One witness, Doug Leuthold, testified at both the Columbus and Lima public hearings.

At each of the public hearings, numerous witnesses testified in support of AEP-Ohio's modified ESP. Specifically, many witnesses testified on behalf of community groups and non-profit organizations that praised AEP-Ohio's charitable support to their organizations. Witnesses that testified in favor of the modified ESP also noted that AEP-Ohio maintains a positive corporate presence and promotes economic development endeavors throughout its service territory. Members of local unions testified in support of AEP-Ohio's proposal, explaining it would not only allow AEP-Ohio to retain jobs, but also create new jobs as AEP-Ohio continues to expand its infrastructure throughout the region.

Several residential customers testified at the public hearings in opposition to AEP-Ohio's modified ESP, noting an increase in customer rates would be burdensome in light of the current economic recession. Many of these witnesses pointed out that low-income and fixed-income residential customers would be particularly vulnerable to any rate increases. Several witnesses also argued that the proposed application might limit customers' ability to shop for a CRES supplier.

In addition, many witnesses testified on behalf of small business and commercial customers. These witnesses argued the proposed rate increases would be burdensome on small businesses who cannot take on any electric rate increases without either laying off employees or passing costs on to customers. Representatives on behalf of school districts also testified that the modified ESP could create a financial strain on schools throughout AEP-Ohio's service territory.

2. Evidentiary Hearing

The evidentiary hearing commenced on May 17, 2012. Twelve witnesses testified on behalf of AEP-Ohio, 10 witnesses on behalf of the Staff, and 54 witnesses offered testimony on behalf of various interveners to the cases. In addition, AEP-Ohio offered three witnesses on rebuttal. The evidentiary hearing concluded on June 15, 2012. Initial briefs and reply briefs were due June 29, 2012, and July 9, 2012, respectively. For those parties that filed a brief or reply brief addressing select issues, oral arguments were held before the Commission on July 13, 2012.

E. Procedural Matters

1. Motions to Withdraw

On May 4, 2012, the city of Hilliard filed a notice requesting to withdraw as an intervenor from the modified ESP cases. Also on May 4, 2012, IBEW filed a notice stating that it intends to withdraw as an intervenor in these proceedings. The Commission finds IBEW's and Hilliard's requests to withdraw reasonable and should be granted.

2. Motions for a Protective Order

On May 2, 2012, AEP-Ohio filed a motion for a protective order, seeking protective treatment of supplemental testimony and corresponding exhibits of AEP-Ohio witness Nelson containing confidential and proprietary information relating to the Turning Point Solar project (Turning Point). On May 4, 2012, OMAEG filed a motion for a protective order relating to proprietary business information of OSCO Industries, Summitville Tiles, Belden Brick, Whirlpool Corporation, Lima Refining, and AMG Vanadium. Also, on May 4, 2012, IEU filed a motion for a protective order seeking to protect confidential and proprietary information contained within witness Kevin Murray's testimony. FES filed a motion for protective treatment on May 4, 2012, for confidential items contained in attachments to witness Jonathan Lesser's testimony. In addition, Exelon filed a motion for protective order seeking protection of confidential and proprietary information contained within witness Fein's direct testimony. On May 11, 2012, AEP-Ohio filed an additional motion for protective order to support the protection of confidential AEP-Ohio information contained within IEU witness Murray, FES witness Lesser, and Exelon witness Fein's testimony. Finally, on the record in these proceedings May 17, 2012, AEP-Ohio also sought the continuation of protective treatment of exhibits attached to AEP-Ohio witness Jay Godfrey, as previously set forth in AEP-Ohio's July 1, 2011, motion for a protective order (Tr. at 24).

At the evidentiary hearing on May 17, 2012, the attorney examiners granted the motions for protective order, finding the information specified within the parties' motions constitutes confidential, proprietary, and trade secret information, and meets the requirements contained within Rule 4901-1-24, Ohio Administrative Code (O.A.C.) (*Id.* at 23-24). Rule 4901:1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders prohibiting public disclosure pursuant to Rule 4901:1-24(D), O.A.C., shall automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this order, until February 8, 2014. Until that date, the Docketing Division should maintain, under seal, the conditional diagrams, filed under seal. Rule 4901:1-24(F), O.A.C., requires any party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to the parties.

In addition, on June 29, 2012, IEU and Ormet filed motions for protective order regarding items contained within their initial briefs. Specifically, both the information for which IEU and Ormet's are seeking confidential treatment was already determined to be confidential in the evidentiary hearing and was discussed in a closed record. On July 5, 2012, AEP-Ohio filed a motion for protective order over the items contained within Ormet and IEU's briefs, noting that it contains proprietary and trade secret information. On July 9, Ormet filed an additional motion for protective order for the same information, which it also included in its reply brief filed on July 9, 2012. Similarly, AEP-Ohio filed a motion for protective order on July 12, 2012, in support of Ormet's motion, as it contains AEP-Ohio's confidential trade secret information. As the attorney examiners previously found the information contained within the IEU and Ormet's initial briefs and Ormet's reply brief was confidential in the evidentiary hearing, we affirm this decision and find that confidential treatment shall be afforded for a period ending 18 months from the date of this order, until February 8, 2014.

3. <u>Requests for Review of Procedural Rulings</u>

IEU argues that the record improperly includes evidence of stipulations as precedent. Specifically, IEU argues that several witnesses relied on Duke Energy-Ohio's ESP to indicate that certain proposed riders were appropriate. IEU also points out that a witness relied on AEP-Ohio's distribution rate case stipulation as evidence of AEP-Ohio's capital structure. IEU claims that these stipulations expressly state that no party or Commission order may cite to a stipulation as precedent, and accordingly, IEU requests that the references to stipulations be struck.

The Commission finds that IEU's request to strike portions of the record should be denied. We acknowledge that individual components agreed to by parties in one proceeding should not be binding on the parties in other proceedings, but we find that references to other stipulations in this proceeding were limited in scope and did not create any prejudicial impact on parties that signed the stipulations. Consistent with our Finding and Order in Case No. 11-5333-EL-UNC, we also note that, while parties may agree not to be bound by the provisions contained within a stipulation, these limitations do not extend to the Commission.

In addition, IEU claims the attorney examiners improperly denied IEU's motions to compel discovery. In its motions to compel discovery, IEU sought information related to AEP-Ohio's forecasts of the RPM price for capacity, which IEU alleges would have provided information relating to the transfer of AEP-Ohio's Amos and Mitchell generating units.

The Commission finds the attorney examiners' denials of IEU's motions to compel discovery were proper and should be upheld. As noted in AEP-Ohio's memorandum contra the motion to compel, the information IEU sought relates to AEP-Ohio forecasts beyond the period of this modified ESP. As these proceedings relate to the appropriateness of AEP-Ohio's modified ESP, we find that any forecasts beyond the terms contained within AEP-Ohio's application are irrelevant and unlikely to lead to discoverable information. Accordingly, the attorney examiners' ruling is affirmed.

On July 13, 2012, OCC filed a motion to strike four specific portions of AEP-Ohio's reply brief at pages 29-30, 33-34, 68-69, 97-99, including footnotes, and attachments A and

B, as OCC asserts the information is not based on the record in the modified ESP proceeding but reflects the Commission's Order issued in the Capacity Case on July 2, 2012. OCC submits that the Commission has previously recognized that "it is improper to rely on claims in the brief that are unsupported by evidence within the record." In this instance, OCC points out that AEP-Ohio attached to its reply brief, documents that were not part of the record evidence or designated late-filed exhibits, a statement by Standard and Poor's (Attachment A) and the Company's recalculation of its ESP/MRO test (Attachment B) based on the Commission's decision in the Capacity Case. Since neither document is part of the modified ESP record evidence, OCC reasons that the attachments are hearsay which are not excused by any exception to the hearsay rule. OCC also notes that the reply brief includes discussion of recent storms in the Midwest and the East Coast, and there is nothing in the record regarding the strength of the winds or the ability of the Company's system to withstand hurricane force winds. Furthermore, neither the attachments nor AEP-Ohio's assertions was subjected to cross-examination by the parties nor the parties afforded an opportunity to rebut the associated arguments of the Company. For these reasons, OCC requests that Attachments A and B and the specified portions of the reply brief be stricken.

In its memorandum contra, AEP-Ohio asserts that discussion of matters related to the Commission's Capacity Case decision were appropriate. AEP-Ohio notes that it is fair to rely on a Commission opinion and order and reasonable to consider the impact of the Capacity Case on these proceedings, as evidenced by Commission questions during the oral arguments held on July 13, 2012. In addition, AEP-Ohio points out that several parties' reply briefs also included significant discussion of the impact of the Capacity Case on the modified ESP. Similarly, AEP-Ohio notes that the attachments indicate the financial impact of the Capacity Case on AEP-Ohio, and that the items are consistent with the testimony of AEP-Ohio witness Hawkins. Finally, AEP-Ohio provides that its references to major storms that occurred this summer relate to customer expectations and AEP-Ohio's need for the DIR.

The Commission finds that OCC's motion to strike portions of AEP-Ohio's reply brief should be denied. The Company's reply brief reports the impact of the Commission's Order in the Capacity Case based on subject matters and information subjected to extensive cross-examination by the parties in the course of this proceeding. Furthermore, several of the parties to this proceeding discuss in their respective reply briefs the Order in the Capacity Case. For these reasons, we conclude that it would be improper to strike the portions of AEP-Ohio's reply brief, including Attachment B, which reflect AEP-Ohio's interpretation of the Commission Capacity Order as requested by OCC. We, likewise, deny OCC's request to strike the Company's reference to recent storms, where the Company offered support for its position on customer reliability expectations. Customer service reliability was an issue raised and discussed by AEP-Ohio as well as OCC. However, Attachment A to the Company's reply brief is a July 2, 2012 statement by

Standard & Poor's regarding the effect of the Commission's Capacity Charge Order, and should be stricken. We find that the Company's Attachment A is not part of the record and should not be considered by the Commission in this proceeding.

On July 20, 2012, OCC/APJN filed a motion to take administrative notice of several items contained within the record of the Capacity Case. Specifically, OCC/APJN seek administrative notice of pages 3, 9, and 12 of the direct testimony of AEP-Ohio witness Munczinski, pages 19-20 of the rebuttal testimony of AEP-Ohio witness Allen, pages 304, 348-350, and 815 of the hearing transcripts, and AEP-Ohio's post-hearing initial and reply briefs. OCC/APJN opine that the record should be expanded to include these materials in order to have a more thorough record on issues pertaining to customer rates. Further, OCC/APJN state that no parties would be prejudiced as parties, particularly those involved in the Capacity Case, who had opportunities to explain and rebut these items.

AEP-Ohio filed a memorandum contra OCC/APJN's motion on July 24, 2012. AEP-Ohio argues that OCC/APJN improperly seeks to add documents into the record at this late stage, is not only inappropriate, but also unnecessary as there are no further actions to these proceedings except the Commission opinion and order and rehearing. AEP-Ohio notes the Commission has broad discretion in handling its proceedings, but points out that the small subset of information could have a prejudicial effect to parties, and due process would require that other parties be permitted to add other items to the record. In addition, AEP-Ohio explains that OCC/APJN had the opportunity in the ESP proceedings to further explore areas of the Capacity Case that were related to parts of the modified ESP.

On August 6, 2012, FES also filed a memorandum contra OCC/APJN's motion. On August 7, 2012, OCC/APJN filed a motion to strike FES's memorandum contra. In support of its motion to strike, OCC/APJN argues that FES filed its memorandum contra 17 days after OCC/APJN filed its motion, past the procedural deadlines established by attorney examiner entry issued April 2, 2012. The Commission finds that OCC/APJN's motion to strike FES's memorandum contra OCC/APJN's motion should be granted. By entry issued April 2, 2012, the attorney examiner set an expedited procedural schedule establishing that any memoranda contra be filed within five calendar days after the service of any motions. Therefore, as FES filed its memorandum contra 17 days after OCC/APJN filed its motion, OCC/APJN's motion to strike shall be granted.

The Commission finds that OCC's motion to take administrative notice should be denied. AEP-Ohio correctly points out that the timing of OCC/APJN's request is troublesome and problematic. While the Commission has broad discretion to take administrative notice, it must be done in a manner that does not harm or prejudice any other parties that are participating in these proceedings. Were the Commission to take notice of this narrow window of information, we would be allowing a party to supplement the record in a misleading manner. Further, while we acknowledge that parties may rely on the Commission's order in the Capacity Case, as it speaks for itself, to show effects on items in this proceeding, to exclusively select narrow and focused items in an attempt to supplement the record is not appropriate. Accordingly, we deny OCC's motion.

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, 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, 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 modified 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. Analysis of the Application

1. Base Generation Rates

As part of its modified ESP application, AEP-Ohio proposes to freeze base generation rates until all rates are established through a competitive bidding process. AEP-Ohio maintains that the fixed pricing is a benefit to customers by providing reasonably priced electricity in furtherance of Section 4928.02(A), Revised Code. AEP-Ohio explains that while the base generation rates will remain frozen, it will relocate the current Environmental Investment Carrying Cost Rider (EICCR) into the base generation rates, which will result in the elimination of the EICCR. AEP-Ohio witness Roush provides the change is merely a roll in and will be "bill neutral" for all AEP-Ohio customers (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 111 at 10-11).

While AEP-Ohio's base generation rates will be frozen under the modified ESP, AEP-Ohio witness Roush notes that the generation rates are based on cost relationships, and include cross-subsidies among tariff classes, which, upon class rates being based on an auction, may result in certain customer classes being disproportionately impacted by rate changes. Mr. Roush notes that residential customers with high winter usage may face unexpected impacts, but that a possible solution may be to phase-out lower rates for high winter usage customers (*Id.* at 14-15).

OADA supports the adoption of the base generation rate design as proposed, advocating that the consistency in the rate design is beneficial for GS-2 customers (OADA Br. at 2). OCC and APJN claim that frozen base generation rates is not a benefit to customers, as the price of electricity offered by CRES providers have declined and may continue to decline through the term of the ESP (OCC Ex. 111 at 15). OCC and APJN also point out that the inclusion of numerous riders, including the retail stability rider (RSR) and the deferral created in the Capacity Case will result in increases in the rates residential customers continue to pay. (OCC/APJN Br. at 43-44.)

The Commission finds that AEP-Ohio's proposed base generation rates are reasonable. We note that AEP-Ohio's base generation rate design was generally unopposed, as most parties supported AEP-Ohio's proposal to keep base generation rates frozen. Although OCC and APJN conclude that the base generation rate plan does not benefit customers, OCC and APJN failed to justify their assertion and offer no evidence within the record other than the fact that the modified ESP contains several riders. Accordingly, the modified ESP's base generation rates should be approved. In addition, as AEP-Ohio raised the possibility of disproportionate rate impacts on customers when class rates are set by auction, we direct the attorney examiners to establish a new docket within

90 days from the date of this opinion and order and issue an entry establishing a procedural schedule to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts for customers upon rates being set by auction. Further, the Commission reserves the right to implement a new base generation rate design on a revenue neutral basis for all customer classes at any time during the term of the modified ESP.

2. Fuel Adjustment Clause and Alternative Energy Rider

(a) Fuel Adjustment Clause

The Commission approved the current fuel adjustment clause (FAC) mechanism in the Company's ESP 1 case pursuant to Section 4928.143(B)(2)(a), Revised Code.[6] In this modified ESP application, AEP-Ohio requests continuation of the current FAC mechanism, with modifications. The Company proposes to modify the FAC by separating out the renewable energy credit (REC) expense component of the fuel clause and recovering the REC expense through the newly proposed alternative energy rider (AER) mechanism. The Company also requests approval to unify the CSP and OP FAC rates into a single FAC rate effective June 2013. AEP-Ohio reasons that delaying unification of the FAC rates until June 2013, to coincide with the implementation of the Phase-In Recovery Rider (PIRR), limits the impact on both CSP and OP rate zones which results in a net decrease in rates of $0.69 per megawatt hour (MWh) for a typical CSP transmission voltage customer and a net increase in rates of $0.02 per MWh for a typical OP transmission voltage customer. (AEP-Ohio Ex. 111 at 5-6; AEP-Ohio Ex. 103 at 14-20.)

Beginning January 1, 2014, after corporate separation is effective, AEP-Ohio's generation affiliate, AEP Generation Resources Inc. (GenResources), will bill AEP-Ohio its actual fuel costs in the same manner and detail as currently performed by AEP-Ohio, and the costs will continue to be recovered through the FAC. As a component of the modified ESP, AEP-Ohio proposes that as of January 1, 2015, all energy and capacity to serve the Company's SSO load be supplied by auction, whereupon the FAC mechanism will no longer be necessary. (AEP-Ohio Ex. 103 at 14-20.)

In opposition to the FAC, Ormet argues that the FAC has caused significant increases in the cost of electric service, rising 22 percent for GS-4 customers since 2011. Ormet asks that the Commission temper the impact of FAC increases and improve the transparency of the cause for increasing FAC costs, as well as reconsider the FAC rate design, to avoid cost shifts between low load factor customers and high load factor customers. Ormet, a 98.5 percent load factor customer, asserts that it pays an equal share of the FAC costs as a customer that uses all its energy on-peak. As such, Ormet contends that the FAC rate design violates the principle of cost causation. Ormet suggests that this

6 In re *AEP-Ohio*, ESP 1 Order at 13-15 (March 18, 2009).

modified ESP presents the Commission with the opportunity, as it is within the Commission's jurisdiction, to redesign the FAC, such that FAC costs are separated into charges which reflect on-peak and off-peak usage. (Ormet Ex. 106B at 19; Ormet Br. at 13-15; Ormet Reply Br. at 14-16.)

The Company responds that Ormet's arguments on the FAC reflect improper calculations and is based on forecasted FAC rates. More importantly, AEP-Ohio points out that the FAC is ultimately based on actual FAC costs and any increases in the FAC rate cannot appropriately be attributed to the modified ESP. Ormet is served by AEP-Ohio pursuant to a unique arrangement and as such avoids charges that other similarly situated customers pay; however, the Company requests that Ormet not be permitted to avoid fuel costs. (AEP-Ohio Reply Br. at 5-6.)

The Commission notes that currently, through the FAC mechanism, AEP-Ohio recovers prudently incurred fuel and associated costs, including consumables related to environmental compliance, purchase power costs, emission allowances, and costs associated with carbon-based taxes. We note that, since January 1, 2012, AEP-Ohio has been collecting its full fuel expense and no further fuel expenses are being deferred.

We interpret Ormet's arguments to more accurately request the institution of a fuel rate cap on the FAC or to revise the FAC rate design. The Commission rejects Ormet's request to review and redesign the FAC. The FAC rate mechanism is reconciled to actual FAC costs each quarter and annually audited for accounting accuracy and prudency. Furthermore, as AEP-Ohio notes, Ormet's rates are set pursuant to its unique arrangement as opposed to the Company's SSO rates paid by other high load industrial and commercial customers. By way of Ormet's unique arrangement, Ormet is provided some rate stability and rate certainty and we see no need to redesign the FAC for Ormet's benefit. No other intervener took issue with the continuation and the proposed modification of the FAC. The Commission finds that the FAC rates should continue on a separate rate zone basis. We note that there are a few Commission proceedings pending that will affect the FAC rate for each rate zone which the Commission believes will be better reviewed and adjusted if the FAC mechanisms remain distinguishable. Further, as discussed, below, maintaining FAC rates on a separate basis is necessary to be consistent with our decision regarding recovery of the PIRR.

(b) <u>Alternative Energy Rider</u>

As noted above, AEP-Ohio proposes to begin recovery of REC expenses, associated with renewable energy purchase agreements (REPAs) or REC purchases by means of the new AER mechanism to be effective with this modified ESP. With the proposed modification, the Company will continue to recover the energy and capacity components of renewable energy cost through the FAC, until the FAC expires. After the FAC ends, energy and capacity associated with REPAs will be sold into the PJM Interconnection, LLC

(PJM) market and offset the total cost of the REPAs, with the balance of REC expense to be recovered from SSO customers through the AER. AEP-Ohio proposes that the AER be bypassable for shopping customers. The Company also proposes that where the REC is part of the REPA, the value of each component be based on the residual method using the monthly average PJM market price to value the energy component, the capacity will be valued using the price at which it can be sold into the PJM market and the remaining value would constitute the cost of the REC. The AER mechanism, according to AEP-Ohio, is consistent with Section 4928.143(B)(2)(a), Revised Code, and is essentially a partial unbundling of the FAC to provide greater price visibility of prudently-incurred REC compliance costs under Section 4928.66, Revised Code. The Company will make quarterly filings, in conjunction with the FAC, to facilitate the audit of the AER. AEP-Ohio reasons that the establishment of the AER for recovery of costs is uncontested, reasonable, and should be approved. The Company argues continuation and unification of the FAC and development and implementation of the AER, is reasonable and should be approved. (AEP-Ohio Ex. 103 at 18-19.)

Staff endorses the Company's requests to continue and consolidate the FAC rates for CSP and OP rate zones and to reclassify the RECs and REPA components for recovery through the AER, as proposed by the Company. However, Staff recommends that annual AER audit procedures be established and that the AER audit be conducted by the same auditor and in conjunction with the FAC audit to determine the appropriateness and recoverability of costs as a part of and between the AER and FAC mechanisms. As to the allocation of cost components, Staff agrees with the Company's proposal to allocate cost components of bundled products but suggests that the auditor detail how to best determine the cost components and how to apply the allocation to specific situations in the context of the FAC/AER audits. Staff recommends, and the Company agrees, that the auditor's allocation process be applied to AEP-Ohio's renewable generation from existing generation facilities. (Staff Ex. 104 at 2-3.)

No party took exception to the implementation of the AER mechanism. As proposed by AEP-Ohio, continuation of the FAC and establishment of the AER, through this modified ESP, is consistent with Section 4928.143(B)(2)(a), Revised Code, for the recovery of prudently incurred fuel costs and fuel-related costs and alternative energy and associated costs. We find the Company's proposal to continue the FAC and create the AER to better distinguish fuel and alternative energy costs to be reasonable and appropriate during the term of the modified ESP. We approve the continuation of the FAC and implementation of the AER mechanisms, consistent with the audit recommendations made by Staff. The next audit of AEP-Ohio's FAC shall also include an audit of the AER mechanisms and the allocation method for classification of the REPA components and their respective values. In all other respects, the Commission approves the continuation of the FAC rate mechanisms and the creation of the AER rate mechanism for each rate zone.

3. Timber Road

AEP-Ohio states that it conducted a request for proposal (RFP) process to competitively bid and secure additional renewable resources. As a result of AEP- Ohio's need for in-state renewables, AEP-Ohio only considered bids for projects in Ohio, and ultimately selected the proposal from Paulding for its Timber Road wind farm. Specifically, the Timber Road REPA will provide AEP-Ohio a 99 MW portion of Timber Road's electrical output, capacity and environmental attributes for 20 years as necessary for the Company to meet its increasing renewable energy benchmarks as required by Section 4928.64(C)(3), Revised Code. (AEP-Ohio Ex. 109 at 10-15; Paulding Ex. 101 at 1-4.)

AEP-Ohio testified that the 20-year agreement facilitates long-term financing by the developer, reduces up front costs, and allows for price certainty for AEP-Ohio customers. Paulding offers that although 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. AEP-Ohio argues that the Timber Road REPA provides the Company and its customers, with access to affordable renewable energy from an in-state resource supporting the state policy to facilitate the state's effectiveness in the global economy, Section 4928.02(N), Revised Code. (AEP-Ohio Ex. 109 at 16-18; Paulding Ex. 101 at 4-5.)

Staff supports AEP-Ohio's REPA with Paulding and the Timber Road contract as reasonable and prudent. Accordingly, Staff advocates its approval and that AEP-Ohio be permitted to recover costs associated with energy, capacity, and RECs outlined in the contract, subject to annual FAC and AER audits. The Company agrees with Staff that the implementation of the Timber Road REPA should be subject to the FAC and AER audit, as offered in the testimony of AEP-Ohio witness Nelson. AEP-Ohio commits to acquiring RECs to meet its portfolio requirements on behalf of its SSO load and to recover the costs through the AER once the FAC is terminated. (Staff Ex. 103 at 2-3; Tr. at 2498-2499; AEP-Ohio Ex. 103 at 18.)

The Commission finds that the long-term Timber Road REPA promotes diversity of supply, consistent with state policies set forth in Section 4928.02, Revised Code. Further, based on the evidence of record, the Timber Road project benefits Ohio consumers and supports the Ohio economy. Accordingly, the Commission finds it reasonable and appropriate to allow the Company to recover the cost of the Timber Road REPA through the bypassable FAC/AER mechanisms.

4. Generation Resource Rider

AEP-Ohio requests establishment of a non-bypassable, Generation Resource Rider (GRR) pursuant to Section 4928.143(B)(2), Revised Code, to recover the cost of new generation resources including, but not limited to, renewable capacity that the Company owns or operates for the benefit of Ohio customers. At this time, the Company proposes the rider as a placeholder and expects that the only project to be included in the GRR will be the Turning Point facility, assuming need is established in Case Nos. 10-501-EL-FOR and 10-502-EL-FOR.[7] To be clear, although the Company provided an estimate of the revenue requirement for the Turning Point project, as requested by the Commission, AEP-Ohio is not seeking recovery of any costs for the Turning Point facility in this ESP. The Company asks that the GRR be established at zero with the amount of the rider to be determined, and the remaining statutory requirements to be met, as part of a subsequent Commission proceeding. (AEP-Ohio Ex. 103 at 20-21; AEP-Ohio Ex. 104; Tr. at 2514, 599, 1170, 2139-2140.)

UTIE encourages the Commission's approval of the GRR as a regulatory mechanism pursuant to the authority granted under Section 4928.143(B)(2)(c), Revised Code, to adopt a non-bypassable surcharge for new electric generation (UTIE Br. at 1-2). NRDC and OEC support the proposed GRR, including the Timber Road REPA and the Turning Point project, with certain modifications, as permitted under Section 4928.143(B)(2)(c), Revised Code. NRDC and OEC recommend that the GRR be limited to only renewable and alternative energy projects or qualified energy efficiency projects, and also recommend that the Company develop a crediting system to ensure that shopping customers do not pay twice for renewable energy. NRDC and OEC reason that AEP-Ohio could make the RECs available to CRES providers based on the CRES provider's share of the load served or by liquidating the RECs in the market and crediting the revenue to the GRR. (NRDC Ex. 101 at 11; NRDC/OEC Reply Br. at 1.)

However, while Staff does not foresee any need for additional generation by AEP-Ohio, Staff and UTIE acknowledge and endorse the adoption of the GRR mechanism to facilitate the Commission's allowance for the construction of new generation facilities (Staff Ex. 110 at 7; Tr. at 4599; UTIE Reply Br. 1-2).

On the other hand, numerous interveners oppose the adoption of the GRR. IGS requests that the Commission reject the GRR or if it is not rejected, that the GRR be made bypassable or modified so the benefits flow to shopping customers (IGS Ex. 101 at 27-28). Wal-Mart requests that the GRR not be imposed on shopping customers because approval of a non-bypassable GRR would violate cost causation principles, send an incorrect price signal, and cause shopping customers to pay twice but receive no benefit (Wal-Mart Ex. 101 at 5-6).

7 A stipulation between the Company and the Staff was filed agreeing, among other things, that as a result of the requirements of Sections 4928.143(B)(2)(c) and 4928.64(B)(2), Revised Code, which require AEP-Ohio to obtain alternative energy resources including solar resources in Ohio, the Commission should find that there is a need for the 49.9 MW Turning Point Solar project. The Commission decision in the case is pending.

RESA and Direct contend that the GRR will inhibit the growth of the competitive retail electric market and violates the state policy set forth in Section 4928.02(H), Revised Code, which prohibits the collection of generation-based rates through a non-bypassable rider. Similarly, IGS reasons that the GRR is intended to recover the cost for new generation to serve SSO customers and, therefore, the GRR amounts to an anticompetitive subsidy on CRES providers for the benefit of noncompetitive retail electric service, or, according to Wal-Mart, requires shopping customers to pay twice. IGS recommends that AEP-Ohio develop renewable energy projects on its own with recovery through market prices. RESA and Direct reason that AEP-Ohio's request is premature and creates uncertainty for CRES providers who are also required to comply with Ohio's renewable energy portfolio standards. RESA and Direct contend that, to the extent the Commission adopts the GRR, the GRR should not be assessed to shopping customers. RESA and Direct propose that the GRR be set at zero and incorporation of the Turning Point project or other facilities should occur in a separate case. (RESA Ex. 102 at 12; RESA/Direct Br. 18-21; IGS Br. at 13; Wal-Mart Ex. 101 at 5.)

To make the GRR benefit shopping and non-shopping customers, IGS suggests that AEP-Ohio sell the generated electricity on the market with revenues to be credited against the GRR or the renewable energy credits used to meet the requirements for all customers. IGS notes that AEP-Ohio witnesses agree that crediting the revenues against the GRR is reasonable. (IGS Ex. 101 at 27-28; Tr. 599, 1169-1170.)

OCC, APJN, IEU and FES contend that AEP-Ohio has inappropriately conflated two unrelated statutes, Sections 4928.143(B)(2)(c) and 4928.64, Revised Code, in support of the GRR. The goals of the two sections are different according to the interpretation of the aforementioned interveners. They contend that the purpose of Section 4928.64, Revised Code, is to require electric distribution utilities and CRES providers to comply with renewable energy benchmarks and paragraph (E) of Section 4928.64, Revised Code, directs that costs incurred to comply with the renewable energy benchmarks shall be bypassable. Whereas, according to IEU and FES, Section 4928.143(B)(2)(c), Revised Code, permits the Commission to implement a market safety valve under specific requirements should Ohio require additional generation. FES notes that AEP-Ohio has sufficient energy and capacity for the foreseeable future. IEU and FES interpret the two statutory provisions to affirmatively deny non-bypassable cost recovery under Section 4928.143(B)(2)(c), Revised Code, for renewable energy projects. IEU and FES contend that their interpretation is confirmed by the language in Section 4928.143(B), Revised Code, which states "Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except...division (E) of section 4928.64... ." Thus, FES reasons the Commission is expressly prohibited from authorizing a provision of an ESP which conflicts with Section 4928.64(E), Revised Code. (FES Br. at 87-90; IEU Br. 74-76; Tr. at 226-227.)

Further, IEU, FES, OCC, IGS and APJN argue that the statute requires, and AEP-Ohio has failed to demonstrate, the need for and the terms and conditions of recovery for the Turning Point project in this proceeding pursuant to Section 4928.143(B)(2)(c), Revised Code. Finally, IEU submits that AEP-Ohio has failed to offer any evidence as to the effect of the GRR on governmental aggregation, as required in accordance with the Commission's obligation under Section 4928.20(K), Revised Code. For these reasons, IEU, IGS, FES, OCC and APJN request that the Company's request to implement the GRR be denied. (Tr. 1170, 570-574, 2644-2646; FES Br. at 87-94; FES Reply Br. at 22-24, IGS Reply Br. at 5-6; OCC/APJN Br. at 84-85; IEU Br. 74-76.)

Staff notes that there are a number of statutory requirements pursuant to Section 4928.143(B)(2)(c), Revised Code, that OP has not satisfied as a part of this modified ESP proceeding but will be addressed in a future proceeding, including the cost of the proposed facility, alternatives for satisfying the in-state solar requirements, a demonstration that Turning Point was or will be sourced by a competitive bid process, the facility is newly used and useful on or after January 1, 2009, the facility's output is dedicated to Ohio consumers and the cost of the facility, among other issues. Staff notes the need for the Turning Point facility has been raised by parties in another case and a decision by the Commission is pending.[8] Staff emphasizes that the statutory requirements would need to be addressed, and a decision made by the Commission, before recovery could commence via the GRR mechanism. Further, Staff suggests that it is in this future proceeding that parties should explore whether the GRR should be applied to shopping customers. (Staff Ex. 106 at 11-14.)

FES responds that the language of Section 4928.143(B)(2)(c), Revised Code, omits any asserted discretion of the Commission to consider the requirements to comply with the statute outside of the ESP case, as AEP-Ohio and Staff offer. Nor is it sufficient policy support, according to FES and IGS, that customers may transition from shopping to non-shopping and back during the useful life of the Turning Point facility as claimed by AEP-Ohio. The interveners argue AEP-Ohio overlooks that, as proposed by the Company, the load of all its non-shopping customers will be up for bid as of June 1, 2015. With that in mind, FES ponders why customers of AEP-Ohio competitors should pay for AEP-Ohio facilities after May 31, 2015. (FES Reply Br. at 24-25; IGS Reply Br. at 4.)

UTIE notes that parties that oppose the approval of the GRR, on the premise that it will require shopping customers to pay twice, overlook AEP-Ohio's proposal to allocate RECs between shopping and non-shopping customers, to sell the energy and capacity from the Turning Point facility into the market and credit such transactions against the GRR (UTIE Reply Br. at 2).

NRDC and OEC respond that it is disingenuous for parties to argue that establishing a placeholder rider as a part of an ESP is unlawful. The Commission has adopted placeholder riders in several previous Commission cases for AEP-Ohio, Duke

8 Case Nos. 10-501-EL-FOR and 10-502-EL-FOR.

Energy Ohio and the FirstEnergy operating companies.[9] Further, NRDC and OEC note that no party has waived its right to participate in subsequent GRR-related proceedings before the Commission. (NRDC/OEC Reply Br. at 2.)

The Company notes that four interveners support the adoption of the GRR and of the four supporters, two request modifications which are components already proposed by the Company.

First, AEP-Ohio addresses the arguments of FES and IEU that Section 4928.64(E), Revised Code, prohibits the use of Section 4928.143(B)(2)(c), Revised Code, for renewable generation projects. AEP-Ohio states that it recognizes the overlapping policies of the two statutes and offers that each section relates to the cost recovery aspect of the project, which as the Company interprets the statutes, will be addressed when cost recovery is requested in a future proceeding. Further, AEP-Ohio reasons that IEU's and FES's arguments are inappropriate as they would lead to the disallowance of a statutorily prescribed option merely because another option exists. In addition, AEP-Ohio contends, proper statutory construction seeks to give all statutes meaning and, therefore, both options are available to the Commission at its discretion.

It is premature, AEP-Ohio retorts, to assert as certain interveners have done, that the statutory requirements of Section 4928.143(B)(2)(c), Revised Code, have not been met by the Company. The statutory requirements of Section 4928.143(B)(2)(c), Revised Code, will be addressed in a separate proceeding before any costs can be recovered via the proposed GRR. AEP-Ohio asserts that the Commission is vested with the discretion to establish the GRR, as a zero-cost placeholder, as it has done in other Commission proceedings. The Company also proposes, and Staff agrees, that as a part of this future proceeding, the amount and prudency of costs associated with the Turning Point project and whether the GRR results in shopping customers paying twice for renewable energy compliance costs, among other issues will be determined. AEP-Ohio reiterates its plan to share the RECs from the Turning Point project between shopping and SSO customers on an annual basis. IGS, NRDC and Staff endorse AEP-Ohio's proposal to share the value of the Turning Point project between shopping and non-shopping customers. (AEP-Ohio Reply Br. at 7-10; Tr. at 2139-2140; NRDC/OEC Reply Br. at 1; Staff Ex. 110 at 7; Staff Br. at 20.)

The Commission interprets Section 4928.143(B)(2)(c), Revised Code, to permit a reasonable allowance for construction of an electric generating facility and the establishment of a non-bypassable surcharge, for the life of the facility where the electric utility owns or operates the generation facility and sourced the facility through a competitive bid process. Before authorizing recovery of a surcharge for an electric generation facility, the Commission must determine there is a need for the facility and to

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[9] In re AEP-Ohio, ESP 1 (March 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (December 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (March 25, 2009).

continue recovery of the surcharge, establish that the facility is for the benefit of and dedicated to Ohio consumers. AEP-Ohio will be required to address each of the statutory requirements, in a future proceeding, and to provide additional information including the costs of the proposed facility, to justify recovery under the GRR. However, the Commission notes that there shall be no allowances for recovery approved unless the need and competitive requirements of this section are met.

Furthermore, we disagree with the arguments that the language in Section 4928.143(B)(2)(c), Revised Code, requires the Commission to first determine, within the ESP proceeding, that there was a need for the facility. The Commission is vested with the broad discretion to manage its dockets 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. *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 367, 379; *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 560. Accordingly, it is acceptable for the Commission to determine the need for the Turning Point facility as a part of the Company's long-term forecast case filed consistent with Section 4935.04, Revised Code, wherein the Commission evaluates energy plans and needs. To avoid the unnecessary duplication of processes, the Commission has undertaken the determination of need for the Turning Point project in the Company's long-term forecast proceeding. The Commission interprets the statute not to restrict our determination of the need and cost for the facility to the time an ESP is approved but rather to ensure the Commission holds a proceeding before it authorizes any allowance under the statute. FES raises the issue of whether shopping customers should incur charges associated with AEP-Ohio's construction of generation facilities. The Commission finds that Section 4928.143(B)(2)(c), Revised Code, specifically provides that the surcharge be non-bypassable. However, the statute also provides that the electric utility must dedicate the energy and capacity to Ohio consumers. AEP-Ohio has represented that any renewable energy credits will be shared with CRES providers proportionate with such providers' share of the load. Accordingly, as long as AEP-Ohio takes steps to share the benefits of the project's energy and capacity, as well as the renewable energy credits, with all customers, we find that the GRR should be non-bypassable. Further, in the subsequent application for any cost recovery AEP-Ohio will have the burden to demonstrate compliance with the statutory requirements set forth in Section 4928.143(B)(2)(c), Revised Code.

Accordingly, the Commission approves the Company's request to adopt as a component of this modified ESP the GRR mechanism, at a rate of zero. It is not unprecedented for the Commission to adopt a mechanism, with a rate of zero, as a part of an ESP.[10] The Commission explicitly notes that in permitting the creation of the GRR, it is not authorizing the recovery of any costs, at this time.

5. Interruptible Service Rates

In its modified ESP, AEP-Ohio suggests it would be appropriate to restructure its current interruptible service provisions to make its offerings consistent with the options that will be available upon AEP-Ohio's participation in the PJM base residual auction beginning in June 2015. AEP-Ohio witness Roush provides that interruptible service is more frequently represented as an offset to standard service offer rates as opposed to a separate and distinct rate (AEP-Ohio Ex. 111 at 8). To make AEP-Ohio's interruptible service options consistent with the current regulatory environment, AEP-Ohio proposes that Schedule Interruptible Power-Discretionary (IRP-D) become available to all current customers and any potential customers seeking interruptible service (*Id.*). The IRP-D credit would increase to $8.21 per kw-month upon approval of the modified ESP (AEP-Ohio Ex. 100 at 9). AEP-Ohio proposes to collect any costs associated with the IRP-D through the RSR to reflect reductions in AEP-Ohio's base generation revenues (*Id.*).

OCC believes the IRP-D proposal violates cost causation principles, as the beneficiaries are customers with more than 1 MW of interruptible capacity, and does not apply to residential customers. OCC witness Ibrahim argues it is unfair for non-participating customers to make AEP-Ohio whole for any lost revenues associated with the IRP-D (OCC Ex. 110 at 11-12). Therefore, OCC recommends the IRP-D should not allow for any lost revenue associated with IRP-D credits to be collected through the RSR (*Id.*).

Staff suggests modifying the IRP-D credit based upon the state compensation mechanism approved in the Capacity Case (Staff Ex. 105 at 6-9). Staff witness Scheck recommended lowering the IRP-D credit to $3.34/kw-month (*Id.*). Further, Staff notes its preference of any interruptible service to be offered in conjunction with Commission approved reasonable arrangements, as opposed to tariff service (*Id*). EnerNOC states that a reasonable arrangement process is more transparent than an interruptible service credit, and notes that a subsidized IRP-D rate may impede AEP-Ohio's transition to a competitive market by reducing the amount of demand response resources that may participate in RPM auctions (EnerNOC Br. at 6-9).

OMAEG and OEG support the proposed IRP-D credit, but recommend it not be tied to approval of the RSR (OMAEG Br. at 21, OEG Br. at 15). Ormet also supports the IRP-D credit, noting that customers should be compensated for taking on an interruptible load (Ormet Br. at 21-22). OEG explains it is reasonable and consistent with state policy

10 *In re AEP-Ohio*, ESP 1 (March 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (December 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (March 25, 2009).

objectives under Section 4928.02, Revised Code, as it will promote economic development and innovation and market access for AEP-Ohio's customers. OEG witness Stephen Baron provides that the credit is beneficial to customers that participate in the IRP-D program who received a discounted price for power in exchange for interruptible service, which retains existing AEP-Ohio customers and can attract new customers to benefit the state's economic development (Tr. IV at 1125-1126, OEG Ex. 102 at 6-8). Mr. Baron notes that the IRP-D is beneficial to AEP-Ohio as well by allowing AEP-Ohio to have increased flexibility in providing its service, thus increasing overall system reliability (OEG Ex. 102 at 6-8). However, Mr. Baron believes that costs associated with the IRP-D would be more appropriate to recover under the EE/PDR rider (*Id.* at 9-10). OEG also disputes Staff's proposal to lower the IRP-D credit to the capacity rate charged to CRES providers, as the credit is only available to SSO customers, and not customers of CRES providers (OEG Br. at 16-21).

The Commission finds the IRP-D credit should be approved as proposed at $8.21/kW-month. In light of the fact that customers receiving interruptible service must be prepared to curtail their electric usage on short notice, we believe Staff's proposal to lower the credit amount to $3.34/kW-month understates the value interruptible service provides both AEP-Ohio and its customers. In addition, the IRP-D credit is beneficial in that it provides flexible options for energy intensive customers to choose their quality of service, and is also consistent with state policy under Section 4928.02(N), Revised Code, as it furthers Ohio's effectiveness in the global economy. In addition, since AEP-Ohio may utilize interruptible service as an additional demand response resource to meet its capacity obligations, we direct AEP-Ohio to bid its additional capacity resources into PJM's base residual auctions held during the ESP.

The Commission agrees with several parties who correctly pointed out that the IRP-D credit should not be tied to the RSR. As we will discuss below, the RSR is tied to rate certainty and stability, and while we have no qualms in finding that the IRP-D is reasonable, it is more appropriate to allow AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider. As the IRP-D will result in reducing AEP-Ohio's peak demand and encourage energy efficiency, it should be recovered through the EE/PDR rider.

6. <u>Retail Stability Rider</u>

In its modified ESP, AEP-Ohio proposes a non-bypassable RSR. AEP-Ohio states the RSR is justified under Section 4928.143(B)(2)(d), Revised Code, as it promotes stability and certainty with retail electric service, and Section 4928.143(B)(2)(e), Revised Code, which allows for automatic increases or decreases by revenue decoupling mechanisms that relate to SSO service. AEP-Ohio provides that in addition to the RSR's promotion of rate stability and certainty, it is essential to ensure the Company does not suffer severe financial repercussions as a result of the proposed ESP's capacity pricing mechanism.

AEP-Ohio witness William Avera explains that the Commission has the duty to ensure there is not an unconstitutional taking that may result in material harm to AEP-Ohio (AEP-Ohio Ex. 150 at 4-6). Dr. Avera stresses that not only does the Commission maintain this obligation to avoid confiscation, but in the event the rate plan is confiscatory, AEP-Ohio's credit rating would likely drop, limiting the ability to attract future capital investments (*Id.*).

The proposed RSR functions as a generation revenue decoupling charge that all shopping and non-shopping customers would pay through June 2015. As proposed, the RSR relies on a 10.5 percent return on equity to develop the non-fuel generation revenue target of $929 million per year, which, throughout the term of the modified ESP, would collect approximately $284 million in revenue (AEP-Ohio Ex. 100, 116 at WAA-6). In establishing the 10.5 percent target, AEP-Ohio witness William Allen considered CRES capacity revenues as based on the proposed two-tiered capacity mechanism, auction revenues, and credit for shopped load to determine where the RSR should be set. AEP-Ohio notes that while the RSR is designed to produce consistent non-fuel generation revenues, the RSR does not guarantee a company total ROE of 10.5 percent, as there are other factors affecting total company earnings, which AEP-Ohio witness Sever estimated at 9.5 percent and 7.6 percent (AEP-Ohio Ex. 151 at 2-4, AEP-Ohio Ex. 108 at OJS-2). Thus, AEP-Ohio explains the RSR only ensures a stable level of revenues during the term of the ESP, not a stable ROE (*Id.* at 3). For every $10/MW-day decrease in the Tier 2 price for capacity, Mr. Allen explains the RSR would increase by $33M (or $.023/MWh) (AEP-Ohio Ex. 116 at 14-15). Mr. Allen explains that the $3 shopped load credit is based on AEP-Ohio's estimated margin it earns from off-system sales (OSS) made as a result of MWh freed as a result of customer shopping. In his testimony, Mr. Allen provides that AEP-Ohio only retains 40 percent of the OSS margins due to its participation in the AEP pool, and of that 40 percent only 50 to 80 percent of reduced retail sales result in additional OSS, thus demonstrating the $3/MWh credit is reasonably based on appropriate OSS assumptions (AEP-Ohio Ex. 151 at 5-8).

In designing the RSR, AEP-Ohio explains that a revenue target is preferable to an earnings target, as decoupling will provide greater stability and certainty for customers and is easier to objectively measure and audit as compared to earnings, which are prone to litigation as evidenced by SEET proceedings (AEP-Ohio Ex. 116 at 13-16). AEP-Ohio believes a revenue target provides for risks associated with generation operations to be on AEP-Ohio while avoiding the need for evaluating returns associated with a deregulated entity after corporate separation (*Id.*) As proposed, the RSR would average $2/MWh (*Id.* at WAA-6).

AEP-Ohio believes the RSR is beneficial in that it freezes non-fuel generation rates and allows for AEP-Ohio's transition to a fully competitive auction by June 2015 (AEP-Ohio Ex. 119 at 2-4). AEP-Ohio opines that the RSR mechanism reflects a careful balance that will encourage customer shopping through discounted capacity prices while retaining reasonable rates for SSO customers and ensure that AEP-Ohio is not financially harmed as it transitions towards a competitive auction (*Id.*). AEP-Ohio also touts an increase in its interruptible service (IRP-D) credit upon approval of the RSR. AEP-Ohio witness Selwyn Dias explains that the increase in the IRP-D credit will benefit numerous major employers in the state of Ohio and promote economic development opportunities within AEP-Ohio's service territory (*Id.* at 7).

Without the Commission's approval of the RSR as proposed, AEP-Ohio claims that the modified ESP would result in confiscatory rates. In his rebuttal testimony, Mr. Allen argues that if the established capacity charge is below AEP-Ohio's costs, AEP-Ohio will face an adverse financial impact (AEP-Ohio Ex. 151 at 9). As such, AEP-Ohio points out that the 10.5 percent return on equity used to develop the RSR's target revenue is not only appropriate to prevent financial harm but is also necessary to avoid violating regulatory standards addressing a fair rate of return. Mr. Allen contends that the non-fuel generation revenue, which the RSR addresses, is separate and distinct from the total company earnings, which are not addressed by the RSR. This distinction, Mr. Allen states, shows the 10.5 percent return on equity is appropriate for the RSR because when the RSR is combined with total company earnings, AEP-Ohio would be looking at a total company return on equity of 7.5 percent in 2013. Therefore, AEP-Ohio argues it would be inappropriate to allow a RSR rate of return of less than 10.5 percent, as any reduction would lower the total company return on equity downward from 7.5 percent, harming AEP-Ohio's ability to attract capital and potentially putting the company in an adverse financial situation (*Id.* at 4-5).

DER, DECAM, FES, NFIB, OCC, and IEU all contend that the RSR lacks statutory authority to be approved. FES claims that Section 4928.143(B)(2)(d), Revised Code, only authorizes charges that provide stability and certainty regarding retail electric service, which AEP-Ohio has failed to show. OCC witness Daniel Duann argues that the RSR will raise customer rates and cause financial uncertainty to all native load customers (OCC Ex. 111 at 10). OCC contends that even if the RSR provided certainty and stability, it does not qualify as a term, condition, or charge pursuant to Section 4928.143(B)(2)(d), Revised Code (OCC Br. at 40). IEU and Exelon also argue the RSR violates Section 4928.02(H) Revised Code, as it would be tied to a distribution rate based on its charge to shopping customers despite the fact it is a non-bypassable charge designed to recover generation related costs (IEU Br. at 63-64, Exelon Br. at 12).

IEU, Ohio Schools, Kroger, and DECAM/DER argue that AEP-Ohio is improperly utilizing the RSR to attempt to recover transition revenue. IEU notes that AEP-Ohio's attempt to recover generation-related revenue that may not otherwise be collected by statute is an illegal attempt to recover transition revenue (IEU Ex. 124 at 4-10, 24-26). Kroger and Ohio Schools point out that not only has the opportunity to recover generation *transition costs expired with the establishment of electric retail competition in 2001*, AEP-Ohio waived its right to generation transition costs when it stipulated to a resolution in Case Nos. 99-1729 and 99-1730 (Kroger Br. at 3-5, Ohio Schools Br. at 18-20). Exelon and FES maintain the RSR is anticompetitive and would stifle competition.

Ormet, OCC, Ohio Schools, OEG, and Exelon indicate that, if the RSR is approved, it should contain exemptions for certain customer classes. Ohio Schools request an exemption from the RSR, pointing out that not only are schools relying on limited funding, but also that the Commission has traditionally considered schools to be a distinct customer class that is entitled to special rate treatment (Ohio Schools Br. at 22-30, citing to Case Nos. 90-717-EL-ATA, 95-300-EL-AIR, 79-629-TP-COI, Ohio Schools Ex. 103, and Tr. XVI at 4573-4574). Exelon believes the RSR should not apply to shopping customers and should be bypassable. While Exelon notes it does not oppose affording AEP-Ohio protection as it transitions its business structure, witness David Fein argues that shopping customers will unfairly be forced pay both the CRES provider and AEP-Ohio for generation (Exelon Ex. 101 at 13-14).

On the contrary, Ormet believes the RSR should not apply to customers like Ormet who cannot shop, as Ormet neither causes costs associated with the RSR nor can Ormet receive the benefits associated with it (Ormet Ex. 106 at 15-17). Ormet maintains that the RSR, as currently proposed, violates cost causation principles (*Id.*). OCC and OEG suggest that if the RSR is approved, it should not be charged to SSO customers, as these customers are not the cause of the RSR costs, and it would be unfair to force these customers to subsidize shopping customers and CRES providers (OEG Br. at 5-6, OCC Ex. 111 at 16-17).

While OEG does not support the creation of the RSR, it understands the Commission may need to provide a means to ensure AEP-Ohio has the ability to attract capital, and as such suggests that the Commission look to AEP-Ohio actual earnings as opposed to revenue (OEG Ex. 101 at 12-18). OEG argues that the RSR's use of revenues does not accurately reflect a utility's financial condition or ability to attract capital in the way that earnings do, as evidenced by earnings being the foundation used by credit agencies to determine bond ratings (*Id.*). OEG witness Lane Kollen points out that revenues are just a single component of AEP-Ohio's earnings and do not reflect a full picture of AEP-Ohio's financial health (*Id.*). Mr. Kollen suggests that if the Commission were to look at AEP-Ohio's earnings, an appropriate return on equity (ROE) would be between seven percent and 11 percent (OEG Ex. at 4-6). If the Commission were to use revenues to determine AEP-Ohio's ROE, as proposed in the RSR, Mr. Kollen believes the ROE should be at seven percent, as it is still double the cost of AEP-Ohio's long-term debt and falls within the Ohio Supreme Court's zone of reasonableness (*Id.* at 7, Tr. X at 2877-79).

generation rates, as well as the guarantee that, in less than three years, AEP-Ohio will establish its pricing based on energy and capacity auctions, which this Commission again maintains is extremely beneficial by providing customers with an opportunity to pay less for retail electric service than they may be paying today.

Therefore, we find that the RSR provides certainty for retail electric service, as is consistent with Section 4928.143(B)(2)(d), Revised Code. Until May 31, 2015, AEP-Ohio's SSO rate, as a result of this RSR, will remain available for all customers, including those who are presently shopping, as well as those who may shop in the future. The ability for AEP-Ohio to maintain a fixed SSO rate is valuable, particularly if an unexpected, intervening event occurs during the term of the ESP, which could have the effect of increasing market prices for electricity. The ability for all customers within AEP-Ohio's service territory to have the option to return to AEP-Ohio's certain and fixed rates allows customers to explore shopping opportunities. This is an extremely beneficial aspect of the RSR and is undoubtedly consistent with legislative intent in providing that electric security plans may include retail electric service terms, conditions, and charges that relate to customer stability and certainty. Further, we reject the claim that the RSR allows for the collection of inappropriate transition revenues or stranded costs that should have been collected prior to December 2010 pursuant to Senate Bill 3, as AEP-Ohio does not argue its ETP did not provide sufficient revenues, and, in light of events that occurred after the ETP proceedings, including AEP-Ohio's status as an FRR entity, AEP-Ohio is able to recover its actual costs of capacity, pursuant to our decision in the Capacity Case. Therefore, anything over RPM auction capacity prices cannot be labeled as transition costs or stranded costs.

Moreover, we find that the certainty and stability the RSR provides would be all but erased by its design as a decoupling mechanism. We agree with OCC that the ability for AEP-Ohio to decouple the RSR would cause financial uncertainty, as truing up or down each year will create customer confusion in their rates. NFIB, OADA, and RESA correctly raise concerns that the RSR design creates no incentive for AEP-Ohio to limit its expenses and the Company may make uneconomic investments by its guaranteed level of annual income. While AEP-Ohio should have the opportunity to earn a reasonable rate of return, there is not a right to a guaranteed rate of return, and we will not allow AEP-Ohio to shift its risks onto customers. Thus, because its design may lead to a perverse outcome of AEP-Ohio making imprudent decisions, we find it necessary to remove the decoupling component from the RSR.

Although the RSR is justified by statute, AEP-Ohio has failed to sustain its burden of proving that its revenue target of $929 million is reasonable. The basis of AEP-Ohio's $929 million target is to ensure that its non-fuel generation revenues are stable and that stability may be ensured through a 10.5 percent ROE. However, as we previously established, it is inappropriate to guarantee a rate of return for AEP-Ohio, therefore, we

In the event the Commission adopts RPM priced capacity, RESA also supports the use of earnings as opposed to revenues in calculating the RSR in the event it is necessary to avoid confiscatory rates (RESA Ex. at 11, Br. at 13-16). RESA also suggests the Commission consider projecting an amount of money necessary for AEP-Ohio to earn a reasonable rate of return and set the RSR accordingly (RESA Br. at 14-16). RESA maintains that either of these alternatives may reduce the possibility that AEP-Ohio and its new affiliate make uneconomic investments or other risks that may result from AEP-Ohio receiving a guarantee of a certain level of annual income (*Id.*). NFIB and OADA express similar concerns that the RSR, as proposed, creates no incentive for AEP-Ohio to limit its expenses (NFIB Br. at 4-6, OADA Br. at 2-3).

In addition, several other parties suggest modifications to the RSR, including its proposed ROE. Ormet states that the 10.5 percent ROE is excessive and unreasonably high. Ormet witness John Wilson explained that AEP-Ohio failed to sustain its burden of showing 10.5 percent ROE was just and reasonable, and upon utilizing Staff's methodology in 11-351-EL-AIR, determined that, based on current economic conditions and AEP-Ohio and comparable utility financial figures, an appropriate ROE would be between eight and nine percent (Ormet Ex. 107 at 8-30). Kroger witness Kevin Higgins testified that the average ROE for electric utilities is 10.2 percent, and based on the fact that AEP-Ohio's proposed two-tier capacity mechanism is above market, the ROE should be below 10.2 percent (Kroger 101 at 10). FES and Wal-Mart state that AEP-Ohio failed to justify its 10.5 percent figure, with Wal-Mart witness Steve Chriss suggesting the ROE be no higher than 10.2 percent (Wal-Mart Ex. 101 at 8-9, FES Ex. 102 at 79-80).

OCC recommends that the Commission allocate the RSR in proportion to each class share of the switched kWh sales as opposed to customer class contribution to peak load, as an allocation based on contribution to peak load is not just and reasonable (OCC Ex. 110 at 8-9). OCC witness Ibrahim points out that the residential customer class share of switched kWh sales is only eight percent, thus, if the Commission reallocates RSR costs, residential customer increases would drop from six percent to three percent (*Id.* at 24-26). Kroger argues the RSR allocates costs to customers by demand, but recovers through an energy cost, resulting in cross subsidies amongst customers (Kroger Ex. 101 at 8). Kroger recommends that costs and charges should be aligned and based on demand as opposed to energy usage (*Id.*)

OCC, FES, and Ormet also submit modifications related to the calculation AEP-Ohio's shopping credit included within the RSR calculation. Ormet argues that AEP-Ohio underestimates its $3 shopping credit. Ormet states that based on AEP-Ohio's 2011 resale percentage of 80 percent, the actual shopping credit increases to $3.75 MWh, with the total amount increasing to $78.5 million (Ormet Br. at 10-12, citing to Tr. XVII at 4905). Ormet also shows that AEP-Ohio will not need to reduce the credit by 60 percent beginning in 2013, as AEP-Ohio will no longer be in the AEP pool, resulting in the credit increasing to

$6.50 per year in 2014 and 2015 (*Id.*). OCC also points out that the shopping credit should increase based on AEP-Ohio's 2011 shopping percentage, as well as the termination of the AEP pool agreement, and recommends the Commission adopt a shipping credit higher than $3/MWh but less than $12/MWh (OCC Br. at 49-54).

The Commission finds that, upon review of the record, it is apparent that no party disputes that the approval of the RSR will provide AEP-Ohio with sufficient revenue to ensure it maintains its financial integrity as well as its ability to attract capital. There is dispute, however, as to whether the RSR is statutorily justified, and, if it is justified, the amount AEP-Ohio should be entitled to recover, and how the recovery should be allocated among customers. The Commission must first determine whether RSR mechanism is supported by statute. Next, if we find that the Commission has the authority to approve the RSR, we must balance how much cost recovery, if any, should be permitted to ensure customers are not paying excessive costs but that the recovery is enough to allow AEP-Ohio to freeze its base generation rates and maintain a reasonable SSO plan for its current customers as well as for any shopping customers that may wish to return to AEP-Ohio's SSO plan.

In beginning our analysis, we first look to AEP-Ohio's justification of the RSR. While AEP-Ohio argues there are numerous statutory provisions that may provide support for the RSR, the thrust of its arguments in support of the RSR pertain to Section 4928.143(B)(2)(d), Revised Code, which AEP-Ohio notes is met by the RSR's promotion of rate stability and certainty. AEP-Ohio also suggests that Section 4928.143(B)(2)(e), Revised Code, which allows for automatic increases or decreases, justifies the RSR, as its design includes a decoupling mechanism.

Pursuant to Section 4928.143(B)(2)(d), Revised Code, an ESP may include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation that would have the effect of stabilizing retail electric service or provide certainty regarding retail electric service. We believe the RSR meets the criteria of Section 4928.143(B)(2)(d), as it promotes stable retail electric service prices and ensures customer certainty regarding retail electric service. Further, it also provides rate stability and certainty through CRES services, which clearly fall under the classification of retail electric service, by allowing customers the opportunity to mitigate any SSO increases through increased shopping opportunities that will become available as a result of the Commission's decision in the Capacity Case.

In addition, we find that the RSR freezes any non-fuel generation rate increase that might not otherwise occur absent the RSR, allowing current customer rates to remain stable throughout the term of the modified ESP. While we understand that the non-bypassable components of the RSR will result in additional costs to customers, we believe any costs associated with the RSR are mitigated by the effect of stabilizing non-fuel find it more appropriate to establish a revenue target that will allow AEP-Ohio the opportunity to earn a reasonable rate of return. We note that our analysis of an ROE is not to guarantee a rate of return, as evidenced by the removal of the decoupling components but rather to determine a revenue target that adequately ensures AEP-Ohio can keep its base generation rates frozen and maintain its financial health. Although we believe the more appropriate method to balance these factors would have been through the use of actual dollar figures that relate to stability, because AEP-Ohio utilized a ROE in calculating its proposals, and parties responded with alternative ROE proposals, the record limits us to this approach. Therefore, in determining an appropriate quantification for the RSR, we will consider a ROE of the non-fuel generation revenue only for the purpose of creating an appropriate revenue target that will ensure AEP-Ohio has sufficient capital while maintaining its frozen base generation rates.

Only three witnesses, AEP-Ohio witness Avera, OEG witness Kollen, and Ormet witness Wilson, developed thorough testimony exploring how an appropriate revenue target for the RSR should be established, all of which were driven by an analysis of AEP-Ohio's ROE. Although OEG witness Kollen proposed a mechanism driven by adjusting AEP-Ohio's ROE upward or downward if it does not fall within a zone of reasonableness, Mr. Kollen established that anything between seven and 11 percent could be deemed reasonable (OEG Ex. 101 at 8-9). Mr. Kollen preferred focusing on a zone of reasonableness, but notes that if the Commission preferred to establish a baseline revenue target, it should be set at $689 million (*Id.* at 16-18). Ormet witness Wilson utilized Staff models from Case No. 11-351 including discounted cash flow and capital asset pricing models, and updated calculations in the Staff models to reflect current economic factors, reaching a conclusion that AEP-Ohio's ROE should be between eight and nine percent (Ormet Ex. 107 at 8-18). AEP-Ohio used witness Avera to rebut Dr. Wilson's testimony, noting that Dr. Wilson did not consider a sufficient number of utilities in the proxy group, and the utilities that were considered were not similarly situated to AEP-Ohio (AEP-Ohio Ex. 150 at 5-6). Based on this information, Dr. Avera recommended an ROE range of 10.24 percent to 11.26 percent (*Id.*).

The Commission finds that all three experts provide credible methodologies for determining an appropriate ROE for AEP-Ohio, therefore, we find OEG witness Kollen's zone of reasonableness of seven to 11 percent to be an appropriate starting point. We again emphasize that the Commission does not want to guarantee a ROE nor establish what an appropriate ROE would be, but rather, establish a reasonable revenue target that would allow AEP-Ohio an opportunity to earn somewhere within the seven to 11 percent range. We believe AEP-Ohio's starting point of $929 is too high, particularly in light of the fact that AEP-Ohio is entitled to a deferral recovery pursuant to the Capacity Case but that a baseline of $689 million would be too low to support the certainty and stability the RSR provides. Accordingly, we find that a benchmark shall be set in the approximate middle of this range, and the $929 million benchmark shall be adjusted downward to $826 million.

While we have revised the benchmark amount down to $826 million, we also need to revisit the figures AEP-Ohio used in determining its RSR revenue amounts. In designing the RSR benchmark, Mr. Allen focused on four areas of revenue: retail non-fuel generation revenues; CRES capacity revenues; auction capacity revenues; and credit for shopped load (AEP-Ohio Ex. at WAA-6). In calculating the inputs for these revenue figures, Mr. Allen relied on AEP-Ohio's own estimates ofshopping loads of 65 percent for residential customers, 80 percent for commercial customers, and 90 percent for industrial customers by the end of 2012 (*Id.* at 5).

However, evidence within this record indicates Mr. Allen's projected shopping statistics may be higher than actual shopping levels. On rebuttal, FES presented shopping statistics based on actual AEP-Ohio numbers provided by Mr. Allen as of March 1, 2012, and May 31, 2012 (FES Ex. 120). FES concluded that, based on AEP-Ohio's actual shopping statistics to date, Mr. Allen's figures overestimated the amount of shopping by 36 percent for residential customers, 17 percent for commercial customers, and 29 percent for industrial customers, creating a total overestimate across all customer classes of 27.54 percent. The Commission finds it is more appropriate to utilize a shopping projection which is roughly the midpoint between AEP-Ohio's shopping projections and the more conservative shopping estimates offered by FES. Therefore, we will estimate shopping in the first year at 52 percent, and then increase the shopping projections for years two and three to 62 percent and 72 percent, respectively. These numbers represent a reasonable estimate and are consistent with shopping statistics of other EDUs throughout the State (*See* FES Ex. 114).

Based upon the Commission's revised shopping projections, we need to adjust the calculation of the RSR. The record indicates that lower shopping figures will result in changes to retail generation revenues, CRES margins, and OSS margins, which affects the credit for shopped load, all resulting in an adjustment to the RSR (*See* FES Ex. 121). Our adjustments are highlighted below.

	PY 12/13	PY 13/14	PY 14/15
Retail Non-Fuel Gen Revenues	$528	$419	$308
CRES Capacity Revenues	$32	$65	$344
Credit for Shopped Load	$75	$89	$104
Subtotal	$636	$574	$757
Revenue Target	$826	$826	$826
Retail Stability Rider Amount	$189	$251	$68

All figures in millions

To appropriately correct the RSR based on more conservative shopping projections, we begin our analysis with retail non-fuel generation revenues. As the figures of $402, $309, and $182 are based on Mr. Allen's assumed shopping figures, when we adjust these figures to 52, 62, and 72 percent shopping, AEP-Ohio's revenues would increase to $528 million, $419 million, and $308 million, respectively.

Conversely, as a result of decreasing the shopping statistics, CRES capacity revenues would decrease. Assuming our shopping estimates of 52, 62, and 72 percent, as well as the use of RPM capacity prices, the CRES capacity revenues lower to $32 million, $65 million, and $344 million. Finally, we need to adjust the credit for shopped load based on the revised non-shopping assumptions. Because we assume lower shopping statistics, AEP-Ohio will have less opportunity for off-system sales due to an increased load of its non-shopping customers, which will lower the credit to $75 million, $89 million, and $104 million for each year of the modified ESP. Accordingly, upon factoring in our revised revenue benchmark based on a nine percent return on equity, we find a RSR amount of $508 million is appropriate. The $508 million RSR amount is limited only to the term of the modified ESP.

Although our corrected RSR mechanism ensures customer stability and certainty by providing a means for AEP-Ohio to move towards competitive market pricing, in addition to the $508 million RSR, which allows AEP-Ohio to maintain frozen base generation rates and an accelerated auction process, we must also address the capacity charge deferral mechanism, created in the Capacity Case. As our decision in the Capacity Case to utilize RPM priced capacity considered the importance of developing competitive electric markets, we believe it is appropriate to begin recovery of the deferral costs through AEP-

Ohio's RSR mechanism, as the RSR allows for AEP-Ohio to continue to provide certainty and stability for AEP-Ohio's SSO plan while competitive markets continue to develop as a result of RPM priced capacity. Therefore we believe it is appropriate to begin collection of the deferral within the RSR.

Based on our conclusion that a $508 million RSR is reasonable, as well as our determination that AEP-Ohio is entitled to begin recovery of its deferral, AEP-Ohio will be permitted to collect its $508 million RSR by a recovery amount of $3.50/MWh, through May 31, 2014, and $4/MWh between June 1, 2014 and May 31, 2015. The upward adjustment by 50 cents to $4/MWh reflects the Commission's modification to expedite the timing and percentage of the wholesale energy auction beginning on June 1, 2014. Of the $3.50/MWh and $4/MWh RSR recovery amounts, AEP-Ohio must allocate $1.00 towards AEP-Ohio's deferral recovery, pursuant to the Capacity Case. At the conclusion of the modified ESP, the Commission will determine the deferral amount and make appropriate adjustments based on AEP-Ohio's actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary. Further, although this Commission is generally opposed to the creation of deferrals, the extraordinary circumstances presented before us, which allow for AEP-Ohio to fully participate in the market in two years and nine months as opposed to five years, necessitate that we remain flexible and utilize a deferral to ensure we reach our finish line of a fully-established competitive electric market.

Any remaining balance of this deferral that remains at the conclusion of this modified ESP shall be amortized over a three year period unless otherwise ordered by the Commission. In order to ensure this order does not create a disincentive to shopping, at the end of the term of the ESP, AEP-Ohio shall file its actual shopping statistics in this docket. To provide complete transparency as well as to allow for accurate deferral calculations, AEP-Ohio should maintain its actual monthly shopping percentages on a month-by-month basis throughout the term of this modified ESP, as well as the months of June and July of 2012. All determinations for future recovery of the deferral shall be made following AEP-Ohio's filing of its actual shopping statistics.

We believe this balance is in the best interests of both customers and AEP-Ohio. For customers, this keeps the RSR costs stable at $3.50/MWh and $4/MWh, and with $1.00 of the RSR being devoted towards paying back AEP-Ohio's deferrals, customers will avoid paying high deferral charges for years into the future. In addition, our modifications to the RSR will provide customers with a stable rate that will not change during the term of the ESP due to the elimination of the decoupling components of the RSR. Further, as result of the Capacity Case, customers may be able to lower their bill impacts by taking advantage of CRES provider offers allowing customers to realize savings that may not have otherwise occurred without the development of a competitive retail market. In addition, this mechanism is mutually beneficial for AEP-Ohio because the RSR will ensure

AEP-Ohio has sufficient funds to maintain its operations efficiently and revise its corporate structure, as opposed to a deferral only mechanism.

Finally, we find that the RSR should be collected as a non-bypassable rider to recover charges per kWh by customer class, as proposed. We note that several parties pitched reasons as to why certain customers classes should be excluded, but we believe these arguments are meritless. Ormet contends that the RSR should not apply to customers like Ormet who cannot shop. Interestingly, Ormet again tries to play both sides of the table, forgetting that it is the beneficiary of a unique arrangement that results in Ormet receiving a discount at the expense of other AEP-Ohio customers. We reject Ormet's argument, and note that while Ormet cannot shop pursuant to its unique arrangement, it directly benefits from AEP-Ohio's customers receiving stability and certainty, as these customers ultimately pay for Ormet's discounted electricity. We also find Ohio Schools' request to be excluded from the RSR to be without merit, as it too would result in other AEP-Ohio customers, including taxpayers that already contribute to the schools, paying significantly higher shares of the RSR. It is unreasonable to make AEP-Ohio's customers pay the schools twice.

In addition, in light of the fact that the Commission has established a revenue target to be reached through the RSR in this proceeding, the Commission finds that it is also appropriate to establish a significantly excessive earnings test (SEET) threshold to ensure that the Company does not reap disproportionate benefits from the ESP. The evidence in the record demonstrates that a 12 percent ROE would be at the high end of a reasonable range for return on equity (OEG Ex. 101 at 4-6; Kroger 101 at 10; Ormet Ex. 107 at 8-30; Wal-Mart Ex. 101 at 8-9, FES Ex. 102 at 79-80), and even AEP-Ohio witness Allen agreed that a ROE of 10.5 percent is appropriate. Accordingly, for purposes of this ESP, the Commission will establish a SEET threshold for AEP-Ohio of 12 percent.

Likewise, multiple parties argue that either shopping customers or SSO customers should be excluded from paying the RSR. For non-shopping customers, the RSR provides rate stability and certainty, and ensures all SSO rates will be market-based by June 2015. For shopping customers, the RSR not only keeps a reasonably priced SSO offer on the table in the event market prices increase, but it also enables CRES providers to provide offers that take advantage of current market prices, which is a benefit for shopping customers. Accordingly, we find the RSR, as justified by Section 4928.143(b)(2)(d), Revised Code is just and reasonable, and should be non-bypassable.

Finally, the Commission notes that our determination regarding the RSR is heavily dependent on the amount of SSO load still served by the Company. Accordingly, in the event that, during the term of the ESP, there is a significant reduction in non-shopping load for reasons beyond the control of the Company, other than for shopping, the

Company is authorized to file an application to adjust the RSR to account for such changes.

7. Auction Process

As part of its modified ESP, AEP-Ohio proposes a transition to a fully-competitive auction based SSO format. The first part of AEP-Ohio's proposal includes an energy-only, slice-of system auction of five percent that will occur prior to AEP-Ohio's SSO energy auction. The energy-only slice-of-system auction would commence upon a final order in this proceeding and the corporate separation plan, with the delivery period to extend to December 31, 2014 (AEP-Ohio Ex. 101 at 20-21). AEP-Ohio notes that specific details would be addressed upon the issuance of final orders in this proceeding (*Id*).

AEP-Ohio's transition proposal also includes a commitment to conduct an energy auction for 100 percent of the SSO load for delivery in January 2015. By June 1, 2015, AEP-Ohio will conduct a competitive bid procurement (CBP) process to commit to an energy and capacity auction to service its entire SSO load (*Id.* at 19-21, AEP-Ohio Ex. 100 at 10-11). AEP-Ohio witness Powers explained that the June 1, 2015 energy and capacity auction will permit competitive suppliers and marketers to bid into AEP-Ohio's load, as its FRR obligation will be terminated (*Id.*). AEP-Ohio anticipates the CBP process will be similar to other Ohio utility CBP filings, and explains that specific details of the CBP will be addressed in a future filing.

AEP-Ohio explains that the June 1, 2015, date to service its entire SSO load by auction is based on the need for AEP's interconnection pool to be terminated and AEP-Ohio's corporate separation plan being approved. AEP-Ohio witness Philip Nelson explains that an SSO auction occurring prior to pool termination may expose AEP-Ohio to significant financial harm, and if the auction occurs prior to corporate separation, it is possible that AEP-Ohio's generation may not be utilized in the auction (AEP-Ohio Ex. 103 at 8). Further, AEP-Ohio points out that a full auction prior to June 1, 2015, would conflict with its FRR commitment that continues until May 31, 2015 (AEP-Ohio Reply Br. at 46).

FES and DER/DECAM argue that AEP-Ohio could hold an immediate CBP without waiting for pool termination and corporate separation. FES witness Rodney Frame testified that the AEP pool agreement contains no provisions that would prevent a CBP (FES Ex. 103 at 3). DER/DECAM provide that a delay in the implementation of the CBP process harms customers by preventing them from taking advantage of the current market rates (DECAM Ex. 101 at 5).

Other parties, including RESA and Exelon, propose modifications to AEP-Ohio's proposed auction process. Exelon believes the first energy and capacity auction for the SSO load should be accelerated to June 1, 2014, in order to permit customers to take advantage of competition. Exelon witness Fein notes the June 1, 2014 date would be six months after the date by which AEP-Ohio indicated its corporate separation and pool termination would be completed (Exelon Ex. 101 at 15-20). RESA makes a similar proposal, but that a June 1, 2014, auction be energy only, as this still allows AEP-Ohio six months to prepare for auction and provides customers with the benefits associated with a competitive market (RESA Br. at 16-17). On the contrary, OCC argues the interim auctions to be held during the first five months of 2015 would be detrimental to residential customers, and suggests that the Commission adopt a different approach (OCC Br. at 100-103). OCC contends that competitive market prices in 2015 may be higher than prices that would result from AEP-Ohio continuing to purchase energy from its affiliate, and recommends that the Commission require the agreement between AEP-Ohio and its affiliate to continue during the first five months of 2015, or, in the alternative, AEP-Ohio should purchase SSO capacity from its generation affiliate at RPM prices (*Id.* at 103).

In addition, Exelon also recommends that the Commission direct AEP-Ohio to conduct its CBP in a manner that is consistent with the processes that Duke Energy Ohio and FirstEnergy used in their most recent auctions. Exelon sets forth that establishing details of the CBP process in a timely manner will expedite AEP-Ohio's transition to competition and ensure there are no delays associated with settling these issues in later proceedings. Specifically, Exelon proposes that the CBP should be consistent with statutory directives set forth in Section 4928.142, Revised Code, and should ensure the dates for procurement events do not conflict with dates of other default service procurements conducted by other EDUs. Exelon warns that if the substantive issues of the procurement process are left open for interpretation, there may be uncertainty that could limit bidder participation and lead to less efficient prices. Exelon also recommends that the Commission ensure the CBP process is open and transparent by having substantive details established in a timely manner (Exelon Ex. 101 at 20-31).

The Commission finds that AEP-Ohio's proposed competitive auction process should be modified. First, we believe AEP-Ohio's energy only slice-of-system of five percent of the SSO load is too low, as AEP-Ohio will be at full energy auction by January 1, 2015, and the slice-of-system auctions will not commence until six months after the corporate separation order is issued. Accordingly, we find that increasing the percentage to a 10 percent slice-of-system auction will facilitate a smoother transition to a full energy auction.

Second, this Commission understands the importance of customers being able to take advantage of market-based prices and the benefits of developing a healthy competitive market, thus we reject OCC's arguments, as slowing the movement to competitive auctions would ultimately harm residential customers by precluding them from enjoying any benefits from competition. Based on the importance of customers having access to market-based prices and ensuring an expeditious transition to a full energy auction, in addition to making the modified ESP more favorable than the results that would otherwise apply under Section 4928.142, Revised Code, we find that AEP-Ohio is capable of having an energy auction for delivery commencing on June 1, 2014. Therefore, we direct AEP-Ohio to conduct an energy auction for delivery commencing on June 1, 2014, for 60 percent of its load, and delivery commencing on January 1, 2015, for the remainder of AEP-Ohio's energy load. AEP-Ohio's June 1, 2015, energy and capacity auction dates are appropriate and should be maintained. In addition, nothing within this Order precludes AEP-Ohio or any affiliate from bidding into any of these auctions.

Finally, we agree with Exelon that the substantive details of the CBP process need to be established to maximize the number of participants in AEP-Ohio's auctions through an open and transparent auction process. We direct AEP-Ohio to establish a CBP process consistent with Section 4928.142, Revised Code, by December 31, 2012. The CBP should include guidelines to ensure an independent third party is selected to ensure there is an open and transparent solicitation process, a standard bid evaluation, and clear product definitions. We encourage AEP-Ohio to look to recent successful CBP processes, such as Duke Energy-Ohio's, in formulating its CBP. Further, AEP-Ohio is ordered to initiate a stakeholder process within 30 days from the date of this opinion in order.

8. CRES Provider Issues

The modified application includes a continuation of current operational switching practices, charges, and minimum stay provisions related to the process in which customers can switch to a Competitive Retail Electric Service (CRES) provider and subsequently return to the SSO rates (AEP-Ohio Ex. 111 at 4). AEP-Ohio points out that the application includes beneficial modifications for CRES providers and customers, including the addition of peak load contribution (PLC) and network service peak load (NSPL) information to the master customer list. AEP-Ohio witness Roush testified that AEP-Ohio also eliminates the 90-day notice requirement prior to enrolling with a CRES provider, the 12 month stay requirements for commercial and industrial customers that return to SSO rates beginning January 1, 2015, and requirements for residential and small commercial customers that return to SSO rates be required to stay on the SSO plan until April 15th of the following year, beginning on January 1, 2015 (*Id.*)

Exelon argues that AEP-Ohio needs to make additional changes in order to develop the competitive market. Specifically, Exelon requests the Commission implement rate and bill ready billing and a standard purchase of receivables (POR) program, eliminate the 90-day notice requirement immediately, and implement a process to provide CRES providers with data relating to PLC and NSPL values. Exelon witness Fein recommends that, consistent with the Duke ESP order, the Commission order AEP-Ohio provide via electronic data interchange, pertinent data including historical usage and historical interval data, NSPL and PLC data, and provide a quarterly updated list for CRES providers to show accounts that are currently enrolled with the CRES provider. (Exelon Ex. 101 at 33-34). Exelon maintains that this information will allow CRES providers to more effectively serve customers and result in cost efficient competition (*Id.*) Mr. Fein further provides that clear implementation tariffs will lower costs for customers, plainly describe rules and contract terms, and allow both CRES providers and customers to easily understand AEP-Ohio's competitive process (*Id.* at 35-36).

RESA and IGS provide that AEP-Ohio's billing system is confusing to customers and creates numerous problems for CRES providers, all of which may be corrected through the implementation of a POR program that would provide customers with a single bill and collection point (RESA Ex. 101 at 12-17, IGS Ex. 101 at 15). IGS witness Parisi points out that switching statistics of natural gas utilities and Duke have increased upon the implementation of POR programs (IGS Ex. 1-1 at 18-19). RESA witness Rigenbach also recommends that the Commission direct AEP-Ohio to develop a web-based system to provide CRES providers access to customer usage and account data by May 31, 2014 (RESA Ex. 101 at 12-13). RESA and DER/DECAM also recommend that AEP-Ohio reduce or eliminate customer switching fees, as well as customer minimum stay periods (*Id.*, DER Ex. 101 at). FES witness Banks noted that the fees and minimum stay requirements hinders competition by making it difficult for customers to switch (FES Ex. 105 at 31).

While the Commission supports AEP-Ohio's provisions that encourage the development of competitive markets, modifications need to be made. AEP-Ohio witness Roush notes that customer PLC and NSPL information will be included in the master customer list, AEP-Ohio fails to make any commitment to the time frame this information would become available, nor the specific format in which customers would be able to access this data. We note that recent updates have been revised to the electronic data interchange (EDI) standards developed by the Ohio EDI Working Group (OEWG). This Commission values the efforts of OEWG in developing uniform operational standards and we expect AEP-Ohio to follow such standards and work within the group to implement solutions which are fair and reasonable, and do not discriminate against any CRES provider.

Accordingly, we direct AEP-Ohio to develop an electronic system to provide CRES providers access to pertinent customer data, including, but not limited to, PLC and NSPL values and historical usage and interval data no later than May 31, 2014. Within 30 days from the date of this opinion and order, we direct representatives from AEP-Ohio to schedule a meeting with members of the OEWG to develop a roadmap towards developing an EDI that will more effectively serve customers, and promote state policies in accordance with Section 4928.02, Revised Code. Further, as AEP-Ohio explains that it neither supports nor is opposed to the idea of a POR program (AEP-Ohio Reply Br. at 64-66), we encourage interested stakeholders to attend a workshop in conjunction with the five year rule review of Chapter 4901:1-10, O.A.C., as established in Case No. 12-2050-EL-ORD et al, to be held on August 31, 2012. In our recent order on FirstEnergy's electric security plan (*See* Case No. 12-1230-EL-SSO), we noted that this workshop would be an appropriate place of stakeholders in the FirstEnergy proceedings to review issues related to POR programs. Similarly, we believe this workshop would also provide stakeholders in this proceeding an opportunity to further discuss the merits of establishing POR programs for other Ohio EDUs that are not currently using them. The Commission concludes that the modified ESP's modification to AEP-Ohio's switching rules, charges, and minimum stay provisions that are set to take effect on January 1, 2015, are consistent with AEP-Ohio's previously approved tariffs. Further, as we previously established in our original opinion and order in this case, these provisions are not excessive or inconsistent with other electric distribution utilities, and will further support the development of competitive markets beginning in January 1, 2015. Therefore, we find these provisions to be reasonable.

9. Distribution Investment Rider

The Company's modified ESP application includes a Distribution Investment Rider (DIR), pursuant to the provisions of Section 4928.143(B)(2)(h) or (d), Revised Code, and consistent with the approved settlement in the Company's distribution rate case,[11] to provide capital funding, including carrying cost on incremental distribution infrastructure to support customer demand and advanced technologies. Aging infrastructure, according to AEP-Ohio, is the primary cause of customer outages and reliability issues. AEP-Ohio reasons that the DIR will facilitate and encourage investments to maintain and improve distribution reliability, align customer expectations and the expectations of the distribution utility, as well as streamline recovery of the associated costs and reduce the frequency of base distribution rate cases. Replacement of aging distribution equipment will also support the advanced technologies of gridSMART which will reduce the duration of customer outages based on preliminary gridSMART Phase 1 information. The Company argues that its existing capital budget forecast includes an annual investment in excess of $150 million plus operations and maintenance in distribution assets. The DIR mechanism, as proposed by the Company, includes components to recover property taxes, commercial activity tax, and to earn a return on plant in-service based on a cost of debt of 5.46 percent, a return on common equity of 10.2 percent utilizing a 47.72 percent debt and 52.28 percent common equity capital structure. The net capital additions to be included in the DIR reflect gross plant in-service after August 31, 2010, as adjusted for accumulated depreciation, because August 31, 2010, is the date certain in the Company's most recent distribution rate case and any increase in net plant that occurs after that date is not recovered in base rates. The Company proposes to cap the DIR mechanism at $86 million in 2012, $104 million for 2013, $124 million for 2014 and $51.7 million for the period January 1 through May 31, 2015, for a total of $365.7 million. As the DIR mechanism is designed, for any year that the Company's investment would result in revenues to be

[11] *In re AEP-Ohio*, Case Nos. 11-351-EL-AIR, et al., Opinion and Order at 5-6 (December 14, 2011) in reference to paragraph IV.A.3 of the Joint Stipulation and Recommendation filed on November 23, 2011.

collected which exceed the cap, the overage would be recovered and be subject to the cap in the subsequent period. Symmetrically, for any year that the revenue collected under the DIR is less than the annual cap allowance, then the difference shall be applied to increase the cap for the subsequent period. The Company notes that the DIR revenue requirement must recognize the $62.344 million revenue credit reflected in the Commission approved Stipulation in the Company's distribution rate case.[12] As proposed by the Company, the DIR would be adjusted quarterly to reflect in-service net capital additions, excluding capital additions reflected in other riders, and reconciled for over and under recovery. The Company specifically requests through the DIR project, that when meters are replaced by the installation of smart meters, that the net book value of the replaced meter be included as a regulatory asset for recovery in a future filing. The DIR mechanism would be collected as a percentage of base distribution revenues. Because the DIR provides the Company with a timely cost recovery mechanism for distribution investment, AEP-Ohio will agree not to seek a change in distribution base rates with an effective date earlier than June 1, 2015. (AEP-Ohio Ex. 116 at 9-12; AEP-Ohio Ex. 110 at 18-19.)

The Company notes that Staff continuously monitors the Company's distribution system reliability by way of service complaints, electric outage reports and compliance provisions pursuant to Chapter 4901:1-10, O.A.C. In reliance on Staff testimony, the Company offers that the reliability of the distribution system was evaluated as a part of this case. (Staff Ex. 106 at 5-6; Tr. at 4339, 4345-4346.)

Customer expectations, as determined by AEP-Ohio, are aligned with the Company's expectations. AEP-Ohio witness Kirkpatrick offered that the updated customer survey results show that 19 percent of residential customers and 20 percent of commercial customers expect their reliability expectations to increase in the next five years. AEP-Ohio points out that when those customers are considered in conjunction with the customers who expect the utility to maintain the level of reliability, customer expectations increase to 90 percent of residential customers and 93 percent of commercial customers. AEP-Ohio states it is currently evaluating, based on several criteria, various asset categories with a high probability of failure and will develop a DIR program, with Staff input, taking into consideration the number of customers affected. (AEP-Ohio Ex. 110 at 11-19.)

OHA supports the adoption of the DIR as proposed by the Company (OHA Br. at 2). Kroger, OCC and APJN, on the other hand, ask the Commission to reject the DIR, as this case is not the proper forum to consider the recovery of distribution-related costs. Kroger, OCC and APJN reason that prudently incurred distribution costs are best considered in the context of a base distribution rate case where such cost are more thoroughly reviewed by the Commission. Kroger asserts that maintaining the distribution

12 *Id.*

system is a fundamental responsibility of the utility and the Company should continue to operate under the terms of its last distribution rate case until the next such proceeding. If the Commission elects to adopt the DIR mechanism, Kroger endorses Staff's position that the DIR be modified to account for accumulated deferred income taxes (ADIT) and accelerated tax depreciation. In addition, Kroger asserts that the DIR for the CSP rate zone and the OP rate zone are distinct and the cost of each unique service area should be maintained and the distribution costs assigned on the basis of cost causation. OCC and APJN add that the Company's reason for pursuing the DIR, as a component of the ESP rather than in the distribution case, is the expedience of cost recovery and when that rationale is considered in conjunction with the lack of detail on the projects to be covered within the DIR, suggest that the DIR is not needed. (Kroger Ex. 101 at 13-19; Kroger Reply Br. at 3-4; OCC/APJN Br. at 87-89; Tr. at 1184.)

OCC and APJN argue that in determining whether the DIR complies with the requirements of Section 4928.143(B)(2)(h), Revised Code, the Company focuses exclusively on the percentage of residential and commercial customers (71 percent and 73 percent, respectively) who do not believe that their electric service reliability expectations will increase rather than the minority of customers who expect their service reliability expectations to increase (19 percent and 20 percent, respectively). OCC and APJN note that 10 percent of residential customers and seven percent of commercial customers expect their reliability expectations to decrease over the next five years. At best, these interveners assert, the customer survey results are inconclusive regarding an expectation for reliability improvements as the majority of customers are content with the status quo. OCC and APJN state that with the lack of project details, and without providing an analysis of customer reliability expectation alignment with project cost and performance improvements, AEP-Ohio has failed to meet its burden of proof to support the DIR. Accordingly, OCC and APJN request that this provision of the modified ESP be rejected. (AEP-Ohio Ex. 110 at 11-12; OCC/APJN Br. at 987-994).

NFIB and COSE emphasize that the DIR, as AEP-Ohio witness Roush testified, would, if approved as proposed, result in General Service tariff rate customers receiving an increase of approximately 14.2 percent in distribution charges, about $2.00 monthly (NFIB/COSE Br. at 8-9;Tr. at 1162-1163).

Staff testified that consistent with the requirements of Rule 4901:1-10-10(B)(2), O.A.C., AEP-Ohio has rate zone specific minimum reliability performance standards, as measured by the customer average interruption duration index (CAIDI) and system average interruption frequency index (SAIFI).[13] According to Staff, development of each CAIDI and SAIFI takes into account the electric utility's three-year historical system performance, system design, technological advancements, the geography of the utility's

[13] See *In re AEP-Ohio*, Case No. 09-756-EL-ESS, Opinion and Order (September 8, 2010).

service territory, customer perception surveys and other relevant factors. Staff monitors the utility's compliance with the reliability standards. Staff offers that based on customer surveys, 75 to 80 percent of residential and commercial customers are satisfied overall with the Company's service reliability. However, the Company's 2011 reliability measures were below their reliability measures for 2010 for CSP and the SAIFI measure was worse in 2011 than in 2010 for OP. Accordingly, Staff determined that AEP-Ohio's reliability expectations are not currently aligned with the reliability expectations of its customers. Staff further offered that a number of conditions be imposed on the Commission's approval of the DIR, including that the Company be ordered to work with Staff to develop a distribution capital plan, that the DIR mechanism include an offset for ADIT, irrespective of the Company's asserted inconsistency with the distribution rate case settlement, and that gridSMART related cost not be recovered through the DIR, so as to better facilitate the tracking of gridSMART expenditures and savings and benefits of the gridSMART project. Further, Staff proposes that AEP-Ohio be directed to make quarterly filings to update the DIR mechanism, with the filed rate to be effective, unless suspended by the Commission, 60 days after filing. The DIR mechanism, as advocated by Staff, would be subject to annual audits after each May filing and, in addition, subject to a final reconciliation filing on or about May 31, 2015. With the final reconciliation, Staff recommends that any amounts collected by AEP-Ohio in excess of the established cap be refunded to customers as a one-time credit on customer bills. (Staff Ex. 106 at 6-11; Staff Ex. 108 at 3-4; Tr. at 4398.)

AEP-Ohio disagrees with the Staff's rationale that the Company's and customer's expectations are not aligned. The Company reasons that the Staff relies on the reliability indices and the fact that the Company performed below the level of the preceding year. AEP-Ohio notes that in the most recent customer survey results, with the same questions as the prior year, the Company received an 85 percent positive rating from residential customers and a 92 percent positive rating from commercial customers for providing reliable service. Further, AEP-Ohio points out that missing one of the eight applicable reliability standards during the two year period does not, under the rules, constitute a violation. The Company also notes that the reliability standards are affected by storms, which are not defined as major storms, and other factors like tree-caused outages. (Tr. at 4344-4345, 4347, 4366-4367; OCC Ex. 113, Att. JDW-2.)

AEP-Ohio also opposes Staff's recommendation to file the DIR plan in a separate docket, subject to an adversarial proceeding. The Company expresses great concern that this recommendation, if adopted, will result in the Commission micromanaging and becoming overly involved in the "day-to-day operations of the business units within the utility."

As to Staff's and Kroger's proposal to reduce the DIR to account for ADIT, the Company responds that such an adjustment would have resulted in a reduced DIR credit if taken into account when the distribution rate case settlement was pending. AEP-Ohio argues that the decision on the DIR in the modified ESP should continue to mirror the understanding of the parties to the distribution rate case as any change would improperly impact the overall balanced ESP package. (AEP-Ohio Ex. 151 at 9-10.)

As authorized by Section 4928.143(B)(2)(h), Revised Code, an ESP may include the recovery of capital cost for distribution infrastructure investment to improve reliability for customers. 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 Company's investment in distribution service. 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.

In this modified ESP, there is some disagreement between Staff and the Company whether or not AEP-Ohio's reliability expectations are aligned with the expectations of its customers. The Company focuses on customer surveys to conclude that expectations are aligned while Staff interprets the slight degradation in the reliability performance measures to indicate that expectations are not aligned. Despite the different conclusions by the Company and Staff, the Commission finds that both Staff and the Company have demonstrated that indeed, customers have a high expectation of reliable electric service. Given that customer surveys are one component in the factor used to establish the reliability indices and the slight reduction in the level of measured performance on which the Staff concludes that reliability expectations are not aligned, we are convinced that it is merely a slight difference between the Company's and customers' expectations. We also recognize that customer satisfaction is dependent on whether the customer has recently experienced any service outages and how quickly service was restored.

The Commission finds that, adoption of the DIR and the improved service that will come with the replacement of aging infrastructure will facilitate improved service reliability and better align the Company's and its customers' expectations. The Company appears to be placing sufficient proactive emphasis on and will dedicate 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 AEP-Ohio's prudently incurred distribution investment costs. We emphasize that the DIR mechanism shall not include any gridSMART costs; the gridSMART projects shall be separate and apart from the DIR mechanism and projects. With this clarification, we believe it is unnecessary to address the Company's request to allow the remaining net book value of removed meters to be included as a regulatory asset recoverable through the DIR mechanism.

We agree with Staff and Kroger that the DIR mechanism be revised to account for ADIT. The Commission finds that it is not appropriate to establish the DIR rate mechanism in a manner which provides the Company with the benefit of ratepayer supplied funds. Any benefits resulting from ADIT should be reflected in the DIR revenue requirement. Therefore, the Commission directs AEP-Ohio to adjust its DIR to reflect the ADIT offset.

As was noted in the December 14, 2012 Order on the ESP 2, we find that granting the DIR mechanism requires 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, therefore find it reasonable to permit the recovery of prudently incurred distribution infrastructure investment costs. AEP-Ohio is correct to aspire to move from a reactive to a more proactive replacement maintenance program. The Company is directed to work with Staff to develop a plan to emphasize proactive distribution maintenance that focuses spending on where it will have the greatest impact on maintaining and improving reliability for customers. Accordingly, AEP-Ohio shall work with Staff to develop the DIR plan and file the plan for Commission review in a separate docket by December 1, 2012.

With these modifications, we approve the DIR mechanism, and direct Staff to monitor, as part of the prudence review, by an independent auditor for in-service net capital additions and compliance with the proactive distribution maintenance plan developed with the assistance of the Staff. The proactive distribution infrastructure plan shall quantify reliability improvements expected, ensure no double recovery, and include a demonstration of DIR expenditures over projected expenditures and recent spending levels. The DIR mechanism will be reviewed annually for accounting accuracy, prudency and compliance with the DIR plan developed by the Staff and AEP-Ohio.

10. <u>Pool Modification Rider</u>

The modified ESP application includes the planned termination of the AEP East Pool Agreement (Pool Agreement). As a provision of this ESP, AEP-Ohio requests approval of a Pool Termination Rider (PTR), initially set at zero. If the Company's corporate separation plan filed in Case No. 12-1126-EL-UNC is approved as proposed by the Company, and the Amos and Mitchell units are transferred as proposed to AEP-Ohio affiliates, then AEP-Ohio will not seek to implement the PTR irrespective of whether lost revenues exceed $35 million annually. However, if the corporate separation plan is denied or modified, then AEP-Ohio requests permission to file for the recovery of lost revenue in association with termination of the Pool Agreement via a non-bypassable rider. The PTR, according to AEP-Ohio, is designed to offset the revenue losses caused by the termination of the Pool Agreement since a significant portion of AEP-Ohio's total revenues come from sales of power to other Pool members. The Company argues that with the termination of the Pool Agreement, the Company will need to find new or additional revenue to recover the costs of operating its generating assets, or it will need to reduce the cost associated with those assets. As AEP-Ohio claims the lost revenues[14] from capacity sales to Pool Agreement members cannot be mitigated by off-system sales in the market alone. The Company agrees that it will only seek to recover lost pool termination revenues in excess of $35 million per year during the term of the ESP. (AEP-Ohio Ex. 103 at 21-23.)

OCC, APJN, FES and IEU oppose the adoption of the PTR, as they reason there is no provision of Section 4928.143(B)(2), Revised Code, which authorizes such a charge and no Commission precedent for the PTR. IEU asserts that approval of the PTR would essentially be the recovery of above-market or transition revenue in violation of state law and the electric transition plan (ETP) Stipulations.[15] As proposed, the interveners claim that the PTR is one-sided to the benefit of the Company. FES offers that there is insufficient information in the record to allow the Commission to evaluate the terms and conditions of the PTR, as a part of the modified ESP, to require ratepayers to submit $350-$400 million over the term of the ESP. Furthermore, OCC and APJN note that the Commission has disregarded transactions related to the Pool Agreement for the purpose of considering revenue or sales margins from opportunity sales (capacity and energy) as to FAC costs or consideration of off-system sales in the evaluation of significantly excessive earnings test.[16] Accordingly, OCC and APJN reason that because the Commission has previously disregarded transactions related to the Pool Agreement, that it would be unfair and unreasonable to ensure AEP-Ohio is compensated for lost revenue based on the Pool Agreement at the cost of ratepayers. For these reasons, OCC and APJN believe the PTR should be rejected or modified such that AEP-Ohio customers receive the benefits from the Company's off-system sales. IEU says the PTR provides a competitive advantage to GenResources and, therefore, violates corporate separation requirements. (OCC/APJN Br. at 85-87; IEU Br. at 69; IEU Ex. 124 at 30-31; FES Br. at 106-109; Tr. at 582, 698.)

The Company dispels the assertion that there is no statutory basis for a pool termination cost recovery provision in an ESP on the basis that the Commission has already rejected this argument in its December 14, 2011, Order on the ESP 2, where the Commission determined a pool termination rider may be approved "pursuant to Section

14 AEP-Ohio would determine the amount of lost revenue by comparing the lost pool capacity revenue for the most recent 12 month period preceding the effective date of the change in the AEP Pool to increases in net revenue related to new wholesale transactions or decreases in generation asset costs as a result of terminating the Pool Agreement.

15 *In re AEP-Ohio*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Order (September 28, 2000).

16 *In re AEP-Ohio*, ESP I Order at 17 (March 18, 2009); *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Order at 29 (January 11, 2011).

4928.143(B), Revised Code," and further concluded that establishing a rider "at a zero rate does not violate any regulatory principle or practice."[17] According to the Company, the other criticisms that these parties raise regarding the PTR are objections as to how, or the extent to which, pool termination costs should be recoverable through the rider which are not ripe and should be addressed if, and only if, AEP-Ohio actually pursues recovery of any such costs in the future as part of a separate proceeding. (AEP-Ohio Reply Br. at 59-60.)

We find statutory support for the adoption of the PTR in Section 4928.143(B)(2)(h), Revised Code. The PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement with the full transition to market for all SSO customers by no later than June 1, 2015. Therefore, we approve the PTR as a placeholder mechanism, initially established at a rate of zero, contingent upon the Commission's review of an application by the Company for such costs. The Commission notes that in permitting the creation of the PTR, it is not authorizing the recovery of any costs for AEP-Ohio, but is allowing for the establishment of a placeholder mechanism, and any recovery under the PTR must be specifically authorized by the Commission. If, and when, AEP-Ohio seeks recovery under the PTR, 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 PTR, AEP-Ohio must first demonstrate the extent to which the Pool Agreement benefitted Ohio ratepayers over the long-term and the extent to which the 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 PTR is based upon costs which were prudently incurred and are reasonable. Importantly, this Commission notes that AEP-Ohio will only be permitted to requests recovery should this Commission modify or amend its corporate separation plan as filed in Case No. 12-1126-EL-UNC only as to divestiture of the generation assets; we specifically deny the Company's request for recovery through the PTR based on any other amendment or modification of the corporate separation plan by this Commission or the Federal Energy Regulatory Commission (FERC) or FERC's denial or impediment to the transfer of the Amos and Mitchell units to AEP-Ohio affiliates. As such, AEP-Ohio's right to recover lost revenues under the PTR is based exclusively on the actions, or lack thereof, of this Commission.

11. <u>Capacity Plan</u>

Pursuant to the Commission's Entry on Rehearing issued February 23, 2012, in the ESP 2 cases, and the Entry issued March 7, 2012, in the Capacity Case, the Commission directed that the Capacity Case proceed, without further delay, to facilitate the development of the record to address the issues raised, outside of the ESP proceeding.

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17 *In re AEP-Ohio*, Case No. 11-346-EL-SSO et al., Order at 50 (December 14, 2011).

While the Capacity Case continued on an expedited schedule to determine the state compensation mechanism, AEP-Ohio nonetheless included, as a component of this modified ESP, a capacity provision different from its litigation position in the Capacity Case, which may be summarized as follows. As a component of this modified ESP, the Company proposes a two-tiered, capacity pricing mechanism, with a tier 1 rate of $145.79 per MW-day and a tier 2 rate of $255.00 per MW-day. Shopping customers, within each rate class, would receive tier 1 capacity rates in proportion to their relative retail sales level based on the Company's retail load. During 2012, 21 percent of the Company's total retail load would receive tier 1 capacity and in 2013, the percentage would increase to 31 percent. In 2014, through the end of the ESP, May 31, 2015, the tier 1 set aside percentage would increase to 41 percent of the Company's retail load. All other shopping customers would receive tier 2 capacity rates. For 2012, an additional allotment of tier 1 priced capacity will be available to non-mercantile customers who are part of a community that approved a governmental aggregation program on or before November 8, 2011, even if the set-aside has been exceeded. AEP-Ohio does not propose any special capacity set-aside for governmental aggregation programs after 2012. (AEP-Ohio Ex. 101 at 15; AEP-Ohio Ex. 116 at 6-7.)

AEP-Ohio argues that its embedded cost-based charge for capacity is $355.72 per MW-day, as supported by the Company in the Capacity Case. Further, AEP-Ohio projects, with forward energy pricing decreasing over the remainder of 2012 by approximately 25 percent and based upon the switching rates experienced by other Ohio electric utilities, that by the end of 2012 shopping rates in AEP-Ohio territory will increase to 65 percent of residential load, 80 percent of commercial load and 90 percent of industrial load (excluding one large customer). AEP-Ohio reasons that the two-tier capacity pricing mechanism is a discount from the Company's embedded cost of capacity which will provide CRES providers headroom, the ability to offer shopping customers lower competitive electric service rates and expand competition in the Company's service territory and, as a component of this modified ESP, balances the revenue losses likely to be experienced by the Company. Further, AEP-Ohio submits that the capacity pricing offered as a part of this modified ESP is intended to mitigate, in part, the financial harm the Company will potentially endure if the Company is required to provide capacity at PJM's RPM-based rate. (AEP-Ohio Ex. 116 at 4-5, 8-9; Tr. at 332-333.)

As an alternative to the two-tiered capacity mechanism, AEP-Ohio proposes as a component of the modified ESP, to charge CRES providers its embedded cost of capacity $355.72 per MW-day with a $10 per MWh bill credit to shopping customers, subject to a cap of $350 million through December 31, 2014. Shopping credits would be limited to up to 20 percent of the load of each customer class for June 2012 through May 2013, and increase to 30 percent for the period June 2013 through May 2014 and then to 40 percent for the period June 2014 through December 2014. AEP-Ohio's rationale for the alternative is to ensure shopping customers receive a direct and tangible benefit to shop that is fixed and known regardless of the CRES provider selected. (AEP-Ohio Ex. 116 at 15-17; Tr. at 427, 1434.)

On July 2, 2012, the Commission issued the Order in the Capacity Case (Capacity Order) wherein the Commission determined $188.88 per MW-day as the appropriate charge to enable the Company to recover its capacity costs pursuant to its Fixed Resource Requirements (FRR) obligations from CRES providers.[18] However, the Capacity Order also directed that AEP-Ohio's capacity charge to CRES providers shall be the auction-based rate, as determined by PJM via its reliability pricing model (RPM), including final zonal adjustments, on the basis that the RPM rate will promote retail electric competition.[19]

In the Capacity Order, the Commission also authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers, commencing June 1, 2012, through the end of this modified ESP, with the recovery mechanism to be established in this proceeding.[20]

In this Order on the modified ESP, the Commission adopts, as part of the RSR, the recovery of the difference between the RPM-based capacity rate and AEP-Ohio's state compensation mechanism for capacity as determined by the Commission.

Staff endorses the Company's recovery of the difference between the state compensation mechanism for capacity and the RPM rate (Staff Reply Br. at 13). On the other hand, IEU, OCC and APJN argue that there is no record evidence in this modified ESP case, or any other proceeding, to determine an appropriate mechanism to collect deferred capacity charges in contradiction of the requirements in Section 4903.09, Revised Code, and the parties were not afforded due process on the issue. Furthermore, OCC and APJN reason that the capacity charge deferrals cannot be a provision of an ESP as the charges do not fall within one of the specified categories listed in Section 4928.143(B)(2), Revised Code, and there is no statutory basis under Chapter 4928, Revised Code, for such charges. OCC and APJN also contend approval of the recovery of deferred capacity charges violates state policies expressed in Section 4928.02, Revised Code, at paragraph (A), which requires reasonably priced retail electric service; at paragraph (H), which prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail service; and at paragraph (L), which requires the Commission to protect at-risk populations. (OCC/APJN Reply Br. at 18; IEU Reply Br. 6-7).

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18 In re Capacity Case, Order at 33-36 (July 2, 2012).

19 In re Capacity Case, Order at 23 (July 2, 2012).

20 In re Capacity Case, Order at 23 (July 2, 2012).

Certain parties that oppose the Commission's incorporation of the Capacity Case deferrals in the modified ESP overlook the fact that the Capacity Case was opened prior to each of the ESP 2 applications filed by AEP-Ohio and that each of the applications proposed a state compensation capacity charge and plan for resolution of the issue. The Commission rejects the Company's two-tier capacity plan and rates, proposed as a part of this modified ESP 2.

Furthermore, in accordance with Section 4928.144, Revised Code, the Commission may order any just and reasonable phase-in of any rate or price established under Sections 4928.141, 4928.142, or 4928.143, Revised Code, including carrying charges. Where the Commission establishes a phase-in, the Commission must also authorize the creation of the regulatory asset to defer the incurred costs equal to the amount not collected, plus carrying charges on the amount not collected, and authorize the recovery of the deferral and carrying charges by way of a non-bypassable surcharge.

Several of the interveners argue that because the record in the modified ESP was closed when the Capacity Order was issued, the deferral of capacity charges was not made an issue in the modified ESP case, the record does not support the deferral of capacity charges or that the parties were not afforded due process on the issue. We disagree. AEP-Ohio proposed certain capacity charges and a plan as a part of this modified ESP and consistent with the Commission's authority we may approve or modify and approve an ESP. Nothing in the Section 4928.144, Revised Code, limits the Commission's authority to modify the ESP to include deferrals on its own motion. With the Commission's decision to begin collecting the deferral in part through the RSR, all other issues raised on this matter are addressed in that section of the Order.

12. Phase-in Recovery Rider and Securitization

As part of AEP-Ohio's ESP 1 case, to mitigate the impact of the rate increase for customers, the Commission ordered, pursuant to Section 4928.144, Revised Code, the Company to phase-in any increase authorized over an established percentage for each year of the ESP.[21] The Commission authorized CSP and OP to establish a regulatory asset to record and defer fuel expenses, with carrying costs at the weighted average cost of capital (WACC), with recovery through a non-bypassable surcharge to commence January 1, 2012, and continue through December 31, 2018.[22] This aspect of the ESP 1 Order is final and non-appealable. On September 1, 2011, CSP and OP filed the Phase-in Recovery Case application to request the creation of the Phase-In Recovery Rider (PIRR), a mechanism to recover the accumulated deferred fuel costs, including carrying costs, to be effective with the first billing cycle of January 2012. The Phase-in Recovery Case was a part of the proposed ESP 2 Stipulation which was initially approved by the Commission on

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21 ESP 1 Order at 22.

22 ESP 1 Order at 20-23; First ESP EOR at 6-10.

December 14, 2011. Consistent with the Commission's directive in the February 23, 2012 Entry on Rehearing rejecting the ESP Stipulation, a procedural schedule was established for the Phase-in Recovery Case to proceed independently of any ESP. On August 2, 2012, the Commission issued its decision on the Company's PIRR application.

Notwithstanding the Phase-in Recovery Case, as a part of this modified ESP case, AEP-Ohio requests that recovery of the deferred fuel expenses be delayed, while continuing to accrue carrying cost at WACC, until June 2013. The Company does not propose to extend the recovery period. AEP-Ohio also proposes that the PIRRs of CSP and OP be combined. The rationale presented by the Company for delaying collection of the PIRR is to coincide with and offset the consolidation of the FAC, which the Company reasons will minimize customer rate impacts. According to AEP-Ohio witness Roush, combining the PIRR rates will increase the rate for customers in the CSP rate zone and reduce the rate for customers in the OP rate zone. In this modified ESP proceeding, AEP-Ohio also requests that the Commission suspend the procedural schedule in the PIRR cases. (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 119 at 3; AEP-Ohio Ex. 111 at 5-6.)

AEP-Ohio witness Hawkins acknowledges that legislation permitting the securitization of the PIRR was passed in December 2011 but claims that securitization of the PIRR regulatory asset will likely take about nine months to finalize after the issuance of a final, non-appealable order. AEP-Ohio admits that securitization of the PIRR regulatory assets would reduce customer costs as a result of the reduction in carrying costs and provide the Company with capital to assist with the transition to market. (AEP-Ohio Ex. 102 at 7-8.)

OCC opposes the notion that AEP-Ohio be permitted to earn a return on its own capital at WACC while the PIRR is delayed at the Company's request. Further, OCC and APJN agree with Staff that collection of the PIRR should commence as soon as possible after the Commission issues its Order, the delay in collection amounts to an additional cost of $64.5 million. OCC and APJN argue that there is no justification for the delay and the delay at WACC only serves to benefit the Company. Since the delayed collection is at the Company's request, OCC and APJN advocate that no further carrying charges accrue or the carrying charge be reduced to the long-term cost of debt. (OCC Ex. 115 at 4-7; OCC Ex. 111 at 20-22; OCC/APJN Br. at 64-72)

Similarly, IEU argues that the delay of the PIRR violates Section 4928.144, Revised Code, which requires that the delay in collection at WACC be consistent with sound regulatory practice, just, and reasonable. IEU estimates the additional carrying cost will be at least an additional $40 to $45 million and reasons that AEP-Ohio was only authorized to collect WACC on deferred fuel costs through December 31, 2011, the end of ESP 1. (IEU Ex. 129 at 30-31, 14; Tr. at 3639, 4549.)

Ormet argues that the increased carrying charge to defer the implementation of the PIRR until June 2013 is excessive and presents a number of legal and pragmatic issues. Ormet notes that the interest to be incurred by delaying the implementation of the PIRR is based on an interest rate of 11.26 percent, more than AEP-Ohio utilized to determine the RSR. Ormet encourages the Commission to reduce the carrying cost, in light of the change in economic and financial circumstances since the ESP 1 Order, to the short-term cost of debt and to delay PIRR implementation until securitization is complete or at least until June 2013. (Ormet Br. at 23-24.)

Ormet and IEU request that the Company be directed to maintain the separate PIRR mechanisms for CSP and OP to reduce the impact on ratepayers. IEU notes that CSP customers have contributed approximately one percent of the total PIRR balance. Ormet notes that the deferred fuel expenses that are the basis of the PIRR, as provided in the ESP 1 Order, is a final non-appealable order for which AEP-Ohio may rely to seek securitization. AEP-Ohio has argued such in this case in its filing of March 6, 2012, and Ormet contends that pursuant to *Nationwide Ins. Co. v. Hall*, No. 1258, 1978 WL 214906 at *3 (Ohio App. 7 Dist. Mar. 23, 1978) AEP-Ohio can not now assert a contradictory legal position. (Tr. at 4543-4548; Ormet Ex. 106B at 9; Ormet Br. at 23-27; IEU Ex. 129 at 9-11; IEU Br. at 72)

Ormet asserts that blending the PIRR rate for CSP and OP rate zones constitutes a retroactive change in fuel costs for which AEP-Ohio has failed to offer any justification. Ormet states that at the time the fuel cost were incurred, CSP and OP were not merged and that the overwhelming majority of the PIRR balance is from the OP rate zone. The rationale offered by Ormet is that the blending of the FAC rate is fundamentally different from the blending of the PIRR rate, as FAC is an ongoing look at current and future fuel costs where the PIRR is the collection of previously incurred, deferred fuel costs. Ormet argues that the Commission has previously concluded that the distinction between retrospective and prospective is key to what constitutes prohibited retroactive ratemaking. Ormet asks that, consistent with the Commission's determination in the ESP 1 Entry on Remand Order, that the Commission find the blending of the CSP and OP PIRR balances equates to changing the rate for previously incurred but deferred fuel costs. (Tr. at 1187, 4536-4537, 4540; Ormet Br. at 27-31.)

The Company reasons that the PIRR regulatory asset is on the books of OP, as the surviving entity post-merger, along with all of the other assets and liabilities of the former CSP. Therefore, it is appropriate for all AEP-Ohio customers to pay the PIRR. AEP-Ohio notes that Staff advocates that the FAC and PIRR be immediately unified and implemented, because CSP customers benefit from a rate impact perspective with the merging of both rates (Tr. at 4539-4540).

Staff opposes the Company's request to delay recovery of the merged PIRR rates and recommends that the Commission direct recovery to commence upon approval of the modified ESP to avoid increased carrying charges associated with the dely. Staff notes that with a PIRR balance of approximately $549 million, delaying PIRR recovery until June 2013 results in additional carrying charges of $71 million at the WACC. Further, Staff supports the merger of the PIRR rates. (Staff Ex. 109 at 4-5.)

AEP-Ohio answers that the difference between the Company's proposal to delay collection of the PIRR in comparison to the Staff and certain interveners opposition to the delay is essentially a balancing or prioritizing between two goals: mitigating present rate impacts and reducing the total carrying charges. The Company's proposal was aimed at addressing the first goal and the Staff's position prioritizes the second goal. The Company contends that its proposal to delay implementation of the PIRR until June 2013 to coincide with the unification of FAC rates is reasonable, results in minimal immediate rate impacts to customers, and should be approved.

AEP-Ohio's request to suspend the procedural schedule in the PIRR case is moot, as it does not appear that the Company made a similar request in the Phase-in Recovery Cases, and given that the Commission has issued its decision on the PIRR application. Consistent with the Company's limited request as to the PIRR in this modified ESP, we will address the commencement of the amortization period for the PIRR, combining the PIRR rates for the CSP and OP rate zones and securitization. Any remaining issue raised as to the deferred fuel expense or the PIRR that is not addressed in the Phase-in Recovery Order or this modified ESP Order is denied.

As AEP-Ohio correctly points out, delaying collection of the PIRR to offset against the merged FAC rates, as opposed to immediately commencing collection of the PIRR, is indeed the prioritizing between two goals. AEP-Ohio's request to delay commencement of the amortization period for the PIRR is denied. In this case, where the accrued carrying charges during the requested delay are estimated to be an additional $40 to $71 million, it is unreasonable for the Commission to approve the delay and permit carrying charges to continue to accrue merely to facilitate one charge offsetting another. AEP-Ohio is directed to commence recovery of the PIRR charges as soon as practicable after the issuance of this Order.

We agree with the recommendation of Ormet and IEU to maintain separate PIRR rates for the CSP and OP rate zones. The PIRR balance was incurred primarily by OP customers, and according to cost causation principles, the recovery of the balance should be from OP customers. Further, as discussed above, the Commission directs that FAC rates should be maintained on a separate basis.

IEU argues that the PIRR fails to address the requirements of Section 4928.20(I), Revised Code,[23] that requires non-bypassable charges arising from a phase-in deferral are applicable to customers in governmental aggregation programs only in proportionate to the benefit received. IEU's claim that the PIRR violates Section 4928.20(I), Revised Code, is misdirected. The PIRR is not part of this ESP proceeding but was the directive of the Commission in the Company's prior ESP case. Therefore, the Commission finds that IEU should have raised this issue in the ESP 1 case or when the Commission established the PIRR and that Section 4928.144, Revised Code, as to the collection of the PIRR, is not applicable to this modified ESP proceeding.

The Commission notes that AEP-Ohio witness Hawkins testified that securitization of the PIRR regulatory assets would reduce customer costs through the reduction of the carrying cost and provide AEP-Ohio with the needed capital to assist with the transition to competition. AEP-Ohio also states that recovery of the PIRR can commence before securitization is complete. Ormet supports securitization of the PIRR. (AEP-Ohio Ex. 102 at 8; Ormet Br. at 24-25.)

Finally, while AEP-Ohio does not specifically propose securitization of the PIRR in the modified ESP, AEP-Ohio notes that securitization offers a benefit to both customers and AEP-Ohio. Further, no parties opposed the idea of securitizing the PIRR. Accordingly, we direct AEP-Ohio to take advantage of this extremely useful tool our General Assembly created for electric utilities and their customers through House Bill 364 and securitize the PIRR deferral balance. Securitization not only leads to lower utility bills for all customers as a result of reduced carrying costs, but also leads to lower borrowing costs for AEP-Ohio. The Commission finds it extremely important, particularly when our State has been hit by tough economic times, to keep customer utility bills as low as possible, and securitization of the PIRR provides us with a means to ensure we protect customer interests. Therefore, AEP-Ohio shall initiate the securitization process for the PIRR deferral balance as soon as practicable..

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[23] Section 4928.20(I), Revised Code, states:

Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.

13. Generation Asset Divestiture

The Company describes, but does not request as a part of this modified ESP, its proposed application for full corporate separation filed in Case No. 12-1126-EL-UNC (Corporate Separation Case), pursuant to the requirements of Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C.[24] AEP-Ohio asserts full corporate separation is a necessary prerequisite for generation asset divestiture and AEP-Ohio's transition to an auction-based SSO. Pursuant to the proposed modified ESP and the Company's proposed corporate separation plan, AEP-Ohio will retain transmission and distribution-related assets, its REPAs and the associated RECs. AEP-Ohio will transfer to its generation affiliate, GenResources, existing generation units and contractual entitlements, fuel-related assets and contracts and other assets and liabilities related to the generation business.[25] The generation assets will be transferred at net book value. AEP-Ohio proposes to retain senior notes and pollution control revenue bonds, as such long-term debt is not secured by the generation assets being transferred to GenResources. The Company expects to complete termination of the Pool Agreement and full corporate separation by January 1, 2014.[26] (AEP-Ohio Ex. 103 at 4-6, 8, 21-22.)

AEP-Ohio is a Fixed Resource Requirement (FRR) entity, pursuant to the requirements of PJM Interconnection LLC (PJM), and must remain an FRR until June 1, 2015. To meet its FRR obligations after full corporate separation and before the proposed energy auctions for delivery commencing January 1, 2015, the Company states GenResources will provide AEP-Ohio, via a full requirements wholesale agreement, its load requirements to supply non-shopping customers. Pursuant to the proposed modified ESP, AEP-Ohio proposes that for the period January 1, 2015 through May 31, 2015, GenResources will provide AEP-Ohio only capacity, no energy, at $255 per MW-day and the contract between AEP-Ohio and GenResources will terminate effective June 1, 2015, when both energy and capacity will be provided to SSO customers through an auction. While AEP-Ohio is an FRR entity, the Company states it will make capacity payments to GenResources for the energy only auctions proposed in this modified ESP at $255 per MW-day. Generation-related revenues paid to AEP-Ohio by Ohio ratepayers will be passed through to GenResources for capacity and energy received for the SSO load, and AEP-Ohio will reimburse GenResources on a dollar-for-dollar basis for transmission, ancillary, and other service charges billed to GenResources by PJM to serve AEP-Ohio's

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24 See *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, filed March 30, 2012.

25 AEP-Ohio notes that after transferring the generation assets and liabilities to GenResources, GenResources will transfer Amos unit 3 and 80 percent of the Mitchell Plant to Appalachian Power Company (APCo) and transfer the balance of the Mitchell Plant to Kentucky Power Company (KYP), so the utilities can meet their respective load requirement absent the AEP East Pool Agreement (AEP-Ohio Ex. 101 at 22).

26 As a part of the modified ESP, AEP-Ohio requests approval for a Pool Termination Rider which is addressed in a separate section of this Order.

SSO load. In addition, AEP-Ohio will remit all capacity payments made by CRES providers pursuant to PJM's Reliability Assurance Agreement to GenResources as well as revenues from the Retail Stability Rider as compensation for fulfillment of AEP-Ohio's FRR obligations. (AEP-Ohio Ex. 101 at 23; AEP-Ohio Ex. 103 at 6-8; Tr. at 515-519.)

IEU, OCC and APJN argue that because AEP-Ohio has made the modified ESP filing contingent on receiving approval of the corporate separation plan yet failed to request consolidation of the Corporate Separation Case, the Commission cannot approve the corporate separation plan as a part of this proceeding. (OCC/APJN Br. at 73; IEU Br. 76-77.)

In fact, IEU argues that AEP-Ohio is not the FRR entity but, American Electric Power Service Corporation (AEPSC) is the FRR entity on behalf of all of the American Electric Power operating companies within PJM and, therefore, AEP-Ohio does not have any FRR obligation. Nor has AEP-Ohio offered into evidence, IEU notes, AEPSC's FRR capacity plan or indicated which of AEP-Ohio's generation assets are part of the capacity plan. IEU reasons that AEP-Ohio's generation assets are not dedicated to AEP-Ohio's distribution customers and may be replaced by other capacity resources. (IEU Ex. 125 at 23, AEP-Ohio Ex. 103 at 9.)

DER and DECAM argue that AEP-Ohio's proposal to contract with GenResources to serve the SSO load at the proposed capacity price after corporate separation is an illegal violation of the corporate separation laws and violates state policy causing a negative impact on the ability of unaffiliated CRES providers to compete in OP territory (Tr. at 812-813; DER/DECAM Br. at 11).

Staff opposes AEP-Ohio's request to retain $296 million in pollution control bonds, where there has not been, according to Staff, any demonstration that use of the intercompany notes would have a substantial negative affect on the generation affiliate's cost of debt. Staff proposes that AEP-Ohio be directed to make a filing with the Commission within six months after the completion of corporate separation, to demonstrate that there is not any substantial negative impact on AEP-Ohio if the debt or intercompany notes are not transferred to the generation affiliate. Therefore, Staff recommends that the Commission deny this aspect of the Company's ESP proposal at this time. Further, Staff recommends that the Corporate Organization chart be updated to reflect the legal entities that are related to American Electric Power Inc., as well as all reportable segments related to AEP-Ohio, in a format and manner similar to the information American Electric Power Inc. provides in its 10K filing to the Securities and Exchange Commission. (Staff Ex. 108 at 5-6; Tr. at 4405-4406.)

AEP-Ohio did not request consolidation of its pending corporate separation plan in conjunction with this modified ESP application, and as such the Commission will consider the corporate separation application in a separate docket. As such, the primary issues to be considered in this modified ESP proceeding is how the divestiture of the generation assets and the agreement between AEP-Ohio and GenResources will impact SSO rates.

We find IEU's arguments, that AEP-Ohio is not the entity committed to an FRR obligation with PJM to be form over substance. AEPSC entered into the FRR agreement on behalf of AEP-Ohio and other AEP-Ohio operating affiliates and the legal obligation of AEP-Ohio is no less binding than if AEP-Ohio entered into the agreement directly.

The Commission finds that sufficient information regarding the proposed generation asset divestiture and corporate separation, as reflected in more detail in the Corporate Separation Case, has been provided in this modified ESP case to allow the Commission to reasonably conclude that termination of the Pool Agreement and corporate separation facilitate AEP-Ohio's transition to a competitive market in Ohio. With the modification and adoption of the modified ESP, as presented in this Order, the Commission may reasonably determine the ESP rates, including the rate impact of the generation asset divestiture, on the Company's SSO customers for the term of the modified ESP, where upon SSO rates will subsequently be subject to a competitive bidding process. While, AEP-Ohio proposes to enter into an agreement with GenResources to provide AEP-Ohio capacity at $255 per MW-day, we emphasize that based on the Commission's decision in the Capacity Case, AEP-Ohio will not receive any more than the state compensation capacity charge of $188.88 per MW-day from Ohio customers during the term of this ESP.

As the Commission understands the Company's description of the generation divestiture, all AEP-Ohio generation facilities, except Amos and Mitchell, will be transferred to GenResources at net book value. Amos and Mitchell will ultimately be transferred to AEP-Ohio operating affiliates at net book value.

Staff raises some concern with the implementation of corporate separation and the lack of the Company's transfer of all debt and/or intercompany notes to GenResources. Despite the Staff's recommendation, the Commission approves AEP-Ohio's requests to retain the pollution control bonds contingent upon a filing with the Commission demonstrating that AEP-Ohio ratepayers have not and will not incur any costs associated with the cost of servicing the associated debt. More specifically, AEP-Ohio ratepayers shall be held harmless for the cost of the pollution control bonds, as well as any other generation or generation related debt or inter-company notes retained by AEP-Ohio. AEP-Ohio shall file such information with the Commission, in this docket no later than 90 days after the issuance of this Order. Accordingly, the Commission finds that, subject to our approval of the corporate separation plan, the electric distribution utility should divest its generation assets from its noncompetitive electric distribution utility assets by transfer to its separate competitive retail generation subsidiary, GenResources, as represented in this modified ESP. The Company states that it has notified PJM of its intention to enter PJM's auction process for the delivery year 2015-2016. The Commission will review the remaining issues presented in the Company's Corporate Separation Case.

In regards to the contract between AEP-Ohio and GenResources, FES contends that after corporate separation AEP-Ohio cannot simply pass-through the generation revenues it receives without evidence that the cost are prudent consistent with Section 4928.143(B)(2)(a), Revised Code, and AEP-Ohio has done nothing to establish that $255 per MW-day for capacity is prudent. The price of $255 per MW-day is unrelated to cost or market rates, and according to FES, appears to be well above market. Furthermore, Constellation and Exelon witness Fein testified that Exelon made an offer of energy and capacity and an offer for capacity only to serve AEP-Ohio's SSO load June 1, 2014 through May 31, 2016, at a cost lower than the Company is proposing as a part of this modified ESP. Constellation and Exelon emphasize that the PJM tariff does not prohibit an FRR entity from making bilateral purchases in the market to meet its capacity obligations. (Constellation/Exelon Ex. 101 at 17-19). FES notes that according to testimony offered by AEP-Ohio witness Nelson, the $255 MW-day for capacity is not based on costs nor indexed to the market rate. Furthermore, FES points out that AEPSC is negotiating the contract for both AEP-Ohio and GenResources. AEP-Ohio has no intent, based on the testimony of Mr. Nelson, to evaluate whether the cost of its contract with GenResources for SSO service could be reduced by contracting with another supplier. Based on the record evidence, FES argues that this aspect of the modified ESP does not comply with the requirements of Section 4928.143(B)(2)(a), Revised Code, and the contract between AEP-Ohio and GenResources, after corporate separation does not comply with the FERC *Edgar* guidelines, which direct that no wholesale sale of electric energy or capacity between a franchised public utility with captive customers and a market-regulated power sales affiliate may take place without first receiving FERC authorization for the transaction under section 205 of the Federal Power Act. (Tr. at 523-526; FES Br. at 102-105.)

The Commission finds, that once corporate separation is effective and AEP-Ohio procures its generation from GenResources that it is appropriate and reasonable for certain revenues to pass-through AEP-Ohio to GenResources. Specifically, the revenues AEP-Ohio receives, after corporate separation is implemented, from the RSR which are not allocated to recovery of the deferral, revenue equivalent to the capacity charge of $188.99/MW-day authorized in Case No. 10-2929-EL-UNC, generation-based revenues from SSO customers, and revenue for energy sales to shopping customers, should flow to to GenResources. We recognize, as AEP-Ohio acknowledges and FES discusses in its reply brief, that the contract between AEP-Ohio and GenResources is subject to prior FERC approval. We do not make, as a part of our review of the Company's modified ESP application, any expressed or implied endorsement of the terms or conditions of the AEP-Ohio contract with GenResources, as presented in this case.

14. GridSMART

The Company's modified ESP application proposes the continuation of the gridSMART rider approved by the Commission in the ESP 1 Order, with two modifications. First, AEP-Ohio requests that the gridSMART rates for the CSP rate zone be expanded to the OP rate zone. Second, AEP-Ohio requests that the net book value of meters retired as a result of the gridSMART project be deferred as a regulatory asset for accounting purposes. Currently, the net book value of meters replaced as a result of Phase 1 of the gridSMART project are charged to expense net of salvage and net of meter transfers and included in the over/under calculation of the rider. The Company expects to complete the installation of gridSMART equipment in Phase 1 and to complete gridSMART data submission to the U. S. Department of Energy on Phase 1 of the project by December 31, 2013, with the evaluation to be completed around March 31, 2014. Further, AEP-Ohio states that the Company intends to deploy elements of the gridSMART program throughout the AEP-Ohio service territory as part of the proposed DIR program proposed in this proceeding. (AEP-Ohio Ex. 107 at 10; AEP-Ohio Ex. 110 at 9-13.)

OCC and APJN submit that, to the extent that the Company proposes to include gridSMART costs in the DIR, there are numerous concerns that need to be addressed before the Company is authorized to proceed. Staff, OCC, and APJN retort that the Company's proposed expansion of the gridSMART project, before any evaluation and analysis of the success of gridSMART Phase 1, is inconsistent with sound business principles and should be rejected by the Commission. Therefore, these parties recommend that the Company not proceed with Phase 2 until evaluation of Phase 1, is complete, on or about March 31, 2014. (Staff Ex. 105 at 5-6; OCC/APJN Br. at 96-97.)

More specifically, Staff reasons that the costs of the expansion of various gridSMART technologies have not been determined, the benefits of the gridSMART expansion defined nor customer acceptance of such technologies evaluated. In addition, Staff claims that the Company has stated that certain components of the aging distribution infrastructure do not support gridSMART technologies. Despite Staff's position on the commencement of Phase 2 of the gridSMART project, Staff does not oppose the Company's installation, at the Company's expense and risk of recovery, of proven distribution technologies that can proceed independently of gridSMART, which address near term generation reliability concerns, such as integrated voltage variation control (IVVC), and do not present any security or interoperability issues or violate requirements set forth by the National Institute of Standards and Technology Interagency Report. Staff endorses the continuation of the gridSMART rider to be collected from all AEP-Ohio customers. Staff emphasizes that equipment should not be recoverable in the gridSMART rider until it is installed, has completed and passed thorough testing, and has been placed in-service. (Staff Ex. 105 at 3-6; Staff Ex. 107 at 3-13.)

AEP-Ohio points out that no intervener has expressed any opposition to the continuation and completion of gridSMART Phase 1 and, accordingly, AEP-Ohio requests approval of this aspect of the modified ESP. AEP-Ohio also requests that the Commission provide some policy guidance on whether the Company should proceed with the expansion of the gridSMART program.

As the Commission noted in AEP-Ohio's ESP 1 Order:

> [I]t is important that steps be taken by the electric utilities to explore and implement technologies... that will potentially provide long-term benefits to customers and the electric utility. GridSMART Phase 1 will provide CSP with beneficial information as to implementation, equipment preferences, customer expectations, and customer education requirements... More reliable service is clearly beneficial to CSP's customers. The Commission strongly supports the implementation of AMI [advanced metering infrastructure] and DA [distribution automation initiative], with HAN [home area network], as we believe these advanced technologies are the foundation for AEP-Ohio providing its customers the ability to better manage their energy usage and reduce their energy costs.

(*ESP 1 Order* at 34-35.)

The Commission is not wavering in its conviction as to the benefits of gridSMART. Thus, we direct AEP-Ohio to continue the gridSMART Phase 1 project and to complete the review and evaluation of the project. We are approving the Company's request to initiate Phase 2 of the gridSMART project, prior to the March 31, 2014, completion of the evaluation of gridSMART Phase 1, with those technologies that have to-date demonstrated success and are cost-effective. To require the Company to delay any further expansion or installation of gridSMART is unnecessarily restrictive with respect to the further deployment of successful individual smart grid systems and technologies used in the project. The Company shall file its proposed expansion of the gridSMART project, gridSMART Phase 2, as part of a new gridSMART application, including sufficient detail on the equipment and technology proposed for the Commission to evaluate the demonstrated success, cost-effectiveness, customer acceptance and feasibility of the proposed technology. However, the Company shall include, as Staff recommends, IVVC only within the distribution investment rider, as IVVC is not exclusive to the gridSMART project. IVVC supports the overall electric system reliability and can be installed without the presence of grid smart technologies, although IVVC enhances or is necessary for grid smart technology to operate properly and efficiently. Furthermore, the gridSMART Phase 1 rider was approved with specific limitations as to the equipment for which recovery could be sought, and a dollar limitation.[27] Any gridSMART investment beyond the Phase 1 pilot, which is not subject to recovery through the DIR mechanism, should be recovered through a mechanism other than the current gridSMART rider, for example, through a gridSMART Phase 2 rider. The current gridSMART rider allows for recovery on an "as spent" basis, with audits directed toward truing-up expenditures with collections through the rider rate. Keeping subsequent non-DIR, gridSMART expenditures in a new separate recovery mechanism facilitates enforcement and a Commission determination that recovery of gridSMART investment occur only after the equipment is installed, tested, and is in-service. With these clarifications, the Commission approves the Company's request to continue, as a part of this modified ESP, the current gridSMART rider mechanism, subject to annual true-up and reconciliation based on the Company's prudently incurred costs, and to extend the rate to include OP as well as CSP customers.

We note that the gridSMART Phase 1 rider was last evaluated for prudency of expenditures, reconciled for over- and under-recoveries and the rate mechanism adjusted in Case No. 11-1353-EL-RDR, with the rate effective beginning September, 1, 2011. Despite the Commission's February 23, 2012 rejection of the application in this ESP 2 proceeding, the recovery of the gridSMART rate mechanism continued consistent with the Entry issued March 7, 2012. Accordingly, the gridSMART rider rate mechanism approved in Case No. 11-1353-EL-RDR shall continue at the current rate until revised by the Commission. We also note that in Case No. 11-1353-EL-RDR, the Commission deducted an amount from the Company's claim for the loss on the disposal of electro-mechanical meters. The Commission notes, as we stated in the Order issued August 4, 2011, that we will address the meter issue in the Company's pending gridSMART rider application, Case No. 12-509-EL-RDR, and nothing in this Order on the modified ESP should be interpreted to the contrary.

15. Transmission Cost Recovery Rider

Pursuant to Commission authority, as set forth in Section 4928.05(A)(2), Revised Code, and the rules in Chapter 4901:1-36, O.A.C., electric utilities may seek recovery of transmission and transmission-related costs. Through this modified ESP, AEP-Ohio proposes only that the transmission cost recovery rider (TCRR) mechanisms of the CSP and OP rate zones be combined. The Company proposes no other changes to the TCRR mechanism as a part of this ESP. (AEP-Ohio Ex. 111 at 6-7; AEP-Ohio Ex. 107 at 8.)

The Commission notes that the current TCRR process has been in place since 2009, and operates appropriately. As structured, with the TCRR mechanism any over- or under-recovery is accounted for in the next semi-annual review of the TCRR mechanism. For this reason, we do not expect any adverse rate impact for customers with the combining of the CSP and OP TCRR rate mechanisms. Given the merger of CSP into OP, effective as of

[27] ESP 1 Order at 37-38; ESP 1 Entry on Rehearing at 18-24 (July 23, 2009).

December 31, 2011, the Commission finds AEP-Ohio's request to combine the TCRR mechanism to be reasonable. The Commission directs that any over-recovery of transmission or transmission-related costs, as a result of combining the TCRR mechanisms, be reconciled in the over and under-recovery component of the Company's next TCRR rider update.

16. Enhanced Service Reliability Rider

As part of AEP-Ohio's ESP 1 case, AEP-Ohio proposed an enhanced service reliability rider (ESRR) program which included four components, of which only the transition to a cycle-based vegetation management program was approved by the Commission. In this modified ESP, AEP-Ohio requests continuation of the ESRR and the Company's transition to a four-year, cycle-based trimming program. Further, the Company proposes the unification of the ESRR rates for each rate zone into a single rate, adjusted for anticipated cost increases over the term of the ESP, with carrying cost on capital assets and annual reconciliation. AEP-Ohio admits that before the initiation of the transitional vegetation management program, the number of tree-related circuit outages had gradually increased. However, the Company states that with the initiation of the new vegetation management program, the number of tree-caused outages has been reduced and service reliability has improved. AEP-Ohio proposes to complete the transition from a performance-based program to a four-year, cycle-based trimming program for all of the Company's distribution circuits as approved by the Commission in the prior ESP. However, the Company notes that the vegetation management plan was implemented as a five-year transition program and, as a result of the delay in adopting a second ESP and increases in the expected costs to complete implementation of the cycle-based trimming program, it is now necessary to extend the implementation period to include an additional year into 2014. AEP-Ohio requests incremental funding for 2014 for both the completion of the transition to a cycle-based vegetation management program of $16 million and an incremental increase of $18 million annually to maintain the cycle-based program. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 110 at 5-9.)

Staff supports the continuance of the ESRR through 2014 but not any cost incurred thereafter. Staff reasons that after 2014, the Company's transition to a four-year, cycle-based vegetation management program will be complete and regular maintenance pursuant to the program will be part of the Company's normal operations, the cost of which should be recovered through base rates not through the ESRR. Further, Staff argues that the ESRR funding level for the period 2012 through 2014 is overstated due to the increased ESRR baseline reflected in the Company's recent distribution rate case.[28] According to Staff, to reach the rate base in the Stipulation in the distribution rate case, Staff agreed to an increase in the revenue requirement for CSP and OP which incorporated an annual increase in vegetation management operation and maintenance expense of $17.8

[28] *In re AEP-Ohio*, Opinion and Order, Case No. 11-351-EL-AIR, et al. (December 14, 2011).

million annually for 2012 through 2014 over its recommendation in the Staff Report. For that reason, Staff asserts that vegetation management operation and maintenance expense must be reduced by $17.8 million annually for the period 2012 through 2014. Further, Staff recommends that the Commission direct AEP-Ohio to file, pursuant to Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2013, a revised vegetation management program which commits the Company to complete end-to-end trimming on all of its distribution circuits every four years beginning January 1, 2014 and beyond. (Staff Ex. 106 at 11-14; Tr. at 4363-4365.)

AEP-Ohio retorts that Staff ignores the fact that the Stipulation, and the Commission Order approving the Stipulation, in the Company's distribution rate case do not detail any increase in the ESRR baseline. AEP-Ohio requests that the Commission reject Staff's view of the rate case settlement as unsupported and improper, after the issuance of a final, non-appealable order in the case. As to Staff's proposed termination of funding after 2014, the Company offers that such would undermine the benefits of the cycle-based trimming. (AEP-Ohio Reply Br. at 76-77.)

The Commission concludes that while the Stipulation in the distribution rate case reflects an increase in the baseline operations and maintenance expense from the level recommended in the Staff Report, there is no evidence in the Stipulation or the Commission's Order adopting the Stipulation which specifically supports a $17.8 million increase in operations and maintenance expense for the vegetation management program. Accordingly, the Commission approves the continuation of the vegetation management program, via the ESRR, and merger of the rates, as requested by the Company for the term of the modified ESP, through May 31, 2015. Within 90 days after the conclusion of the ESRR, the Company shall make the necessary filing for the final year review and reconciliation of the rider. We direct AEP-Ohio to file a revised vegetation management program consistent with this Order and Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2012. We see no need to wait until December 2013 for the filing, as requested by Staff, in light of our ruling in this Order.

17. Energy Efficiency and Peak Demand Reduction Rider

Through this modified ESP, the Company proposes the continuation of the EE/PDR Rider, with the unification of the rates into a single rate. The EE/PDR rider would continue to be, as it has been since its adoption in the ESP 1 cases,[29] updated annually. AEP-Ohio notes the proposed regulatory accounting for the EE/PDR rider, is over-under accounting with no carrying charge on the investment and no carrying charge on the over/under balance. The Company states that it has developed energy efficiency and demand response programs for all customer segments and through the implementation of the programs customers have the potential to save approximately $630

[29] ESP 1 Order at 41-48; ESP 1 EOR at 27-31.

million in reduced electric service cost over the life of the programs. Further, the EE/PDR programs cause power plant emissions to be reduced. AEP-Ohio testified that its energy efficiency and peak demand response programs for 2009 through 2011 have been very successful in meeting the benchmarks. Staff endorses the Company's request to continue the EE/PDR rider. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 11-12; Staff Br. at 31.)

The Commission approves the merger of the EE/PDR rider rates for the CSP and OP rate zones and, for the term of this modified ESP, the continuation of the EE/PDR rider as adopted in the ESP 1 Order and subsequently confirmed in each of the Company's succeeding EE/PDR cases. In addition, as we established in our analysis of the IRP-D credit, because the IRP-D credit promotes energy efficiency, it is appropriate for AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider, as opposed to the RSR. Further, the Commission directs AEP-Ohio to take the appropriate steps necessary to bid the energy efficiency savings funded by the EE/PDR rider into the next PJM base residual auction and all subsequent auctions held during the term of the ESP.

18. Economic Development Rider

AEP-Ohio's modified ESP application request approval to continue, with one modification, the non-bypassable Economic Development Rider (EDR). The EDR mechanism recovers the costs, incentives, and forgone revenues associated with new or expanding Commission-approved special arrangements for economic development and job retention. As currently designed, the EDR rate is a component of each customer's base distribution rates. The Company wishes to merge the EDR rates for each of the rate zones into a single EDR rate with the EDR rate to continue in all other respects as approved by the Commission in the ESP 1 Order and the Company's subsequent EDR cases. As currently approved by the Commission, the EDR is updated periodically and the regulatory accounting for the EDR, being over-under accounting with no carrying charge on the investment and a long-term interest carrying charge on any unrecovered balance. AEP-Ohio states that the EDR supports Ohio's effectiveness in the global economy as required in Section 4928.02(N), Revised Code. AEP-Ohio asserts that the proposed EDR is reasonable and should be adopted as part of the modified ESP. (AEP-Ohio Ex. 111 at 3, 7 and Ex. DMR-5; AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 7, 13.)

Staff supports the Company's EDR proposal (Staff Br. at 31). However, OCC and APJN argue the Company allocates the EDR rider based only on distribution revenues as opposed to current total revenues (distribution, transmission and generation) between the customer classes in compliance with Rule 4901:1-38-08(A), O.A.C.[30] OCC and APJN note

[30] Rule 4901:1-38-08(A)(4), O.A.C., states:

> The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change,

that the Commission approved Dayton Power & Light Company's EDR application with a similar allocation to the one they are proposing AEP-Ohio be required to adopt.[31]

The Company argues that because transmission and generation revenues are recovered only from its nonshopping customers, that OCC's and APJN's proposal would actually result in residential customers being responsible for a greater share of the delta revenues than under the current allocation method based only on distribution revenues paid by shopping and non-shopping customers. Further, AEP-Ohio notes that the Commission rejected this same proposal by OCC in the ESP 1 cases and requests that the Commission again reject the proposed change in the allocation methodology. (AEP-Ohio Reply Br. at 78.)

The Commission rejects OCC's and APJN's request to revise the basis for the EDR allocation, given the fact that the EDR is a non-bypassable rider recovered from shopping and non-shopping customers alike. We recognize that the EDR acts to attract new business and to facilitate the expansion of existing businesses in Ohio. In order to allow AEP-Ohio to effectively promote economic development to customers in its service territories, and continue its positive corporate presence in communities throughout Ohio, as evidenced by multiple witnesses at the public hearings, we find it reasonable for AEP to maintain its corporate headquarters in Columbus, Ohio, at a minimum, for the entire term of this ESP and the subsequent collection period associated with the deferral costs included in the RSR. Further, the Commission finds that, the EDR, as a non-bypassable rider, is recovered from all AEP-Ohio shopping and non-shopping customers. Therefore, we approve the Company's request to merge the EDR rates for the CSP and OP rate zones into a single rate and to otherwise continue the EDR mechanism as previously approved by the Commission in the Company's ESP 1 Order, as revised or clarified in its subsequent EDR proceedings.

Additionally, in light of the extenuating economic circumstances, the Commission hereby orders the Company to reinstate the Ohio Growth Fund, to be funded by shareholders at $2 million per year, or portion thereof, during the term of this ESP. The Ohio Growth Fund creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio.

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alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

31 See In re Dayton Power & Light Company, Case No. 12-815-EL-RDR, Order (April 25, 2012).

19. Storm Damage Recovery Mechanism

AEP-Ohio proposes a storm damage recovery mechanism be created to recover any incremental expenses incurred due to major storm events (AEP-Ohio Ex. 110 at 20). AEP-Ohio provides that the mechanism would be created in the amount of $5 million per year in accordance with the settlement in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR. In support of the storm damage recovery mechanism, AEP-Ohio witness Kirkpatrick notes that absent the mechanism, forecasted operation and maintenance (O&M) funds would be constantly diverted to cover the expense of major storms, which could disrupt planned maintenance activities and impact system reliability. The determination of what a major storm is or is not would be determined by methodology outlined in the IEEE Guide for Electric Power Distribution Reliability Indices, as set forth in Rule 4901:1-10-10(B), O.A.C. (*Id.*) Any capital costs that would be incurred due to a major storm would either become a component of the DIR or would be addressed in a distribution rate case (*Id.* at 21). Upon approval of the storm damage recovery mechanism, AEP-Ohio will defer the incremental distribution expenses above or below the $5 million storm expense beginning with the effective date of January 1, 2012 (AEP-Ohio Ex. 107 at 10).

OCC notes that while AEP-Ohio's actual storm costs expenses are currently unknown, it is likely that AEP-Ohio will incur more than $5 million based on historic data, which indicates the average annual expenses amount to approximately $8.97 million per year (OCC Ex. 114 at 20-21). In addition, OCC explains that AEP-Ohio failed to specify the carry charge rate for any storm damage deferrals, but suggests the carrying charges not be calculated using AEP-Ohio's WACC, as the mechanism does not include capital costs (OCC Br. at 97-98). OCC suggests that AEP-Ohio utilize its cost of long-term debt to calculate carrying charges (*Id.*).

In establishing its storm damage recovery mechanism, AEP-Ohio failed to specify how recovery of the deferred asset would actually work or would occur. As proposed, it is unknown when AEP-Ohio would seek recovery, or whether anything over or under $5 million would become a deferred asset or liability. As it currently stands, the storm damage recovery mechanism is open-ended and should be modified.

Therefore, we find that AEP-Ohio may begin deferral of any incremental distribution expenses above or below $5 million, per year, subject to the following modifications. Further, throughout the term of the modified ESP, AEP-Ohio shall maintain a detailed accounting of all storm expenses within its storm deferral account, including detailed records of all incidental costs and capital costs. AEP-Ohio shall provide this information annually for Staff to audit to determine if additional proceedings are necessary to establish recovery levels or refunds as necessary.

In the event AEP-Ohio incurs costs due to one or more unexpected, large scale storms, AEP-Ohio shall open a new docket and file a separate application by December 31 each year throughout the term of the modified ESP, if necessary. In the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating all the costs were prudently incurred and reasonable. Staff and any interested parties may file comments on the application within 60 days after AEP-Ohio dockets an application. If any objections are not resolved by AEP-Ohio, an evidentiary hearing will be scheduled, and parties will have the opportunity to conduct discovery and present testimony before the Commission. Thus, OCC's concern on the calculation of appropriate carrying charges is premature.

20. Other Issues

(a) Curtailable Service Riders

In ESP 1, based on the lack of certain information in the record, the Commission determined that customers under reasonable arrangements with AEP-Ohio, including, but not limited to, energy efficiency/peak demand reduction arrangements, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates, are prohibited from also participating in a PJM demand response program (DRP), unless and until the Commission decides otherwise (First ESP EOR at 41). While the Commission opined on the ability of customers in reasonable arrangements with AEP-Ohio to participate in PJM DRPs, the Commission did not, in the context of the ESP 1, address the ability of AEP-Ohio's retail customers to participate in PJM DRPs.

On March 19, 2010, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, AEP-Ohio filed an application to amend its emergency curtailment service riders to permit customers to be eligible to participate in AEP-Ohio's DRPs, integrate their customer-sited resources and assign the resources to AEP-Ohio to meet with the Company's peak demand reduction mandates or conditional retail participation in PJM DRPs.

As a part of this modified ESP, AEP-Ohio recognizes customer participation in the PJM directly or through third-party aggregators and proposes to eliminate two tariff services, Rider Emergency Curtailable Services and Rider Price Curtailable Service, as no customer currently receives service pursuant to either rider. EnerNOC endorses this aspect of AEP-Ohio's modified ESP application on the basis that its supports the provisions of Section 4928.02(D), Revised Code. (AEP-Ohio Ex. 100 at 9; AEP-Ohio Ex. 111 at 9; EnerNOC Br. at 5-6.).

We concur with the Company's request. Accordingly, the Company should eliminate Rider Emergency Curtailable Services and Rider Price Curtailable Service from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed.

(b) Customer Rate Impact Cap

In order to ensure no customers are unduly burdened by any unexpected rate impacts, as well as to mitigate any customer rate changes, we direct AEP-Ohio to cap customer rate increases at 12 percent over their current ESP I rate plan bill schedules for the entire term of the modified ESP, pursuant to our authority as set forth in Section 4928.144, Revised Code. The 12 percent limit shall be determined not by overall customer rate classes, but on an individual customer by customer basis. The customer rate impact cap applies to items approved within this modified ESP. Any rate changes that arise as a result of past proceedings, including any distribution proceedings, or in subsequent proceedings are not factored into the 12 percent cap. Further, the 12 percent cap shall be normalized for equivalent usage to ensure that at no point any individual customer's bill impacts shall exceed 12 percent. On May 31, 2013, AEP-Ohio should file, in a separate docket, a detailed accounting of its deferral impact created by the 12 percent rate cap. Upon AEP-Ohio's filing of its deferral calculations, the attorney examiners shall establish a procedural schedule, to consider, among other things, the deferral costs created, and the Commission will maintain the discretion to adjust the 12 percent limit, as necessary, throughout the term of the ESP.

(c) AEP-Ohio's Outstanding FERC Requests

The Commission takes notice that American Electric Power Service Corporation filed a renewed motion on AEP-Ohio's behalf for expedited rulings on July 20, 2012, in FERC docket numbers ER11-2183-001 and EL11-32-000. In the event FERC takes any action that may significantly alter the balance of this Commission's order, the Commission will make appropriate adjustments as necessary. Specifically, pursuant to Section 4928.143(F), Revised Code, at the end of each annual period of this modified ESP, the Commission shall consider if any such adjustments, including any that may arise as a result of a FERC order, lead to significantly excessive earnings for AEP-Ohio. In the event that the Commission finds that AEP-Ohio has significantly excessive earnings, AEP-Ohio shall return any amount in excess to consumers.

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.

AEP-Ohio contends that the ESP, as proposed, 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 an MRO. To properly conduct the statutory test, AEP-Ohio states that the proposed ESP must be viewed in the aggregate, which includes the statutory price test, other quantifiable benefits, and the consideration of non-quantifiable benefits (AEP Ex. 114 at 3-4). In evaluating all of these criteria, AEP-Ohio witness Laura Thomas concludes that the proposed ESP, in the aggregate, is more favorable that the results that would otherwise apply under an MRO by approximately $952 million (AEP-Ohio Ex. 115 at Exhibit LJT-1, page 1). In addition, Ms. Thomas states that there are numerous benefits that are not readily quantifiable (*Id.*).

In conducting the statutory price test, Ms. Thomas explains that she utilized Section 4928.20(J), Revised Code's interpretation of market prices for guidance in determining the competitive benchmark price. In establishing the competitive benchmark price, AEP-Ohio used ten components, including the capacity component, which includes the capacity cost that a supplier would incur to serve a retail customer within AEP-Ohio's service territory (AEP-Ohio Ex. 114 at 15). AEP-Ohio concluded that the capacity cost to be utilized in the statutory price test should be $355.72/MW-day, based on the notion that AEP-Ohio will be operating under its FRR obligation and the full capacity cost rate for AEP-Ohio should be utilized in the competitive benchmark price. By using $355.72/MW-day, Ms. Thomas concludes that the statutory price test shows the ESP is more favorable than an MRO by $256 million (AEP-Ohio Ex. 114 at LJT-1 page 3). Ms. Thomas also conducted an alternative price test utilizing the two-tier capacity proposal numbers of $146 and $255 as the capacity costs, and concludes that modified ESP would be more favorable than an MRO $80 million (*Id.* at LJT-5 page 2). In light of the Commission's decision in Case No. 10-2929, AEP-Ohio indicates the use of the $188.88 capacity price would result in the MRO being slightly less favorable by $12.6 million, but when factoring in AEP-Ohio's energy-only slice-of-system auction the statutory price test comes out almost even, with the MRO being slightly more favorable by approximately 2.6 million (AEP-Ohio Reply Br. at 97-99, Attachment B).

In addition, as AEP-Ohio explains that the statutory test requires the proposed ESP be reviewed in the aggregate in addition to the price test, other quantifiable benefits need to be considered. Specifically, AEP-Ohio points to capacity price discount from AEP-Ohio's $355.72/MW-day to the two-tier discounted capacity pricing for CRES provides, which results in a benefit of $988 million. In addition, in her aggregate test, Ms. Thomas acknowledges that while the RSR is a benefit of the proposed modified ESP, the RSR will cost $284 million during the term of the modified ESP. Ms. Thomas explains that the GRR should not be considered in the aggregate analysis as the results would be the same under the proposed ESP or an MRO, but notes if the Commission determines otherwise the consideration of GRR would reduce the quantifiable benefits by approximately $8 million. By taking these additional quantifiable factors into consideration in addition to the results under the statutory test, AEP-Ohio asserts that the total quantifiable benefits of the modified ESP are $952 million based on the statutory price test using $355.72/MW-day (AEP-Ohio Ex. 115 at LJT-1).

Regarding non-quantifiable benefits, AEP-Ohio states that the modified ESP will provide price certainty for SSO customers while presenting increased customer shopping opportunities. AEP-Ohio provides that the modified ESP will ensure financial stability of

AEP-Ohio and provides for a necessary transition towards the competition while acknowledging AEP-Ohio's existing contractual and FRR obligations. AEP-Ohio also opines that the modified ESP advances state policies and is consistent with Section 4928.02, Revised Code.

In addition to the statutory test conducted by AEP-Ohio witness Thomas, several other parties conducted the statutory test pursuant to Section 4928.143, Revised Code. OCC, FES, IEU, DER and Staff allege that the statutory price test actually indicates that the modified ESP produces results that are less favorable than what would otherwise apply under an MRO by figures ranging from $50 million to $1.427 billion (*See* OCC Ex. 114, DER Ex. 102, IEU Ex. 125, FES Ex. 104, and Staff Ex. 110). Specifically, OCC witness Hixon points out that AEP-Ohio's assumption of a $355.72/MW-day capacity charge is inappropriate, but rather, the capacity charge approved by the Commission in Case No. 10-2929-EL-UNC should be utilized. Further, OCC notes that any costs associated with the GRR should be included in the statutory test, as the GRR would not be available under an MRO (*Id.* at 14-17). In addition, OCC points out that in considering any non-quantifiable benefits associated with the modified ESP, the aggregate test should consider additional costs to customers associated with items such as the DIR, ESRR, and gridSMART rider, which, while not readily quantifiable, are currently known to be costs associated with the modified ESP (*Id.* at 18).

FES and IEU raise similar concerns in utilizing AEP-Ohio's $989 million as a quantifiable benefit. FES states that the Commission previously found the consideration of discounted capacity pricing cannot be considered a benefit because it is too speculative (FES Ex. 104 at 14-16, IEU Ex. at 50-53). IEU, DER, and FES provide that AEP-Ohio overstated the competitive benchmark price by failing to use a market-based capacity price, and failed to properly consider the costs associated with the modified ESP including the RSR, GRR, and possibly the PRR (FES at 16-25, IEU at 49-72, DER Ex. 102 at 3-6). Mr. Schnitzer also concluded that the statutory test indicates that the modified ESP is worse for customers than the Stipulation ESP, and approval of the modified ESP would harm the development of a competitive retail market by limiting CRES providers' ability to provide alternative offers to customers (FES Ex. 104 at 38-41).

IEU, DER, and OCC argue that Ms. Thomas incorrectly assumed the MRO's blending requirement should have been accelerated, as it is unlikely the Commission would authorize an MRO with any blending other than the fault blending provisions of 70 percent ESP pricing and 30 percent market pricing, as is consistent with Section 4928.142, Revised Code (DER Ex. at 3-6, OCC Ex. 114 at 8-9). Further, IEU suggests the Commission consider the June 2015 to May 2016 deliver year as part of the statutory test analysis, as AEP-Ohio is seeking Commission approval to conduct a CBP for the entire SSO load beginning in June 2015 under this modified application (IEU Ex. 125 at 79).

Staff witness Fortney conducted the statutory test by blending the market rate with the SSO rates pursuant to Section 4928.142(D), Revised Code, but noted that the market rate is extremely uncertain due to volatility of forward contract prices. Mr. Fortney calculated the average rates under AEP-Ohio's modified ESP and compared them to the results that would occur under an MRO on RPM price capacity, $146.41, and $255. Mr. Fortney concluded that under all three scenarios the modified ESP is less favorable, but noted there are other non-quantifiable benefits, including AEP-Ohio's transition to competitive markets, which would be achieved more quickly than through an MRO (Staff Ex. 110 at 3-7). FES revised Mr. Fortney's statutory price test using the $188.88 price of capacity and concluded an MRO would be less expensive by $277 million (FES Reply Br. at B-1).

The Commission finds that, while AEP-Ohio made multiple errors in conducting the statutory test, we believe that these errors are correctible based on evidence contained within the record. Under Section 4928.143(C)(1), Revised Code, we must determine whether AEP-Ohio's has sustained its burden of proof of indicating whether the proposed electric security plan, as we've modified it, including its pricing, other terms and conditions including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to results that would otherwise apply under Section 4928.142, Revised Code. Further, we must ensure our analysis looks at the entire modified ESP as a total package, as the Supreme Court of Ohio has held that Section 4928.143(C)(1), Revised Code, does not bind the Commission to a strict price comparison, but rather, instructs the Commission to consider other terms and conditions, as there is only one statutory test that looks at an entire ESP in the aggregate (*In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 407).

Therefore, as AEP-Ohio presented its analysis of this statutory test, we first look at the statutory pricing test, and then will explore other provisions, terms, and conditions of the proposed ESP that are both quantifiable and non-quantifiable. In considering AEP-Ohio's statutory price test, consistent with Section 4928.143(C)(1), Revised Code, we must look in part at the price AEP-Ohio's proposed ESP, as we've modified it, with the price of the results that would otherwise apply under Section 4928.142, Revised Code. The way AEP-Ohio calculated its statutory price test precludes us from accurately determining the results that would otherwise apply under a market rate offer, as it begins its analysis on June 1, 2012.

To accurately determine what would otherwise apply under Section 4928.142(A)(1), Revised Code, for the purposes of comparing it with this modified ESP, we begin by looking at the statute for guidance. Section 4928.142(A)(1), Revised Code, mandates that any electric distribution utility that wishes to establish its standard service offer price through a market rate offer must ensure the competitive bidding process provides for an open, fair, and transparent competitive solicitation process, with a clear product definition, standardized bid evaluation criteria, oversight of the process by an independent third party, and an evaluation of the submitted bids prior to selecting a winner. For the Commission to appropriately predict the results that would otherwise occur under this section, we cannot, in good conscience, compare prices during a time period that has elapsed prior to the issuance of this order. Nor can we, by statute, compare this modified ESP price with what would otherwise apply under Section 4928.142, Revised Code, beginning today, as it would be impossible for AEP-Ohio to immediately establish an alternate plan under Section 4928.142, Revised Code, that meets all the statutory criteria. Therefore, for the Commission to appropriately compare the price components of this modified ESP with the results that would otherwise apply under Section 4928.142, Revised Code, we must determine the amount of time it would take AEP-Ohio to implement its standard service offer price with what would otherwise apply under Section 4928.142, Revised Code.

As FES witness Banks testified, a June 1, 2013 start date would provide AEP-Ohio sufficient time to plan for auctions, develop bidding rules, and the auction structure, all of which are requirements of Section 4928.142, Revised Code (FES Ex. 105 at 20). In light of this testimony, we believe that we should begin evaluating the statutory price test analysis approximately ten months from the present, in order to determine what would otherwise apply. Therefore, in considering this modified ESP with the results that would otherwise apply under the statutory price test, we will conduct the statutory price test for the period between June 1, 2013, and May 31, 2015.

Further, in conducting the statutory price test, Ms. Thomas erred by utilizing $355.72/MW-day for the capacity component of the competitive benchmark price. This number was unilaterally determined by AEP-Ohio and justified as AEP-Ohio's cost of capacity, which is entirely inconsistent with the Commission's determination of AEP-Ohio's cost of capacity being $188.88. Although we believe AEP-Ohio's use of the $355.72/MW-day capacity figure is flawed, we are not persuaded by parties who argue the capacity component should be market based and reflect RPM prices. These parties fail to consider that AEP-Ohio, as an FRR entity, will be supplying capacity for its customers throughout the term of this ESP, whether the customer is an SSO customer or the customer takes service through a CRES provider. Thus, even under the results that would otherwise apply consistent with Section 4928.142, Revised Code, due to AEP-Ohio's remaining FRR obligations, it would still be supplying capacity to all of its customers through 2015. We find it is inappropriate to consider market prices in establishing this capacity component, even though RPM prices are consistent with the state compensation mechanism, as AEP-Ohio is and will remain an FRR entity for the immediate future. In conducting the statutory price test, we shall use AEP-Ohio's cost of capacity of $188.88, as supported by Case 10-2929, for the competitive benchmark.

Next, we need to address the appropriate blending method under the statutory price test for the period of January 1, 2015 through June 1, 2015. In light of the clearly defined statutory blending percentages contained within Section 4928.142(D), Revised Code, as well as past Commission precedent in conducting the statutory price test, we do not find it appropriate to use a 100 percent blending rate for the final five months of the modified ESP. *See* Duke Energy Ohio, Case No. 10-2586-EL-SSO (February 23, 2011). Accordingly, we need to adjust the percentages of the MRO pricing component that is indicated in AEP-Ohio's reply brief to 90 percent of the generation service price and ten percent of the expected market price for the period between June 1, 2013 to May 31, 2014, consistent with Section 4928.142(D), Revised Code, and increase the MRO pricing component to 80 percent of the generation service price and 20 percent of the expected market price for the period of June 1, 2014, to May 31, 2015. By making these modifications to the competitive benchmark price, as well as the $188.88 cost of capacity figure, we conclude that the statutory price test indicates the modified ESP is more favorable than the results that would otherwise occur under Section 4928.142, Revised Code, by approximately $9.8 million.

Our analysis does not end here, however, as we must now consider the proposed ESP's other provisions that are quantifiable. As we previously established in the December 14, 2011, Opinion and Order, we believe AEP-Ohio must address costs associated with the GRR, as it is non-bypassable pursuant to Section 4928.143(B)(2)(c), Revised Code, and thus would not occur under an MRO. Therefore, the costs of approximately $8 million must be considered in our quantitative analysis. We understand that the GRR is a placeholder rider, but we find that the costs associated with the GRR are known and should therefore be included in the quantitative benefits. Likewise, we must consider the costs associated with the RSR of approximately $388 million in our quantitative analysis.[32] The inclusion of any deferral amount does not need to be included in our analysis, as it would still be recovered under an MRO pursuant to the Commission's decision in the Capacity Case. After including the statutory price test in favor of the ESP by $9.8 million, and the quantifiable costs of $388 million under the RSR and $8 million for the GRR, we find an MRO is more favorable by approximately $386 million.

By statute, our analysis does not end here, however, as we must consider the non-quantifiable aspects of the modified ESP, in order to view the proposed plan in the aggregate. We acknowledge that there may be costs associated with distribution related

32 The RSR determination of $388 million is calculated by taking the $508 million RSR recovery amount and subtracting the $1 figure to be devoted towards the Capacity Case deferral, as recovery of this deferral will occur under either an ESP or an MRO. Using LJT-5 in AEP-Ohio Ex. 114, when we consider the total connected load of 48 million kWh and multiply it by $1 over the term of the modified ESP, we reach a figure of $144 million to be devoted towards the Capacity Case deferral. However, as the RSR recovery amount increases to $4/MWh in the final year of the modified ESP, we also must account for an increase in the RSR of $24 million, which is also calculated by connected load in LJT-5. Therefore, the actual amount which should be included in the test is $388 million.

riders and the gridSmart and ESRR that currently are not readily quantifiable, we believe any of these costs are significantly outweighed by the non-quantifiable benefits this modified ESP leads to. Although these riders may end up having costs associated with them, they would support reliability improvements, which will benefit all AEP-Ohio customers, as well as provide the opportunity for customers to utilize efficiency programs that can lead to lower usage, and thus lower costs. Further, these costs will be mitigated by the increase in auction percentages, including the slice-by-slice auction, as we modified to ten percent each year, which will offset some of these costs in the statutory test and moderate the impact of the modified ESP. Further, the acceleration to 60 percent of AEP-Ohio's energy only auction by June 1, 2014, not only enables customers to take advantage of market based prices, but also creates a qualitative benefit which, while not yet quantifiable, may well exceed the costs associated with the GRR and RSR.

In addition, while the RSR and the inclusion of the deferral within the RSR are the most significant cost associated with the modified ESP, but for the RSR it would be impossible for AEP-Ohio to completely participate in full energy and capacity based auctions beginning in June 1, 2015. Although the decision for AEP-Ohio to transition towards competitive market pricing is something this Commission strongly supports and the General Assembly anticipated in enacting Senate Bill 221, the fact remains that the decision to move towards competitive market pricing is voluntary under the statute and in the event this ESP is withdrawn or even replaced with an MRO, there is no doubt that AEP-Ohio would not be fully engaged in the competitive marketplace by June 1, 2015.

The most significant of the non-quantifiable benefits is the fact that in just under two and a half years, AEP-Ohio will be delivering and pricing energy at market prices, which is significantly earlier than what would otherwise occur under an MRO option. If AEP-Ohio were to apply for an MRO it is not feasible to conclude that energy would be at market prices prior to June 1, 2015, even if the Commission were to accelerate the percentages set forth under Section 4928.142, Revised Code. Thirteen years ago our general assembly approved legislation to begin paving the way for electric utilities to transition towards market-based pricing, and provide consumers with the ability to choose their electric generation supplier. While the process has not been easy, we are confident that this plan will result in the outcome the general assembly intended under both Senate Bill 3 and Senate Bill 221, and this modified ESP is the only means in which this can be accomplished in less than two and a half years. Further, while the modified ESP will lead us towards true competition in the state of Ohio, it also ensures not only that customers will have a safe harbor in the event there is any uncertainty in the competitive markets by having a constant, certain, and stable option on the table, but also that AEP-Ohio maintains its financial stability necessary to continue to provide adequate, safe, and reliable service to its customers. Accordingly, we believe these non-quantifiable benefits significantly outweigh any of the costs.

Therefore, in weighing the statutory price test which favors the modified ESP by $9.8 million, as well as the quantifiable costs and benefits associated with the modified ESP, and the non-quantifiable benefits, as we find the modified ESP, is more favorable in the aggregate than what would otherwise apply under an MRO.

IV. CONCLUSION

Upon consideration of the modified ESP application filed by the Company and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the modified ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this Order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Therefore, the Commission finds that the proposed ESP should be approved, with the modifications set forth in this Order. As modified herein, the plan provides rate stability for customers, revenue certainty for the Company, and facilitates a transition to market. To the extent that interveners have proposed modifications to AEP-Ohio's modified ESP that have not been addressed by this Opinion and Order, the Commission concludes that the requests for such modifications are denied.

AEP-Ohio is directed to file, by August 16, 2012, revised tariffs consistent with this Order, to be effective with bills rendered as of the first billing cycle in September 2012.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

(2) Effective December 31, 2011, CSP was merged with and into OP consistent with the Commission's December 14, 2011 Order in the ESP 2 cases. The merger was confirmed by entry issued March 7, 2012 in Case No. 10-2376-EL-UNC.

(3) On March 30, 2012, the Company filed modified applications for an SSO in accordance with Section 4928.141, Revised Code.

(4) On April 9, 2012, a technical conference was held regarding AEP-Ohio's modified ESP applications.

(5) Notice was published and public hearings were held in Canton, Columbus, Chillicothe, and Lima where a total of 66 witnesses offered testimony.

(6) A prehearing conference on the modified ESP application was held on May 7, 2012.

(7) The following parties filed for and were granted intervention in AEP-Ohio's modified ESP 2 proceeding: IEU, Duke Retail, OEG, OHA, OCC, OPAE, Kroger, FES, Paulding, APJN, OMAEG, AEP Retail, P3, Constellation, Compete, NRDC, Sierra Club, RESA, Exelon, Grove City, AICUO, Wal-Mart, Dominion Retail, ELPC, OEC, Ormet, Enernoc, IGS, Ohio Schools, Ohio Farm Bureau Federation, Ohio Restaurant Association; Duke, DECAM, Direct, The Ohio Automobile Dealers Association, Dayton Power and Light Company, NFIB, Ohio Construction Materials Coalition, COSE, Border Energy Electric Services, Inc., UTIE; (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; city of Hillsboro, Ohio; and CPV Power Development, Inc.

(8) Motions for protective orders were filed by AEP-Ohio on July 1, 2011, May 2, 2012, by OMAEG, IEU, FES, and Exelon on May 4, 2012, AEP-Ohio on May 11, 2012. The attorney examiners granted the motions for protective order in the evidentiary hearing on May 17, 2012.

(9) Additional motions for protective order were filed by Ormet on June 29, 2012, and July 9, 2012, by IEU on June 29, 2012, and by AEP-Ohio on July 5, 2012 and July 12, 2012.

(10) The evidentiary hearing on the modified ESP 2 was called on May 17, 2012, and concluded on June 15, 2012.

(11) Briefs and reply briefs were filed on June 29, 2012, and July 9, 2012, respectively.

(12) Oral arguments before the Commission were held on July 13, 2012.

(13) The proposed modified ESP, as modified pursuant to this opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VI. ORDER:

It is, therefore,

ORDERED, That IBEW's and Hilliard's requests to withdraw from these proceedings are granted. It is, further,

ORDERED, That the motions for protective order as discussed herein be granted for 18 months from the date of this Order. It is, further,

ORDERED, That the Company should eliminate Rider Emergency Curtailable Services (ECS) and Rider Price Curtailable Service (PCS) from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed. It is, further,

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

ORDERED, That OCC/APJN's motion to take administrative notice be denied. It is, further,

ORDERED, That OCC/APJN's motion to strike AEP-Ohio's reply brief be granted in part and denied in part. It is, further,

ORDERED, That the Company shall file proposed final tariffs consistent with this Order by August 16, 2012, subject to review and approval by the Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

JJT/GNS/vrm

Entered in the Journal
AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DISSENTING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I decline to join my colleagues in finding that the quantitative advantage of $388 million dollars that an MRO would enjoy over the proposed ESP is overcome by the non-quantifiable benefit of moving to market two years and three months faster than what would have occurred under an MRO. For this reason, I do not find that the proposed modified ESP, as modified pursuant to the opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Because of this conclusion, it is unnecessary for me to discuss further any individual conclusion within the order or feature of the ESP.

Cheryl L. Roberto

Cheryl L. Roberto

CLR/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	)	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
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CONCURRING OPINION OF COMMISSIONER LYNN SLABY

I agree with the conclusions of the majority. However, I write separately to express my reservations on the use of a retail stability rider (RSR). It is my opinion that generally the use of an RSR with decoupling components lacks certain benefits to consumers. In addition, a company that receives that RSR has little, if any, incentive to look for more operating efficiencies to reduce consumer costs. Consequently, these inefficiencies could lead to additional costs to consumers in the long run. Although these concerns led to my reservations in this present case, I am also fully aware that certain cases present specific circumstances that necessitate setting aside individual concerns for the greater good.

In Case No. 10-2929-EL-UNC, the Commission agreed to defer the recovery of the difference between the market price and the companies' cost of generation. This created a need to establish a mechanism to recover those costs. Although I generally disagree with the use of RSRs for recovering deferred costs, in this case I side with the majority in order to meet our mission. Our mission is to ensure all residential and business consumers access to adequate, safe and reliable utility services at a fair price, while facilitating an environment that provides competitive choices. We as a Public Utilities Commission have to balance the rights of the consumer to ensure safe and reliable service at a fair cost while also making sure that companies receive sufficient revenues to provide that service in a safe and reliable manner.

This decision will help move the company to a fully competitive market at the end of the ESP term, which has been the overall goal of the state legislature since the adoption of Senate Bill 3 in 1999. Furthermore, by creating an RSR without decoupling components, we are stabilizing the rate structure over the next three years. This provides customers a stabilized rate or the opportunity to shop for a better rate, depending on what the market presents during the term of the ESP. Overall, this decision is not only important to the State statutory goal of free and open competition in the market place, but also to the philosophy of this Commission. Therefore, in this isolated case, I find the use of an RSR to be an appropriate mechanism to allow the Company to begin to recover its deferred costs.

Lynn Slaby

Lynn Slaby

LS/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
THE APPALACHIAN PEACE AND JUSTICE NETWORK

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On Behalf of the Appalachian Peace and Justice Network

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. 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

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
THE APPALACHIAN PEACE AND JUSTICE NETWORK

As part of our advocacy for residential consumers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "AEP Ohio" or "Company") to receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC") and the Appalachian Peace and Justice Network ("APJN") file this application for rehearing of the Opinion and Order ("O&O") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in the above-captioned proceedings on August 8, 2012. OCC and APJN are authorized to file this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The O&O approved, with modifications, AEP Ohio's modified electric security plan ("ESP"), filed in these proceedings on March 30, 2012. As a result, the O&O

approved an Electric Security Plan ("ESP") for the Companies that will collect increased rates from customers for the period September 2012 through May 31, 2015.

The O&O was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR 1:

The PUCO's Finding That The Modified Electric Security Plan Is More Favorable In The Aggregate Than A Market Rate Offer ("MRO") Is Unreasonable And Unlawful.

A. In conducting the statutory test of the Company's electric security plan, the Commission erred in unreasonably and unlawfully comparing prices that excluded the first ten months of the Company's ESP term. As a result of this error, the Commission overstated the price of the market rate offer, compared to the electric security plan, making the Commission's analysis unreasonable and unlawful under R.C. 4928.143(C)(1), and the resulting rates are not reasonably priced violating R.C. 4928.02(A).

B. The Commission erred in unreasonably and unlawfully comparing prices that excluded the first ten months of the Company's ESP term. This was an abuse of discretion and violated R.C. 4903.09, as the Commission departed from its prior precedent without showing a clear need to depart from precedent or that prior decisions were in error.

C. Because the Commission did not consider the first ten months of the ESP term in its statutory analysis under R.C. 4928.143(C)(1), it was unreasonable and unlawful for the Commission to commence the ESP term before June 1, 2013. The Commission should also have ordered existing rates to continue during the ten-month period.

D. The Commission erred in failing to include all the conditions of the Generation Resource Rider, including future expected costs, in its statutory analysis, violating R.C.4928.143(C)(1). This understated the price of the ESP, making the Commission's analysis unreasonable and resulting in rates that are not reasonably priced under R.C. 4928.02(A). Additionally, the Commission erred, under R.C. 4903.10, in failing to state the rationale or reason for its holding.[1]

E. The Commission erred under R.C. 4928.143(C)(1) in evaluating the non-quantifiable benefits of the ESP and unreasonably concluded that the non-quantifiable benefits outweigh the hundreds of millions of dollars of costs of the modified ESP. On this basis the PUCO's finding that the ESP is

[1] APJN does not join the OCC in this assignment of error.

more favorable in the aggregate than the electric security plan is unlawful, unreasonable, and unsupported by the record.

1. Under an MRO, within two and a half years, 100% of energy may be supplied through the market.

2. There is a safe harbor for consumers under an MRO.

3. There is financial security for an EDU under an MRO.

ASSIGNMENT OF ERROR 2:

The Base Generation Rates For Standard Service Offer ("SSO") Customers Are Not Just Or Reasonable. And Do Not Provide A Benefit To Customers.

A. The Commission erred in permitting base generation rates that are not unbundled between energy and capacity. In doing so, the Commission failed to ensure the comparable and non-discriminatory retail rates are available to customers, in violation of R.C. 4928.141 and 4928.02(A) and (B).

B. The Commission erred in failing to reduce the SSO generation rates. consistent with its findings in the Capacity Charge Case that AEP Ohio's capacity cost is not \$355/MW-day but \$188/MW-day.

1. Under the SSO base generation rates approved there is discriminatory pricing of capacity between shopping customers, CRES providers and non-shopping customers, which is unreasonable and violates R.C. 4905.33, 4905.35, 4928.02(H), and 4928.141(A).

2. The PUCO's failure to reduce the standard service offer rate was unreasonable and inconsistent with its findings in the Capacity Charge Case. As a result the generation rates for SSO customers are not just and reasonable and are not reasonably priced under R.C. 4928.02 (A).

3. The Commission abused its discretion in denying administrative notice of the Capacity Charge Case materials.

ASSIGNMENT OF ERROR 3:

The Commission Erred In Allowing the Company to Collect hundreds of millions of dollars from customers through a Retail Stability Rider That Guarantees a steady source of Non-Fuel Base Generation Revenues For The Company.

A. There is no statutory basis to allow the Company to be made whole for revenues lost due to competition from Competitive Retail Electric Service Providers.

B. The Commission erred in unreasonably and unlawfully determining there is a statutory basis for including a Retail Stability Rider in the Company's electric security plan under R.C. 4928.143.

    1. The Commission failed to give effect to all the words in the statute, violating R.C. 1.47.

    2. The Commission erred by unreasonably and unlawfully engaging in statutory construction when the plain meaning of the statute was clear.

C. Assuming arguendo that there is a legal basis for the Retail Stability Rider, the Commission erred in unreasonably determining that $508 million rather than the $284 million requested by AEP Ohio is the appropriate level of the rider. The Commission's calculation of the rider is overstated, making the rates to be collected from customers unjust, unreasonable, and unsubstantiated. If the rider is to be implemented, over the strenuous objections of OCC/APJN and others, rehearing should be permitted to allow parties to examine, on the record, the appropriate calculation of the Retail Stability Rider.

    1. In assigning a value for competitive retail electric supplier revenues, the Commission unreasonably assumed capacity revenues are based on Retail Pricing Model ("RPM") pricing, when AEP Ohio was authorized to, and will in fact, collect capacity revenues at the level of $188.88/MW-day.

    2. In calculating the Retail Stability Rider, the Commission unreasonably excluded revenues that the Company will receive for capacity associated with auctions that occur prior to June 2015.

    3. Third, the Commission erred when it unreasonably and unlawfully applied too low of a credit for shopped load, without setting forth the reasoning or rationale for adopting that low value.

ASSIGNMENT OF ERROR 4:

The Commission Erred When It Ruled That The Company Is Authorized To File An Application To Adjust The RSR If There Is A Significant Reduction In Non-Shopping Load For Reasons Beyond The Control Of The Company, Other Than Shopping. The Commission's Ruling Unreasonably Transfers The Risks Of Weather, Economic Downturn, And Customer Mobility Away From The Company And Onto Consumers Which Is Unfair, Unjust, And Unreasonable.

ASSIGNMENT OF ERROR 5:

The Commission Violated R.C. 4903.09 When It Unreasonably And Unlawfully Failed To Allocate The Retail Stability Rider According To The Percentage Of Customers Shopping In Each Class.

ASSIGNMENT OF ERROR 6:

The Commission Unreasonably and Unlawfully Ruled That, After Corporate Separation Is Implemented, The Retail Stability Rider Revenues Which Are Not Allocated To Recovering The Capacity Charge Deferrals, Should Flow To Company's generating affiliate, GenResources, Inc., Which Violates R.C. 4928.02(H). In Failing To Explain The Rationale Or Reasons For Its Ruling, The Commission Also Violated R.C. 4903.09.

ASSIGNMENT OF ERROR 7:

In Permitting The Company (As Part Of The Retail Stability Rider), To Collect From Customers The Difference In Revenues Between The RPM-Based Wholesale Capacity Rate And The Company's State Compensation Mechanism For Wholesale Capacity, The Commission Unreasonably And Unlawfully Acted, Without Jurisdiction.

A. There is no statutory basis under R.C. 4928.143 or 4928.144 to allow the Company to collect revenues for wholesale capacity service to CRES providers from rates charged to retail customers.

B. CRES providers should be responsible for paying the difference in revenues as they are the cost causers.

C. It is unlawful, unreasonable, and inconsistent with the terms of the RAA and Section 201 of the Federal Power Act to impose wholesale capacity costs on Standard Service offer customers.

D. The Commission unlawfully created an anti-competitive subsidy of a product or service other than retail electric service that flows from a competitive retail electric service, thus violating R.C. 4928.02(H).

E. Collecting deferrals from customers will cause customers, both shopping and non-shopping, to pay twice for the capacity—a result that is unlawful, unjust, unreasonable, contrary to public policy, and has no statutory basis.

F. Charging non-shopping SSO customers a higher capacity charge than shopping customers violates the anti-discrimination provisions of R.C. 4928.141, 4928.02(A), R.C. 4905.33, and 4905.35.

G. The Commission unreasonably and unlawfully failed to provide a basis for determining that the capacity revenues could be collected through a Retail Stability Rider, thus violating R.C. 4903.09.

ASSIGNMENT OF ERROR 8:

The Commission Erred In Ordering Separate Phase-In Recovery Rider Rates For The CSP And OP Rate Zones, Instead Of One Unified Phase-In Recovery Rider.

ASSIGNMENT OF ERROR 9:

The Commission's Approval Of The Generation Resource Rider Without A Showing Of Need For The Turning Point Facility Violated R.C. 4928.143(B)(2)(C).[2]

ASSIGNMENT OF ERROR 10:

The Commission's Approval Of The Generation Resource Rider As A "Placeholder" Rider With A Zero Value Unlawfully Skewed The Commission's ESP-MRO Comparison.

ASSIGNMENT OF ERROR 11:

The Commission's Approval Of The Generation Resource Rider As A Surcharge For Collecting Costs Specifically For The Turning Point Solar Facility Violated R.C. 4928.143(B)(2)(C) Because AEP Ohio Did Not Make The Showing The Statute Requires To Establish A Non-bypassable Surcharge For Collecting Costs Associated With An Electric Generating Facility.[3]

ASSIGNMENT OF ERROR 12:

The Commission's Order Regarding The Companies' Collection Of The Deferrals On Capacity Charges Is Unlawfully Vague.

ASSIGNMENT OF ERROR 13:

There Is No Statutory Basis For The Pool Termination Rider, And Thus The Commission's Approval Of The Rider Is Unlawful.

ASSIGNMENT OF ERROR 14:

By Approving Merged Rates For The Energy Efficiency And Peak Demand Reduction Rider, The Commission Adversely Affected The Rights Of Signatory Parties To The Stipulation In The Companies' Program Portfolio Case.

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[2] APJN does not join OCC in this assignment of error.

[3] APJN does not join OCC in this assignment of error.

ASSIGNMENT OF ERROR 15:

The Commission's Failure to Provide Partnership With Ohio Funding Was Unjust, Unreasonable and Unlawful. The Partnership with Ohio Was a Key Component of the Economic Development Proposal in the Companies' First ESP and Should be Maintained.

ASSIGNMENT OF ERROR 16:

The Commission's Decision Regarding The Rate Cap Is Unlawfully Vague.

ASSIGNMENT OF ERROR 17:

The PUCO's finding that the Distribution Investment Rider was warranted is Unreasonable and Unlawful.

A. In approving the Distribution Investment Rider the Commission failed to apply the appropriate statutory standard as set forth in R.C. 4928.143 (B)(2)(h).

B. The Commission erred in failing to meet the requirement in R.C. 4903.09 to set forth its findings when it did not address AEP Ohio's failure to include four key categories of information as part of its Application, and was inconsistent with its own precedent.

C. The Commission erred in failing to meet the requirement in R.C. 4903.09 to set forth its findings when it did not address the issue of basic customer affordability of a Modified ESP that included a $365.7 million Distribution Investment Rider.

ASSIGNMENT OF ERROR 18:

The PUCO's Decision to Approve the Separation of the Alternative Energy Rider from the Fuel Adjustment Clause but Delay Unification of the Fuel Adjustment Clause Until June 2013 is Unjust, Unreasonable and Inconsistent With How the PUCO Treated Other Elements of the Modified ESP in this Opinion and Order.

ASSIGNMENT OF ERROR 19:

The PUCO Erred by Failing to Meet the Requirements of R.C. 4903.09 When Without Explanation it Failed to Follow its Own Precedent in Approving the Separation of the Alternative Energy Rider from the Fuel Adjustment Clause but Delaying Unification of the Fuel Adjustment Clause Until June 2013, Resulting in an Unreasonable Negative Impact on the Customers of Ohio Power.

ASSIGNMENT OF ERROR 20:

The PUCO Erred by not Stating that Interruptible Power-Discretionary Schedule Credit Cost Will be Collected Only From Non-residential GS 4/IRP Customers and not From Residential Customers, Consistent With the Stipulation in Case No. 11-5568-EL-POR.

The reasons in support of these grounds for this application for rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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On Behalf of the Appalachian Peace and Justice Network

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On January 27, 2011, the Company filed its second SSO application,[4] seeking approval of the Application under R.C. 4928.143. During early August 2011, the Company, the intervenors, and PUCO Staff entered into settlement negotiations. Although a Stipulation was signed by a number of parties, OCC and APJN declined to sign. The Stipulation was filed on September 7, 2011.

The PUCO conducted a hearing on the Stipulation during October 2011. On December 14, 2011, the Commission issued its Opinion and Order in these proceedings that adopted, yet modified, the Stipulation. On February 23, 2012, on rehearing, and after considerable public outcry about the rate increases resulting from the modified Stipulation, the Commission rejected the ESP plan. The Commission directed the Company to file new tariffs to continue the provisions of its previous electric security

[4] Case Nos. 11-346-EL-SSO and 11-348-EL-SSO, Application (January 27, 2011).

plan.[5] Additionally, the Commission provided the Company the opportunity to modify or withdraw its original ESP application.[6]

On March 30, 2012, the Companies filed an application containing a Modified ESP. Evidentiary hearings were held from May 17, 2012 through June 15, 2012. On July 2, 2012, the Commission issued its order in the Company's Capacity Charge proceeding, Case No. 10-2929-EL-UNC. Oral arguments were conducted following briefing in this proceeding. On August 8, 2012, the PUCO issued its decision in this case modifying and approving the Company's electric security plan. The Company now must determine whether to withdraw its application and file a new plan, or accept the new modified plan.[7]

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding on February 4, 2011, which was granted in an Entry dated March 23, 2011. APJN filed a motion to intervene on February 22, 2011, which also was granted in the March 23, 2011 Entry. OCC also filed testimony regarding the Application containing the Modified ESP. Both OCC and APJN participated in the hearing on the Modified

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[5] Id., Entry on Rehearing at ¶20.

[6] Id. at ¶21.

[7] See R.C. 4928.143(C)(2)(a).

ESP.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed." As shown herein, the statutory standard for abrogating some portions of the Order and modifying other portions is met here. The Commission should grant and hold rehearing on the matters specified in this Application for Rehearing, and subsequently abrogate or modify its August 8, 2012 decision.

III. ARGUMENT

ASSIGNMENT OF ERROR 1:

The PUCO's Finding That The Modified Electric Security Plan Is More Favorable In The Aggregate Than A Market Rate Offer ("MRO") Is Unreasonable And Unlawful.

Under R.C. 4928.141(C)(1), the Commission must compare the expected price of standard service offer generation under an electric security plan ("ESP") to the expected price of a market rate offer ("MRO"). *This price comparison is required in order to* *determine what is better for customers.* The Commission can only approve the electric security plan if it is "more favorable in the aggregate" than the market rate offer. "In the aggregate" means that the comparison must consider "all other terms and conditions" of the utility's electric security plan. The Commission cannot approve a utility's electric security plan that does not pass this statutory test (ESP/MRO comparison). While the Commission has discretion in applying this test, it cannot apply the test in a manner that is unlawful or unreasonable to the detriment of customers of the utility.[8]

Yet here, the Commission abused its discretion in a number of respects. In comparing the ESP to an MRO it made arbitrary adjustments to the pricing of the electric security plan which were contrary to law, inconsistent with Commission precedent, and without evidentiary support. It failed to follow the statutory mandate to include in its price test "all other terms and conditions" of the electric security plan. And it unreasonably determined that the ESP was more favorable in the aggregate than an MRO largely on the basis of non-quantifiable benefits -- the most significant being that AEP will be delivering and pricing energy at market prices, earlier than what would otherwise occur under an MRO option. These are all errors that OCC/APJN seeks rehearing on, as explained in detail below.

[8] See e.g. R.C. 1.47 which establishes that when enacting a statute, the entire statute is intended to be effective and a just and reasonable result is also intended.

A. In conducting the statutory test of the Company's electric security plan, the Commission erred in unreasonably and unlawfully comparing prices that excluded the first ten months of the Company's ESP term. As a result of this error, the Commission overstated the price of the market rate offer, compared to the electric security plan, making the Commission's analysis unreasonable and unlawful under R.C. 4928.143(C)(1), and the resulting rates are not reasonably priced violating R.C. 4928.02(A).

In considering the statutory test the Commission concluded that "to appropriately predict the results that would otherwise occur [where generation service is provided by market means, the MRO] under this section, we cannot in good conscience, compare prices during a time period that has elapsed prior to the issuance of an order."[9] The Commission was referring to the time period that had elapsed as being June through August 2012, the first three months of the Company's proposed ESP term.[10]

But instead of stopping there, it digressed even further from the law, making its statutory comparison unlawful and unreasonable. The Commission started the comparison not at the beginning of the actual ESP term, i.e., when new ESP rates will go into effect,[11] but at a different, later period. The period it arbitrarily chose for the MRO/ESP comparison was June 2013 through May 31, 2015, a period starting nearly ten months after the Company's ESP rates are to be implemented.

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[9] Opinion and Order at 74 (August 8, 2012).

[10] See Company Application at 2.

[11] Under the Commission's order, the Company was ordered to file tariffs by August 16, 2012, and these tariffs are to be effective with bills rendered as of the first billing cycle in September 2012. See Opinion and Order at 77.

The Commission, however, has no such authority.[12] R.C. 4928.143(C)(1) requires a full comparison of the electric security plan "so approved, including its pricing and all other terms and conditions***." One of the "terms and conditions" of the Company's ESP "so approved" is the period of time during which the new rates are in effect – known as the "term of the ESP." While the Company proposed a term of June 1, 2012 through May 31, 2015, the Commission unilaterally modified that part of the ESP. Instead, the Commission ordered the new rates implemented, effective with bills rendered as of the first billing cycle in September 2012.[13] Thus, the term of the Companies' ESP "so approved" is the first billing cycle in September 2012 through May 31, 2015. It is the period of time during which the SSO rates are in effect.

The term of the ESP "so approved" creates the logical and necessary time period over which the statutory comparison must occur. And because the ESP term is one of the terms and conditions of the ESP "so approved," the Commission must consider that period in its analysis under R.C. 4928.143(C)(1). The Commission has no authority to choose a different or shortened period for its analysis. When the Commission chose a different period, (June 2013 through May 2015) other than the "so approved" ESP term to conduct its statutory price test, it was unlawfully acting beyond the scope of its authority under R.C. 4928.143(C)(1).

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[12] The Commission is a creature of statute and has no authority other than that expressly granted to it by the General Assembly. See *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 Ohio Op. 3d 410, 429 N.E.2d 444; *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 153, 21 Ohio Op.3d 96, 423 N.E.2d 820; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 Ohio Op. 3d 478, 414 N.E.2d 1051.

[13] Opinion and Order at 77.

Additionally, by choosing a shorter period of time over which to conduct the ESP/MRO comparison the Commission's action was internally inconsistent and its analysis lacked record support. It approved a term for the ESP, but failed to conduct its analysis over that term. Such a mismatched comparison is not envisioned by the statute and is unreasonable.

The PUCO's decision also lacked record support. No party to the case, not even the Company, ever proposed pushing the analysis forward for ten months, and ignoring the comparison for the first ten months. Rather the parties to the proceeding all conducted their analysis consistent with the term of the ESP proposed by the Company. Hence, the approach devised by the Commission was against the manifest weight of the evidence and clearly unsupported by the record.[14]

While the Commission chose the comparison period based on the notion that it should consider when an MRO could actually be offered, such an adjustment is aimed at bringing a degree of precision that is not called for under the statute. Such ad hoc tinkering given the nature of the statutes' forward looking analysis, is inappropriate and inconsistent with the Commission's past rulings.

In past electric security plan cases the Commission has declined to infuse precision into the MRO/ESP analysis through updated or actual information. For instance, in the Company's first ESP filing, the Commission disregarded parties' recommendations to update the market price analysis considering that forward market

[14] See *Monongahela Power Co. v. Pub. Util. Comm.* (2004), 104 Ohio St.3d 571, 578 (holding that the PUCO will be reversed by the Ohio Supreme Court when its determination is manifestly against the weight of the evidence and clearly unsupported by the record).

pricing for energy had fallen since the Company filed its ESP application.[15] Similarly in another separate case, the Commission refused to adjust the MRO/ESP comparison to use more recent forward-looking energy prices[16] that were available.

And, the Commission's analysis in this regard appears to bias the results of the comparison in favor of the ESP. This is because expected market prices increased over the term AEP Ohio proposed (June 2013 through May 2015), as noted by many parties[17] and as can even be seen in AEP Ohio's own annual competitive benchmarks.[18] Thus, analysis that disregards the months during which expected market prices were lowest results in higher MRO annual prices that are used to compare to ESP prices.

B. The Commission erred in unreasonably and unlawfully comparing prices that excluded the first ten months of the Company's ESP term. This was an abuse of discretion and violated R.C. 4903.09, as the Commission departed from its prior precedent without showing a clear need to depart from precedent or that prior decisions were in error.

R.C. 4903.09 requires the PUCO to set forth "findings of fact and written opinions setting forth the reason prompting the decisions arrived at, based upon said

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[15] *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; and Amendment to the Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets*, Case No. 08-917-EL-SSO et al., Opinion and Order at 71-72 (Mar. 18, 2009).

[16] *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison 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. 08-935-EL-SSO, Opinion and Order at 64-68 (Dec. 19, 2008).

[17] Increasing expected market prices can be seen in FES Witness Schnitzer's Exhibit MMS-4, IEU-Ohio Witness Murray's Exhibit KMM-20 and Staff Witness Johnson's testimony at 32.

[18] AEP Ohio's Attachment B to its reply brief (which the Commission's referenced adjusting in its Order, at 75), estimated competitive benchmark prices for capacity and energy of $57.07 for PY 2012/2013 that rose to $62.77 for PY 2014/2015. Even AEP Ohio witness Thomas' original Exhibit LJT-2 estimated competitive benchmark prices of $69.36 for PY 2012/2013 that rose to $74.34 for PY 2014/2015.

findings of fact." Where the PUCO does not set forth detailed findings, it fails to comply with the requirements of this section and its Order is unlawful.[19]

In particular, where the PUCO issues a decision departing from precedent, it has a heightened responsibility to explain its decision, in order to comply with R.C. 4903.09.[20] This responsibility is created because the Ohio Supreme Court values predictability in administrative law. Such predictability is assured when precedent set by an administrative body, such as the PUCO, is followed. Indeed, the Court has noted that prior determinations of the PUCO should not be disregarded and set aside unless the need to change is clear and the prior decisions are in error.[21]

The Commission dramatically changed the way it conducts the statutory test. Never before has the Commission determined that the statutory test can only begin when an actual MRO can be implemented. Rather the Commission, consistent with the statute, has always compared the ESP to the MRO for the entire time period during which the ESP rates were in effect. It ran such a comparison in the earlier Opinion and Order issued in this case.[22] And it conducted the comparison over the term of the ESP in its

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[19] *Ideal Transportation Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195, 71 O.O.2d 183, 326 N.E.2d 861.

[20] See e.g. *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 403, 431-432, 71 O.O. 393, 330 N.E.2d 1, writ of certiorari denied (1975), 423 U.S. 986, 96 S.Ct. 393, 46 L.Ed.2d 302, appeal after remand (1976), 46 Ohio St.2d 105, 75 O.O.2d 172, 346 N.E.2d 778 (citing *State ex rel. Automobile Machine Co. v. Brown* (1929), 121 Ohio St. 73,75, 166 N.E. 903 -- "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so.'" (Citation omitted).

[21] Id.

[22] *In the Matter of the Application of Columbus Southern Power Company, Case No.* 11-346-EL-SSO et al., Opinion and Order at 27-32 (Dec. 14, 2011) (conducting the ESP/MRO analysis based on a term of January 1, 2012 through May 31, 2014, with the analysis starting at the beginning of the ESP term, not ten months later).

Opinion and Orders issued on all other utilities' ESP/MRO applications.[23] But here, the Commission created a new approach to the statutory price test and yet failed to show that its prior application of the statutory test was erroneous.

The Commission's new approach has the effect of increasing the price of the MRO in the ESP/MRO comparison because it fails to take into account the lower market prices available during the first ten months of the ESP term. By focusing instead on the MRO prices during the remainder of the ESP term, it captures market prices during a period of time when such prices are higher. This exaggerates the differential between MRO and ESP, making the ESP by comparison cheaper than the MRO. This skews the MRO/ESP comparison, and will likely cause rates that are not reasonably priced. It is an unreasonable and unlawful interpretation of R.C. 4928.143(C)(1).

Additionally, the Commission failed to explain why it needed to change how it applied the ESP/MRO comparison. Nor did it explain how prior application of the test, where the ESP was compared to the MRO during the entire term of the ESP, was in error. This is an error that the Ohio Supreme Court has found to be reversible.[24] The PUCO should grant rehearing on this issue and abrogate or modify its Order so that its decision complies with the law.

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[23] *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; and Amendment to the Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets*, Case No. 08-917-EL-SSO et al., Opinion and Order at 64, 69-72 (Mar. 18, 2009) (conducting the ERP/MRO analysis based on term of 1/1/2009 through 2011, despite the fact that the Order was issued in March 2009, with rates going into effect in April, 2009); *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison 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. 08-935-EL-SSO, Opinion and Order at 64-68 (Dec. 19, 2008) (conducting the ESP/MRO analysis consistent with the term of the ESP for 2009-2011, and refusing to update the analysis for more current forward electricity prices).

[24] *Office of Consumers' Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St.3d 21, 16 OBR 371, 475 N.E.2d 786.

C. Because the Commission did not consider the first ten months of the ESP term in its statutory analysis under R.C. 4928.143(C)(1), it was unreasonable and unlawful for the Commission to commence the ESP term before June 1, 2013. The Commission should also have ordered existing rates to continue during the ten-month period.

If the Commission upholds its analysis of the MRO/ESP price comparison, in order to be consistent with that approach and to comply with R.C. 4928.143(C), it must also determine that the ESP term does not start until the date that its price comparison starts, June 2013. That would mean that the existing, continued rates placed in effect on March 9, 2013,[25] would remain in effect for the next ten months. For consumers this means no increase in rates until June 2013. Then starting in June 2013, new ESP rates can go into effect so long as they have been shown to be more reasonable in the aggregate than the rates expected to be achieved under an MRO. Such a showing would require holding rehearing on this issue, and after rehearing, modifying or abrogating the Commission's order.

But the Commission failed to do so, and as a result its analysis did not comply with R.C. 4928.143(C)(1). It was also unreasonable for the PUCO to implement new ESP rates starting in September 2012 and yet not include those rates in its statutory analysis. The Commission erred and rehearing should be granted.

[25] Entry (Mar. 9, 2012).

D. The Commission erred in failing to include all the conditions of the Generation Resource Rider, including future expected costs, in its statutory analysis, violating R.C.4928.143(C)(1). This understated the price of the ESP, making the Commission's analysis unreasonable and resulting in rates that are not reasonably priced under R.C. 4928.02(A). Additionally, the Commission erred, under R.C. 4903.10, in failing to state the rationale or reason for its holding.[26]

In conducting the statutory price test the Commission appropriately recognized that it must include costs associated with the Generation Resource Rider ("GRR"),[27] on the basis that it is a non-bypassable provision falling under R.C. 4928.143(B)(2)(c) that would not occur under an MRO.[28] Here the Commission duly noted its previous holding in the earlier phase of this case that the costs of the GRR must be included in the MRO/ESP comparison.[29] However, the Commission included only $8 million[30] in costs related to the GRR.[31] Such costs, according to the Commission, are the known costs of the GRR during the term of the Company's ESP, and should be included in the quantitative analysis.[32]

But the Commission approved the GRR as a "placeholder rider." This means that the Company can come in at any future time, either within or outside the term of the ESP, and seek to collect revenues from customers to cover the costs of the Turning Point

[26] APJN does not join OCC in this section of the Argument under Assignment of Error 1.

[27] This rider will collect the costs of the Turning Point Solar project from the Company's customers.

[28] The Commission rejected the unsubstantiated claim of Company Witness Thomas that a GRR provision would be permissible under a market rate offer. See AEP Ohio Ex. No. 114 at 8-9 (Thomas).

[29] See Opinion and Order at 30 (Dec. 14, 2011).

[30] $8 million reflects the Company's estimate of the Turning Point net revenue requirement during the term of the ESP. See OCC Ex. 114 at 17.

[31] Opinion and Order at 75 (Aug. 8, 2012). The original holding was made in the PUCO's Opinion and Order of Dec. 14, 2011. See Opinion and Order at 30.

[32] Id.

facility. The ability of the Company to do so means that there may be additional costs collected from customers.

OCC Witness Hixon testified that these additional costs are estimated by the Company to be $346 million.[33] The $346 million represents the remaining estimated revenue requirement for June 2015 through 2040. This figure was supplied to OCC through the discovery process and was not subject to dispute. However, the PUCO completely disregarded the testimony of Ms. Hixon and assigned only $8 million to the GRR, without explaining why additional costs of the GRR should not be considered as a cost of the ESP.

Including the $346 million in GRR costs is important in order to render an appropriate and accurate MRO/ESP comparison. It falls directly under the "all other terms and conditions" that must be included under R.C. 4928.143(C)(1) analysis. When the Commission failed to include the future revenue requirements related to the GRR, and yet approved the rider as a placeholder rider. it acted unlawfully. Because the $346 million in GRR costs was not included in the MRO/ESP comparison conducted by the PUCO, the cost of the modified ESP was significantly understated.

[33] OCC Ex. 114 at 17 (Hixon).

And the PUCO unreasonably relied upon such a flawed analysis in its decision to modify and approve the Company's ESP. This was unreasonable and will likely result in rates that are not reasonably priced, conflicting with the policy of the State, contained in R.C. 4928.02(A).

Finally, the PUCO erred, under R.C. 4903.09, because it failed to show the facts in the record upon which its order is based and failed to state the rationale for its decision.[34] The PUCO is required under R.C. 4903.09 to address material arguments made by parties to the proceeding. The PUCO did not do so here, where a material issue was presented by OCC and FirstEnergy Solutions -- an issue that could have been the basis for further modifications to the ESP, to the benefit of consumers. The PUCO should grant rehearing.

E. The Commission erred under R.C. 4928.143(C)(1) in evaluating the non-quantifiable benefits of the ESP and unreasonably concluded that the non-quantifiable benefits outweigh the hundreds of millions of dollars of costs of the modified ESP. On this basis the PUCO's finding that the ESP is more favorable in the aggregate than the electric security plan is unlawful, unreasonable, and unsupported by the record.

The Commission found that AEP Ohio made multiple errors in conducting the statutory test.[35] In its place, the Commission conducted its own test. It determined that the statutory price test, when considering quantifiable benefits and costs, resulted in the MRO being more favorable than the ESP by $386 million.[36]

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[34] See e.g. *MCI Telecommunications v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306; *Ideal Transportation v. Pub. Util. Comm.* (1974), 42 Ohio St.2d 195.

[35] Opinion and Order at 73.

[36] Opinion and Order at 75.

But then the Commission reviewed the non-quantifiable benefits of the modified ESP. It determined that non-quantifiable benefits "significantly outweigh any of the costs."[37] The "most significant" of the non-quantifiable benefits "is the fact that, in just under two and a half years, AEP Ohio will be delivering and pricing energy at market prices."[38] This is "significantly earlier" than what would otherwise occur under an MRO option, the Commission found.[39] According to the Commission, it is not "feasible to conclude that energy would be at market prices prior to June 1, 2015***."[40] Moreover, the Commission determined that the modified ESP ensures that customers "will have a safe harbor in the event there is any uncertainty in the competitive markets by having a constant, certain and stable option on the table."[41] Additionally, the Commission found that the modified ESP will "assure that the Company maintains its financial stability necessary to continue to provide adequate, safe, and reliable service to its customers."[42]

But this conclusion is unreasonable and unlawful. It erroneously assumes that these non-quantifiable benefits are not available under a market rate offer. This is both factually and legally wrong.

1. Under an MRO, within two and a half years, 100% of energy may be supplied through the market.

The Commission assumes that AEP Ohio would be unable, in two and a half years, to deliver and price energy at market prices under an MRO. This conclusion is not

[37] Opinion and Order at 76.

[38] Id.

[39] Id.

[40] Id.

[41] Id.

[42] Id.

correct under applicable law and the PUCO's interpretation of that law, and lacks record support.

Under R.C. 4928.142 an electric utility may file an MRO as its SSO, whereby retail electric generation pricing will be based, in part, upon the results of a competitive bid process. Paragraphs (D) and (E) of that statute set forth the blended price requirements any electric distribution utility ("EDU") must abide by. Section 4928.142(D), provides that the first MRO application filed by a utility:

> [s]hall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid***as follows: ten per cent of the load in year one, not more than twenty percent in year two; thirty per cent in year three, forty per cent in year four; and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five.

Section 4928.142(E) provides, inter alia, that:

> Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, *the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change* in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. (Emphasis added).

The Commission had occasion to delve into the meaning of these statutes in response to an application by Duke Energy Ohio Inc. ("Duke") for PUCO approval of a market rate offer, which ended the blending period at the beginning of year three and based SSO pricing exclusively on the market prices derived from an auction.[43] Although

[43] *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Application (Nov. 15, 2010) ("*Duke MRO I*").

ultimately the Commission denied Duke's application[44] the Commission's Opinion and Order[45] and Entry on Rehearing[46] extensively discussed whether the five-year blending period under R.C. 4928.142(D) was mandatory or subject to alteration. The Commission concluded that, in accordance with R.C. 4928.142(E), the blending proportions of subsection (D) are essentially fall back or default blending provisions that can be altered in two ways.[47] First, a "party" could come forward and request that the PUCO alter prospectively the proportions specified in subsection (D) in order to mitigate any effect of an abrupt or significant change in the SSO price that would otherwise result. Second, the Commission could make a determination on its own.

The Commission went on to affirm its holding in the Entry on Rehearing.[48] The PUCO also determined that the time to alter an MRO filing is not at the outset of an MRO filing, but in the second year of the MRO.[49]

Thus, the Commission in *Duke MRO 1* made it quite clear that an MRO can get to 100% blending after year two. It need not take five years under R.C. 4928.142 to get to full market priding, because "[b]eginning in the second year of the blended price ***the commission may alter prospectively the proportions specified [in subsection (d)]."[50]

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[44] The PUCO found that Duke's failure to present in information and testimony in support of a five year blending plan, in compliance with Ohio Adm. Code 4901:1:35-03(D), rendered the application fatally deficient and unable to be considered as filed. Id. Opinion and Order at 23; Entry on Rehearing at ¶20. The PUCO thus did not consider altering the blending proportions.

[45] *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service,* Case No. 10-2586-EL-SSO, Opinion and Order (Feb. 23, 2011).

[46] Id. Entry on Rehearing (May 4, 2011).

[47] Id. Opinion and Order at 23.

[48] Id. Entry on Rehearing (May 4, 2011).

[49] Id. Opinion and Order at 18; Entry on Rehearing at ¶25.

[50] R.C. 4928.142(E).

On the basis of its statutory analysis in the *Duke MRO 1* case, it was an error for the PUCO to conclude that AEP Ohio's market pricing of energy and capacity would occur "significantly earlier" than under an MRO. The *Duke MRO 1* case is precedent that the PUCO should have acknowledged and followed, but it did not.

In particular, where the PUCO issues a decision departing from precedent, it has a heightened responsibility to explain its decision, in order to comply with R.C. 4903.09.[51] This responsibility is created because predictability is valued in administrative law. Yet the PUCO here failed to respect its interpretation of R.C. 4928.142(D) and (E). It failed to explain why its prior determination in the *Duke MRO 1* case was in error, and why a change was needed. This is an error that the Ohio Supreme Court will not tolerate.[52]

A potential full transition to market is possible under an MRO faster than the five years under R.C. § 4928.142(D). Under an MRO, the Commission has the authority to alter any blending after two years. Because the transition to market could occur in

[51] See e.g. *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 403, 431-432, 71 O.O. 393, 330 N.E.2d 1, writ of certiorari denied (1975), 423 U.S. 986, 96 S.Ct. 393, 46 L.Ed.2d 302, appeal after remand (1976), 46 Ohio St.2d 105, 75 O.O.2d 172, 346 N.E.2d 778 (citing *State ex rel. Automobile Machine Co. v. Brown* (1929), 121 Ohio St. 73,75, 166 N.E. 903 – "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so.'" (Citation omitted).

[52] See e.g. *OCC v. Pub. Util. Comm., et al.* (1984), 10 Ohio St.3d 49, 51 (the Ohio Supreme Court reversed the Commission after finding that the Commission "failed to justify" its decision to cut short a previously ordered four-year phase-in period). Accordingly, the Commission must explain changes in its precedent.

approximately two years under an MRO, there is no qualitative benefit vis-à-vis an MRO that exists under the Company's proposed ESP, let alone a "significant benefit."

Moreover, there is no record evidence that supports the PUCO's conclusion that "it is not feasible to conclude that energy would be at market prices prior to June 1, 2015, even if the commission were to accelerate the percentages set forth under Section 4928.142, Revised Code."[53] The Commission fails to meet the requirements of R.C. 4903.09 when it draws conclusions that lack any foundation in evidence. In its opinions the Commission must provide evidentiary support and must thoroughly explain the rationale for its decisions.[54] It did neither here.

Thus, the Commission should hold a rehearing on this issue and should re-conduct the test adjusting the non-quantifiable benefits it found under the ESP. Then a new MRO/ESP analysis should be conducted, in compliance with R.C. 4928.143(C)(1). Rehearing should be granted on this issue.

2. There is a safe harbor for consumers under an MRO.

As explained *supra*, under an MRO the Commission may order, or a party may seek to adjust the blending of market prices in order to mitigate any effect of an abrupt or significant change in the EDU's standard service offer price. This is the safe harbor that customers have under an MRO. While it is different than the protection offered by an ESP, it is nonetheless a harbor.

Notably this harbor was described by the Commission as primarily aimed at the "goal" of safeguarding ratepayers from the risk of abrupt or significant increases in

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[53] Opinion and Order at 76.

[54] See e.g. *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 91.

price.[55] Indeed it expressly rebuffed Duke's claim that the PUCO was given the authority to alter the blending proportions "solely for the purpose of moving the company expeditiously to a fully competitive market."[56]

But the Commission fails to recognize that comparable consumer protections exist under an MRO and an ESP and thus, in this respect, there is little if any qualitative benefit of the ESP over the MRO. Its analysis is unreasonable in this respect.

3. There is financial security for an EDU under an MRO.

Under an MRO, a utility may adjust the ESP price up or down as the Commission determines is reasonable for certain costs which are reflected in the utility's most recent ESP price, i.e. fuel costs, purchased power, supply and portfolio requirements, and environmental compliance.[57] This provision provides security for the Company -- security not necessarily found in an ESP.

Additionally, there is another provision in an MRO, not found in the ESP statutes,[58] that provides financial stability to an EDU. The Commission "may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to

[55] *Duke MRO 1*, Entry on Rehearing at 59-60.

[56] Id.

[57] See R.C. 4928.142(D) (1)-(4).

[58] Curiously, the Company argues that this standard, R.C.4928.142(D), applies to the offering of an ESP. AEP Ohio Brief at 40-46. This notion is contrary to the rule of statutory construction that governs Ohio. Under the doctrine of *expressio unius est exclusio alterius*, if the General Assembly wanted to give the Commission authority to establish provisions in an electric security plan that ensure the Company's financial stability it would have expressly done so. But the General Assembly did not. Neither the Commission nor the Companies can rewrite the law.

result, directly or indirectly, in a taking of property without just compensation***."[59] Conversely, the Commission has no authority to approve measures such as the Retail Stability Rider to assure an EDU's financial security in an ESP case. Hence, properly viewed, the MRO arguably provides a greater measure of security (even if strictly limited under law), for the utility than that found under an ESP, tipping the scales again in favor of an MRO for what should have been the result in this case.

Yet the Commission ignored these facts, and concluded that the ESP provides significant non-quantifiable benefits that outweigh the $386 million price differential between the MRO and ESP. This analysis was unreasonable and unlawful because it failed to properly compare the expected results of the MRO as compared to the ESP. Had the complete expected results of the MRO been properly compared to the results of the ESP, the Commission would not have determined that the non-quantifiable benefits of the ESP "significantly outweigh any of the costs." That is because the MRO provides similar, and in some cases greater, non-quantifiable benefits than the ESP. The Commission should grant rehearing on this basis.

ASSIGNMENT OF ERROR 2:

The Base Generation Rates For Standard Service Offer ("SSO") Customers Are Not Just Or Reasonable, And Do Not Provide A Benefit To Customers.

The Commission in its Opinion and Order found that AEP Ohio's proposed base generation rates are reasonable.[60] Although the Commission noted that OCC and APJN contend the SSO generation rates do not benefit customers, the Commission found that "OCC and AJPJN failed to justify their assertion and offer no evidence within the record

[59] R.C. 4928.142(D).

[60] Opinion and Order at 15.

other than the fact that the modified ESP contains several riders."[61] This finding is however, contrary to the record in this proceeding and is inconsistent with the Commission's holding in the Company's Capacity Case. [62]

OCC Witness Duann testified that the base generation rate plan does not benefit customers.[63] Witness Duann explained this conclusion:

> Second, keeping the base generation rate at the current level is not a benefit to AEP Ohio's customers when the auction prices of generation service or prices of electricity service by CRES providers in Ohio have generally declined and are expected to decline further over the next few years. One AEP Ohio witness has indicated there were significant reductions in forward energy prices in the PJM markets recently.[64]

OCC Witness Duann relied, in part, on the uncontroverted testimony of Company Witness Allen that "[o]ver the last seven months, forward energy prices in the PJM market for the balance of 2012 have decreased by approximately $10/MWh or 25%."[65] Notably, OCC Witness Duann was not challenged in cross-examination on this point. Nor was Mr. Allen's testimony on this point controverted. Thus, contrary to the Commission's assertions otherwise there *was* evidence offered establishing that freezing the base generation rates at current levels is not a benefit because the rates would be frozen at a rate higher than what the result would produce in the alternative.

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[61] Id.

[62] Capacity Charge Case, Opinion and Order at 25, 33 (July 2, 2012)(finding that the record supported $188.88/MW-day as an appropriate charge to enable AEP-Ohio to recover its capacity costs for its fixed resource requirement obligations -- and acknowledging that AEP Ohio's testimony that $355/MW-day is received from its SSO customers for capacity through base generation rates).

[63] OCC Ex. 111 at 15 (Duann).

[64] Id. Citing AEP Ohio Ex. 116 at 4 (Allen).

[65] Company Ex. 115 at 4 (Thomas supplemental).

The Commission's decision in this regard is directly contradicted by Mr. Duann's and Mr. Allen's testimony. Its Order thus fails to comply with R.C. 4903.09 altogether and must be considered "unlawful" under R.C. 4903.13.[66]

Moreover, the Commission's determinations in the Company's Capacity Charge Case also belie the conclusion that freezing base generation rates at current levels benefits customers. In the Company's Capacity Charge Case, the Commission found that compensating the Company for its capacity at $188.88/MW-day would enable it to collect capacity costs for its fixed resource requirement ("FRR") obligations from CRES providers.[67] In doing so it rejected the Company's proposed charge of $355.72/MW-day, finding that it does not fall with "the zone of reasonableness."[68]

And yet, as the PUCO correctly noted, the Company presented testimony in that case purporting to show that its proposed cost based pricing ($355.72/MW-day) approximates the revenues the Company receives from its SSO customers for capacity through base generation rates.[69] This means, that the Company itself acknowledges that the revenues produced under base generation rates charged to SSO customers "roughly and approximately"[70] compensate it for the "full cost" of capacity ($355/MW-day).

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[66] See *Ideal Transportation Co. v. Pub. Util. Comm.* (2008), 885 N.E.2d 195 (reversing the PUCO because certain of its findings were directly contradicted by witness testimony in the record).

[67] Id., Opinion and Order at 33 (July 2, 2012).

[68] Id.

[69] See id at 25, citing to Mr. Allen's Rebuttal Testimony at 19-20, where, in responding to FES Witness Lesser, he presented graphs illustrating that the Company's base generation rates are essentially equivalent to the full cost capacity rate ($355.MW-day). The Capacity Charge Opinion and Order also cites to Tr. II at 304, 350, where Company witness Pearce, being cross examined, stated that the implicit capacity rate charged to standard service offer customers is equivalent to the $355/MW-day rate AEP proposed for capacity. Company Witness Pearce confirmed this under questioning by Commissioner Porter. Tr. II at 350.

[70] Capacity Charge Case, Tr. II at 350.

If the Company's admission is accepted, and the Commission's holding in the Capacity Charge Case is correct and upheld, then it stands to reason that the base generation rates that the Company is freezing in the ESP case ARE OVERSTATED and "outside the zone of reasonableness." They are overstated because embedded in the SSO generation rate is a component[71] that, in conjunction with other components, produces revenues that approximate the $355/MW-day rate for capacity that the Company requested in the Capacity Charge Case.

If the rates are overstated *vis-à-vis* what the Commission determined was an appropriate capacity charge, then the "benefit" of a rate freeze inures to the Company, and not the SSO customers. This is because continuation of an overstated SSO rate will enable the Company to collect much more than its costs of providing generation service to SSO customers. The MRO/ESP comparison examines the expected price of each option in order to determine what is best for the customer, not what is best or beneficial to the Company; and not what is best for marketers. Such benefits should not and cannot be considered part of the ESP/MRO comparison.

The SSO generation rates, due to the explicit findings of the Commission in the Capacity Charge Case, are de facto not just or reasonable. And they do not ensure that consumers are provided reasonably priced retail electric service, a policy of the state under R.C. 4928.02(A). Rehearing should be granted.

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[71] In this proceeding, the Company claims the generation rate is not based on cost, and thus it cannot identify discrete components of the generation rate. Tr. V at 1438-1441.

A. The Commission erred in permitting base generation rates that are not unbundled between energy and capacity. In doing so, the Commission failed to ensure the comparable and non-discriminatory retail rates are available to customers, in violation of R.C. 4928.141 and 4928.02(A) and (B).

In its ESP the Company proposed base generation rates that are frozen until all rates are established through a competitive bidding process. The base generation rates offered beginning with the term of the ESP are to include a component for environmental investment carrying costs so that a rider (EICCR) will no longer be needed. For residential customers of CSP the base generation rate is $0.0296458 cents per kwh; for residential customers of OP the base generation rate is $0.0278195 cents per kwh.[72] The Commission approved this part of the Company's ESP.[73]

Although these rates are not based on a current cost study,[74] the Company testified that the rates were established at a level to ensure that Company recovers its costs of capacity and other costs.[75] According to Company Witness Allen, the base generation rate produces revenues that are equivalent to rates the Company proposed to charge CRES providers for capacity at $355/MW-day.[76]

But the bundling of the base generation rate (energy and capacity) by the Company makes it difficult, if not impossible, for the PUCO to ensure that customers of the Company are receiving comparable and non-discriminatory service, a policy of the

[72] Compliance Tariff Sheet, Ohio Power Rate Zone Schedule RS, rate for first 800 KWh used per month; Columbus Southern Power Rate Zone Schedule RR, rate for first 800 KWh used per month.

[73] Opinion and Order at 15.

[74] See Tr. V at 1438.

[75] See Tr. V at 1440-1441.

[76] Tr. V at 1438.

State[77] and a requirement of R.C. 4928.141.[78] Moreover, under R.C. 4928.02(B), it is a policy of the State to "ensure the availability of *unbundled and comparable* retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their prospective needs." (Emphasis added).

Under R.C. 4928.06, the Commission has a duty to ensure that the policy specified in R.C. 4928.02 is effectuated. According to the Commission, the policy specified in R.C. 4928.02 is "more than a statement of general policy objectives."[79] Indeed the Ohio Supreme Court expressly held that the Commission may not approve a rate plan that violates the policy provisions of R.C. 4928.02.[80] Accordingly, the Commission has held that an electric utility should be deemed to have met the "more favorable in the aggregate" standard "only to the extent that the electric utility's proposed MRO is consistent with the policies set forth in section 4928.02, Revised Code."[81]

In this regard, it was incumbent upon the Company to meet its burden of proving[82] that its standard service offer, including its base generation rate, provides customers with electric services on a comparable and non-discriminatory basis, as

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[77] R.C. 4928.02(A) states that it is the "policy of the state to do the following throughout this state: (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, *nondiscriminatory* and reasonably priced retail electric service." (Emphasis added).

[78] R.C. 4928.141 states that, beginning January 1, 2009 "an electric distribution utility shall provide consumers, *on a comparable and nondiscriminatory basis* within it service territory, a standard service offer of all competitive electric services necessary to maintain essential electric service to consumers***." (Emphasis added).

[79] *In the Matter of the Application of Ohio Edison Companies, the Cleveland Electric Illuminating Companies, and the Toledo Edison Companies for Approval of a Market Rate Offer to Conduct a Competitive bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 08-936-EL-SSO, Opinion and Order at 5 (Nov. 25, 2008) ("*FirstEnergy MRO Order*").

[80] *Elyria Foundry v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305.

[81] *FirstEnergy MRO Order* at 14.

[82] See R.C. 4928.143(C)(1), establishing that the burden of proof shall be on the utility.

required by R.C. 4928.141. It was also incumbent upon the Company to prove that the provisions under the ESP, including base generation pricing, do not violate the policy provisions of R.C. 4928.02.

But the Company did not meet its burden. In fact, the Company in the Capacity Charge case claimed that if CRES suppliers were given RPM-based capacity prices (which they were) it would discriminate against non-shoppers.[83] We agree.

The Commission erred when it approved the bundled base generation rates without specifically determining that AEP Ohio had met its burden of showing the base generation rates are comparable and non-discriminatory. Rehearing should be granted.

B. The Commission erred in failing to reduce the SSO generation rates, consistent with its findings in the Capacity Charge Case that AEP Ohio's capacity cost is not $355/MW-day but $188/MW-day.

The General Assembly required electric distribution utilities to provide customers "on a comparable and nondiscriminatory basis" a standard service offer of all competitive electric services necessary to maintain essential services to customers.[84] State policy ensures that the standard service offer provided by a utility will be based on reasonably priced electric service.[85]

The Commission approved base generation rates in this proceeding, as part of the Company's standard service offer. The base generation rates will be paid by customers who choose not to shop, or are prohibited from shopping. Statistically, the majority of those customers that are most likely to pay SSO base generation rates are the residential

[83] See Capacity Charge Order at 15.

[84] R.C. 4928.141(A).

[85] See R.C. 4928.02(A).

customers. This is because residential customers have generally not shopped, but have stayed with AEP Ohio. Indeed the latest shopping levels reported by the Company for residential customers is only 15.57 %,[86] much less than the robust shopping that industrial and commercial customers are engaged in.[87]

So when the Commission is establishing base generation rates it must closely consider the needs of residential customers. But here the Commission did not. Rather it placed inordinate emphasis on the expected benefits to be achieved from competition, to the potential detriment of residential non-shopping customers. And while competition may be a means to achieve "reasonably priced electric service" it is not the ultimate goal. Rather the goal is "reasonably priced electric service."

But on the way, the Commission erred. It erred in numerous ways when it came to pricing base generation rates. One of the errors was that the Commission did not reduce the base generation rates consistent with its finding in the Company's Capacity Charge case. This was unreasonable, and unlawful, as explained below.

1. Under the SSO base generation rates approved there is discriminatory pricing of capacity between shopping customers, CRES providers and non-shopping customers, which is unreasonable and violates R.C. 4905.33, 4905.35, 4928.02(H), and 4928.141(A).

In the Company's Capacity Charge Case, the Commission determined that the state compensation mechanism is to be based on the costs incurred by the Company for its fixed resource requirement capacity obligations.[88] The Commission identified the

[86] See AEP Ohio Ex. 150 at 10 (Allen rebuttal).

[87] Commercial customer shopping data over the same time frame (as of May 31, 2012) shows 48.69% shopping while industrial customers shopping is at 33%. Overall, total shopping for AEP is 32.4%. Company AEP Ohio Ex. 150 at 10 (Allen rebuttal).

[88] Capacity Charge Order at 23.

"costs incurred" as $188.88/MW-day. In reaching this conclusion the Commission determined that the Company had failed to demonstrate that its proposed charge of $355.72/MW-day "falls within the zone of reasonableness."[89] Further, the Commission directed the Company to charge CRES providers the adjusted PJM RPM rate in effect for the current PJM delivery year, with the rate changing annually to match the current PJM RPM rates.[90] And the Company was authorized to defer incurred capacity costs not recovered from CRES provider billings during the ESP term to the extent that the total incurred capacity costs do not exceed $188/MW-day. The Commission noted that it would establish an appropriate recovery mechanism for such cost in the Company's ESP proceeding. In the end, what this means is that CRES providers will receive discounted capacity from AEP, which they can choose to pass on to their customers (or not), and SSO customers will continue to pay the Company's full embedded cost of capacity. This scheme, however, is unreasonable and unlawful.

R.C. 4928.02(A) requires that consumers have "nondiscriminatory" retail electric service. R.C. 4928.141 requires the utility to provide consumers a standard service offer on a "comparable and non-discriminatory basis." Further, R.C. 4905.33 prohibits a public utility from charging greater or lesser compensation for services rendered for "like and contemporaneous service under substantially the same circumstances and conditions." R.C. 4905.35 prohibits a utility from giving any "undue or unreasonable preference or advantage" to any person, firm, or corporation.

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[89] Id at 33.

[90] Id. at 23.

The capacity that the Company provides to CRES providers, in carrying out its FRR obligations, is a "like and contemporaneous service" that it provides as well to its standard service offer customers. And the service is provided under substantially the same circumstances and conditions. Capacity is capacity whether it is supplied (on a wholesale basis) to CRES providers or supplied (on a retail basis) to non-shopping customers.

Non-shopping or standard service offer customers pay capacity charges that enable the Company to recover its "embedded costs" of $355/MW-day. Yet, under the Commission's decision in the Capacity Charge Case, CRES providers will pay capacity rates at RPM pricing, which is much lower than the $355/MW-day. And CRES providers will then be able to serve shopping customers, using much lower capacity charge pricing, based on receiving capacity at RPM prices. That is discriminatory. It violates R.C. 4928.141, 4928.02(A), R.C. 4905.33, and 4905.35.

Such an approach also fails to provide correct price signals to all customers (not just shoppers). This approach facilitates vastly different capacity prices for the same or comparable services. This is unreasonable as well as discriminatory. Rehearing should be granted.

2. The PUCO's failure to reduce the standard service offer rate was unreasonable and inconsistent with its findings in the Capacity Charge Case. As a result the generation rates for SSO customers are not just and reasonable and are not reasonably priced under R.C. 4928.02 (A).

While the Commission clearly determined that the Capacity Charge Case findings were to control the pricing of capacity in the Company's ESP, and were controlling when it came to collecting deferred capacity charges, it failed to consistently apply those very holdings to other portions of the Company's ESP, including the base generation rates. To ignore the effects of the Commission's Capacity Charge decision on other elements of the Company's ESP, including base generation rates, is unreasonable, inconsistent, and unjust. It is a decidedly biased application of precedent that is unreasonable and detrimental to SSO customers.

The Commission failed to reduce the Company's base generation rates for SSO customers consistent with its determination that the cost of capacity for AEP Ohio is $188/MW-day, instead of the $355/MW-day "roughly and approximately" being charged in the base generation rates. OCC specifically requested that the Commission reduce base generation rates, consistent with its *Capacity Charge* Order, a request made during the oral arguments[91] and in its Reply Brief in this case.[92] Additionally, OCC argued this issue as well in its Application for Rehearing in the Capacity Charge Case.[93]

The Commission should have responded to the arguments made by OCC and others.[94] But it did not. This was an error. The Ohio Supreme Court has recognized that the Commission's failure to address a material issue in its Opinion and Order is reversible error.[95]

The Commission should grant rehearing and address this issue. Ultimately it should rule that the base generation rates charged to SSO customers should be reduced to

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[91] See Oral Argument Transcript at 107 (July 13, 2012).

[92] OCC and APJN Reply Brief at 26-27 (July 9, 2012).

[93] *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, Application for Rehearing at 20-21 (Aug. 1, 2012). The Commission found that "sufficient reason" "to warrant further consideration" had been set forth in the numerous applications for rehearing made in that case. It granted the applications for further consideration. Entry at 2 (Aug. 15, 2012).

[94] See e.g. Ohio Manufacturing Association Reply Brief at 12 (July 9, 2012).

[95] *In re Application of Columbus. S. Power Co.*, 2011 Ohio 1788 at ¶71.

reflect its determination that $188/MW-day is the appropriate cost of capacity for the Company. Otherwise, the base generation rates will not be just and reasonable and retail electric service for non-shopping customers will not be reasonably priced.

3. The Commission abused its discretion in denying administrative notice of the Capacity Charge Case materials.

On July 20, 2012, OCC/APJN filed a motion to take administrative notice of several items contained within the record of the Capacity Charge Case. Specifically OCC/APJN sought administrative notice of portions of the direct testimony of AEP Ohio Witness Munczinski, portions of the rebuttal testimony of AEP Ohio witness Allen; portions of the hearing transcripts; and AEP Ohio's briefs and reply briefs. Although both the Company and FES filed responsive pleadings against OCC/APJN, FES' memorandum contra was appropriately struck as untimely.[96]

The Commission, however, denied OCC/APJN's motion. The PUCO found that OCC's motion to be "troublesome" and "problematic" from a timing perspective.[97] Characterizing the materials as a "narrow window of information" it found that if the request was allowed it would supplement the record "in a misleading manner."[98] The Commission further found that "to exclusively select narrow and focused items in an attempt to supplement the record is not appropriate."[99]

The Commission's denial of administrative notice of selected materials from the Capacity Charge pleadings was an error that constitutes abuse of discretion. This is an

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[96] Opinion and Order at 12.

[97] Id.

[98] Id at 12-13.

[99] Id. at 13.

unreasonable and arbitrary ruling that is strikingly inconsistent with the otherwise heavy reliance upon the Capacity Charge Case record by the Commission.

For instance the Commission acknowledged in its Capacity Charge Order that "11-346 [the instant proceeding] and the present proceeding are intricately linked."[100] That linkage went so far as to make findings in the Capacity Charge proceeding which would supersede portions of the Company's filed ESP. The Capacity Charge pricing scheme was incorporated into the rates set in the ESP proceeding, displacing the Company's proposed two tier capacity pricing proposal.[101] This scheme was developed after the evidentiary record in the ESP case had closed. In fact the Capacity Charge Order was issued on July 2, 2012, after initial ESP briefs were filed on June 29, 2012. And, under the Capacity Case proceeding, the Commission created deferrals which were then punted into the ESP proceeding. Specifically, the Commission expressly ruled, in the Capacity Charge Case, that it would establish in the Company's ESP an appropriate recovery mechanism for the Capacity Charge Case deferrals.[102]

Yet despite the late evidentiary maneuvering that the Commission engaged in, whereby significant findings in the Capacity Charge Case were incorporated into the decision in this case, the PUCO declined to allow administrative notice of other portions of the very same evidentiary record. This was, on its face, an arbitrary decision with no rational basis provided. While the Commission found the timing of OCC/APJN's request to be "troublesome" and "problematic," those concerns are ironic in light of the

[100] See Capacity Charge Order at 24.

[101] See id. at 38.

[102] Id. at 23.

Commission's own belated actions[103] which caused the need for OCC to seek administrative notice.

In authorizing deferrals and shifting issues from the Capacity Charge Case into the ESP case, the Commission created an evidentiary problem because the 11-346 record had no evidence in it to determine what an appropriate recovery mechanism is for the newly created deferrals. OCC/APJN's motion was not untimely but was an appropriate and timely response to the PUCO's Capacity Charge Order.

Moreover, the Commission arbitrarily ignored the standard of review for administrative notice. The key to determining whether administrative notice can be taken is not whether the timing of a motion is "awkward," as alleged by the Company. Rather the Commission should have considered whether the parties to the ESP proceeding had knowledge of and an opportunity to explain and rebut the evidence.[104] And the Commission should have examined whether parties would have suffered prejudice from the taking of such administrative notice. But the Commission could not find prejudice or harm and so it ignored those requirements and improvised. Instead it described OCC/APJN's request as "troublesome" and "problematic" not ever finding that it would cause harm and prejudice. Such an analysis was unreasonable and biased.

Indeed, had the Commission examined these issues in a reasonable and appropriate way -- the way the Supreme Court has dictated -- it would necessarily come to the conclusion that there was no harm or prejudice to any party from what OCC/APJN was requesting. The Company did not dispute that it knew of the evidence. And the

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[103] The Commission determined on July 2, 2012 that it would create deferrals and address a recovery mechanism for the deferrals in its to be decided ESP decision. At the time –July 2, 2012, the evidentiary record in the ESP case was closed and initial briefs had been filed.

[104] See e.g., *Allen v. Pub. Util. Comm.* (1988), 40 Ohio St.3d 184, 186.

Company had the opportunity to explain it and rebut it not just once (in the Capacity Charge Case) but again through its Memorandum Contra in this case. Considering that a significant part of the noticed material are the Company's own words, there was not much more explaining the Company could have done.

And with respect to the Commission finding that it was concerned that the record would be supplemented in a "misleading" manner,"[105] the Commission's concerns could easily have been addressed if it had taken the more reasonable and less draconian measure of incorporating the whole record from the Capacity Charge Case into this proceeding. Interestingly enough, part of the information it characterized as "misleading" was information that the Commission reported in its Opinion and Order when it summarized the Company's position: "AEP Ohio contends that its proposed cost-based capacity pricing roughly approximates and is, therefore, comparable to the amount 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)." [106]

To top it all off, the Commission's approach, not permitting selective materials to be noticed, is inconsistent with its ruling in the recent FirstEnergy ESP proceeding.[107] There the Attorney Examiner denied the Company's request to administratively notice the entire record of a proceeding, requiring the utility instead to tailor its administrative

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[105] AEP Ohio did not characterize this as "misleading." That characterization was supplied by FES. But, FES' pleading was untimely, and stricken. See Opinion and Order at 12. This raises the issue of whether the Commission unreasonably and unlawfully relied upon information or arguments that were not specifically before it.

[106] Capacity Charge Order at 25.

[107] See In *the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 17-21(affirming the Attorney Examiner's ruling that administrative notice be taken of selected documents, and not the whole record, as requested by FirstEnergy).

notice request to a secure and narrower window of information.[108] That approach was followed by OCC/APJN here and yet the result was disparately different for OCC/APJN than it was for the utility seeking administrative notice. These disparate rulings cannot be easily explained.

The Commission's Order in the *FirstEnergy case* is precedent that the PUCO should have acknowledged and followed but it did not. The Ohio Supreme Court has ruled that prior determinations of the PUCO should not be disregarded and set aside unless the need to change is clear and the prior decisions are in error.[109] Yet the PUCO here failed to respect its earlier decision and failed to explain why its prior determination in the FirstEnergy case was erroneous, and needed to be changed.

This is an additional error that the PUCO made constituting abuse of discretion. The effect of the Commission's ruling is that OCC/APJN is prejudiced by the Commission's action. OCC cannot rely upon the statements made and testimony given to support its argument in this case that base generation rates should be reduced to prevent discriminatory pricing. For all the reasons set forth above the Commission should grant rehearing on this issue and reverse its ruling.

ASSIGNMENT OF ERROR 3:

The Commission Erred In Allowing the Company to Collect hundreds of millions of dollars from customers through a Retail Stability Rider That Guarantees a steady source of Non-Fuel Base Generation Revenues For The Company.

In its modified ESP, the Company proposed a non-bypassable charge called the "Retail Stability Rider." As OCC Witness Hixon testified, this charge was intended to guarantee that the Companies collect a pre-determined level of non-fuel generation

[108] See id, Tr. I at 29 (Price) (June 4, 2012).

[109] See e.g. *In re: Application of Columbus S. Power*, 128 Ohio St.3dd 512, 523.

revenue during each year of the modified ESP.[110] This guarantee would exist to protect the revenues the Company will lose as more and more of its customers shop.

The Company itself refers to the Retail Stability Rider as a way to "protect the financial integrity of the Company during the transition period to market-based SSO pricing."[111] Mr. Allen testified that RSR is a proposal by the Company to replace a portion of lost revenues associated with providing capacity to CRES providers at a discount.[112] Thus, in the Company's own words, the retail stability rider is essentially a lost revenue mechanism for the Company. As more customers shop, the Company loses revenues. Recouping these lost revenues is important, from the Company's perspective, to ensure it does not suffer severe financial harm from its "discounted" pricing of capacity and its willingness to offer market-based pricing of capacity and energy under a series of auctions. OCC, APJN, and numerous other intervenors vehemently opposed the Retail Stability Rider.

But, despite the strong opposition and the arguments presented against this charge, the Commission nonetheless approved the charge[113] to the detriment of the Company's customers. In doing so, the Commission made a number of changes to the rider. The most significant of those changes, from the customers' perspective, was that the Commission determined that the Company was entitled to collect $504 million, instead of $284 million the Company had proposed for collection through the rider. The

[110] OCC Ex. No. 114 at 7-8 (Hixon).

[111] See Company Ex. 119 at 1 (Dias supplemental).

[112] Company Ex. 116 (Allen).

[113] Opinion and Order at 31-38.

Commission's Order approving the Retail Stability Rider was unreasonable and unlawful for the numerous reasons set forth below.

A. There is no statutory basis to allow the Company to be made whole for revenues lost due to competition from Competitive Retail Electric Service Providers.

S.B. 221 does not guarantee that electric distribution utilities ("EDUs") such as AEP Ohio will be made whole for sales of generation lost to CRES providers. There is no such provision in Chapter 4928 for this theory.

Indeed, where the General Assembly wanted to allow utilities to recoup lost sales opportunities or foregone revenue, it has expressly provided for such. For example, R.C. 4905.30 permits the Commission to approve the collection of "revenues foregone" with regard to economic development arrangements. Additionally, under R.C. 4928.143(B)(2)(h), a utility's ESP may include "lost revenues" as part of the EDU's distribution infrastructure and modernization plans.

That the General Assembly provided limited conditions under which costs may be collected from customers for lost or foregone revenues reflects the legislative intent to otherwise disallow costs to be collected under other conditions not specified. The legislative canon expressio unius exclusio alterius applies -- the inclusion of one thing implies exclusion of the other.[114] Including authority to allow lost revenues for economic development and for distribution infrastructure and modernization plans, and not for other purposes, was intended.

The General Assembly, in its wisdom, enacted no provision, for collecting lost generation revenues through R.C. 4928.143(B)(2). There are no provisions within R.C.

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[114] See *Crawford-Cole v. Lucas Co. Dept. of Jobs & Family Services*, 121 Ohio St.3d 560, 566, 2009-Ohio-1355, ¶42.

4928.143(B)(2) under which lost generation revenues fit, and thus the Commission may not authorize the collection of these lost generation revenues in the ESP.[115] Such a finding is in keeping with the Supreme Court's precedential ruling interpreting R.C. 4928.143(B)(2) to be an exclusive list that the ESP provisions must qualify under.[116] Rehearing should be granted on this.

B. The Commission erred in unreasonably and unlawfully determining there is a statutory basis for including a Retail Stability Rider in the Company's electric security plan under R.C. 4928.143.

In discussing the Retail Stability Rider, the Commission correctly noted that there was a dispute as to whether the rider is statutorily justified.[117] Yet, despite the dispute, the Commission failed to address the merits of numerous parties' arguments detailing how the rider lacked any statutory basis.[118] Instead it went straight to the Company's claim that the rider is justified under R.C. 4928.143(B)(2)(d). And it found that the rider "meets the criteria of Section 4928.143(B)(2)(d), as it promotes stable retail electric service prices and ensures customer certainty regarding retail electric service."[119] It also determined that the rider "also provides rate stability and certainty through CRES services, which clearly fall under the classification of retail electric service, by allowing customers the opportunity to mitigate any SSO increases through increased shopping

[115] See *In re Application of Columbus Southern Power Company, et al.*, 2011 Ohio 1788, 31-35.

[116] Id. at ¶31-32.

[117] Id. ¶31.

[118] While it regurgitated the intervenors' arguments in three pages, the Commission failed to explain why those arguments were wrong. This is an error and violates R.C. 4903.09, because the Commission must explain its rationale as to why it chose to accept the Company's arguments and found other arguments to be lacking. See e.g. *General Telephone Co. v. Pub. Util. Comm.* (1972), 30 Ohio St.2d 271, 59 Ohio Op.2d 125.

[119] Opinion and Order at 31.

opportunities***"[120] The Commission also found that the retail stability rider "freezes any non-fuel generation rate increase that might not [sic] otherwise occur absent the RSR, allowing current customer rates to remain stable throughout the term of the modified ESP."[121]

But the Commission's statutory analysis is wrong for a number of reasons. First, it ignores all of the preceding language of R.C. 4928.143(B)(2)(d), and instead focuses on the end of the section containing the language "as would have the effect of stabilizing or providing certainty regarding electric retail service." And second, it construes the statute as being met where the term, condition, or charge only indirectly stabilizes or provides certainty regarding retail electric service.

1. The Commission failed to give effect to all the words in the statute, violating R.C. 1.47.

The Commission's analysis is wrong. It ignores the six preceding lines of Subsection (B)(2)(d) and focuses only on part of the statute. The first six lines of Subsection (B)(2)(d) establish the parameters that must be met in order for a provision to be part of a utility's electric security plan. R.C. 4928.143(B)(2)(d) reads as follows:

> (2) The plan may provide for or include, without limitation, any of the following:
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> ***
>
> Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;

[120] Id.

[121] Id.

The statute quite clearly requires that the provision be a term, condition, or charge relating: (1) limitations on customer shopping for retail electric generation service,(2) bypassability, standby, back-up or supplemental power service; (3) default service; (4) carrying costs (5) amortization periods, and (6) accounting or deferrals, including future recovery of such deferrals. And if it is determined that the provision falls within one of these six categories, then the provision must also "have the effect of stabilizing or providing certainty regarding retail electric service."

But the Commission skipped the first step of the statutory analysis altogether. It never determined that the Retail Stability Rider is a "term, condition or charge" that fits the description of one of the six categories. In doing so, the Commission erroneously construed the statute, ignoring the bulk of the language found there. Construing the statute this way is inconsistent with the rules of statutory construction that presume, inter alia, the entire statute is intended to be effective.[122] As noted by the Ohio Supreme Court, "[t]he presumption always is, that every word in a statute is designed to have some legal effect, and putting the same construction on a statute, every part of it is to be regarded and so expounded if practicable, as to give some effect to every part of it."[123]

The Commission erred when it approved the Retail Stability Rider, but failed to identify which one of the six categories the rider satisfies under R.C. 4928.143(B)(2)(d). As OCC/APJN argued on brief, the rider is NOT one of the categories of "terms, conditions, or charges" under R.C. 4928.143(B)(2)(d). The retail stability rider is not related to "limitations on customers shopping for retail electric generation service." In

[122] See R.C. 1.47.

[123] *Richards v. Market Exch. Bank Co.* (1919), 81 Ohio St. 348.

fact, the Company argues that the RSR will increase customer shopping for retail electric generation service. The RSR does not pertain to bypassability (it is a non-bypassable rider). The RSR does not pertain to "carrying costs," "amortization periods" or "accounting or deferrals."

The closest one can get to the statute is to argue that the RSR relates to "back-up," or "default service." But even that doesn't work. Why? Because the RSR is tied to lost revenues based on shopping, and the lost revenues are tied to "discounted capacity prices" that AEP Ohio charges to CRES providers.

Non-fuel base generation revenues lost from customers switching to CRES providers are not a provider of last resort ("POLR") cost. This Commission resoundingly determined that migration risk -- the risk of customers switching to a CRES provider -- is NOT A POLR RISK.[124] Rather it is a business risk faced by all retail suppliers as a result of competition. POLR, according to the Commission, is limited to the return risk -- the risk of customers returning to the EDU's SSO rates from service with a CRES provider.[125] Hence. AEP Ohio's proposal -- to collect a certain level of non-fuel base generation revenues from customers, based on the amount of shopping (customer migration) is unrelated to POLR and the provision of back-up or default service.

R.C. 4928.142(B)(2)(d) cannot be construed to cover lost generation revenues. Default service or back up service means capacity and energy costs incurred when the customer must receive default or back up supply service. No more and no less.

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[124] *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 Generation Assets*, Case No. 08-917-EL-SSO et al., Order on Remand at 32 (Oct. 3, 2011).

[125] Id.

2. The Commission erred by unreasonably and unlawfully engaging in statutory construction when the plain meaning of the statute was clear.

In the Order, the Commission's found that the RSR meets the criteria of R.C. 4928.143(B)(2)(d) because it "promotes stable retail electric service prices and ensures customer certainty regarding retail electric service."[126] Looking to the next passage of the Commission Order, it appears that this conclusion is reached on the basis that the RSR *enables* other provisions of the ESP to be implemented. For instance, the Commission notes that the RSR is connected to CRES services[127] which allow customers to "mitigate any SSO increases through increased shopping opportunities that will become available as a result of the Commission's decision in the Capacity Case."[128] And the RSR allows[129] "freezes" to any non-fuel generation rate increase that might otherwise not occur absent the rider.

But R.C. 4928.143(B)(2(d), requires more than an indirect stabilizing or providing certainty for retail electric service. The words of the statute state that the "terms, conditions, or charges must "have the effect of stabilizing or providing certainty regarding retail electric service." But the Commission reads the language to allow any

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[126] Opinion and Order at 32. There is no record citation for this statement, and thus R.C. 4903.09 appears to be violated.

[127] The Commission claims that CRES services fall under the classification of retail electric service. This conclusion seems to conflict with the holding the Commission reached in the capacity charge case where it, after much analysis, concluded that the provision of capacity by CRES providers is not a retail electric service. Capacity Charge Order at 13. Further the Commission recognized that the benefits to customers from AEP providing capacity to CRES, come not directly, but "in due course" as customers are "initially one step removed from the transaction." This is another example of the Commission stretching to find some connection between the statutory language and the RSR.

[128] Id.

[129] The Commission states that the "RSR freezes any non-fuel generation rate increase***." This statement is incorrect and not supported by the record, violating R.C. 4903.09, as the provisions of the RSR do not in of themselves require freezes to any non-fuel generation rate increases. Rather, as explained above, the Company argues they enable the rate freezes.

provision[130] that enables other provisions to be implemented – with the other provisions being the ones which have the effect of stabilizing or providing certainty regarding electric retail service. Such an indirect approach is not sustainable under Ohio rules of statutory construction.

Had the General Assembly wanted to allow more permissive structuring of an ESP, it would have inserted language to that effect. For instance the statute would have been written with the phraseology "which provision enables other charges that" "have the effect of stabilizing or providing certainty regarding retail electric service." But the statute is not written in such an indirect manner. Under the doctrine of *expressio unius est exclusio alterius*, if the General Assembly wanted to give the Commission authority to approve a provision in an electric security plan that "enables" other provisions, it would have expressly done so. But the General Assembly did not. The Commission cannot rewrite the law.

According to the Supreme Court of Ohio, where the statute is clear and unambiguous, as is the provision of R.C. 4928.143(B)(2)(d), "[the] only task is to give effect to the words used,"[131] and "not to delete words used or to insert words not used."[132] "To construe or interpret what is already plain is not interpretation but legislation, which is not the function of the courts."[133]

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[130] See discussion *supra*.

[131] *State v. Elam* (1993), 68 Ohio St.3d 585, 587.

[132] *Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127. See also *State ex rel. v. Evatt* (1944), 144 Ohio St. 65 (no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for).

[133] *Thompson Elec., Inc. v. Bank One, Akron, N.A.* (1988), 37 Ohio St.3d 259, 264 (remaining citation omitted).

The Commission's attempt to add words to the statute to provide a spot for the retail stability rider under R.C. 4928.143(B)(2) is unlawful and unreasonable. Rehearing should be granted on this issue.

C. Assuming arguendo that there is a legal basis for the Retail Stability Rider, the Commission erred in unreasonably determining that $508 million rather than the $284 million requested by AEP Ohio is the appropriate level of the rider. The Commission's calculation of the rider is overstated, making the rates to be collected from customers unjust, unreasonable, and unsubstantiated. If the rider is to be implemented, over the strenuous objections of OCC/APJN and others, rehearing should be permitted to allow parties to examine, on the record, the appropriate calculation of the Retail Stability Rider.

The Commission found that the RSR is justified by statute, a conclusion that is unlawful, unreasonable, and lacks evidentiary support. It also concluded that AEP Ohio had failed to sustain its burden of proving the cornerstone of the retail stability rider -- the revenue target of $929 -- is reasonable.[134] Instead the Commission chose a lower revenue target of $826 million,[135] and on that basis determined that the rider revenue to be collected would have to change as well. The Commission made several adjustments[136] to the calculation of the rider and "highlighted" its adjustments in a chart contained on page 35 of the Opinion and Order. The end results of all the adjustments was to dramatically increase (by almost 79 percent) the amount of the retail stability rider to be collected

[134] Opinion and Order at 32.

[135] Id. at 34.

[136] The adjustments made by the Commission do not appear to be based on facts contained within the record. This is an additional error that the Commission made. See e.g. *Tongren v. Pub. Util. Comm.* (1997), 85 Ohio St.3d 87.

from customers. Specifically, while the Company had requested a $284 million retail stability rider, the Commission approved a rider of $508 million.[137]

Assuming arguendo that the rider is justified by statute, OCC/APJN request rehearing on the calculation of the rider. The Commission erred in numerous respects, and these errors unreasonably overstated the total amount to be collected from customers under the rider. In other words, the rider is unreasonable and will overcharge customers. This will render it imposible for the Commission to ensure that reasonably priced retail electric service is made available to consumers in the State, conflicting with R.C. 4928.02(A). Rehearing should be permitted to allow parties to examine, on the record, the appropriate calculation of the RSR.

1. **In assigning a value for competitive retail electric supplier revenues, the Commission unreasonably assumed capacity revenues are based on Retail Pricing Model ("RPM") pricing, when AEP Ohio was authorized to, and will in fact, collect capacity revenues at the level of $188.88/MW-day.**

On page 35 of the Commission's Opinion and Order, the Commission attempted to replicate Company's Exhibit WAA-6, in order to recalculate the Company's Retail Stability Rider for various adjustments the Commission made that impact the rider. A number of these adjustments flowed from the Commission's recent decision in the Capacity Charge Case.

In the Capacity Charge Case, the Commission adopted a state compensation mechanism for AEP Ohio with a capacity charge of $188.88/MW-day.[138] AEP Ohio will collect 100% of its $188.88/MW-day capacity charge, but it will be collected from

[138] Opinion and Order at 36.

different sources and at different times. During the term of the ESP, AEP Ohio will collect capacity charges from CRES providers based on RPM pricing. Additionally, during the term of the ESP, a $1/MW-hour charge for capacity charges will be collected from customers as a part of the retail stability rider. After the ESP terminates, the Company will collect from customers deferred capacity charges, with carrying costs, over a three-year period.[139]

Under the approach derived by the Commission, charging CRES providers RPM prices for capacity causes AEP Ohio to collect less than the PUCO determined cost of capacity ($188.88/MW-day) during the term of the ESP. The incurred costs that will not be collected from CRES providers during the ESP are defined as the difference between RPM prevailing prices and $188.88/ MW-day. The Commission authorized the Company to defer these incurred capacity costs, to the extent that the costs do not exceed $188.88/MW-day.[140] In the decision in this case, the Commission determined that the deferred capacity costs would be collected from customers, over a three-year period beginning in June 2015.[141]

Thus, although CRES providers will be paying RPM-based prices for the capacity supplied by the Company, it is now clear, from the Commission's Order in this case, that the Company will collect *from customers* the full deferred capacity costs up to the value of $188.88/MW-day. For instance, in the first planning year, 2012/2013, CRES

[139] Opinion and Order at 36.

[140] Capacity Charge Order at 23.

[141] Opinion and Order at 36. In the Capacity Charge Case the PUCO granted the Company accounting authority to defer the capacity costs and authorized the Company 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 this case. Thereafter, the Company was authorized to collect carrying charges at its long-term cost of debt. See Capacity Charge Order at 23-24.

Providers will be charged $20.01/MW-day.[142] That means that $168.87/MW-day[143] will be the capacity costs subject to deferral and collected from customers. When that deferred capacity cost is multiplied by the shopping load assumed by the Commission[144] a capacity deferral of $270 million is created.[145] In the second and third years, using the RPM pricing of $33.71/MW-day (2013/2014), and $153.89/MW-day (2014/2015)[146] capacity costs subject to deferral will be $155.171/MW day (2013/2014) and $34.99/MW-day (2014/2015).[147] When that deferred capacity cost is multiplied by the shopping load assumed by the Commission, capacity deferrals of $299 million (2013/2014) and $78 million, (2014/2015) are created.[148] Thus, over the ESP term, $647 million of capacity deferrals will be created.[149] While some capacity costs will be collected from the RSR ($144 million), which will be used to offset these deferrals,[150] $503 million of deferred capacity costs will remain to be collected from customers in 2015 through 2018, plus carrying charges at long term cost of debt, resulting more than $503 million being collected from AEP Ohio's customers during that time period.[151]

In calculating the Retail Stability Rider, the Commission included CRES capacity revenues based on RPM pricing. These revenues, included in the Commission's

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[142] See Capacity Charge Order at 10.

[143] $188.88/MW-day minus 20.01/MW-day.

[144] The Commission rejected the Company's shopping load projections and adopted the following assumptions: 52% in year one; 62% in year two; and 72% in year three. Opinion and Order at 34.

[145] See OCC Rehearing Ex. 1A.

[146] Capacity Charge Order at 10.

[147] $188.88 MW-day minus $33.71/MW-day equals $155.17/MW-day. $188.88 MW-day minus $153.89/MW-day equals $34.99/MW-day.

[148] See OCC Rehearing Ex. 1A.

[149] OCC Rehearing Ex. 1A.

[150] See Opinion and Order at 35-36.

[151] See OCC Rehearing Ex. 1A.

recalculated RSR, are $441 million. The $441 million of CRES capacity revenues offset the need for a retail stability rider. In other words, the greater the CRES capacity revenues, the lower the Retail Stability Rider collected from customers. But in counting the CRES capacity revenues at RPM price levels, the Commission fails to reflect the reality that the Company is authorized to collect full CRES capacity revenues based on $188.88/MW-day -- not just capacity based at RPM levels.

If the Retail Stability Rider calculation is not corrected to reflect the reality that the Company is authorized to and will collect capacity revenues totaling $188.88/MW-day, then the rider will be overstated and customers will pay twice for the capacity costs (specifically the difference between the $188.88/MW-day and the RPM levels) -- once through an overvalued SSO generation rate (incorporating capacity revenues at $355/MW-day) and the second time though the capacity cost deferrals. This is not just, reasonable, or consistent with the Capacity Charge Order.

The Commission's rider calculation should be corrected, if it is to be the basis for the Retail Stability Rider. Instead of using CRES capacity revenues based on RPM pricing, the Commission should have calculated CRES capacity revenues based on the state compensation mechanism approved in the Capacity Charge Case -- $188.88/MW-day. If this had been done, no Retail Stability Rider would be needed.

Here's how it works.[152] For 2012/2013 the CRES capacity revenue becomes $302 million [153] instead of $32 million.[154] For 2013/2014. CRES capacity revenue is

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[152] See OCC Rehearing Ex. 1B

[153] $270 million is to be collected from all customers after the ESP plus $32 million is collected from the CRES providers.

[154] OCC Rehearing Ex. 1B.

$364 million[155] instead of $65 million.[156] And for 2014/2015, CRES capacity revenues amount to $422 million.[157] Accepting all other assumptions made by the Commission in deriving the rider, and adjusting the CRES capacity revenues to be consistent with what the Commission authorized the Company to collect (from both CRES providers and customers), one can reasonably conclude that over the period of the ESP the RSR is not needed. Rather the RSR becomes a negative amount, indicating that money is due to be returned to customers in the amount of $133 million over the entire ESP period.[158]

Alternatively, if the Commission does not correct its retail stability rider calculation to ensure that customers do not pay twice for capacity through the RSR, the Commission should use all the RSR collections from customers as credit to the future capacity deferrals that have been created as a consequence of charging CRES providers $188.88/MW-day. This alternative would permit the Company to collect cash from customers to be used to offset the $503 million of capacity cost deferrals which will be created and collected from customers after the ESP term is over.

2. In calculating the Retail Stability Rider, the Commission unreasonably excluded revenues that the Company will receive for capacity associated with auctions that occur prior to June 2015.

In calculating the Retail Stability Rider, the PUCO used Company Exhibit WAA-6 as the template. In WAA-6, the Company included "Auction Capacity Revenues" of

[155] $299 million is to be collected from all customers after the ESP plus $65 million is collected from the CRES providers.

[156] OCC Rehearing Ex. 1B.

[157] $78 million is to be collected from all customers after the ESP plus $344 million is collected from the CRES providers.

[158] Id.

$89.6 million in PY 2014/2015.[159] Mr. Allen testified that starting in 2015, the Company had proposed an energy-only auction with a capacity rate of $255/MW-day embedded in the charge to retail customers.[160] The $89.6 million was the capacity revenues associated with the non-shopping load that is subject to auction in 2015. Including such revenues as a line item in the Retail Stability Rider charge decreased the revenue to be collected from customers.

But the Commission, in calculating the Retail Stability Rider, failed to incorporate any auction capacity revenues, despite the fact that under the Commission's modifications to the ESP, there will be energy only auctions (10%, 60%, and 100%). And for these energy-only auctions there will be a capacity rate embedded in the charge to non-shopping customers. As explained earlier that capacity rate approximately and roughly equates to $355/MW-day.[161]

Collecting that capacity rate from the non-shoppers in the energy-only auctions will create capacity revenues for the Company which should be recognized as an offset to the Retail Stability Rider calculation. The failure to recognize such a component of the RSR is unreasonable, because it overstates the rider, and threatens the Commission's ability to ensure reasonably priced electric service is available to consumers in this State. Moreover, the Commission failed to explain its rationale as to why such revenues should be excluded, violating R.C. 4903.09. Rehearing should be permitted to allow parties to examine, on the record, the appropriate amount for auction capacity revenues that should be included in the calculation of the Retail Stability Rider.

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[159] Company Ex. 116 at WAA-6 (Allen).

[160] Tr. V at 1661.

[161] See Capacity Charge Order at 25.

3. Third, the Commission erred when it unreasonably and unlawfully applied too low of a credit for shopped load, without setting forth the reasoning or rationale for adopting that low value.

In calculating the Retail Stability Rider, the Commission determined there should be a credit for shopped load. The larger the credit, the less the RSR collections from customers will need to be. The credit for shopped load was proposed by the Company to recognize that as more customers shop, energy is freed up for potential off-system sales.[162] It appears[163] that the Commission accepted the Company's recommended $3/MWh credit for shopped load, without explaining the rationale for accepting it. OCC and others had recommend that the credit reflect the actual profits earned from off-system sales and not a mere pittance of the margins expected to be earned by the Companies on such off-system sales.

Had the Commission rejected the $3/MWh credit and ordered a larger, more reasonable credit, the RSR collections from customers would have been less. The Commission, however, unreasonably failed to accept the recommendations of OCC[164] and others, causing the revenues to be collected under the Retail Stability Rider to be greater than what would otherwise be necessary.

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[162] Tr. II at 677 (Nelson).

[163] The Commission's decision did not discuss the level of the shopping credit other than to state that the credit for shopped load should be adjusted based on the revised non-shopping assumptions. It then lowered the credit without explaining how the new credits for shopped load were derived. See Opinion and Order at 35.

[164] OCC/APJN had argued that the $3/MW credit was substantially below the margins projected by Company Witness Sever in his pro-forma AEP Ohio financial projections. See OCC Brief at 49-54. OCC/APJN proposed a more realistic credit that would be more than $3Mwh but less than $12/MWH. Alternatively, OCC/APJN proposed tracking the actual energy freed up and the actual energy sold to eliminate the guess work in assigning a value to profits from energy sales freed up by shopping load.

It is unreasonable to charge customers millions of dollars to support the Company's lost revenues from shopping when customers are not given complete credit for the profits earned when energy from the shopped load is freed up. This is all the more so unreasonable when customers are expected to pay pool termination costs[165] to collect revenues lost as part of the Company's move to competitive markets.

And using a $3/MWh as a credit for off-system sales is inconsistent with the Commission's finding in the Capacity Charge Case that accepted an energy credit of $147.41/mw-day or $6.14/mwh. This inconsistency stands in stark contrast to the otherwise carte blanche adoption of the Capacity Charge Case findings.

The Commission failed to explain the rationale or reason to support choosing the $3/MWh charge proposed by the Company. Nor did it explain why proposals by others such as OCC/APJN should be rejected. Nor did it explain why the energy credit developed in the Capacity Charge Case should not be utilized in this case. Instead the Commission merely recited what the parties' postions were, but did not explain why the positions were adopted or rejected.

But the Commission has the responsiblitity under R.C. 4903.09 to make findings of fact and issue written decisions setting forth the reasons prompting the decisions arrived at. The Ohio Supreme Court has ruled that the Commission must explain in sufficient detail why it reached conclusions so the the Court may review the reasonableness of the Order.[166] The Commission failed to do so here. Rehearing should be granted and the Commission should fully explain the basis for adopting the $3/MWh

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[165] See AEP Ohio Ex. 103 at 22 (Nelson).

[166] *General Telephone Co. v. Pub. Util. Comm.* (1972), 30 Ohio St.2d 271.

credit, or alternatively should reject the $3/MWh in favor of a larger credit consistent with the recommendations of OCC/APJN, or consistent with the energy credit adopted in the Capacity Charge Case.

ASSIGNMENT OF ERROR 4:

> The Commission Erred When It Ruled That The Company Is Authorized To File An Application To Adjust The RSR If There Is A Significant Reduction In Non-Shopping Load For Reasons Beyond The Control Of The Company, Other Than Shopping. The Commission's Ruling Unreasonably Transfers The Risks Of Weather, Economic Downturn, And Customer Mobility Away From The Company And Onto Consumers Which Is Unfair, Unjust, And Unreasonable.

In approving the Retail Stability Rider, the Commission noted that its findings are "heavily dependent on the amount of SSO load still served by the Company."[167] The Commission then ruled that if during the term of the ESP, there is a "significant" reduction in non-shopping load "for reasons beyond the control of the Company, other than for shopping," the Company is authorized to file an application to adjust the RSR to account for such changes."[168] The effect of the Commission's ruling is that it essentially transfers the risks of reduced non-shopping load away from the Company and onto the backs of customers. For instance, under this ruling "significant reduction" (which is not defined) in non-shopping load could result from a number of factors including weather, customer mobility, and economic downturn i.e. customers going out of business.[169]

But in Ohio these are risks that the electric utilities, and not customers, have consistently borne. Electric utilities in Ohio do not have weather normalization

[167] Opinion and Order at 37.

[168] Id. at 37-38.

[169] Ormet is one of the largest customers of Ohio Power Company. It presented testimony that it contributes significantly to the Company's non fuel generation revenues. See Ormet Ex. 106 at 13-14 (Russell). According to Mr. Russell, revenues required from other customers under the ESP would be "far greater if Ormet were not to continue operating in Ohio." Id.

protection built into rates. Nor do electric utilities have protection from customer loss due to mobility or economic conditions. Guaranteeing this utility full recovery of sales for non-shopped load irrespective of innumerable factors such as weather, economic conditions, and/or customer mobility, is not appropriate or reasonable. This is a slippery slope that the Commission must avoid. Rehearing should be granted and the Commission should reverse itself.

And if the Commission is insistent on going down this slope, which OCC/APJN do not recommend, it should make the adjustment symmetrical. That is, if non-shopped load increases for reasons beyond the control of the Company, the Commission should permit interested parties the opportunity to file to adjust the RSR to account for those changes. To fully explore the necessary conditions of such a proposal, the Commission should hold rehearing on this issue.

ASSIGNMENT OF ERROR 5:

The Commission Violated R.C. 4903.09 When It Unreasonably And Unlawfully Failed To Allocate The Retail Stability Rider According To The Percentage Of Customers Shopping In Each Class.

After accepting a $508 million Retail Stability Rider, the Commission determined that the RSR should be collected as a non-bypassable rider, to recover charges per kWh by customer class, as the Company proposed.[170] The Commission discussed arguments parties had made as to why certain classes should be excluded from paying the rider, and briefly addressed arguments made as to excluding shoppers or non-shoppers from paying the rider.[171] Nonetheless, the Commission failed to address OCC's recommendation that

[170] Opinion and Order at 37.

[171] Id.

the rider be allocated in proportion to each customer class' relative share of switched kWh sales.

OCC's recommendation was made through the testimony of OCC Witness Ibrahim and was based on principles of cost causation. As OCC witness Ibrahim fully explained, the "need" for the retail stability rider is primarily driven by CRES providers.[172] The rider mitigates the financial impact the Company experiences from discounted capacity pricing made available to CRES providers. CRES providers in turn provide service to retail customers who choose to seek alternative sources of generation besides AEP Ohio's standard service offer. Under the theory of cost causation, the Retail Stability Rider should be allocated among the different classes based on their share of total switched load. For it is the switched load that causes the Company to "lose" non-fuel generation revenues (via discounted capacity).

In an attempt to rationalize pushing cost onto others than the cost causers, the Commission points out the so-called benefits of the RSR to non-shoppers. These "benefits" include "rate stability" and "certainty" coupled with the fact that all SSO rates will be market based on June 2015. But stable and certain rates do not equal reasonably priced retail electric service, which is a policy of the State under R.C. 4928.02(A). And stable and certain rates should not shift the burden from the cost causers to other customers. Indeed, if the stable and certain rates are too high to begin with, they provide little, if any benefit to SSO customers.

And, the findings in the Capacity Charge Case confirm that the SSO rates, which have a capacity component built into them, are too high. In the Commission's Capacity

[172] OCC Ex. 110 at 8-9 (Ibrahim).

Charge Case, the Commission determined that the Company's capacity charge should be no greater than $188.88/MW-day, not the $355/MW-day embedded in the SSO rates. Excessive, albeit stable and certain. SSO rates are not a benefit to non-shopping customers.

Additionally, if customers have no interest in shopping, and in fact do not shop during the ESP, the other benefit -- market based SSO rates -- will only be realized after paying the Retail Stability Rider for the term of the ESP and three years thereafter. This is a hefty price to pay.

In the end, there are no primary and direct benefits to non-shopping customers of the Retail Stability Rider. Thus, if they are to pay for this charge, it's only equitable that the charge be assessed on the basis of the relative share of shopping of each class. Yet, residential customers, whose current shopping is around 15%, will pay approximately 40% of the RSR.[173] This is disproportionate, unfair, unjust, and unreasonable. The Commission should grant rehearing on this issue.

ASSIGNMENT OF ERROR 6:

The Commission Unreasonably and Unlawfully Ruled That, After Corporate Separation Is Implemented, The Retail Stability Rider Revenues Which Are Not Allocated To Recovering The Capacity Charge Deferrals, Should Flow To Company's generating affiliate, GenResources, Inc., Which Violates R.C. 4928.02(H). In Failing To Explain The Rationale Or Reasons For Its Ruling, The Commission Also Violated R.C. 4903.09.

Under the Commission's Order, after corporate separation is implemented, the retail stability rider revenues will be remitted to GenResources, Inc., the Company's unregulated generation subsidiary.[174] While the Commission characterized the pass-

[173] AEP Ohio Ex. 111 at Ex. DMR-3 (Roush).

[174] OCC Ex. No. 111 at 11 (Duann).

through as "appropriate and reasonable,"[175] it failed to explain itself or indicate the facts or rationale upon which its conclusion was based.

R.C. 4903.09 requires that, in all contested cases, "the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." The Ohio Supreme Court has recognized that complying with this statute is important because otherwise the Court cannot fulfill its responsibility to review the order being appealed.[176] By not explaining why the retail stability rider revenues should be remitted to the AEP Ohio's affiliate, and how customer funding of the affiliate is lawful, the Commission violated R.C. 4903.09. Without sufficient detail, the Court will be unable to determine how the Commission reached its decision. Thus, the purpose of R.C. 4903.09 will be thwarted and the review that OCC is entitled to, under R.C. 4903.09 and 4903.10 cannot occur. The Commission should therefore, hold rehearing on this matter, and abrogate its Order on this issue. The Commission should reverse itself and preclude the RSR revenues from being transferred to the GenResources, Inc.

But the problems with the Order do not stop there. OCC Witness Duann testified that, through the Retail Stability Rider, AEP Ohio's SSO customers are being asked to subsidize the shortfall between non-fuel generation revenue actually collected and the annual revenue target set by AEP Ohio. Thus, when the RSR is remitted to GenResources, Inc. the Company's customers (shopping and non-shopping) will be subsidizing the Company's unregulated generation business. That unregulated subsidiary will be engaged in offering competitive generation service (selling excess generation

[175] Opinion and Order at 60.

beyond that which is needed for SSO service) and noncompetitive (SSO) service to customers.

Though the Company maintains that generation assets that are transferred need financial support from the Retail Stability Rider, such a subsidy is unlawful and inconsistent with the state policy of R.C. 4928.02(H). R.C. 4928.02(H) prohibits anti-competitive subsidies. That statute also requires the PUCO to ensure effective competition by avoiding anti-competitive subsidies flowing from a non-competitive retail service (SSO generation native load) to a competitive retail service.

Under R.C. 4928.06, the Commission has a duty to ensure that the policy specified in R.C. 4928.02 is effectuated. Thus, according to the Commission, the policy specified in R.C. 4928.02 is "more than a statement of general policy objectives."[177]

[176] See e.g., *Allnet Communications v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 202, 209.

[177] *In the Matter of the Application of Ohio Edison Companies, the Cleveland Electric Illuminating Companies, and the Toledo Edison Companies for Approval of a Market Rate Offer to Conduct a Competitive bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 08-936-EL-SSO, Opinion and Order at 5 (Nov. 25, 2008) ("*FirstEnergy MRO Order*").

Indeed the Ohio Supreme Court expressly held that the Commission may not approve a rate plan that violates the policy provisions of R.C. 4928.02.[178] The Commission thus, cannot approve this portion of the rate plan. Retail stability rider revenues cannot flow to AEP GenResources Inc. under the law.

Besides being unlawful, the subsidy is also unreasonable. It is unreasonable because it assumes that all customers of the Company (shopping and non-shopping) should involuntarily support the unregulated operations of the Company.

Moreover, the Commission assumes that the unregulated operations of AEP GenResources Inc. will be in need of financial support, which has not been supported by any record evidence. If the Company's own analysis is correct, the AEP East generating assets will produce a healthy, positive cash flow value, on a net present value basis, of $22 billion over the next thirty years.[179] Notably, a significant portion of the $22 billion cash flow is attributable to AEP Ohio generating assets.[180] The total actual cash flows on a non-discounted basis are much higher. That positive cash flow from AEP Ohio units is several billion dollars greater than the net book value of those same assets that the Company proposes to transfer to its affiliate.[181] Requiring the Company's customers to contribute even more to the returns of shareholders is unlawful and unreasonable. Rehearing should be granted.

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[178] *Elyria Foundry v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305.

[179] Tr. Vol. III at 851 (Mitchell); OCC Ex. 105.

[180] Id. at 856-857; see also IEU Ex. No. 121 (confidential).

[181] Id.

ASSIGNMENT OF ERROR 7:

In Permitting The Company (As Part Of The Retail Stability Rider), To Collect From Customers The Difference In Revenues Between The RPM-Based Wholesale Capacity Rate And The Company's State Compensation Mechanism For Wholesale Capacity, The Commission Unreasonably And Unlawfully Acted, Without Jurisdiction.

In the Company's Capacity Charge Case the PUCO authorized the Company to defer its incurred capacity costs that it does not collect from CRES providers.[182] In authorizing the deferral, the PUCO set the stage for the Company to collect what the PUCO determined were "wholesale capacity costs"[183] from customers under some provision of the Company's electric security plan. The Commission assumed that deferrals created in the Capacity Charge Case, under its regulatory authority in R.C. Chapters 4905 and 4909,[184] can be incorporated into the Company's ESP.

But, as explained below, the Commission has no authority to permit the Company to collect wholesale capacity costs from the Company's retail customers through the ESP. Rehearing should be granted for the reasons that follow.

A. There is no statutory basis under R.C. 4928.143 or 4928.144 to allow the Company to collect revenues for wholesale capacity service to CRES providers from rates charged to retail customers.

The Commission stated in the Capacity Charge Order that "[a]lthough 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

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[182] Capacity Charge Order at 23.

[183] Opinion and Order at 13 (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.").

[184] Capacity Charge Order at 22.

wholesale rather than a retail service."[185] Sales of electric capacity for resale to retail customers are wholesale transactions, according to the PUCO.

Wholesale transactions fall under the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). However, the PUCO explained that it had limited jurisdiction "for the sole purpose of establishing an appropriate state compensation mechanism," consistent with the governing section of the PJM Reliability Assurance Agreement ("RAA").[186] The Commission expressly determined in the Capacity Charge Case that the provision of capacity for CRES providers is not a "retail electric service" under R.C. 4928.02(A)(27),[187] but instead is a wholesale service.

This means the deferrals arising from providing this wholesale service created in the Capacity Charge Case cannot be collected as part of the retail service rates established under the electric security plan in this case. The Commission has no jurisdiction to authorize AEP-Ohio to collect **wholesale electric costs** for capacity service made available to shopping customers, from **retail customers- SSO customers and shopping customers.** Retail service is totally unrelated to the wholesale electric charges to CRES providers.

Wholesale capacity costs are the responsibility of the unregulated CRES providers. Customers do not owe the utility for the wholesale capacity costs of CRES for providing retail electric service. CRES providers owe the utility for providing wholesale capacity to them. But the PUCO is authorizing the utility to collect wholesale electric

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[185] Id. at 22. (Emphasis added).

[186] Id. at 13.

[187] Opinion and Order at 13.

costs from retail customers (SSO customers and shopping customers) through the Company's electric security plan. This it cannot do.

Further, the Ohio Supreme Court has held that, if a given provision of an ESP does not fit within one of the categories listed following R.C. 4928.143(B)(2), it is not authorized by statute.[188] The deferrals created in the Capacity Charge Order do not fit within the provisions of R.C. 4928.143(B)(2), and thus, cannot be authorized by the PUCO as part of an ESP.[189] Simply put the deferrals are unrelated to providing retail service to SSO customers of the Company though the ESP.

The wholesale capacity charges do not fit under any provision of R.C. 4928.142(B)(2). The Commission cannot transform these unlawful charges into lawful charges by judicial fiat. Although the Commission ordered the recovery of the capacity charge differential[190] as part of the retail stability charge, there is no statutory basis for that rider (as discussed supra). And even if that rider were statutorily permissible (which it is not), there is no basis to conclude that the capacity charge differential in any way shape or form fits within subsection (B)(2)(d) of R.C. 4928.143.

It is not, under R.C. 4928.143(B)(2)(d), a "term, condition or charge relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up or supplemental power service, default service, carrying costs,

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[188] *In re Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶32.

[189] See also, IEU-Ohio Brief (Case No. 11-346-EL-SSO) at 57-58. Industrial Energy Users of Ohio ("IEU") argued in the AEP ESP case that the lost revenues sought to be collected through the RSR are "transition costs" that cannot be collected. IEU identified the RSR as an "illegal attempt to collect transition revenue." IEU explained that, under Senate Bill 3 in 1999, there was an opportunity for electric utilities to seek revenue for transitioning to competition – and that opportunity "has long since passed * * *." OCC agrees that this is another basis under which the Commission could and should reject the RSR.

[190] The capacity charge differential refers to the gap between the RPM based capacity rate and AEP Ohio's state compensation mechanism for capacity ($188.88/MW-day), as determined by the Commission in the Capacity Charge Case.

amortization periods and accounting***." And even it were considered a "deferral" falling under that division, there has been no showing that as such it "would have the effect of a stabilizing or providing certainty regarding *retail electric service.*"

This conclusion is inevitable because the capacity charge being deferred is a *wholesale capacity charge* to CRES suppliers, not SSO customers or shopping retail customers. And CRES suppliers (who are not regulated by the PUCO) ultimately choose how capacity charges enter into generation prices they offer to retail shopping customers. Thus, there is no direct connection between the deferrals associated with the discount given to CRES providers and the ultimate retail electric rates charged to customers under the ESP. Indeed there is no connection at all between the capacity charge deferrals and SSO service since SSO service does not involve purchase of wholesale capacity at a discount by a CRES provider. In this regard there is also no record that establishes the capacity charge deferrals promote rate stability or certainty. Nor was there record evidence establishing that fact that can be drawn upon from the Capacity Charge Case.

In the Capacity Charge Case, the Commission authorized the capacity charges -- and the deferrals -- specifically under R.C. 4905.04, 4905.05, and 4905.06, and generally under R.C. Chapters 4905 and 4909.[191] The deferral itself was created out of the Commission's concept 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."[192] Thus, instead of creating a deferral that meets the requirements of R.C. 4928.143(B)(2)(d), the Commission went beyond the

[191] Id.

[192] Id. at 23.

statute governing ESPs. The Commission is nonetheless a creature of statute, which has no authority other than that which is expressly given to it by the General Assembly. The PUCO cannot legislate in its own right. And that is precisely what the PUCO has done in this proceeding. It devised a way to give the Company extra money -- which is not part of Chapter 4928, Revised Code.

Nor is the deferral lawful under R.C. 4928.144 as part of a "phase in." Even if the deferred capacity charges are phased-in, and collected over three years beginning in 2015, they do not constitute a "just and reasonable phase-in" under that statute. R.C. 4928.144 requires that the phase-in is of "any electric distribution utility rate or price established **under sections 4928.141 to 4928.143 of the Revised Code**, and inclusive of carrying charges, as the commission considers necessary to ensure rate or price stability for consumers." (Emphasis added). Here, instead of phasing in a "rate or price established under sections 4928.41 to 4928.43" the Commission is attempting to phase-in wholesale capacity charges created under different chapters of the Revised Code -- Chapter 4905 and 4909. This does not comport with R.C. 4928.144 because (a) the rate was not established as a retail electric service rate under R.C. 4928.141 to 4928.143, and (b) as mentioned above, the deferral has not been shown to be necessary to ensure rate or price stability for retail electric service to consumers. Accordingly, the Commission should grant rehearing of this issue.

The Commission believes it can create deferrals in one case, under separate and distinct authority allegedly found in Chapter 4909 and 4905, and import those deferrals into a modified ESP plan "on its own motion."[193] To the contrary such an approach

[193] See Opinion and Order at 52.

disregards the statutory boundaries of the Commission's authority. As noted by U.S. Supreme Court Justice William O. Douglas, "[t]hose in power need checks and restraints lest they come to identify the common good for their own tastes and desires***." The check on the Commission's power is that the Commission cannot legislate. That is left to the Ohio General Assembly. Rehearing should be granted.

B. CRES providers should be responsible for paying the difference in revenues as they are the cost causers.

In the Capacity Charge Case the Commission determined $188.88 per MW-day is the appropriate charge to enable the Company to collect its capacity costs under its FRR obligations from CRES providers.[194] This cost of capacity was calculated based on the cost of service.[195] The Commission also determined that the Company should charge CRES providers RPM based capacity rates in order to promote retail competition.[196]

In the Order in this proceeding, the Commission adopted a mechanism to collect the difference between the RPM-based capacity rate and the state compensation mechanism. It determined that the difference should be collected from retail customers (SSO and shopping customers) and not the cost causer, the CRES providers. This was unreasonable.

There is no factual dispute that CRES providers are receiving a discount from the Company's wholesale cost of capacity. The parties who benefit from this are primarily the CRES providers who will receive a substantial subsidy from retail customers and whose business expenses will be decreased significantly. Shopping customers may

[194] Capacity Charge Order at 33-36.

[195] Id. at 22.

[196] Id. at 23.

receive an indirect benefit if the discount given to CRES providers is passed through to those customers. But there is no requirement that the discount, or any portion of it, be passed through to customers. And the Commission lacks jurisdiction to order CRES providers to pass through the discount to their customers. Rather, CRES providers can choose whether to pass along the discount to shopping customers. Non-shopping customers are even further removed from any benefit from discounted capacity given to CRES providers. And yet the Commission pushed nearly $500 million of deferred capacity costs onto customers,[197] creating an undue burden for customers.

The principle of cost causation is sound public policy that requires cost causers to pay the cost they caused. The PUCO has in fact recognized in the past that one of the goals of regulation is that the cost causer is the cost payer.[198] Indeed in a recent FirstEnergy case, the Commission confirmed its stalwart adherence to principles of cost causation when it determined that revenue shortfalls associated with a residential rate should be recovered solely from the residential class, not other classes.[199]

When the cost causation principle is followed the responsibility for costs falls on those causing the costs. But here retail customers (both shopping and non-shopping) will

[197] See OCC Rehearing Ex. 1A.

[198] See, e.g., *In the Matter of the Application of Cincinnati Bell Telephone Company for Authority to Revise its General Exchange Tariff PUCO No. 7*, Finding and Order at ¶6 (Jan. 24, 1989). See also *In re Duke Energy Ohio*, Case No. 07-589-GA-AIR, Opinion and Order at 17-19; (May 28, 2008); *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, Opinion and Order at 22-24 (Oct. 15, 2008); *In re Vectren Energy Delivery of Ohio*, Case No. 07-1080-GA-AIR, Opinion and Order at 11-14 (Jan. 7, 2009) (cases holding that SFV rate design would assure more equitable allocation of distribution system costs to cost-causers); *In the Matter of the Commission Investigation into the Resale and Sharing of Local Exchange Telephone Service*, Case No. 85-119-TP-COI, Opinion and Order at 25-27 (noting the Commission policy of favoring measured service rates to local resellers as a means of assessing the cost of service to the cost causers rather than spreading it among all ratepayers.).

[199] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA , Opinion and Order at 62-63 (May 25, 2011).

be subsidizing private business enterprise, the CRES providers' business. Non-shoppers will be charged for a service they are not receiving. This is unlawful, unjust, and unreasonable. Rehearing should be granted on this issue.

C. It is unlawful, unreasonable, and inconsistent with the terms of the RAA and Section 201 of the Federal Power Act to impose wholesale capacity costs on Standard Service offer customers.

The PUCO found in its Capacity Charge Case that Ohio Power's cost of capacity is $188.88/MW-day for its FRR obligations to CRES providers.[200] But the PUCO ordered Ohio Power to charge CRES providers a discounted capacity charge set at the RPM market-based rate of $20.01/MW-day.[201] The PUCO then authorized Ohio Power to defer the difference between Ohio Power's cost and the RPM capacity rates charged to CRES providers, ultimately finding in this case, that these deferrals could be charged to retail customers.[202] The Commission in the Opinion and Order in this case determined to collect those deferrals from all customers, including non-shoppers.

This decision directly conflicts with the plain language of the PJM RAA. The RAA is a rate schedule on file with FERC that contains an alternative method for meeting the RPM capacity obligation, the FRR alternative, which applies to entities, like AEP Ohio, that choose not to participate in the RPM auctions. This rate schedule has been approved by FERC, and thus, has the effect of law. The RAA does not permit the PUCO

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[200] Capacity Charge Case, Case No. 10-2929-EL-UNC, Opinion and Order at 33 (July 2, 2012). CRES providers will pay $20.01/ MW-day for planning year 2012/2013, $33.71 for planning year 2013/2014, and $153.89 for 2014/2015.

[201] Id. at 23.

[202] See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order at 36 (Aug. 8, 2012).

to require non-shopping retail customers to compensate the Ohio Power for its FRR obligations.[203] To this end, Section D.8 of Schedule 8.1 of the RAA provides:

> [i]n the case of load reflected in the FRR Capacity Plan that switches to an alternative 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. (Emphasis added).

The PJM RAA language is clear. The state compensation mechanism can only require load serving entities (CRES providers) or switching (shopping) customers to compensate the FRR Entity (in this case, Ohio Power). The RAA does not authorize a state compensation mechanism in which non-shopping customers are responsible for compensating Ohio Power for its FRR obligations. As such, there is no circumstance contemplated by the RAA under which non-shopping customers can be made responsible for paying capacity deferrals associated with wholesale service to CRES providers. Indeed, because non-shopping customers already have capacity charges built into their rates, at a level to allow Ohio Power to cover its costs, the PUCO is forcing double payments from non-shopping customers. This result is unduly preferential, unduly discriminatory, unjust and unreasonable.

OCC does not support the $355/MW-day cost-based price suggested by Ohio Power. But the $188.88/MW-day cost-based price adopted by the PUCO could potentially be acceptable, provided CRES providers or shopping customers are responsible for paying the deferrals associated with these wholesale charges. That outcome would be consistent with the language of the RAA. However, an end result in which non-shopping retail customers are responsible for paying wholesale capacity

[203] Id.

charges is in direct violation of the plain language of the RAA. And it causes an unduly preferential, unduly discriminatory, unreasonable and unlawful double payment of charges by non-shopping customers.

The PUCO noted in a July 30, 2012 pleading filed at FERC that "[m]anifestly the public interest is served by preserving the RAA not by altering it."[204] The PUCO further commented "the provisions [of the RAA] are unambiguous. The words say what they say and mean what they mean."[205] But the PUCO itself ignores the plain language of the RAA. Quite simply, the PUCO over-stepped its authority by authorizing the collection of deferrals for wholesale charges from non-shopping customers in violation of the RAA.

The PUCO also lacks the authority to do this under Section 201 of the FPA. That section of the FPA contains broad language establishing federal jurisdiction over the "transmission of electric energy in interstate commerce."[206] Congress thus preserved this area for federal regulation, putting it beyond the reach of state supervision.[207] Here though the PUCO attempts to exercise jurisdiction over who must ultimately pay for wholesale capacity charges when FERC has, by approving the RAA rate schedule, definitively limited the collection of such charges to switching customers or the CRES providers. The PUCO cannot do so. It is preempted from exercising such jurisdiction.

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[204] PUCO Response, Docket No. EL11-32-000, EL11-2183-000, at 6-7 (July 30, 2012).

[205] Id. at 3.

[206] Section 201(b) of the Federal Power Act; 16 U.S.C.A. Section 824(b)(1).

[207] *Connecticut Light & Power Co.* (1945), 324 U.S. 515, 524; 65 S.Ct. 749; *Jersey Central Power & Light Co.*, 319 U.S. 61, 70-71.

D. The Commission unlawfully created an anti-competitive subsidy of a product or service other than retail electric service that flows from a competitive retail electric service, thus violating R.C. 4928.02(H).

The PUCO's approach has created a subsidy for CRES providers, whereby third parties will pay AEP Ohio to make it whole so that it can charge CRES providers less than the PUCO-determined cost of AEP Ohio's capacity. This below-cost pricing is an anti-competitive practice that is a subsidy of CRES providers by shoppers and non-shoppers. And this below cost pricing is not made available to the Company's SSO customers. It is unjust, unreasonable, and unlawful.

R.C. 4928.02(H) states:

It is the policy of this state to do the following throughout this state:

* * *

> (H) *Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service* or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates***. Emphasis added.

In Commissioner Roberto's concurring and dissenting opinion, she refers to this payment as a "significant, no-strings-attached, unearned benefit" to entice more sellers into the market.[208] She further states that the deferral mechanism is "an unnecessary, ineffective, and costly intervention into the market" that she cannot support.[209] OCC agrees, as there is no basis to extend this benefit to CRES providers at the expense of retail customers, and especially no basis to make non-shopping customers pay for this

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[208] Id., Concurring and Dissenting Opinion of Commissioner Cheryl L. Roberto at 4.

[209] Id.

anticompetitive subsidy. This is ineffective competition, as noted by Commissioner Roberto.

OCC recommended that AEP Ohio's charge for capacity be set at the market price, through the use of the Reliability Pricing Model.[210] If this had been done, there would have been no discount for capacity, no subsidy to CRES providers, no deferrals, and competition would have been furthered. But the PUCO's decision seemed to be an attempt to find a point in-between what AEP Ohio wanted and what CRES providers wanted. Customers are caught in the middle, where the middle is defined as paying AEP Ohio hundreds of millions of dollars (approximately $500 million plus carrying charges) in deferred capacity costs.

R.C. 4928.02(H) prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail service. Under this statute, it is unlawful to collect the capacity costs (whether or not deferred) from retail customers. Rehearing should be granted.

E. Collecting deferrals from customers will cause customers, both shopping and non-shopping, to pay twice for the capacity – a result that is unlawful, unjust, unreasonable, contrary to public policy, and has no statutory basis.

R.C. 4928.02(A) requires ensuring that "reasonably priced retail electric service" is available to consumers. R.C. 4928.02(L) requires that the PUCO "protect at-risk populations." If the deferred capacity costs (i.e., subsidy amounts) are in fact directly collected from customers, instead of from the CRES providers, hundreds of millions of dollars will be added to customers' bills.[211] Adding these hundreds of millions of dollars

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[210] Opinion and Order at 19.

[211] See OCC Rehearing Ex 1A (estimating that deferrals created will amount to over $500 million, without considering carrying charges).

of costs to customer bills will impair the Commission's ability to ensure the policies of R.C. 4928.02(A) and (L) are met.

Additionally, a double payment for capacity will likely ensue, which is unjust unreasonable, and contrary to public policy. Moreover, there is no statutory basis that would permit double payments for capacity service provided to customers.

Commissioner Roberto first noted the double payment issue in her Concurring and Dissenting Opinion in the Capacity Charge Case. There she concluded that shopping customers may pay twice for the capacity unless the CRES providers directly pass through RPM market-based prices:

> 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.[212]

But it gets worse, especially for the non-shopping SSO customers. Under AEP Ohio's proposed Modified ESP, SSO customers (non-shopping customers) WILL certainly and inevitably pay twice for the discount granted to CRES providers. SSO customers are currently paying and will continue to pay what AEP Ohio claims is its embedded cost of capacity ($355.72/MW-day) through base generation rates which remain frozen during the term of the ESP.[213] That is the first payment for the capacity

[212] Capacity Charge Order, Concurring and Dissenting Opinion of Commissioner Cheryl L. Roberto at 4. (Emphasis added).

[213] See Tr.. III at 716, where Company Witness William Allen stated: "What I did is I compared the SSO revenues that the company is collecting today and I compared that to the revenues the company would recover if we were charging that -- all that load $355 a megawatt day. **Those rates are**

service the Company provides specifically to them. Then the deferral, with carrying costs, will come due (in three years) and non-shoppers will pay a second time for the capacity provided to non-shoppers during the ESP -- plus interest.

Double payments for the same service are not reasonable or lawful. It makes for bad public policy and is something the Commission has consistently prohibited over the years.[214] Moreover, there is no provision in the Ohio Revised Code that permits an electric distribution utility to charge customers twice for the same service. This is simply unjust and unreasonable. Rehearing should be granted.

F. Charging non-shopping SSO customers a higher capacity charge than shopping customers violates the anti-discrimination provisions of R.C. 4928.141, 4928.02(A), R.C. 4905.33, and 4905.35.

Under R.C. 4928.141, an electric distribution utility must provide consumers, *on a comparable and nondiscriminatory basis*, a standard service offer of all competitive electric service necessary to maintain essential electric service. (Emphasis added). R.C. 4928.02(A) also establishes as a policy of the state ensuring the availability of "adequate, reliable, safe, efficient, *non-discriminatory*, and reasonably priced retail electric service." (Emphasis added). There are also other provisions of the code which reinforce this policy by specifically prohibiting discriminatory pricing. For instance, R.C. 4905.33

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equivalent."(Emphasis added.) See also, Tr. II at 247, where Company Witness Kelly Pearce states: "As far as just comparing the strict level of the charges, again, is what they look like within a rough approximation, they appear to be equal."

[214] *In the Matter of the Amendment of Chapter 4901:1-14, Ohio Admin. Code, Concerning the Exclusion of Unreasonable Amounts of Unaccounted for Gas from the Gas Cost Recovery* Rates, Case No. 86-2011-GA-ORD, Entry on Rehearing at ¶4 (Apr. 27, 1988) (The Commission "would never consider a 'double recovery' *** to be prudent and reasonable"); *In the Matter of the Complaint of AT&T Communications of Ohio, Inc. v. Ameritech Ohio*, Case No. 96-336-TP-CSS, Opinion and Order at 55 (Sept. 18, 1997) (denying a line termination charge from access customers since the utility was already recovering the same charge from local customers); *In the Matter of Adoption of Rates for SSO*, Case No. 08-777-EL-ORD, Entry on Rehearing at ¶28 (Feb. 11, 2009) (no intention to permit double recovery of costs (transmission rider)) under S.B. 221.

prohibits providing special rates that collect greater or lesser compensation for service rendered to persons for a like and contemporaneous service under the same circumstances or conditions. R.C. 4905.35 precludes a public utility from giving any undue or unreasonable preference or advantage to any person, firm, corporation, or locality.

But here the Commission's action facilitates exactly what the statutes prohibit -- discriminatory pricing. The Commission does so by approving overstated base generation rates for SSO customers while at the same time allowing discounted capacity pricing for CRES providers. These actions taken together violate these statutes. Here's why. The non-fuel base generation rates that are charged to SSO customers are bundled rates. They are bundled in the sense that the generation rate for SSO is not separated out into its components, which include capacity and energy.

In the testimony presented in this proceeding and in the Capacity Charge Case, the Company itself testified that its bundled SSO generation rates were set in order to recover its costs, including capacity costs.[215] The Company also testified that its cost of capacity is $355/MW-day, not the $188.88/MW-day the PUCO determined.[216] The Company submitted testimony in the Capacity Charge Case 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.[217]

Unless the Commission orders the Company to reduce these base generation rates for non-shopping customers, as recommended by OCC/APJN, the SSO customers will be

[215] Tr. V at 1440-1441 (Allen).

[216] Tr. V at 1455 (Allen).

[217] Capacity Charge Order at 25, citing to AEP-Ohio Ex. 142 at 19-20; Tr. II at 304, 350.

overpaying (at approximately $355/MW-day) compared to what the PUCO determined was AEP Ohio's capacity cost ($188.88/MW-day). And there is an extreme discrepancy when comparing $355/MW-day to what the PUCO determined to charge CRES providers for capacity (RPM market-based rates). SSO customers would also pay more for capacity through SSO rates than shopping customers (whose capacity could be priced at some discount depending on the CRES providers' pricing of such service).

This will mean that SSO customers are not receiving the "comparable and non-discriminatory" SSO rates the utility must offer under law.[218] It also means that customers will not receive the "nondiscriminatory" and "reasonably priced" retail electric service that the Commission must ensure under R.C. 4928.02(A). Indeed the Ohio Revised Code clearly prohibits such discriminatory pricing under R.C. 4905.33 and 4905.35. Rehearing should be granted.

G. The Commission unreasonably and unlawfully failed to provide a basis for determining that the capacity revenues could be collected through a Retail Stability Rider, thus violating R.C. 4903.09.

In the Order, the Commission summarily adopted, as part of the Retail Stability Rider, the recovery of the difference between the RPM-based capacity rate and AEP-Ohio's state compensation mechanism for capacity as determined by the Commission.[219] While many parties, including OCC/APJN, made numerous arguments[220] as to why this could not be done, the Commission did not address the numerous and detailed arguments.

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[218] See R.C. 4928.141.

[219] Opinion and Order at 52.

[220] OCC/APJN argued there was no record evidence to determine an appropriate mechanism to collect deferred capacity charges and the lack of due process; the capacity charges are not permissible under R.C. 4928.143(B)(2); that capacity charges are not permissible under R.C. 4928.144; that recovery of deferred capacity charges violates R.C. 4928.02 (A),(H), and (L).

Rather, the Commission merely relied upon its general authority to modify or approve an ESP.[221] It noted that the Company had proposed certain capacity charges as part of its plan, and further asserted that nothing in R.C. 4928.144 limits the Commission's authority to modify the ESP to include deferrals on its own motion.[222]

Yet, the Opinion and Order in conveying these concepts, fails to adequately set forth the findings of fact on this issue and the reasons prompting the decision to allow the capacity deferrals to be collected through the RSR. This is an error which violates R.C. 4903.09.

R.C. 4903.09 requires that, in all contested cases, "the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." The Ohio Supreme Court has recognized that complying with this statute is important because otherwise the Court cannot fulfill its responsibility to review the order being appealed.[223] By not explaining why the capacity charge deferrals should be collected through the RSR, and how these charges are an appropriate provision of R.C. 4928.143(B)(2), and failing to address detailed and numerous arguments to the contrary, the Commission violated R.C. 4903.09. Without sufficient detail, the Ohio Supreme Court will be unable to determine how the Commission reached its decision. Thus, the purpose of R.C. 4903.09 will be thwarted and the review that OCC is entitled to, under R.C. 4903.09 and 4903.10, cannot occur. Rehearing must be granted. It is warranted.

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221 Opinion and Order at 52.

222 Id.

223 See e.g. *Allnet Communications v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 202, 209.

ASSIGNMENT OF ERROR 8:

The Commission Erred In Ordering Separate Phase-In Recovery Rider Rates For The CSP And OP Rate Zones, Instead Of One Unified Phase-In Recovery Rider.

In this proceeding, the Company proposed that the phase-in recovery rider of CSP and OP be combined.[224] According to the Company, it is appropriate for all AEP Ohio customers to pay the PIRR, as the PIRR regulatory asset is on the books of OP. OP is the surviving entity post-merger, which will assume all the other assets and liabilities of the former CSP.[225] The PUCO Staff also advocated for the PIRR (and the FAC) to be unified.[226]

The use of a unified PIRR was also part of the Stipulation signed earlier in this proceeding, where the Signatory Parties proposed consolidated transmission and generation rates.[227] The Commission, at that time, accepted the merged PIRR finding that through the merger of CSP and OP, OP as the surviving entity, would succeed to all the restrictions, disabilities, liabilities, and duties of CSP.[228] According to the Commission "[i]t 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."[229]

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[224] Company Ex. 111 at 6 (Roush Direct).

[225] Id.

[226] PUCO Staff Ex. 109 at 5 (Turkenton).

[227] See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO et al., Opinion and Order at 57 (Dec. 14, 2011).

[228] Id.

[229] See e.g. *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 (Nov. 9, 2005) (where Monongahela Power was merged into CSP and the litigation termination rider and the power acquisition rider were charged to all post-merger CSP customers).

But, in a turn-around, the Commission here reversed its earlier ruling and instead found that separate PIRR rates for CSP and OP rate zones should be maintained.[230] Apparently, the Commission is now concerned that the PIRR balance was incurred primarily by OP customers and according to "cost causation principles" the recovery of the balance should be from OP customers.

But such an approach is inconsistent with how numerous riders were treated in this case, and thus, the Commission's Order is unreasonable in this respect. For instance, the Commission allowed a merged transmission cost recovery rider;[231] a unified Energy Efficiency and Peak Demand Rider;[232] a unified Economic Development Rider;[233] and extended the GridSmart rates to OP as well as CSP customers.[234] All of the costs associated with these riders are separable between OP and CSP. If cost causation principles are to be followed, there should not be merged rates for any of these riders as well. Yet, there appears to be no consistency or reason as to why certain rates should be separate and others merged. The Commission's approach is inconsistent in this respect, and therefore unreasonable.

Moreover, the Commission's order maintaining separate rates for the PIRR is inconsistent with its ruling in December of 2011, which approved merged PIRR rates. R.C. 4903.09 requires the PUCO to set forth "findings of fact and written opinions setting

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[230] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO et al., Opinion and Order at 55 (Aug. 8, 2012).

[231] Id. at 63-64.

[232] Id. at 65-66.

[233] Id. at 67.

[234] Id. at 63. GridSmart expenditures to date have only been incurred with respect to the CSP rate area. The GridSmart rider on a unified basis will recover from OP customers (and CSP customers) past GridSmart expenditures made solely for CSP customers.

forth the reason prompting the decisions arrived at, based upon said findings of fact." Where the PUCO does not set forth detailed findings, it fails to comply with the requirements of this section and its Order is unlawful.[235]

In particular, where the PUCO issues a decision departing from precedent, it has a heightened responsibility to explain its decision, in order to comply with R.C. 4903.09.[236] This responsibility is created because the Ohio Supreme Court values predictability in administrative law. Such predictability is assured when precedent set by an administrative body, such as the PUCO, is followed. Indeed, the Court has noted that prior determinations of the PUCO should not be disregarded unless the prior decision is shown to be in error and the Commission explains why the previous Order must be overruled. Here though, the Commission failed to explain itself. This is unlawful and rehearing should be granted on this issue.

ASSIGNMENT OF ERROR 9:

The Commission's Approval Of The Generation Resource Rider Without A Showing Of Need For The Turning Point Facility Violated R.C. 4928.143(B)(2)(C).[237]

In its Modified ESP, AEP Ohio proposed a new non-bypassable Generation Resource Rider ("GRR") to collect from customers the cost of new generation resources, including renewable capacity that the Companies own or operate for the benefit of Ohio

[235] *Ideal Transportation Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195, 71 O.O.2d 183, 326 N.E.2d 861.

[236] See e.g. *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 403, 431-432, 71 O.O. 393, 330 N.E.2d 1, writ of certiorari denied (1975), 423 U.S. 986, 96 S.Ct. 393, 46 L.Ed.2d 302, appeal after remand (1976), 46 Ohio St.2d 105, 75 O.O.2d 172, 346 N.E.2d 778 (citing *State ex rel. Automobile Machine Co. v. Brown* (1929), 121 Ohio St. 73,75, 166 N.E. 903 – "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so.'" (Citation omitted).

[237] APJN does not join in Assignment of Error 9.

customers.[238] The GRR is designed to collect costs of renewable and alternative capacity additions, as well as "more traditional capacity" constructed or financed by the Companies and approved by the Commission.[239] The Companies assert that the only project expected to be included in the rider during the term of the Modified ESP is the proposed Turning Point solar generating facility.[240]

Two statutes are pertinent to the collection of costs for generating facilities through an ESP. R.C. 4928.143(B)(2)(b) allows EDUs to collect, on a non-bypassable basis, a reasonable allowance for construction work in progress on an electric generating facility. The Commission must first determine "in the proceeding" that there is need for the facility based on the EDU's resource planning projections, and the facility's construction must be sourced through a competitive bid process. R.C. 4928.143(B)(2)(c) also requires that the new generation projects must be "used and useful" and "dedicated to Ohio consumers." Further, if a surcharge is authorized for a facility in an ESP and as a condition of the continuation of the surcharge, the EDU must dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility. AEP Ohio sought approval of the GRR under R.C. 4928.143(B)(2)(c).[241]

In the Order, the Commission approved the GRR as proposed by AEP Ohio.[242] The Commission asserted that it has "broad discretion to manage its dockets to avoid undue delay and duplication of effort***."[243] Based on the inclusion of the Turning

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[238] AEP Ohio Ex. No. 103 at 20 (Nelson).

[239] Id.

[240] See id.

[241] See AEP Ohio Brief at 29.

[242] Opinion and Order at 23-25.

[243] Id. at 24.

Point issue in AEP Ohio's long-term forecasting case,[244] the Commission interpreted the statute "not to restrict our determination of the need and cost for the facility to the time an ESP is approved but rather to ensure the Commission holds **a proceeding** before it authorizes any allowance under the statute."[245] The Commission, however, ignored Ohio Supreme Court directives regarding statutory construction and thus misinterpreted R.C. 4928.143(B)(2)(c).

The Ohio Supreme Court has stated that "[w]hen statutory language is plain and unambiguous and conveys a clear and definite meaning, this court need not invoke rules of statutory interpretation."[246] Such a practice "would constitute 'not interpretation but legislation, which is not the function of courts.'"[247] In other words, "[t]he plain language of the statute controls***."[248]

In the Order, the Commission did not follow the plain language of R.C. 4928.143(B)(2)(c). Instead, the Commission revised the statute by substituting the phrase "a proceeding" for the term "*the* proceeding" which the General Assembly wrote into the law. The term "the proceeding" does not refer to any proceeding other than the proceeding involving the ESP application that is required under R.C. 4928.143(A).

In fact, the term "the proceeding" appears only three times in R.C. 4928.143. In addition to (B)(2)(b) and (c), the only other section in which the term appears is section (C)(1). That section discusses the timeframes for reviewing an ESP application and the

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[244] *In the Matter of the Long-Term Forecast Report Submitted by Columbus Southern Power Company and Ohio Power Company*, Case No. 10-501-EL-FOR, et al.

[245] Opinion and Order at 24. (Emphasis added.)

[246] *Campbell v. City of Carlisle*, 127 Ohio St. 3d 275, 277, 2010 Ohio 5707, 939 N.E.2d 153 citing *State v. Muncie* (2001), 91 Ohio St.3d 440, 447, 2001 Ohio 93, 746 N.E.2d 1092.

[247] Id. quoting *Iddings v. Jefferson Cty. School Dist. Bd. of Edn.* (1951), 155 Ohio St. 287, 290, 44 O.O. 294, 98 N.E.2d 827.

standards for approving or denying an ESP application. R.C. 4928.143(C)(1) places "[t]he burden of proof in *the proceeding*" on the EDU. (Emphasis added.) Thus, the term "the proceeding" as used in R.C. 4928.143 refers only to the proceeding involving an ESP application filed by an EDU. No other proceedings are therefore contemplated under R.C. 4928.143(B)(2)(c). The law required the Commission to determine whether there is a need for the Turning Point facility in this proceeding, and the Commission's failure to make the determination was unlawful.[249]

In approving the GRR, the Commission engaged in legislation, not interpretation. The Commission overstepped its authority, and thus the Order unlawfully approved the GRR. The Commission should abrogate the Order on this issue.

ASSIGNMENT OF ERROR 10:

The Commission's Approval Of The Generation Resource Rider As A "Placeholder" Rider With A Zero Value Unlawfully Skewed The Commission's ESP-MRO Comparison.[250]

The Commission approved the GRR as a placeholder rider with a zero rate.[251] Thus, the GRR is part of AEP Ohio's ESP, and thus is relevant to the comparison between the ESP and an MRO that is required by R.C. 4928.143(C)(1).

But in making the statutorily required comparison between the ESP and an MRO, the Commission could not quantify the costs associated with the GRR. The absence of costs associated with the GRR -- that will be charged to customers during the term of the

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[248] *In re Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 34.

[249] It would have been unlawful for the Commission to determine in this proceeding that there is a need for the Turning Point facility, since there is no record support for such a determination. See OCC/APJN Initial Brief at 84.

[250] APJN does not join in Assignment of Error 10.

[251] Opinion and Order at 24-25.

ESP -- makes the ESP/MRO comparison flawed, and thus inconsistent with R.C. 4928.143(C)(1). The Commission thus erred in approving the rider.

In the Order, the Commission noted some costs associated with Turning Point, in the form of a revenue requirement for the project.[252] The Commission, however, ignored the fact that other costs associated with Turning Point will likely be incurred during the term of the ESP as the project progresses. Indeed OCC Witness Hixon testified that the costs associated with Turning Point were significant -- $346.4 million.[253] These costs should have been included as a cost of the ESP in conducting the ESP/MRO comparison. When these costs are included the ESP rates result in additional quantifiable costs to customers of $638.9 to $997.8 million, rendering the ESP much more costly than the MRO.[254] Yet the Commission ignored these costs in its ESP/MRO comparison. Thus, the Commission's ESP-MRO comparison is distorted in favor of the ESP.

By including this rider in the ESP, the Commission's ESP-MRO comparison is unreasonable and unlawful. The Commission should modify the Order by removing the GRR from the ESP. The Commission would also need to reevaluate the ESP-MRO comparison. Rehearing should be granted.

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[252] Id. at 20.

[253] OCC Ex. 114 at 17.

[254] Id. at 4.

ASSIGNMENT OF ERROR 11:

The Commission's Approval Of The Generation Resource Rider As A Surcharge For Collecting Costs Specifically For The Turning Point Solar Facility Violated R.C. 4928.143(B)(2)(C) Because AEP Ohio Did Not Make The Showing The Statute Requires To Establish A Non-bypassable Surcharge For Collecting Costs Associated With An Electric Generating Facility.[255]

In the Order, the Commission established the GRR as a surcharge for collecting costs for the Turning Point solar facility, on a non-bypassable basis. In so doing, the Commission determined that "[b]efore authorizing recovery of a surcharge for an electric generation facility, the Commission must determine there is a need for the facility and to continue recovery of the surcharge, establish that the facility is for the benefit of and dedicated to Ohio consumers."[256] The Commission's reading of R.C. 4928.143(B)(2)(c) is erroneous.

R.C. 4928.143(B)(2)(c) plainly states that "no *surcharge* shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility."

[255] APJN does not join in Assignment of Error 11.

[256] Id. at 23-24.

(Emphasis added.) Authorizing the surcharge and authorizing recovery of the surcharge are two different functions. According to Webster, "authorize" means "to establish by or as if by authority."[257] Webster defines "establish" as "to institute" or "to bring into existence."[258] The statute thus addresses only the institution, or the bringing into existence, of the surcharge itself.

Thus, under the statute, before the surcharge itself can be authorized, the Commission must determine "in the proceeding"[259] "that there is a need for the facility based on resource planning projections submitted by the electric distribution utility." The Commission did not make this determination, in part because of its misreading of R.C. 4928.143(B)(2)(c).

In this regard, the Commission failed to meet R.C. 4928.143(B)(2)(c) in other ways. The statute contains other criteria that must be met before a surcharge to collect costs of a generating facility can be established in an ESP:

- The facility must be owned or operated by the EDU.
- The facility was sourced through a competitive bid process subject to any such rules as the Commission adopts under R.C. 4928.143(B)(2)(b).
- The facility is newly used and useful on or after January 1, 2009.
- The EDU must dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of the facility.

The statute makes clear that the criteria must be met before the "establishment" of the surcharge. The meaning of "establishment" is not defined in the statute, so the

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[257] See http://www.merriam-webster.com/dictionary/authorize?show=0&t=1346347854.

[258] See http://www.merriam-webster.com/dictionary/establish?show=0&t=1346346539.

[259] See Assignment of Error 9, above.

Commission is required to read the phrase in context and construe it according to the rules of grammar and common usage.[260] The plain meaning of the word "establishment" is "the act of establishing,"[261] which, as noted above, means "to institute" or "to bring into existence." Thus, before the Commission could bring the surcharge into existence, as the Commission did in the Order, the statutory criteria had to be met. Not all of the criteria have been met to establish the surcharge, however.

As discussed above, a need for the Turning Point solar facility was not demonstrated in this proceeding. In addition, AEP Ohio did not show that the facility was constructed through a competitive bidding process, or that it is used and useful.[262] AEP Ohio thus did not make the showings required by R.C. 4928.143(B)(2)(c), and the Commission could not lawfully establish the GRR in this proceeding.

In establishing the GRR, the Commission did not follow Ohio law. The Commission should therefore abrogate the Order and reject the GRR.

ASSIGNMENT OF ERROR 12:

The Commission's Order Regarding The Companies' Collection Of The Deferrals On Capacity Charges Is Unlawfully Vague.

In the Order, the Commission allocated $1.00 per MWh of the rate collected through the RSR toward AEP Ohio's collection of deferrals from the Capacity Charge Case.[263] The Commission stated that, at the conclusion of the ESP, the Commission "will determine the deferral amount and make appropriate adjustments based on AEP-Ohio's

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[260] R.C. 1.42.

[261] See http://www.merriam-webster.com/dictionary/establishment.

[262] See OCC/APJN Initial Brief at 84; IEU Initial Brief at 75; FES Initial Brief at 89; IGS Reply Brief at 5-6.

[263] Opinion and Order at 36.

actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary."[264] Not only has the Commission unlawfully included these deferrals in an ESP case, as discussed in Assignment of Error 3, above, but the Commission's Order is unlawfully vague.

A Commission order must be sufficiently detailed to allow for judicial review of the decision.[265] Here, however, the Commission's decision is unclear and raises many questions. Does the decision allow AEP Ohio to increase the deferrals if shopping during the ESP does not meet the Commission's expectations in developing the RSR? Over what period of time will any additional deferrals be collected? Would interest on these additional deferrals be calculated at WACC or cost of long-term debt, and how would the Commission prevent AEP Ohio charging interest on top of interest? Also, what is the meaning of "as necessary?"

In addition, the Commission's plan for keeping track of the deferral balance remaining at the conclusion of the ESP is problematic. Although the Commission required AEP Ohio to file monthly shopping data by stating that "AEP-Ohio *shall* file its actual shopping statistics in this docket,"[266] the frequency of the Companies' filings was not required. The Commission stated that "[t]o provide complete transparency as well as to allow for accurate deferral calculations, AEP-Ohio *should* maintain its actual monthly shopping percentages on a month-by-month basis throughout the term of this modified ESP, as well as the months of June and July of 2012."[267] Thus, the monthly filings

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[264] Id.

[265] See *General Telephone Co.*, 30 Ohio St.2d 271.

[266] Opinion and Order at 36. (Emphasis added).

[267] Id. (Emphasis added).

envisioned by the Commission are permissive, not mandatory. The Commission needs to ensure that AEP Ohio files its shopping percentages monthly.

The Commission should also specify how shopping will be measured, i.e., by number of customers, by load, or by some other means. This is needed in order to avoid confusion and disagreement over the amount of shopping in AEP Ohio's service territory.

The capacity charge deferrals are unlawful. But if the Commission allows these deferrals, it must clarify the process for adjusting the deferrals at the end of the ESP.

ASSIGNMENT OF ERROR 13:

There Is No Statutory Basis For The Pool Termination Rider, And Thus The Commission's Approval Of The Rider Is Unlawful.

In the Order, the Commission approved the pool termination rider as a placeholder mechanism, initially set at zero value.[268] The rider is designed to offset revenue losses caused by the termination of the generation pooling agreement among AEP subsidiaries.[269] Under the Companies' proposal, if AEP Ohio's corporate separation plan is approved as proposed by the Company,[270] and the Amos and Mitchell generating plants are transferred as proposed to AEP Ohio affiliates, then the Companies will not seek to implement the rider. If the corporate separation plan is denied or modified, however, then AEP Ohio would file to collect lost revenue associated with termination of the Pool Agreement, through the non-bypassable Pool Termination Rider.[271]

Several parties, including OCC and APJN, opposed the Pool Termination Rider. Among other things, OCC/APJN pointed out that there is no legal basis to include a pool

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[268] Id. at 49.

[269] See AEP Ohio initial brief at 80.

[270] The corporate separation plan was filed in Case No. 12-1126-EL-UNC.

[271] See Opinion and Order at 47.

termination provision in a utility's ESP because the rider is aimed at guaranteeing a level of revenue for AEP Ohio, which is not part of the General Assembly's plan for competitive generation service.[272] In addition, the Commission can only include in ESPs those items enumerated in R.C. 4928.143(B)(2),[273] and no provision in the statute authorizes a charge guaranteeing a level of revenue for an EDU.[274] Further, there is no Commission precedent for the Pool Termination rider, because transactions within the AEP Pool have been disregarded for purposes associated with the Companies' ESP.[275]

Nevertheless, the Commission approved the rider. The Commission first pointed to its now-vacated December 14, 2011 Order in this proceeding which found a statutory basis for the Pool Termination Rider in R.C. 4928.143(B).[276] But that finding did not point to a specific portion of R.C. 4928.143(B) that allows the Pool Termination Rider.

Undaunted, the Commission now bases approval of the rider on R.C. 4928.143(B)(2)(h).[277] In finding support under R.C. 4928.143(B)(2)(h), the Commission stated:

> The PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement with the full transition to market for all SSO customers by no later than June 1,2015. Therefore, we approve the PTR as a placeholder mechanism, initially established at a rate of zero, contingent upon the Commission's review of an application by the Company for such costs.

[272] See OCC/APJN Initial Brief at 86.

[273] *In re Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶¶ 31-35.

[274] OCC/APJN Initial Brief at 86.

[275] Id.

[276] Opinion and Order at 48-49, citing December 14, 2011 Opinion and Order at 50.

[277] Id. at 49.

The statute, however, does not support the Commission's rationale and thus the Commission's approval of the Pool Termination Rider is unlawful.

Contrary to the Commission's view. R.C. 4928.143(B)(2)(h) does not support the notion that incentives for an EDU to move to a competitive market are to be included in an ESP. Instead, the provision allows an ESP to include:

> Provisions regarding the utility's *distribution* service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. (Emphasis added.)

The statute makes no mention of incentives to move to a competitive market. In addition, the Pool Termination Rider is a *generation* rider, not a distribution rider, and thus is not authorized by R.C. 4928.143(B)(2)(h) for inclusion in an ESP.

In fact, no provision of R.C. 4928.143(B)(2) allows for incentives for an EDU to move to a competitive market. The only provision referencing shopping is (B)(2)(d), which has the opposite effect; that statute allows an ESP to include "[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service***.

The Commission still has not found a statutory provision that supports approval of the Pool Termination Rider in an ESP. Indeed, there is none. The Commission's decision is thus unlawful, and the Commission should abrogate the Order by rejecting the Pool Termination Rider.

ASSIGNMENT OF ERROR 14:

By Approving Merged Rates For The Energy Efficiency And Peak Demand Reduction Rider, The Commission Adversely Affected The Rights Of Signatory Parties To The Stipulation In The Companies' Program Portfolio Case.

In the Order, the Commission approved AEP Ohio's plan to merge the Energy Efficiency and Peak Demand Reduction Rider ("EE/PDR") rates for OP and CSP into a single company-wide rate to be collected for the term of the ESP.[278] The Commission's decision, however, conflicts with the Stipulation and Recommendation the Commission approved in the Companies' 2011 Program Portfolio case.[279] In that proceeding, the signatory parties to the Stipulation agreed that there would be separate EE/PDR rates for OP and for CSP.[280]

The Stipulation was entered into more than a year after the Companies filed their merger case,[281] and nearly three months after the September 7, 2011 stipulation in this ESP proceeding, which recommended that the Commission approve the merger.[282] Thus, the parties to the Program Portfolio Stipulation envisioned that separate EE/PDR rates for OP and CSP would continue even after the Companies merged. The Commission

[278] Opinion and Order at 66.

[279] *OP and CSP Program Portfolio Plans*, Case No. 11-5568, et al., Finding and Order (March 21, 2011).

[280] See id., Stipulation and Recommendation (Nov. 29, 2011). Attachment A.

[281] *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, Application (Oct. 18, 2010).

[282] See September 7, 2011 Stipulation at 24.

approved that stipulation, and cannot overturn its decision in that case without explaining why.

The Commission's Order in this proceeding has an adverse affect on the rights of signatory parties to the Program Portfolio Stipulation. The Commission should modify the Order and keep separate rates for the EE/PDR until the signatory parties are able to discuss the issue of combined EE/PDR rates for OP and CSP.

ASSIGNMENT OF ERROR 15:

The Commission's Failure to Provide Partnership With Ohio Funding Was Unjust, Unreasonable and Unlawful. The Partnership with Ohio Was a Key Component of the Economic Development Proposal in the Companies' First ESP and Should be Maintained.

In 2009, the Commission approved AEP Ohio's First ESP. In its Opinion and Order the Commission stated:

> While the Partnership with Ohio is a key component of the economic development proposal in light of the modifications made to the ESP pursuant to this Opinion and Order, we find that the Companies' shareholders should fund the Partnership with Ohio Fund, at a minimum of $15 million, over the three-year period, with all of the funds going to low-income, at-risk customer programs. Accordingly, we direct AEP-Ohio to consult with the staff to administer the program established herein.[283]

In the original application in this case, AEP Ohio proposed not only continuing the Partnership With Ohio ("PWO"), but increasing the funding from $5 million per year to $6 million per year.[284] Unfortunately, the PWO did not find its way into the Companies' proposed Modified ESP. When AEP Ohio witness Dias was asked repeatedly on cross-examination as to why the Modified Application contained no

[283] ESP 1 Order at 48.

[284] See Tr. VI at 1921.

provision for the PWO, he was at a loss to provide any explanation regarding its absence.[285]

In our initial brief, OCC and APJN urged the Commission, as part of any modified ESP for AEP Ohio, to require the Companies to fund the PWO at its current level ($5 million per year), if not the amount proposed in AEP Ohio's original application ($6 million per year).[286] OCC and APJN also urged the Commission to require AEP Ohio to designate at least $2 million for the Neighbor to Neighbor fund, even if the PWO was not fully funded.[287] OCC and APJN also recommended that the funding come from shareholder dollars, as it did in the ESP 1 Order.[288]

The Commission did not address PWO funding in the Order. As discussed elsewhere in this Application for Rehearing, the Commission's failure to address the PWO argument is unlawful under R.C. 4903.09.

In addition, it was unjust and unreasonable for the Commission to refuse to order PWO funding, while at the same time ordering the Companies to reinstate the Ohio Growth Fund ("OGF") that was part of the original application in this proceeding but not the modified application.[289] According to the Order, the OGF "creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio."[290] The Commission ordered the Companies to reinstate the OGF "in light of the extenuating economic

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[285] See id. at 1927-1931.

[286] OCC/APJN Initial Brief at 57.

[287] Id. at 58.

[288] Id.

[289] Order at 67.

[290] Id.

circumstances…."[291] The Commission did not elaborate on the extenuating economic circumstances that necessitates the OGF.

"Extenuating economic circumstances" are also adversely affecting the at-risk populations who are to be protected under R.C. 4928.02(L). In fact, the circumstances and the need for relief that compelled creation of the PWO in 2009 are essentially unchanged three and one-half years later.

The at-risk populations that are intended to be protected by the policy objective in R.C. 4928.02(L) remain at risk. Although most would agree that the economy in Ohio (and the nation) is recovering, no one is declaring victory and/or that the recovery is complete. This is especially true in Southeast Ohio, or Appalachia, much of which is served by AEP Ohio. That economic struggles persist in Southeast Ohio, a reality that permeated the region long before the Great Recession arrived, is really not a matter of dispute. The real question is what can be done to help alleviate the hardships.

Sadly, if one were to read the Opinion and Order in this case, one would be no closer to an answer. Not one provision of this ESP targets low-income populations or seeks to advance state policy as stated in R.C. 4928.02(L). The lack of relief provides stark contrast to the first ESP, where AEP Ohio provided $5 million per year to address the needs of low-income, at-risk populations, of which a significant portion found its way into fuel funds for customers who had problems keeping current in their payments.[292]

So what has changed? As noted above, little, if anything, has changed regarding the need for bill assistance. Consequently, the change must be the commitment to assist

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[291] Id.

[292] Id. at 48.

vulnerable populations of both AEP Ohio, who proposed no funding for the PWO in its modified application, and the PUCO, which failed to address this crucial need when it modified AEP Ohio's application in its Order.

Significantly, in contrast, the Commission did order AEP Ohio to reinstate the OGF at $2 million per year, despite the fact that the Companies did not include the OGF in their modified application.[293] The compelling rationale to order such a modification: the Commission found it necessary "in light of the extenuating economic circumstances." It is apparent from this statement that the Commission is cognizant of present economic circumstances <u>and</u> that such circumstances justify certain decisions they make.

OCC and APJN agree that the OGF is important and supports the efforts "to attract new investment and improve job growth in Ohio."[294] We believe it is no less important to provide funding to low-income, at-risk customers who undoubtedly will experience bill increases, but not necessarily any more income to address these and other increases in household expenses, when they are already living paycheck to paycheck or on a fixed income.

AEP Ohio now stands in stark contrast to all of the other EDUs in Ohio. Dayton Power & Light continues to provide $400,000 per year to its fuel fund.[295] Duke currently provides $350,000 per year to low-income customers (200% of poverty) for bill payment assistance in years 2012–2014 plus another $1 million annually to support low-income

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[293] Opinion and Order at 67.

[294] Id.

[295] *In the Matter of Application of the AES Corporation, Dolphin Sub, Inc., DLP, Inc. and the Dayton Power and Light Company for Consent and Approval for a Change of Control of the Dayton Power & Light Company*, Case No. 11-3002-EC-MER, Finding and Order (November 22, 2011) at 8.

weatherization efforts.[296] FirstEnergy filed a stipulation in its most recent ESP that was modified in the Commission order on July 18, 2012, where FirstEnergy will continue providing fuel funds in the amount of $4 million annually in years 2015 and 2016, plus another $1 million in those two years to Ohio Partners for Affordable Energy to administer another fuel fund program.[297] AEP Ohio is the sole EDU in Ohio to turn its back on low-income customers, while simultaneously raising the rates residential customers must pay.

Today is not the day to abandon low-income, at-risk customers. It was unfortunate that AEP Ohio chose to defund its Partnership with Ohio entirely in its Modified ESP Application. It was more unfortunate that the Commission chose to ratify this choice by remaining silent on this issue in its Opinion and Order, a sharp contrast to the corrective action it took to restore the Ohio Growth Fund when it modified the ESP.

The Commission's action is unjust, unreasonable and contrary to R.C. 4928.02(L). The Commission should order AEP Ohio to reinstate the Partnership with Ohio to be funded for at least $5 million per year (the amount in the first ESP) out of shareholder dollars with a further commitment to setting aside a significant portion for bill assistance. In addition to doing the right thing, the Commission would be ensuring that AEP Ohio fulfilled its mandate to advance the state policy of protecting at-risk populations pursuant to R.C. 4928(L).

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[296] *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143 Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Opinion and Order, (November 11, 2011) at 23-24.

[297] *In the Matter of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 16.

ASSIGNMENT OF ERROR 16:

The Commission's Decision Regarding The Rate Cap Is Unlawfully Vague.

In order to ease the burden of unexpected rate impacts on customers, the Commission directed AEP Ohio to "cap customer rate increases at 12% over their current ESP I rate plan bill schedules for the entire term of the ESP***.[298] The Commission cited its authority under R.C. 4928.144,[299] which allows the Commission to "authorize any just and reasonable phase-in of any electric distribution utility rate or price established under sections 4928.141 to 4928.143 of the Revised Code, and inclusive of carrying charges, as the commission considers necessary to ensure rate or price stability for consumers." Under the Order, the 12% limit will be determined on an individual customer-by-customer basis, and applies to items approved within the modified ESP.[300] Rate changes that "arise as a result of past proceedings, including any distribution proceedings, or in subsequent proceedings are not factored into the 12% cap."[301] The cap "shall be normalized for equivalent usage to ensure that at no point any individual customer's bill impacts shall exceed 12%."[302]

The Commission also ordered AEP Ohio to file, on May 31, 2013 in a separate docket, a detailed accounting of its deferral impact created by the 12 percent rate cap.[303] Upon the Companies' filing of deferral calculations, a procedural schedule will be

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[298] Id. at 70.

[299] Id.

[300] Id.

[301] Id.

[302] Id.

[303] Id.

established to consider the deferral costs created, and the PUCO will maintain the discretion to adjust the 12 percent limit as necessary, throughout the term of the ESP.[304]

Many aspects of the Commission's decision regarding the rate cap are unlawfully vague and need elaboration. For example, "normalized for equivalent usage" is not defined. In addition, it is unclear what the Commission means by "past and subsequent proceedings." There is also no requirement for calculating carrying charges (OCC and APJN advocates that the charges should be calculated using AEP Ohio's cost of long-term debt). Further, the Order lacks detail as to the process for addressing situations where an individual customer's bill is increased by more than 12 percent. Who is responsible for monitoring the percentage of increase, the customer (who may be unaware of the limitation) or AEP Ohio (which has the means for keeping track of bill increases)? What is AEP Ohio's obligation to notify customers of the cap, and how are bill increases that are over the cap to be addressed?

The Commission's Order regarding the cap on customer bill increases is unlawful, as described above. The Commission should modify the Order by providing more detail on the cap to address the issues raised by OCC.

ASSIGNMENT OF ERROR 17:

The PUCO's finding that the Distribution Investment Rider was warranted is Unreasonable and Unlawful.

A. **In approving the Distribution Investment Rider the Commission failed to apply the appropriate statutory standard as set forth in R.C. 4928.143 (B)(2)(h).**

R.C. 4928.143 (B)(2)(h) requires that prior to authorizing a distribution investment rider ("DIR"), the Commission must "examine the reliability of the electric

[304] Id.

distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned * * *." It is worth noting that the statutory standard is not that expectations were aligned in the past, or might be aligned in the future. Rather, it is that expectations are aligned at the present time. However, rather than ensuring that customers' and the electric distribution utility's ("EDUs") expectations are currently aligned, the Commission instead applied a non-existent future-looking standard.

In approving the DIR the Commission concluded that "the Commission finds that both the Staff and the Company have demonstrated that indeed customers have high expectations of reliable electric service."[305] While this observation may be true -- that customers and the EDU have a high expectation of reliable electric service, the statutory standard for a DIR in an ESP proceeding is not whether customers and the EDU have a high expectation of reliable service, but rather whether the Company's and customers' expectations are aligned.

To be sure, an expectation of reliable electric service is one that is established under the law, and is expected by customers, regardless of whether or not a utility has a DIR. R.C. 4905.22 requires adequate service, and OAC 4901:1-10-26(B)(1) requires utility planning and reporting to "ensure high quality, safe, and reliable delivery of energy to customers***." Even AEP Ohio's own tariffs require "reasonable diligence in delivering a regular and uninterrupted supple of energy to the customer***."[306] Moreover, in response to this statutory reliability requirement, the record indicates that CSP and OP have not provided reliable service based on PUCO standards as noted

[305] Opinion and Order at 46.

below. Despite, this requirement, the Commission's approval of the DIR fails to acknowledge, let alone address this statutory requirement.

R.C. 4928.143(B)(2)(h) permits a utility to include as part of an electric security plan:

> [P]rovisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. * * * The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and *ensure that customers' and the electric distribution utility's expectations are aligned* and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. (Emphasis added.)

The standard in R.C. 4928.143(B)(2)(h) is more specific than the standard cited by the Commission in the Opinion and Order. In fact the standard relied on by the Commission does not exist in the statute.

The manner in which the Commission applied the statutory standard would have the effect of negating the standard because all customers and EDUs have some level of expectation of reliable service. Notwithstanding this rudimentary expectation of service reliability, R.C. 4928.143 (B)(2)(h) obviously requires more. In this case there is a more specific expectation regarding whether service reliability in the future will remain the same, deteriorate or improve, based on what customers and the EDU expect at this time.

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[306] Ohio Power Company Tariff, original sheet No. 103-15D.

Moreover, it is clear that the Companies had the burden of proving that the Companies' and customers' expectations are aligned, and not that they might be in the future.[307] Commissioner Roberto stressed this point in her Dissenting Opinion in the recent First Energy ESP Case.[308]

In the face of this burden of proof, the record in this case demonstrates that only 19% of residential and 20% of commercial customers indicated that their expectation was for increased service reliability.[309] The Company proposed the DIR to provide "additional needed investment."[310] Thus only a small minority of customers -- less than 20% -- had an expectation that the Company would take steps to increase service reliability. The DIR was not proposed to maintain the status quo. Yet the vast majority of customers -- 71% of residential customers and 73% of commercial customers had expectations that service reliability would remain the same.[311] Because the Company had no DIR at the time of the customer surveys, it cannot be claimed that customers wanted or supported the DIR as part of the status quo.

The Commission also erred in its finding because the Opinion and Order noted that adoption of the DIR would "better align the Company's and its customers' expectations."[312] By noting that the DIR would better align the Company's and customers' expectations, the Commission is acknowledging that the current expectations

[307] See R.C. 4928.143(C)(1) (The burden of proof in the proceeding shall be on the electric distribution utility).

[308] *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, Dissenting Opinion of Commissioner Roberto at 5 (July 18, 2012). ("First Energy ESP Case").

[309] AEP Ohio Ex. 110 at 19 (Kirkpatrick).

[310] AEP Ohio Ex. 110 at 13 (Kirkpatrick).

[311] AEP Ohio Ex. 110 at 19 (Kirkpatrick).

are not aligned. The AEP Ohio 2011 customer survey, cited to by Mr. Kirkpatrick, made this point clear[313]

In fact, the Company acknowledged that the DIR was intended to "[e]nable customers' and the distribution utility's expectations to be aligned."[314] If those expectations were already aligned then there would be no need for this stated intent. Also, if those expectations were already aligned, then and only then would the R.C. 4928.143 (B)(2)(h) standard be met. The Company's own admission that its expectations are not currently aligned with those of its customers means that the statutory standard has not been met.

In adopting the DIR, the Commission further relied on a non-existent standard concluding that:

> Given that customer surveys are one component *in the factor* used to establish the reliability indices and the slight reduction in the level of measured performance on which the Staff concludes that reliability expectations are not aligned, we are convinced that it is merely a slight difference between the Company's and customers' expectations."[315]

The only other possible factor that the Commission could be referring to is the two different performance standards.

But the record in this case indicates that CSP failed the Customer Average Interruption Duration Index ("CAIDI") in 2011. In addition, the record also demonstrates that CSP saw a 13% reduction in its CAIDI performance from 2010 to 2011 and a 13% reduction in its System Average Interruption Frequency Index ("SAIFI"), while OP saw

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[312] Opinion and Order at 46.

[313] AEP Ohio Ex. 110 at 19 (Kirkpatrick).

[314] AEP Ohio Ex. 110 at 11 (Kirkpatrick).

[315] Opinion and Order at 46. (Emphasis added).

an 8% reduction in its SAIFI performance over the same time period.[316] In light of these reductions Staff witness Baker concluded "[M]ost of OP's reliability measures showed worse performance in 2011 [compared to 2010]."[317] Thus the Commission's conclusion that there was only a slight reduction in the level of measured performance, conflicts with the Staff testimony and significantly understates the Companies' poor reliability performance.

In evaluating the Commission's decision, it is clear that the Commission made two errors. First the Commission violated the law by applying a wrong, non-existent standard, and second, the Commission significantly understated the service quality degradation that was recorded, in order to justify approval of the DIR. In light of the Commission's failure to apply the proper statutory standard, the Commission should grant rehearing on this issue.

B. The Commission erred in failing to meet the requirement in R.C. 4903.09 to set forth its findings when it did not address AEP Ohio's failure to include four key categories of information as part of its Application, and was inconsistent with its own precedent.

In the Opinion and Order, the Commission failed to meet the statutory requirement of R.C. 4903.09 which requires:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact *and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.* (Emphasis added.)

[316] PUCO Staff Ex. 106 at 8-9 (Baker).

[317] PUCO Staff Ex. 106 at 7 (Baker).

Where the Commission does not set forth its detailed findings, it fails to comply with the statutory requirements and thus the order is unlawful.[318] More specifically, in this case, the Commission Opinion and Order does not address AEP Ohio's failure to include four key categories of information needed to evaluate the DIR as part of the Application. Staff witness Baker identified the four categories of information[319] -- including a cost-benefit study -- that Mr. Kirkpatrick did not include in his testimony and that were not included in the AEP Ohio Application:

> 1. The quantity of these assets OPC plans to install during each year of the [Modified] ESP;
> 2. The planed cost for each asset class;
> 3. The incremental amount of cost above previous levels; and
> 4. The quantified improvement in reliability performance estimated to result from the incremental expenditures.[320]

The magnitude of the importance of the missing data can best be evaluated through a closer examination of what that data would have provided, and how it could be used to evaluate the proposed DIR. AEP Ohio wants the DIR to replace distribution equipment, but there was no quantification of the specific equipment allegedly to be replaced. Thus there is no assurance that the DIR funds will be used for the purpose intended, that the specific equipment will be replaced.

Second, AEP Ohio provided no quantification for the cost of each class of asset allegedly to be replaced. Again, if the DIR is intended to replace assets -- then a known annual spending level for that equipment should be quantifiable in order to ensure that the DIR spending was targeted to the equipment that was intended to be replaced, and not

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[318] *Ideal Transportation Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195, 71 O.O.2d 183, 326 N.E.2d 861.

[319] PUCO Staff Ex. 106 at 10 (Baker).

used for other purposes. AEP Ohio failed to do so, and the Commission failed to address this lack of evidentiary support.

A third shortcoming is that AEP Ohio did not quantify the incremental investment -- if any -- above previous spending levels. Because AEP Ohio failed to include this information in its Application,[321] as noted by Staff witness Baker,[322] there is no demonstration in the record that the current spending levels in base rates are insufficient to fund the same goals that are attributed to the proposed DIR -- that is improved service reliability. There is also demonstration in the record that the $365.7 million in proposed DIR spending will actually be greater than prior spending levels. As a result, AEP Ohio also failed to explain how spending that might not be greater than prior spending levels could produce improved service reliability.

AEP Ohio failed to quantify the level of improved service reliability that customers could expect in exchange for their $365.7 million price tag. Likewise, the Commission failed to explain how the DIR would benefit customers and align customers' expectations of service reliability with AEP Ohio's given there is no quantification for improved reliability. Unfortunately, AEP Ohio only defined the DIR by it price tag for customers.

Without any quantification of improvement or a cost-benefit analysis, the Commission is essentially taking it on faith that the DIR spending will have any impact on service reliability. There is no assurance that the spending will improve service reliability and that the spending will be cost effective. Without a cost-benefit analysis,

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[320] PUCO Staff Ex. 106 at 10 (Baker).

[321] Id.

[322] Id.

there can be no finding that expenditures are reasonable and result in reasonably priced electric service.[323]

The Commission also previously noted the importance of a cost benefit study in the context of the rules review docket to establish the rules to govern an ESP Application, stating:

> In an ESP application, the fact that the Commission requests (a) cost savings and rate-impact information for alternative rate mechanisms and (b) a cost-benefit analysis of economic development and energy efficiency programs does not mean that the Commission will impose programs on electric utilities beyond the scope of SB 221. *The cost-savings and rate impact information and cost-benefit analysis are needed for the Commission to determine whether the electric utility's ESP is, on balance, beneficial and whether it is beneficial to include or modify the distribution infrastructure and modernization component of the ESP, given the alternative of addressing similar issues in a distribution rate case.* With respect to 08-777-EL-ORD economic development, job retention, and energy efficiency programs of the electric utility under paragraph (G)(9)(h) of Rule 03, Section 4928.143(B)(2)(i), Revised Code, specifically authorizes the costs of such programs to be allocated to rates charged to other consumers. A reasonable determination regarding whether any such proposal is a beneficial component of an electric utility's ESP requires a comparison of the benefits relative to the costs that will be borne by other consumers. Moreover, such information is helpful in determining whether alternative rate mechanisms or economic development and energy efficiency programs are reasonable.[324]

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[323] R.C. 4928.02(A). *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric A Security Plan, an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Opinion and Order at 30-34 (March 18, 2009), and *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison 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. 08-935-EL-SSO, Opinion and Order at 40-41 (Dec. 19, 2008).

[324] *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14,4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Entry on Rehearing at 11-12 (Feb. 11, 2009). Emphasis added.

The Commission's failure to address the lack of information, especially the cost-benefit analysis in light of prior Commission precedent, and the Commission's own rules, constitutes a fundamental error in violation of R.C. 4903.09. The statute requires that in all contested cases, "the Commission shall file, with then record of such cases, findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based on said findings of fact." The Commission provided no explanation justifying the lack of data and no explanation for the change from prior precedent.

The lack of this information, especially the lack of a cost-benefit analysis, is particularly significant, because AEP Ohio cannot possibly meet its statutory burden of proof without that data.[325] If AEP Ohio fails to produce the basic data that is necessary to evaluate the DIR proposal, and whether the proposed DIR would in fact produce an effective use of customer provided funding, then the Company fails to meet its burden of proof.

To the extent that AEP Ohio was proposing the DIR as part of the R.C. 4928.143 (B)(2)(h) modernization incentive, the statute specifically requires "a long term energy delivery infrastructure modernization plan***."[326] It is axiomatic that any long term plan that contemplates spending of $365.7 million over a three year period[327] would also include some analysis to quantify the actual reliability improvement anticipated as a result of the spending, and whether the spending provided a sufficient benefit to justify that level of investment. By failing to include the information identified by Staff witness Baker, including a cost benefit analysis, there is no evidence in the record to support the

[325] R.C. 4928.143 (C)(1).

[326] R.C. 4928.143 (C)(1).

[327] AEP Ex. 116 at 11 (Allen).

claim that $36.7 million in spending will actually produce any improvement in service reliability.

Instead, AEP Ohio claimed that the DIR would minimize the regulatory lag associated with recovery of the "important investment that benefits customers."[328] The benefit to AEP Ohio from minimizing the regulatory lag associated with DIR cost recovery is clearly a benefit for AEP Ohio's shareholders. However, the claim that the DIR mechanism will provide a benefit for customers was not proven because the Company failed to provide basic necessary information, including a cost-benefit study.[329] AEP Ohio did not provide basic information and did not meet its burden of proof. The Commission compounded the error by failing to address this omission of data in the Opinion and Order, and in failing to follow its own precedent. The Commission should grant rehearing in order to correct these errors.

C. The Commission erred in failing to meet the requirement in R.C. 4903.09 to set forth its findings when it did not address the issue of basic customer affordability of a Modified ESP that included a $365.7 million Distribution Investment Rider.

In the Opinion and Order, the Commission failed to address the issue of basic affordability of a Modified ESP that included a $365.7 million DIR as well as the other aspects of the ESP case including the RSR, as required by R.C. 4903.09. R.C. 4928.02(A) and (L). R.C. 4928.02 (A) states:

> It is the policy of this state to do the following throughout this state:

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[328] AEP Ohio Ex. 110 at 13 (Kirkpatrick).

[329] *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Entry on Rehearing at 11-12 (Feb. 11, 2009).

> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

R.C. 4928.02(L) further requires that:

> (L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

Despite this clear statutory requirement, the Commission failed to address how the $365.7 million DIR impacts the basic affordability of rates, especially in light of the fact that the DIR was approved without the benefit of important information, including a cost benefit analysis as detailed above. Residential Consumer Advocates raised this issue in their Initial Brief (pages 96-114), but the Opinion and Order did not address these statutory requirements. This lack of explanation fails to meet the requirement of R.C. 4903.09 and thus the Commission should grant rehearing.

ASSIGNMENT OF ERROR 18:

The PUCO's Decision to Approve the Separation of the Alternative Energy Rider from the Fuel Adjustment Clause but Delay Unification of the Fuel Adjustment Clause Until June 2013 is Unjust, Unreasonable and Inconsistent With How the PUCO Treated Other Elements of the Modified ESP in this Opinion and Order.

The law requires the Commission to be consistent in applying the law, in part because the Ohio Supreme Court values predictability in administrative law. This predictability is assured when the Commission is consistent not only from one case to another, but also from how it rules on different issues in the same case. In fact, the Court has noted that prior determinations of the PUCO should not be disregarded and set aside unless the need to change is clear and the prior decisions are in error.[330]

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[330] See for e.g., *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 403, 431-432, 71 O.O 393, 330 N.E.2d 1, writ of certiorari denied (1975), 423 U.S. 986, 96 S.Ct. 393, 461 L.Ed.2d 302, appeal after remand (1976), 46 Ohio St.2d 105, 75 O.O.2d 172, 346 N.E.2d 778 (citing *State ex. Rel.*

In this case, the Commission was arbitrary and inconsistent with how it dealt with the timing of consolidation of rates for CSP and OP customers. For the Fuel Adjustment clause ("FAC") and the Alternative Energy Rider ("AER") the Commission ruled that consolidation of the CSP and OP rates should not occur until June 2013.[331] Yet in this very same Opinion and Order, the Commission without explanation as to this inconsistency -- approved immediate consolidation of the Transmission Cost Recovery Rider ("TCRR") into a single rate for CSP and OP customers.[332]

As part of the TCRR discussion, the Commission noted that the merger of the CSP and OP was effective as of December 2011, and thus the immediate consolidation of the CSP and OP TCRR was warranted.[333] To the extent that the CSP/OP merger was effective as of December 2011 necessitating the immediate consolidation of the CSP and OP TCRR rate, it cannot be argued that the effective date of the merger was different for purposes of consolidating the FAC for CSP and OP. Yet the Commission delayed the FAC rate consolidation for CSP and OP customers until June 2013.

The Commission explained that the delay in consolidating the FAC rate was necessary to be consistent with the recovery of the Phase-In Recovery Rider ("PIRR").[334] However, in having the FAC consolidation timing be consistent with the PIRR, the Commission was inconsistent with the FAC consolidation timing. This internal

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Automobile machine Co. v. Brown (1929), 121 Ohio St. 73, 75, 166 N.E. 903 -- "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so.'" (citation omitted).

[331] Opinion and Order at 16.

[332] Opinion and Order at 63-64.

[333] Opinion and Order at 63-64.

[334] Opinion and Order at 17.

inconsistency in the timing of consolidation of CSP and OP rates does not produce predictability in administrative matters and the Commission should grant rehearing.

ASSIGNMENT OF ERROR 19:

The PUCO Erred by Failing to Meet the Requirements of R.C. 4903.09 When Without Explanation it Failed to Follow its Own Precedent in Approving the Separation of the Alternative Energy Rider from the Fuel Adjustment Clause but Delaying Unification of the Fuel Adjustment Clause Until June 2013, Resulting in an Unreasonable Negative Impact on the Customers of Ohio Power.

The Commission's decision to delay consolidation of the FAC until June 2013, has the effect of unreasonably and negatively impacting OP customers. As a result, OP customers will experience a $0.02 per MWh **increase** while CSP customers will experience a $0.69 per MWh net **decrease** in rates.[335]

In its decision, the Commission offered no explanation as to why it was appropriate and reasonable to negatively impact OP customers by delaying the consolidation of the FAC rates, while immediately consolidating the TCRR rates. The Commission failed to explain why it needed consistency between the timing of the FAC consolidation and recovery of the PIRR, but not between the timing of the consolidation of the FAC and consolidation of the TCRR.

The lack of explanation is compounded by the fact that delaying the consolidation of the FAC until June 2013 for OP customers, results in a objective and quantifiable negative impact of $0.02 per MWh for OP customers. Because the Commission failed to specifically address this inconsistency in its Opinion and Order as required by R.C. 4903.09, the Commission should grant rehearing on this issue.

[335] Opinion and Order at 16.

ASSIGNMENT OF ERROR 20:

> The PUCO Erred by not Stating that Interruptible Power-Discretionary Schedule Credit Cost Will be Collected Only From Non-residential GS 4/IRP Customers and not From Residential Customers, Consistent With the Stipulation in Case No. 11-5568-EL-POR.

As part of the Opinion and Order, the Commission accepted the AEP Ohio proposal that the IRP-D credit be set at $8.21/kwh.[336] As explanation for its decision, the Commission noted that the IRP-D credit is beneficial because it provides flexible options for energy intensive customers to choose the type or quality of service they wish to take as well as being consistent with R.C. 4928.02(N).[337]

The Commission also ruled that the IRP-D credit should not be tied to the RSR because it was more reasonable to permit AEP-Ohio to recover costs related to IRP-D under the Energy Efficiency/Peak Demand Reduction ("EE/PDR") rider because the IRP-D credit would help reduce AEP-Ohio's peak demand and would encourage energy efficiency.[338] However, as part of its decision, the Commission did not make it clear that the cost associated with the IRP-D credit should only be collected from customers in the GS 4/IRP rate schedule.

More specifically, the Commission failed to state that the IRP-D credit costs should not be collected from residential customers consistent with the Stipulation in Case No. 11-5568-EL-POR.[339] The Commission adopted the Stipulation in the 11-5568 case, and discussed the intent of the Stipulation, including:

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336 Opinion and Order at 25-26.

337 Opinion and Order at 26.

338 Opinion and Order at 26.

339 *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 11-5568-EL-POR, Opinion and Order at 11 (March 31, 2012). ("11-5568 Case").

A. Rate Design and Cost Allocation Methodology

> (1) Program costs will be assigned for collection purposes to the respective rate classes whose customers are eligible for the program. *For example, program costs for customers in a nonresidential customer class will not be collected from residential customers and residential program costs will not be collected from non-residential customers.*[340] (Emphasis added.)

In addition to this language, the 11-5568 Opinion and Order also included footnote 11 to that paragraph which stated:

> Residential customers will not pay, for example, for the programs described in paragraphs 3, 4, 5, 6, 7, 8, and 9 contained in Section X, Miscellaneous Terms and Commitments, of the stipulation.

Moreover, during the evidentiary hearing, counsel for IEU-Ohio specifically asked OCC witness Ibrahim if the Stipulation and ensuing Opinion and Order from Case No. 11-5568 would resolve any issues regarding revenue responsibility for the IRP-D credit.[341] Mr. Ibrahim agreed that it was his understanding that the 11-5568 Case would determine the revenue responsibility for the IRP-D credit.[342]

Thus pursuant to the Stipulation and Opinion and Order in the 11-5568 Case, the OCC requests specifically find (or clarify) that the costs related to IRP-D rider credit should only be collected from non-residential GS 4/IRP customers and not from residential customers.

IV. CONCLUSION

To protect consumers, the Commission should grant OCC and APJN's application for rehearing on the assignments of error raised here.

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[340] 11-5568 Case, Stipulation at 11.

[341] Tr. VII at 2282 (Ibrahim).

[342] Tr. VII at 2282 (Ibrahim).

Respectfully submitted,

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On Behalf of the Appalachian Peace and Justice Network

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was served via electronic transmission, to the persons listed below, on this 7th day of September 2012.

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OCC Rehearing Ex. 1B

Corrected Retail Stability Rider reflecting Authorized Capacity Costs

Year	6/2012 - 5/2013	6/2013 - 5/2014	5/2014 - 6/2015	Entire ESP	
Retail Non-fuel Gen Revenue Authorized ($million)	$528	$419	$308	$1,255	$1,255
CRES Capacity Revenue Authorized ($million)*	$302	$364	$422	$1,088	$1,088
Credit for Shopped Load	$75	$89	$104	$268	$268
Subtotal (with authorized capacity cost)	$905	$872	$834	$2,611	$2,611
Revenue Target Revised Per PUCO Order	$826	$826	$826	$2,478	$2,478
RSR Amount (with authorized capacity cost)	-$79	-$46	-$8	-$133	-$133

*based on $188.88/MW-day multiplied by shopping load assumed by PUCO in August 8, 2012 Opinion and Order.

Deferred Capacity Costs

a.	Planning Years within ESP tem	6/2012 - 5/2013	6/2013 - 5/2014	5/2014 - 6/2015	Entire ESP	Actual and Projected Collection Verification
b.	PJM-RPM Price of Capacity	$20.01/mw-day	$33.71/mw-day	$153.89/mw-day		
c.	PUCO-approved Capacity Cost (Case 10-2929 Order)	$188.88/mw-day	$188.88/mw-day	$188.88/mw-day		
d.	AEP Collectino from CRES	$32	$65	$344	$441	$441
e.	Authorized Capacity Cost Collection (in Millions) (Based on $188.88/mw-day*	$302	$364	$422	$1,088	
f.	Capacity Cost Shortfal (e-d, $million)	$270	$299	$78	$647	
g.	Capacity Costs Collected through Retail Stability Rider	$48	$48	$48	$144	$144
h.	Capacity Cost Deferred (f-g, $million)	$222	$251	$30	$503	$503

* Using the same shopping load assumed by PUCO in Aug. 8, 2012 Opinion and Order.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

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The Commission finds:

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

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

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

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

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

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

I. PROCEDURAL MATTERS

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

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

The Commission finds OCC/APJN's assignment of error should be dismissed. OCC/APJN failed to raise its objections to the use of stipulation references contained within AEP-Ohio's application for rehearing in its memorandum contra to AEP-Ohio's application for rehearing, so it is unnecessary for us to address those references. Regarding the stipulation references in AEP-Ohio's memorandum contra the applications for rehearing, we find that, consistent with our Opinion and Order in this proceeding, the references to other stipulations by AEP-Ohio were limited in scope and did not create prejudicial impact on any parties, nor were the references used to in any way bind parties to positions they had in any previous proceeding.[1] In fact, OCC/APJN referred to specific stipulation provisions from a separate proceeding in its own application for rehearing.[2] Accordingly, we find that OCC/APJN's motion to strike should be denied.

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

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

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

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

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

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

1 Opinion and Order at 10.

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

3 Opinion and Order at 10.

4 *Id.* at 12-13.

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

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

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

II. STATUTORY TEST

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

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

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

5 OCC AFR at 7.

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

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

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

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

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

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6 Opinion and Order at 74

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

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

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

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

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

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

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

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

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

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8 Opinion and Order at 75

9 *Id.* at 49

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

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

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

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

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

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

10 Oral Argument Tr. at 46

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

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

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

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

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

13 Opinion and Order at 37

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

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

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

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

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14 *Id.* at 73-75

15 AEP-Ohio Ex. 114

16 Tr. at 1260-1342

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

III. RETAIL STABILITY RIDER

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

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

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

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

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

18 See OCC/APJN AFR pg. 36-38

19 Opinion and Order at 31

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

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

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

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

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20 *Id.* at 31-32

21 IEU AFR at 38.

22 *Id.* at 41

23 See Opinion and Order at 31-34.

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

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

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

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

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

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

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

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

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

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

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

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

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24 *Id.* at 37.

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

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

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

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

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

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

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[25] *Id.*

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

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

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

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

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[26] *Id.* at 32.

[27] Capacity Case EOR at 56-57

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

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

The Commission finds that the applications for rehearing should be denied. Claims that the RSR overcompensates AEP-Ohio fail to consider the actual construct of the $188.88/MW-day capacity price, as the deferral established in the Capacity Case will not be booked as a revenue during the deferral period.[28] The revenue AEP-Ohio will collect for capacity is limited only to the RPM price of capacity. Therefore, all assertions that parties make about AEP-Ohio receiving sufficient revenue from the capacity deferral alone are incorrect and should be rejected. Further, we note that OCC/APJN again mischaracterize the function of the RSR, because, as we have emphasized both in the Opinion and Order and again in this Entry, the RSR allows for stability and certainty for AEP-Ohio's non-shopping customer prices, while the deferral relates to capacity, thereby making it inappropriate to claim customers are being forced to pay twice for capacity.

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

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

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

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

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

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

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

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

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

31 Opinion and Order at 37.

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

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

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

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

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

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

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

The Commission rejects the arguments raised by IEU, FES, and OCC/APJN, and finds their applications for rehearing should be denied. As previously addressed in the Commission's Opinion and Order, AEP-Ohio, as an FRR entity, must continue to fulfill its obligations by providing adequate capacity to its entire load. Therefore, in order for AEP-Ohio, and the newly created generation affiliate to continue to provide capacity consistent with its FRR obligations, we maintain our position that AEP-Ohio is entitled to its actual cost of capacity, which will in part, be collected through the RSR in order for AEP-Ohio to begin paying off its capacity deferral. As we previously established, parties cannot claim that AEP-Ohio's generation affiliate is receiving an improper subsidy when in fact, it is only receiving its actual cost of service.[32]

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

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

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

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

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

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

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32 *Id.* at 60

33 *Id.* at 37.

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

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

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

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

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

34 *Id.* at 33.

35 *Id.* at 36.

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

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

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

IV. FUEL ADJUSTMENT CLAUSE

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

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

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

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

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

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

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

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

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

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

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

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

39 Opinion and Order at 17.

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

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

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

V. BASE GENERATION RATES

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

In its memorandum contra, AEP-Ohio responds that the Commission properly determined that freezing base generation rates for non-shopping SSO customers is beneficial because it allows for a stable and reasonably priced default generation service that will be available to all customers. AEP-Ohio further explains that OCC/APJN do not present any evidence to support its assertion that the base generation rate design makes it difficult for the Commission to ensure that all SSO customers are receiving non-discriminatory generation service, and points out that OCC/APJN wrongfully attempt to extrapolate the Commission's Capacity order. AEP-Ohio adds that any accusations of the base generation rates being discriminatory are also improper because AEP-Ohio offers different services to its SSO customers than it does to CRES providers. Specifically, AEP-Ohio explains that it only offers capacity service to CRES providers, but it offers a bundled supply of generation service to its SSO customers, thereby eliminating any claim of AEP-Ohio providing discriminatory services.

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

VI. INTERRUPTIBLE POWER-DISCRETIONARY SCHEDULE CREDIT

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

42 See Opinion and Order at 15-16.

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

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

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

VII. AUCTION PROCESS

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

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

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

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

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

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43 *Id.* at 39-40.

44 *Id.* at 38-40.

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

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

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

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

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

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

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

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46 See Opinion and Order at 57

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

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

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

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

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

The Commission rejects AEP-Ohio's request to incorporate revenue-neutral solutions within the auction rate docket. However, in the event it becomes apparent that there may be disparate rate impacts amongst customers, the Commission reserves that right to initiate an investigation, as necessary, as set forth in the Opinion and Order.

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

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

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

VIII. <u>CUSTOMER RATE CAP</u>

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

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

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

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

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

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

IX. SEET THRESHOLD

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

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

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

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

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

X. CRES PROVIDER ISSUES

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

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

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

48 Opinion and Order at 33

49 *Id.* at 37.

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

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

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

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

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

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

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

53 *Id.*

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

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

XI. DISTRIBUTION INVESTMENT RIDER

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

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

54 *Id.* at 41

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

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

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

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

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

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

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

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

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

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

The Commission notes that the DIR is a new plan approved by the Commission in the ESP and the distribution investment plan will take into consideration the service needs of the AEP-Ohio as a whole. Kroger's request to establish separate and distinct DIR accounts and rates would result in maintaining and essentially continuing CSP and OP as separate entities. Kroger has not provided the Commission with sufficient justification to continue the distinction between the rate zones or demonstrated any unreasonable disadvantage or burden to either rate zone. The focus of the DIR will be on replacing infrastructure, irrespective of rate zone, that will have the greatest impact on improving reliability for customers. The Commission denies Kroger's request to reconsider adoption of the DIR on a rate zone basis.

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

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

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

[56] Opinion and Order at 42-47.

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

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

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

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

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[57] *Id.* at 47

[58] OCC/APJN Initial Brief at 96-114.

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

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

XII. PHASE-IN RECOVERY RIDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION RIDER

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

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

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

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

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

XIV. GRIDSMART

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

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

XV. ECONOMIC DEVELOPMENT RIDER

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

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

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

XVI. STORM DAMAGE RECOVERY MECHANISM

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

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

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

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

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

XVII. GENERATION RESOURCE RIDER

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

Each of the above-noted requests for rehearing as to the GRR mechanism was previously considered by the Commission and rejected in the Opinion and Order. Nothing offered in the applications for rehearing persuades the Commission that the Opinion and Order is unreasonable or unlawful. Accordingly, the applications for rehearing on the establishment of the GRR are denied. Further, the Commission notes that we recently concluded that AEP-Ohio and Staff failed to make the requisite demonstration of need for the Turning Point project.[64]

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

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

XVIII. POOL MODIFICATION RIDER

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

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

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

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

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

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

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

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

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

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

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67 Opinion and Order at 49.

68 *Id.*

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

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

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

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

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71 Opinion and Order at 49.

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

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

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

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

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73 Opinion and Order at 49.

74 *Id.* at 50.

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

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

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

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75 Section 4928.143(B)(2)(d), Revised Code, states:

> Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

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

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

XIX. GENERATION ASSET DIVESTIURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is, therefore,

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

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

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

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

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

GNS/JJT/vrm

Entered in the Journal
JAN 3 0 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. 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

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

As part of our advocacy for residential consumers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "AEP Ohio" or "Company") to receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing of the Entry on Rehearing ("Rehearing Entry") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in the above-captioned proceedings on January 30, 2013. OCC is authorized to file this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

In the Rehearing Entry the PUCO found, inter alia, that the retail stability rider ("RSR") charge falls within the default service category of R.C. 4928.143(B)(2)(d).[1] In doing so, the Commission explained for the first time the specific statutory basis for

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[1] Entry on Rehearing at ¶17.

finding that the RSR is lawful. With this new finding, the Commission has provided a statutory basis for its decision –a basis that did not exist when it approved the RSR in its Opinion and Order. Permitting the RSR to be collected from customers will cause significant rate increases and financial harm to customers over the period September 2012 through May 31, 2015.

OCC seeks rehearing on the limited new finding of the Commission in its Entry that the RSR equates to default service. In determining the retail stability rider is "default service," the Commission decision is unlawful and unreasonable because it is not based on specific findings of fact and is not supported by the record, violating R.C. 4903.09 and 4903.13.[2]

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support.

[2] See *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337 citing *Dayton Power & Light Co. v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 91, 4 OBR 241, 447 N.E. 2d 733; *Columbus v. Pub. Util. Comm.* (1979), 58 Ohio St.2d 103, 12 O.O.3d 112, 388 N.E. 2d 1237.

Respectfully submitted,

BRUCE J. WESTON
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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. 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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On January 27, 2011, the Company filed its second standard service offer "SSO" or "standard offer" application,[3] seeking approval of the Application under R.C. 4928.143. During early August 2011, the Company, the intervenors, and PUCO Staff entered into negotiations regarding a settlement of the ESP cases. OCC and others declined to sign the Stipulation. The PUCO conducted a hearing on the Stipulation during October 2011 and on December 14, 2011, the Commission issued its Opinion and Order in these proceedings adopting, yet modifying the Stipulation. On February 23, 2012, on rehearing, and after considerable public outcry about the rate increases resulting from the modified Stipulation, the Commission rejected the ESP plan.

On March 30, 2012, the Companies filed an application containing a Modified ESP. Evidentiary hearings were held from May 17, 2012 through June 15, 2012. On July 2, 2012, the Commission issued its order in the Company's Capacity Charge

[3] Case Nos. 11-346-EL-SSO and 11-348-EL-SSO, Application (Jan. 27, 2011).

proceeding, Case No. 10-2929-EL-UNC. Oral arguments were conducted following briefing in this proceeding. On August 8, 2012, the PUCO issued its decision in the case modifying and approving the Company's electric security plan.

OCC and others initially sought rehearing on a number of issues. In particular, one of OCC's assignments of error pertained to the fact that the PUCO did not identify how the RSR qualifies as one of the six categories contained in R.C. 4928.143(B)(2)(d). On January 30, 2013, the Commission issued the Rehearing Entry. The PUCO denied OCC's application for rehearing in large part. However, the Commission granted OCC's application in part "[i]n order to clarify the record in this proceeding."[4]

In its clarification, the Commission determined for the first time that the RSR "clearly falls within the default service category, as set forth in Section 4928.143(B)(2)(d)." It further found that "[a]s a SSO is the default service plan for AEP-Ohio customers who choose not to shop, the RSR meets the second inquiry of the statute as it provides a charge related to default service."[5] These are the new findings which OCC seeks rehearing on. Thus, OCC's arguments addressing the new PUCO finding that the RSR equates to "default service" have not been heard. OCC's Application for rehearing is appropriate here.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect

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[4] Entry on Rehearing at ¶17.

[5] Id.

to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding on February 4, 2011, which was granted in an Entry dated March 23, 2011. OCC also filed testimony regarding the Application containing the Modified ESP and participated in the hearing on the Modified ESP.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed." As shown herein, the statutory standard for abrogating some portions of the Order and modifying other portions is met here. The Commission should grant rehearing on a number of the assignments of error and otherwise should abrogate its Rehearing Entry of January 30, 2013.

III. ARGUMENT

ASSIGNMENT OF ERROR:

In Determining The Retail Stability Rider Is "Default Service" The Commission's Decision Is Unlawful And Unreasonable Because It Is Not

Based On Specific Findings Of Fact And Is Not Supported By The Record, Violating R.C. 4903.09 And 4903.13.[6]

In its Rehearing Entry, the Commission found that a SSO is the default service plan for AEP Ohio customers who choose not to shop and thus the RSR is a charge related to "default service." But this conclusion by the Commission is insufficient to meet the mandates of the Ohio Revised Code.[7]

A legion of cases establishes that the Commission abuses its discretion if it renders an opinion on an issue without record support.[8] The need for record support is mandated under R.C. 4903.09. Under R.C. 4903.09 in all contested cases heard the Commission "shall file, with the records of such cases, finding of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." As recognized by the Ohio Supreme Court the primary purpose of this statute is to provide the Court "with sufficient details to enable [it] to determine, upon appeal, how the commission reached its decision."[9] Some factual support for

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[6] See *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337 citing *Dayton Power & Light Co. v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 91, 4 OBR 241, 447 N.E. 2d 733; *Columbus v. Pub. Util. Comm.* (1979), 58 Ohio St.2d 103, 12 O.O.3d 112, 388 N.E. 2d 1237.

[7] See e.g. *Erie-Lackawanna Rd. Co. v. Pub. Util. Comm.* (1969), 18 Ohio St. 2d 112 (PUCO reversed where facts cited were insufficient to support PUCO order); *General Tel. Co. v. Public Utilities Comm.*(1972), 30 Ohio St. 2d 271(PUCO reversed where Court found the record was incomplete and no decision as to the reasonableness of the determined rate of return could be made); *New York C. & S. L. R. Co. v. Pub. Util. Comm.* (1964), 176 Ohio St. 81, 83 (PUCO reversed where it made no findings of fact with respect to the factors considered by it in making the allocation required by Section 4907.47, Revised Code, and gave no reasons for the allocation which it made, making it "impossible for this court to determine whether the allocation made by the commission is either reasonable or lawful.").

[8] *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St.3d 163, 166.

[9] *Cleveland Elec. Co. v. Pub. Util. Comm.* (1983), 447 N.E.2d 746, 748; *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 513 N.E.2d 337, 343.

commission determinations must exist in the record, an obligation which the Commission itself has recognized in its orders.[10]

Without adequate facts and reasons to support the PUCO's decision, the Court would not be able to determine if the Rehearing Entry is reasonable and lawful under R.C. 4903.13. Additionally, lack of a record stymies a complaining party's effort in demonstrating prejudice,[11] a necessary element to obtain reversal of a Commission order by the Ohio Supreme Court.[12]

Here, the Commission merely concludes, for the first time, that the RSR relates to default service. Yet, while concluding that the RSR relates to default service, the PUCO does not provide the facts or the basis that support its decision. There is not sufficient detail from the bare statements presented in the Commission's Rehearing Entry to permit the Court to determine the basis of the Commission's reasoning. The Commission, thus, has violated R.C. 4903.09. Rehearing should be granted and the Commission should allow an appropriate record to be developed before deciding on this issue.

Not only has the PUCO violated R.C. 4903.09, it has also violated R.C. 4903.13. Under the "unlawful or unreasonable" standard set forth in R.C. 4903.13, the Supreme Court of Ohio will reverse a decision of the Commission if such decision is so clearly unsupported by the record and against the manifest weight of the evidence as to constitute mistake.[13] The PUCO's determination that the RSR relates to default service was just

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[10] See, e.g., In re Petition of Studer & Numerous Other Subscribers of Neapolis Exchange of ALLTEL Ohio, Case No. 88-481-TP-PEX, Entry on Rehearing (Sept. 6, 1990).

[11] See *Tongren v Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 92-93.

[12] Id., citing *Holliday Corp. v. Pub. Util. Comm.*, (1980), 61 Ohio St.2d 335, syllabus.

[13] *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337 citing *Dayton Power & Light Co. v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 91, 4 OBR 241, 447 N.E. 2d 733; *Columbus v. Pub. Util. Comm.* (1979), 58 Ohio St.2d 103, 12 O.O.3d 112, 388 N.E. 2d 1237.

that -- against the manifest weight of the evidence and clearly unsupported by the record in the case.

The Court has previously held that it will not normally substitute its judgment for that of the Commission, "unless the findings and order of the commission are manifestly against the weight of the evidence or there is no evidence." [14] Here, however, the PUCO's conclusion that the RSR relates to default service, with no supporting evidence, calls for the Court to "substitute" its judgment for that of the PUCO.

IV. CONCLUSION

To protect consumers, the Commission should grant OCC Application for Rehearing on the assignment of error raised here.

Respectfully submitted,

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[14] *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*(1975), 42 Ohio St. 2d 403, 415, 71 O.O.2d 393, 330 N.E.2d 393 citing *Akron* v. *Pub. Util. Comm.*, 5 Ohio St.2d 237, 242; *Kenton* v. *Pub. Util. Comm.* (1965), 3 Ohio St. 2d 71, 73, 32 O.O.2d 52, 209 N.E.2d 430.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was served via electronic transmission, to the persons listed below, on this 1st day of March, 2013.

/s/ Maureen R. Grady
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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

SECOND ENTRY ON REHEARING

The Commission finds:

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

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

(3) On August 16, 2012, AEP-Ohio submitted its proposed compliance rates and tariffs to be effective as of the first billing cycle of September 2012. By entry issued on August 22, 2012, the Commission approved the proposed tariffs and rates to be effective with the first billing cycle of September 2012.

(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 matter determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(5) On September 7, 2012, AEP-Ohio, The Kroger Company, Ormet Primary Aluminum Corporation, Industrial Energy Users-Ohio

(IEU), Retail Energy Supply Association, OMA Energy Group (OMAEG) and the Ohio Hospital Association (OHA), the Ohio Energy Group (OEG), FirstEnergy Solutions Corporation (FES), jointly by The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively the Ohio Schools), and jointly by the Ohio Consumers' Counsel (OCC) and Appalachian Peace and Justice Network filed applications for rehearing of the Commission's August 8, 2012 Order. Memoranda contra the various applications for rehearing were filed jointly by Duke Energy Ohio, Inc. and Duke Energy Commercial Asset Management Inc., FES, OCC/APJN, IEU, OMAEG/OHA, OEG, Ohio Schools, and AEP-Ohio on September 17, 2012.

(6) By entry dated October 3, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the Order.

(7) On January 30, 2013, the Commission issued its Entry on Rehearing addressing the merits of the various applications for rehearing (January 30 EOR).

(8) On March 1, 2013, OCC and IEU filed applications for rehearing of the January 30 EOR. On March 11, 2013, AEP-Ohio filed a memorandum contra the applications for rehearing.

(9) In its application for rehearing, IEU argues that Section 4928.143(B)(2)(d), Revised Code, does not provide the Commission authority to approve AEP-Ohio's retail stability rider (RSR). Specifically, IEU states that the fact that the RSR will result in a non-fuel base generation rate freeze does not satisfy the requirements of Section 4928.143(B)(2)(d), Revised Code, and the determination that the RSR provides certainty and stability goes against the manifest weight of the evidence in this proceeding. IEU also points out that the Commission may not approve a rider that causes the modified ESP to be less favorable in the aggregate than a market rate offer.

AEP-Ohio responds that IEU raised similar arguments in its first application for rehearing and fails to raise any new arguments in its second application for rehearing. AEP-Ohio adds that IEU's interpretation of Section 4928.143(B)(2)(d), Revised Code, unnecessarily narrows the statute. In addition, AEP-Ohio points out that IEU previously raised arguments regarding the statutory test in its initial application for rehearing and fail to provide any new arguments.

The Commission finds that IEU fails to raise any new arguments for the Commission's consideration in its application for rehearing. In both the order and the entry on rehearing, the Commission determined that the RSR is justified pursuant to Section 4928.143(B)(2)(d), Revised Code. (Order at 31-32; January 30 EOR at 15-16). Similarly, IEU previously raised its arguments pertaining to the statutory test, which the Commission denied in the January 30 EOR. Accordingly, IEU's application for rehearing should be denied.

(10) In its application for rehearing, OCC claims that the classification of the RSR as a charge related to default service is not supported by the record, violating Section 4903.09 Revised Code, and Section 4903.13, Revised Code.

In its memorandum contra, AEP-Ohio responds that the Commission clearly explained how the RSR falls into default service, and adds that even one of OCC's witnesses agreed that the RSR relates to AEP-Ohio's generation revenues.

The Commission finds OCC's assignment of error is without merit and should be denied. In the entry on rehearing, the Commission emphasized that the RSR meets the statutory criteria contained in Section 4928.143(B)(2)(d), Revised Code, as it is a charge relating to default service that provides certainty and stability for AEP-Ohio's customers. (January 30 EOR at 15-16.) Specifically, the Commission explained that the RSR allows for price certainty and stability for AEP-Ohio's standard service offer (SSO) customers, which, is AEP-Ohio's default service for customers who choose not to shop. *(Id.)* Accordingly, OCC's assignment of error should be rejected.

(11) In its application for rehearing, IEU claims that the customer rate impact cap fails to identify the incurred costs that may be deferred, but rather only provides that AEP-Ohio may defer the difference in revenue as a result of the customer rate cap. In addition, IEU argues the Commission should identify the

specific carrying charges that will apply to the deferred amount. IEU states that if the Commission continues to authorize the customer rate impact cap deferral, it should set the level of the carrying charges on the deferral balance to a reasonable level below AEP-Ohio's long or short term cost of debt.

In its memorandum contra, AEP-Ohio provides that the carrying cost rate should be the weighted average cost of capital, consistent with Commission precedent and AEP-Ohio's phase in recovery rider. AEP-Ohio opines that the same regulatory principles should be applied here, and any deferrals under the customer rate impact cap would accrue a carrying charge during the period of deferral and a lower debt rate charge during the recovery period.

The Commission finds that IEU's application for rehearing should be denied, as the customer rate impact cap is permissible pursuant to Section 4928.144, Revised Code. Section 4928.144, Revised Code, provides the Commission with discretion to establish a deferral to ensure rate or price stability for customers, which the customer rate cap establishes by limiting any customer rate increases to no more than a 12-percent increase. The Commission determined this was necessary in its order, and emphasized it again in its entry on rehearing. (Order at 70; January 30 EOR at 40). Further, the entry on rehearing clarified that AEP-Ohio was entitled to the deferral of the incurred costs equal to the amount not collected, as well as carrying costs associated with the deferral. We do clarify, however, that these carrying costs should be set at AEP-Ohio's long-term cost of debt rate, as recovery of these costs are not only guaranteed but also are consistent with Commission precedent. Finally, the collection of the deferral is on a non-bypassable surcharge, and protects customers from any potential rate increases associated with AEP-Ohio's newly established non-bypassable riders, consistent with Section 4928.144, Revised Code. Therefore, as the customer rate impact cap complies with Section 4928.144, Revised Code, IEU's arguments should be dismissed.

(12) IEU argues that the Commission cannot lawfully authorize a non-bypassable rider to recover lost generation revenue pursuant to Section 4928.143(B)(2)(d), Revised Code. IEU

argues that only divisions (b) and (c) of Section 4928.143(B)(2), Revised Code, allow for a generation-related, non-bypassable charge for the recovery of construction costs. Therefore, according to IEU, there is no basis under Section 4928.143(B)(2)(d), Revised Code, to approve the Pool Termination Rider (PTR).

AEP-Ohio notes that while Section 4928.143(B)(2)(b) and (c), Revised Code, specifically require that the charges established there under be nonbypassable, subdivision (d) contains no such requirement. AEP-Ohio reasons that Section 4928.143(B)(2)(d), Revised Code, specifically grants the Commission the authority to establish a non-bypassable charge as part of an ESP.

The Commission finds that IEU's argument is without merit. Section 4928.143(B)(2)(d), Revised Code, specifically permits the Commission to consider the "bypassability" of the "[t]erms conditions or charges relating to limitations on customer shopping for retail electric generation service ... as would have the effect of stabilizing or providing certainty regarding retail electric service" as a component of an ESP. The Commission interprets the language in this section to grant the Commission the authority to approve a particular component of an ESP as bypassable or non-bypassable. Thus, we deny IEU's request for rehearing.

(13) IEU also argues that the Commission failed to make the necessary findings to demonstrate that the PTR would have the effect of stabilizing or providing certainty regarding retail electric service. IEU asserts that nothing in the record in this case demonstrates that the Pool Agreement prevented an auction for the provision of standard offer service (SSO) and did not have any bearing on the Commission's conclusion in AEP-Ohio's Capacity Case.[1] Accordingly, IEU reasons that there is no basis for the Commission to conclude that termination of the Pool Agreement is "key to the establishment of effective competition." IEU reasserts that the PTR recovers from retail customers lost wholesale Pool Agreement revenue and shifts AEP-Ohio's wholesale risks to retail customers. Therefore, IEU submits that there is no basis for the Commission to find that the PTR has the effect of providing

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

certainty or stability in the provision of retail electric service to retail customers.

In its memorandum contra, AEP-Ohio submits that IEU's claim that an increase in service offers is not equivalent to certainty or stability in service is misplaced. AEP-Ohio states, as it and other parties to this proceeding have previously asserted, that the nature of the Pool Agreement has historically been to stabilize rates for Ohio ratepayers and, on that basis, AEP-Ohio claims that the PTR, therefore, qualifies as a charge that would have the effect of stabilizing or providing certainty regarding retail electric service in compliance with the requirements of Section 4928.143(B)(2)(d), Revised Code. Further, AEP-Ohio emphasizes the rationale offered in the August 8 Order, that the PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers. Furthermore, AEP-Ohio explains that the rationale offered in the August 8 Order is consistent with the reasoning offered by the Commission in the January 30 EOR, which is essentially that termination of the Pool Agreement and increases in service offers likely will promote price stability, through the development of a more robust and transparent retail electric service market. With that understanding, AEP-Ohio reasons that the Commission properly determined that Section 4928.143(B)(2)(d), Revised Code, authorizes the PTR and adequately explained the basis for its decision.

We find no merit in IEU's claims that the Commission failed to make the necessary findings to demonstrate that the PTR would have the effect of stabilizing or providing certainty regarding retail electric service. While the Commission reconsidered its statutory basis for approval of the PTR in the January 30 EOR, the rationale for approval has not changed. As noted in the August 8 Order "the PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement" (Order at 49). The basis for Ohio electric utilities transitioning to a competitive market is to encourage retail electric suppliers to pursue customers with a variety of service offers. A competitive market will ultimately result in more offers for retail electric service for shopping customers and put pressure on AEP-Ohio to retain non-shopping customers with better service offers. Nonetheless, the Commission limited AEP-Ohio's right to recover under the PTR (January 30 EOR at 59-60), and even assuming that the conditions for pursuing recovery under the PTR were met, AEP-Ohio maintained the burden set forth in Section 4928.143, Revised Code, to first file an application to "demonstrate the extent to which the Pool Agreement benefitted Ohio ratepayers over the long-term and the extent to which the costs and/or revenues should be allocated to Ohio ratepayers... that any recovery it seeks under the PTR is based upon costs which were prudently incurred and are reasonable" (Order at 49). Thus, at this juncture, the PTR has only been approved to facilitate the possibility of recovery. The Commission finds that the rationale previously offered is sufficient to allow AEP-Ohio the possibility to file an application for recovery under the PTR and, therefore, we deny IEU's application for rehearing.

(14) Finally, IEU again asserts, as argued in its application for rehearing of the August 8 Order, that the approval of the PTR, violates Sections 4928.02(H) and 4928.17, Revised Code. IEU submits that Section 4928.02(H), Revised Code, prohibits the recovery of any generation-related costs through distribution or transmission rates after corporate separation is effective.

In response, AEP-Ohio notes that the IEU made the same arguments in its application for rehearing of the August 8 Order which were rejected by the Commission in the January 30 EOR. AEP-Ohio recommends that the Commission decline to consider the argument again on rehearing.

In yet another attempt to support its arguments about Section 4928.02(H), Revised Code, IEU overstates the January 30 EOR and the Sporn Decision.[2] We thoroughly considered and addressed these claims in the January 30 EOR. IEU fails to raise any new arguments which persuade the Commission that approval of the PTR violates Sections 4928.02(H) and 4928.17, Revised Code. Thus, we must again deny IEU's request for rehearing.

It is, therefore,

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2 *In re Ohio Power Company*, Case No. 10-1454-EL-RDR, Finding and Order (January 11, 2012).

ORDERED, That the applications for rehearing of the January 30 EOR filed by OCC and IEU are denied as discussed herein. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

M. Beth Trombold

GNS/JJT/vrm

Entered in the Journal

MAR 27 2012

Barcy F. McNeal
Secretary

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of The Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143 Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Supreme Court Case No. 13-0521
In the Matter of the Application of Columbus Southern Power Company and Ohio Power company for Approval of Certain Accounting Authority.	))))	Third Appeal from the Public Utilities Commission of Ohio Case Nos. 11-346-EL-SSO, 11-348-EL-SSO ; 11-349-EL-AAM, and 11-350-EL-AAM.

THIRD NOTICE OF APPEAL
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

FILED
MAY 23 2013
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SUPREME COURT OF OHIO

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THIRD NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel ("OCC"), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(A)(2), 3.11(C)(2), and 10.02, hereby gives notice to this Court and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of this third appeal from decisions of the PUCO issued in the Electric Security Plan proceedings of Columbus Southern Power Company and Ohio Power Company ("Ohio Power Company collectively"), Case No. 11-346-EL-SSO et al. The decisions being appealed are the PUCO's Opinion and Order entered in its Journal on August 8, 2012, and the PUCO's two Entries on Rehearing entered in its Journal on January 30, 2013, and March 27, 2013.[1] At issue in this appeal are approximately $504 million in unjustified retail stability rider charges and $647 million in capacity costs (plus financing costs) that will be collected from nearly 1.2 million customers of the Ohio Power Company over the next five years.

Appellant is the statutory representative, as established under R.C. Chapter 4911, of Ohio Power Company's 1.2 million residential customers. OCC was a party of record in the above-referenced PUCO cases.

On September 7, 2012, OCC and the Appalachian Peace and Justice Network ("APJN") jointly filed, in accordance with R.C. 4903.10, an Application for Rehearing from the PUCO's August 8, 2012 Opinion and Order. By Entry dated October 3, 2012, the PUCO granted rehearing for further consideration of the matters specified in numerous parties' applications for rehearing. The PUCO issued its first substantive Entry on Rehearing on January 30, 2013, granting in part, OCC/APJN's Application for Rehearing. On March 1, 2013, OCC filed a second Application for Rehearing, in accordance with R.C. 4903.10, limited to the PUCO's new

[1] Per S.Ct.Prac.R. 10.02(A)(2), the decisions being appealed are attached.

findings pertaining to the retail stability rider. On March 27, 2013, the PUCO denied OCC's second Application for Rehearing.

Appellant files this Notice of Appeal complaining of errors in the PUCO's August 8, 2012 Opinion and Order, and the two PUCO Entries on Rehearing. OCC alleges that the decisions are unlawful and unreasonable in that the PUCO failed to follow the law and its decisions were unjust and unreasonable. In particular, the PUCO erred in the following respects, all of which were raised in OCC/APJN's Joint Application for Rehearing and OCC's subsequent March 1, 2013 Application for Rehearing:

1. The PUCO erred in unreasonably and unlawfully approving, in violation of R.C. 4928.143(B)(2)(d), a $504 million retail stability charge that requires customers to compensate Ohio Power Company for the profits it has lost on generation sales in the competitive retail electric generation market in Ohio.

2. The PUCO erred in unreasonably and unlawfully authorizing Ohio Power Company to collect from all retail customers (as part of the retail stability rider) the estimated $647 million difference between its cost of capacity and the discounted wholesale capacity rate it charges Competitive Retail Electric Service ("CRES") providers. The PUCO had no jurisdiction under Chapter 4928 to authorize such a collection. Moreover, permitting the utility to charge retail customers for the wholesale capacity discount to CRES providers will cause non-shopping customers to pay twice for capacity—a result that is unjust, unreasonable, contrary to public policy, and unlawful, violating R.C. 4928.141, R.C. 4928.02, and tariffs approved by the Federal Energy Regulatory Commission.

WHEREFORE, OCC respectfully submits that the PUCO's August 8, 2012 Opinion and Order, and its two Entries on Rehearing, are unreasonable and unlawful, and should be reversed or modified with instructions to the PUCO to correct the errors complained of herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Third Notice of Appeal by the Office of the Ohio Consumers' Counsel was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the Office of the Chairman in Columbus and upon all parties of record via electronic transmission this 23rd day of May 2013.

Maureen R. Grady
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CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal of the Office of the Ohio Consumers' Counsel was filed with the docketing division of the Public Utilities Commission of Ohio as required by Ohio Adm. Code 4901-1-02(A) and 4901-1-36.

Maureen R. Grady, Counsel of Record
Counsel for Appellant
The Office of the Ohio Consumers' Counsel

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

Table of Contents

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

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Chad A. Endaley, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43218, on behalf of the Ohio Farm Bureau Federation.

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Matthew Cox Law, Ltd., by Matthew Cox, 4145 St. Theresa Boulevard, Avon, Ohio 44011, on behalf of the Council of Smaller Enterprises.

Williams, Allwein & Moser, by Todd M. Williams, Two Maritime Plaza, Toledo, Ohio 43604, on behalf of the Ohio Business Council for a Clean Economy.

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OPINION:

I. HISTORY OF THE PROCEEDINGS

A. First 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. The ESP 1 Order 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. 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 incurred after January 1, 2009, on past environmental investments (2001-2008) that were not previously reflected in the Companies' existing rates prior to the ESP 1 Order. In addition, the Commission found that the provider of last resort (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 provider of last resort (POLR_ charges authorized in the ESP Order and file revised tariffs consistent with the order on remand.

B. Initial Proposed 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.

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),[1] 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),[2] PJM Power Providers Group (P3), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

1 Subsequently, OPAE filed a motion to withdraw from the ESP 2 proceedings and the request granted in the Commission's December 14, 2011 Order.

2 On August 4, 2011, DWEA filed a motion to withdraw from the ESP 2 proceedings. DWEA's request to withdraw was granted in the December 14, 2011 Order.

(Constellation), COMPETE Coalition (Compete), Natural Resources Defense Council (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).

On September 7, 2011, numerous parties (Signatory Parties) to the ESP 2 proceedings filed a Joint Stipulation and Recommendation (Stipulation). The Stipulation proposed to resolve the ESP 2 cases as well as a number of other related AEP-Ohio matters pending before the Commission.[3] The evidentiary hearing in the ESP 2 cases was consolidated with the related proceedings for the sole purpose of considering the Stipulation. On December 14, 2011, the Commission issued its Opinion and Order, concluding that the Stipulation, as modified by the order, should be adopted and approved. As part of the December 14, 2011, Order, the Commission approved the merger of CSP with and into OP, with OP as the surviving entity.[4]

Several applications for rehearing of the Commission's December 14, 2011, Order in the ESP 2 and consolidated cases were filed. On February 23, 2012, the Commission issued its Entry on Rehearing finding that the Stipulation, as a package, did not benefit ratepayers and was not in the public interest and, thus, did not satisfy the three-part test for the consideration of stipulations. AEP-Ohio was directed to provide notice to the Commission within 30 days whether it intended to modify or withdraw its ESP.

C. Pending Modified Electric Security Plan

On March 30, 2012, AEP-Ohio filed a modified ESP (modified ESP) for the Commission's consideration. As proposed, the modified ESP would commence June 1, 2012, and continue through May 31, 2015. As proposed in the application, the Company states for all customer classes, customers in the CSP rate zone will experience, on average, an increase of two percent annually and customers in the OP rate zone will experience, on average, an increase of four percent annually. The modified ESP proposes the recovery of other costs through riders during the term of the electric security plan. In addition, the

3 Including 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 OP in Case No. 10-2376-EL-UNC (Merger Case); the Commission review of the state compensation mechanism for the capacity charge to be assessed on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity 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 (Phase-in Recovery Cases).

4 By entry issued on March 7, 2012, the Commission again approved and confirmed the merger of CSP into OP, effective December 31, 2011, in the Merger Case.

modified ESP contains provisions addressing distribution service, economic development, alternative energy resource requirements, and energy efficiency requirements.

The modified ESP also sets forth that AEP-Ohio will begin an energy auction for 100 percent of its SSO load beginning in 2015, with full delivery and pricing through a competitive auction process for AEP-Ohio's SSO customers beginning in June 2015. Beginning six months after the final order in the modified ESP case, the application states AEP-Ohio will begin conducting energy auctions for five percent of the SSO load. In addition, the modified ESP provides for the elimination of American Electric Power Corporation's East Interconnection Pool Agreement and describes the plan for corporate separation of AEP-Ohio's generation assets from its distribution and transmission assets.

In addition to the parties previously granted intervention in this matter, following AEP-Ohio's submission of its modified ESP, the following parties, were granted intervention on April 26, 2012: Interstate Gas Supply, Inc. (IGS); The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, Ohio Schools); Ohio Farm Bureau Federation; Ohio Restaurant Association; Duke Energy Ohio, Inc. (Duke); Duke Energy Commercial Asset Management Inc. (DECAM); Direct Energy Services, LLC and Direct Energy Business, LLC (Direct); The Ohio Automobile Dealers Association (OADA); The Dayton Power and Light Company; The Ohio Chapter of the National Federation of Independent Business (NFIB); Ohio Construction Materials Coalition; Council of Smaller Enterprises; Border Energy Electric Services, Inc.; University of Toledo Innovation Enterprises Corporation; Summit Ethanol, LLC d/b/a POET Biorefining-Leipsic and Fostoria Ethanol, LLC d/b/a POET Biorefining-Fostoria (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; IBEW Local Union 1466 (IBEW); city of Hillsboro, Ohio; and CPV Power Development, Inc.

D. Summary of the Hearings on Modified Plan

1. Local Public Hearings

Four local public hearings were held in order to allow AEP-Ohio's customers the opportunity to express their opinions regarding the issues raised within the modified application. Public hearings were held in Canton, Columbus, Chillicothe, and Lima. At the local hearings, a total of 67 witnesses[5] offered testimony: 17 witnesses in Canton, 31 witnesses in Columbus, 10 witnesses in Chillicothe, and nine witnesses in Lima. In addition to the public testimony, numerous letters were filed in the docket regarding the proposed ESP applications.

5 One witness, Doug Leuthold, testified at both the Columbus and Lima public hearings.

At each of the public hearings, numerous witnesses testified in support of AEP-Ohio's modified ESP. Specifically, many witnesses testified on behalf of community groups and non-profit organizations that praised AEP-Ohio's charitable support to their organizations. Witnesses that testified in favor of the modified ESP also noted that AEP-Ohio maintains a positive corporate presence and promotes economic development endeavors throughout its service territory. Members of local unions testified in support of AEP-Ohio's proposal, explaining it would not only allow AEP-Ohio to retain jobs, but also create new jobs as AEP-Ohio continues to expand its infrastructure throughout the region.

Several residential customers testified at the public hearings in opposition to AEP-Ohio's modified ESP, noting an increase in customer rates would be burdensome in light of the current economic recession. Many of these witnesses pointed out that low-income and fixed-income residential customers would be particularly vulnerable to any rate increases. Several witnesses also argued that the proposed application might limit customers' ability to shop for a CRES supplier.

In addition, many witnesses testified on behalf of small business and commercial customers. These witnesses argued the proposed rate increases would be burdensome on small businesses who cannot take on any electric rate increases without either laying off employees or passing costs on to customers. Representatives on behalf of school districts also testified that the modified ESP could create a financial strain on schools throughout AEP-Ohio's service territory.

2. Evidentiary Hearing

The evidentiary hearing commenced on May 17, 2012. Twelve witnesses testified on behalf of AEP-Ohio, 10 witnesses on behalf of the Staff, and 54 witnesses offered testimony on behalf of various interveners to the cases. In addition, AEP-Ohio offered three witnesses on rebuttal. The evidentiary hearing concluded on June 15, 2012. Initial briefs and reply briefs were due June 29, 2012, and July 9, 2012, respectively. For those parties that filed a brief or reply brief addressing select issues, oral arguments were held before the Commission on July 13, 2012.

E. Procedural Matters

1. Motions to Withdraw

On May 4, 2012, the city of Hilliard filed a notice requesting to withdraw as an intervenor from the modified ESP cases. Also on May 4, 2012, IBEW filed a notice stating that it intends to withdraw as an intervenor in these proceedings. The Commission finds IBEW's and Hilliard's requests to withdraw reasonable and should be granted.

2. Motions for a Protective Order

On May 2, 2012, AEP-Ohio filed a motion for a protective order, seeking protective treatment of supplemental testimony and corresponding exhibits of AEP-Ohio witness Nelson containing confidential and proprietary information relating to the Turning Point Solar project (Turning Point). On May 4, 2012, OMAEG filed a motion for a protective order relating to proprietary business information of OSCO Industries, Summitville Tiles, Belden Brick, Whirlpool Corporation, Lima Refining, and AMG Vanadium. Also, on May 4, 2012, IEU filed a motion for a protective order seeking to protect confidential and proprietary information contained within witness Kevin Murray's testimony. FES filed a motion for protective treatment on May 4, 2012, for confidential items contained in attachments to witness Jonathan Lesser's testimony. In addition, Exelon filed a motion for protective order seeking protection of confidential and proprietary information contained within witness Fein's direct testimony. On May 11, 2012, AEP-Ohio filed an additional motion for protective order to support the protection of confidential AEP-Ohio information contained within IEU witness Murray, FES witness Lesser, and Exelon witness Fein's testimony. Finally, on the record in these proceedings May 17, 2012, AEP-Ohio also sought the continuation of protective treatment of exhibits attached to AEP-Ohio witness Jay Godfrey, as previously set forth in AEP-Ohio's July 1, 2011, motion for a protective order (Tr. at 24).

At the evidentiary hearing on May 17, 2012, the attorney examiners granted the motions for protective order, finding the information specified within the parties' motions constitutes confidential, proprietary, and trade secret information, and meets the requirements contained within Rule 4901-1-24, Ohio Administrative Code (O.A.C.) (*Id.* at 23-24). Rule 4901:1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders prohibiting public disclosure pursuant to Rule 4901:1-24(D), O.A.C., shall automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this order, until February 8, 2014. Until that date, the Docketing Division should maintain, under seal, the conditional diagrams, filed under seal. Rule 4901:1-24(F), O.A.C., requires any party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to the parties.

In addition, on June 29, 2012, IEU and Ormet filed motions for protective order regarding items contained within their initial briefs. Specifically, both the information for which IEU and Ormet's are seeking confidential treatment was already determined to be confidential in the evidentiary hearing and was discussed in a closed record. On July 5, 2012, AEP-Ohio filed a motion for protective order over the items contained within Ormet and IEU's briefs, noting that it contains proprietary and trade secret information. On July 9, Ormet filed an additional motion for protective order for the same information, which it also included in its reply brief filed on July 9, 2012. Similarly, AEP-Ohio filed a motion for protective order on July 12, 2012, in support of Ormet's motion, as it contains AEP-Ohio's confidential trade secret information. As the attorney examiners previously found the information contained within the IEU and Ormet's initial briefs and Ormet's reply brief was confidential in the evidentiary hearing, we affirm this decision and find that confidential treatment shall be afforded for a period ending 18 months from the date of this order, until February 8, 2014.

3. Requests for Review of Procedural Rulings

IEU argues that the record improperly includes evidence of stipulations as precedent. Specifically, IEU argues that several witnesses relied on Duke Energy-Ohio's ESP to indicate that certain proposed riders were appropriate. IEU also points out that a witness relied on AEP-Ohio's distribution rate case stipulation as evidence of AEP-Ohio's capital structure. IEU claims that these stipulations expressly state that no party or Commission order may cite to a stipulation as precedent, and accordingly, IEU requests that the references to stipulations be struck.

The Commission finds that IEU's request to strike portions of the record should be denied. We acknowledge that individual components agreed to by parties in one proceeding should not be binding on the parties in other proceedings, but we find that references to other stipulations in this proceeding were limited in scope and did not create any prejudicial impact on parties that signed the stipulations. Consistent with our Finding and Order in Case No. 11-5333-EL-UNC, we also note that, while parties may agree not to be bound by the provisions contained within a stipulation, these limitations do not extend to the Commission.

In addition, IEU claims the attorney examiners improperly denied IEU's motions to compel discovery. In its motions to compel discovery, IEU sought information related to AEP-Ohio's forecasts of the RPM price for capacity, which IEU alleges would have provided information relating to the transfer of AEP-Ohio's Amos and Mitchell generating units.

The Commission finds the attorney examiners' denials of IEU's motions to compel discovery were proper and should be upheld. As noted in AEP-Ohio's memorandum contra the motion to compel, the information IEU sought relates to AEP-Ohio forecasts beyond the period of this modified ESP. As these proceedings relate to the appropriateness of AEP-Ohio's modified ESP, we find that any forecasts beyond the terms contained within AEP-Ohio's application are irrelevant and unlikely to lead to discoverable information. Accordingly, the attorney examiners' ruling is affirmed.

On July 13, 2012, OCC filed a motion to strike four specific portions of AEP-Ohio's reply brief at pages 29-30, 33-34, 68-69, 97-99, including footnotes, and attachments A and

B, as OCC asserts the information is not based on the record in the modified ESP proceeding but reflects the Commission's Order issued in the Capacity Case on July 2, 2012. OCC submits that the Commission has previously recognized that "it is improper to rely on claims in the brief that are unsupported by evidence within the record." In this instance, OCC points out that AEP-Ohio attached to its reply brief, documents that were not part of the record evidence or designated late-filed exhibits, a statement by Standard and Poor's (Attachment A) and the Company's recalculation of its ESP/MRO test (Attachment B) based on the Commission's decision in the Capacity Case. Since neither document is part of the modified ESP record evidence, OCC reasons that the attachments are hearsay which are not excused by any exception to the hearsay rule. OCC also notes that the reply brief includes discussion of recent storms in the Midwest and the East Coast, and there is nothing in the record regarding the strength of the winds or the ability of the Company's system to withstand hurricane force winds. Furthermore, neither the attachments nor AEP-Ohio's assertions was subjected to cross-examination by the parties nor the parties afforded an opportunity to rebut the associated arguments of the Company. For these reasons, OCC requests that Attachments A and B and the specified portions of the reply brief be stricken.

In its memorandum contra, AEP-Ohio asserts that discussion of matters related to the Commission's Capacity Case decision were appropriate. AEP-Ohio notes that it is fair to rely on a Commission opinion and order and reasonable to consider the impact of the Capacity Case on these proceedings, as evidenced by Commission questions during the oral arguments held on July 13, 2012. In addition, AEP-Ohio points out that several parties' reply briefs also included significant discussion of the impact of the Capacity Case on the modified ESP. Similarly, AEP-Ohio notes that the attachments indicate the financial impact of the Capacity Case on AEP-Ohio, and that the items are consistent with the testimony of AEP-Ohio witness Hawkins. Finally, AEP-Ohio provides that its references to major storms that occurred this summer relate to customer expectations and AEP-Ohio's need for the DIR.

The Commission finds that OCC's motion to strike portions of AEP-Ohio's reply brief should be denied. The Company's reply brief reports the impact of the Commission's Order in the Capacity Case based on subject matters and information subjected to extensive cross-examination by the parties in the course of this proceeding. Furthermore, several of the parties to this proceeding discuss in their respective reply briefs the Order in the Capacity Case. For these reasons, we conclude that it would be improper to strike the portions of AEP-Ohio's reply brief, including Attachment B, which reflect AEP-Ohio's interpretation of the Commission Capacity Order as requested by OCC. We, likewise, deny OCC's request to strike the Company's reference to recent storms, where the Company offered support for its position on customer reliability expectations. Customer service reliability was an issue raised and discussed by AEP-Ohio as well as OCC. However, Attachment A to the Company's reply brief is a July 2, 2012 statement by

Standard & Poor's regarding the effect of the Commission's Capacity Charge Order, and should be stricken. We find that the Company's Attachment A is not part of the record and should not be considered by the Commission in this proceeding.

On July 20, 2012, OCC/APJN filed a motion to take administrative notice of several items contained within the record of the Capacity Case. Specifically, OCC/APJN seek administrative notice of pages 3, 9, and 12 of the direct testimony of AEP-Ohio witness Munczinski, pages 19-20 of the rebuttal testimony of AEP-Ohio witness Allen, pages 304, 348-350, and 815 of the hearing transcripts, and AEP-Ohio's post-hearing initial and reply briefs. OCC/APJN opine that the record should be expanded to include these materials in order to have a more thorough record on issues pertaining to customer rates. Further, OCC/APJN state that no parties would be prejudiced as parties, particularly those involved in the Capacity Case, who had opportunities to explain and rebut these items.

AEP-Ohio filed a memorandum contra OCC/APJN's motion on July 24, 2012. AEP-Ohio argues that OCC/APJN improperly seeks to add documents into the record at this late stage, is not only inappropriate, but also unnecessary as there are no further actions to these proceedings except the Commission opinion and order and rehearing. AEP-Ohio notes the Commission has broad discretion in handling its proceedings, but points out that the small subset of information could have a prejudicial effect to parties, and due process would require that other parties be permitted to add other items to the record. In addition, AEP-Ohio explains that OCC/APJN had the opportunity in the ESP proceedings to further explore areas of the Capacity Case that were related to parts of the modified ESP.

On August 6, 2012, FES also filed a memorandum contra OCC/APJN's motion. On August 7, 2012, OCC/APJN filed a motion to strike FES's memorandum contra. In support of its motion to strike, OCC/APJN argues that FES filed its memorandum contra 17 days after OCC/APJN filed its motion, past the procedural deadlines established by attorney examiner entry issued April 2, 2012. The Commission finds that OCC/APJN's motion to strike FES's memorandum contra OCC/APJN's motion should be granted. By entry issued April 2, 2012, the attorney examiner set an expedited procedural schedule establishing that any memoranda contra be filed within five calendar days after the service of any motions. Therefore, as FES filed its memorandum contra 17 days after OCC/APJN filed its motion, OCC/APJN's motion to strike shall be granted.

The Commission finds that OCC's motion to take administrative notice should be denied. AEP-Ohio correctly points out that the timing of OCC/APJN's request is troublesome and problematic. While the Commission has broad discretion to take administrative notice, it must be done in a manner that does not harm or prejudice any other parties that are participating in these proceedings. Were the Commission to take notice of this narrow window of information, we would be allowing a party to supplement the record in a misleading manner. Further, while we acknowledge that parties may rely on the Commission's order in the Capacity Case, as it speaks for itself, to show effects on items in this proceeding, to exclusively select narrow and focused items in an attempt to supplement the record is not appropriate. Accordingly, we deny OCC's motion.

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, 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, 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 modified 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. Analysis of the Application

1. Base Generation Rates

As part of its modified ESP application, AEP-Ohio proposes to freeze base generation rates until all rates are established through a competitive bidding process. AEP-Ohio maintains that the fixed pricing is a benefit to customers by providing reasonably priced electricity in furtherance of Section 4928.02(A), Revised Code. AEP-Ohio explains that while the base generation rates will remain frozen, it will relocate the current Environmental Investment Carrying Cost Rider (EICCR) into the base generation rates, which will result in the elimination of the EICCR. AEP-Ohio witness Roush provides the change is merely a roll in and will be "bill neutral" for all AEP-Ohio customers (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 111 at 10-11).

While AEP-Ohio's base generation rates will be frozen under the modified ESP, AEP-Ohio witness Roush notes that the generation rates are based on cost relationships, and include cross-subsidies among tariff classes, which, upon class rates being based on an auction, may result in certain customer classes being disproportionately impacted by rate changes. Mr. Roush notes that residential customers with high winter usage may face unexpected impacts, but that a possible solution may be to phase-out lower rates for high winter usage customers (*Id.* at 14-15).

OADA supports the adoption of the base generation rate design as proposed, advocating that the consistency in the rate design is beneficial for GS-2 customers (OADA Br. at 2). OCC and APJN claim that frozen base generation rates is not a benefit to customers, as the price of electricity offered by CRES providers have declined and may continue to decline through the term of the ESP (OCC Ex. 111 at 15). OCC and APJN also point out that the inclusion of numerous riders, including the retail stability rider (RSR) and the deferral created in the Capacity Case will result in increases in the rates residential customers continue to pay. (OCC/APJN Br. at 43-44.)

The Commission finds that AEP-Ohio's proposed base generation rates are reasonable. We note that AEP-Ohio's base generation rate design was generally unopposed, as most parties supported AEP-Ohio's proposal to keep base generation rates frozen. Although OCC and APJN conclude that the base generation rate plan does not benefit customers, OCC and APJN failed to justify their assertion and offer no evidence within the record other than the fact that the modified ESP contains several riders. Accordingly, the modified ESP's base generation rates should be approved. In addition, as AEP-Ohio raised the possibility of disproportionate rate impacts on customers when class rates are set by auction, we direct the attorney examiners to establish a new docket within

90 days from the date of this opinion and order and issue an entry establishing a procedural schedule to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts for customers upon rates being set by auction. Further, the Commission reserves the right to implement a new base generation rate design on a revenue neutral basis for all customer classes at any time during the term of the modified ESP.

2. Fuel Adjustment Clause and Alternative Energy Rider

(a) Fuel Adjustment Clause

The Commission approved the current fuel adjustment clause (FAC) mechanism in the Company's ESP 1 case pursuant to Section 4928.143(B)(2)(a), Revised Code.[6] In this modified ESP application, AEP-Ohio requests continuation of the current FAC mechanism, with modifications. The Company proposes to modify the FAC by separating out the renewable energy credit (REC) expense component of the fuel clause and recovering the REC expense through the newly proposed alternative energy rider (AER) mechanism. The Company also requests approval to unify the CSP and OP FAC rates into a single FAC rate effective June 2013. AEP-Ohio reasons that delaying unification of the FAC rates until June 2013, to coincide with the implementation of the Phase-In Recovery Rider (PIRR), limits the impact on both CSP and OP rate zones which results in a net decrease in rates of $0.69 per megawatt hour (MWh) for a typical CSP transmission voltage customer and a net increase in rates of $0.02 per MWh for a typical OP transmission voltage customer. (AEP-Ohio Ex. 111 at 5-6; AEP-Ohio Ex. 103 at 14-20.)

Beginning January 1, 2014, after corporate separation is effective, AEP-Ohio's generation affiliate, AEP Generation Resources Inc. (GenResources), will bill AEP-Ohio its actual fuel costs in the same manner and detail as currently performed by AEP-Ohio, and the costs will continue to be recovered through the FAC. As a component of the modified ESP, AEP-Ohio proposes that as of January 1, 2015, all energy and capacity to serve the Company's SSO load be supplied by auction, whereupon the FAC mechanism will no longer be necessary. (AEP-Ohio Ex. 103 at 14-20.)

In opposition to the FAC, Ormet argues that the FAC has caused significant increases in the cost of electric service, rising 22 percent for GS-4 customers since 2011. Ormet asks that the Commission temper the impact of FAC increases and improve the transparency of the cause for increasing FAC costs, as well as reconsider the FAC rate design, to avoid cost shifts between low load factor customers and high load factor customers. Ormet, a 98.5 percent load factor customer, asserts that it pays an equal share of the FAC costs as a customer that uses all its energy on-peak. As such, Ormet contends that the FAC rate design violates the principle of cost causation. Ormet suggests that this

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6 In re *AEP-Ohio*, ESP 1 Order at 13-15 (March 18, 2009).

modified ESP presents the Commission with the opportunity, as it is within the Commission's jurisdiction, to redesign the FAC, such that FAC costs are separated into charges which reflect on-peak and off-peak usage. (Ormet Ex. 106B at 19; Ormet Br. at 13-15; Ormet Reply Br. at 14-16.)

The Company responds that Ormet's arguments on the FAC reflect improper calculations and is based on forecasted FAC rates. More importantly, AEP-Ohio points out that the FAC is ultimately based on actual FAC costs and any increases in the FAC rate cannot appropriately be attributed to the modified ESP. Ormet is served by AEP-Ohio pursuant to a unique arrangement and as such avoids charges that other similarly situated customers pay; however, the Company requests that Ormet not be permitted to avoid fuel costs. (AEP-Ohio Reply Br. at 5-6.)

The Commission notes that currently, through the FAC mechanism, AEP-Ohio recovers prudently incurred fuel and associated costs, including consumables related to environmental compliance, purchase power costs, emission allowances, and costs associated with carbon-based taxes. We note that, since January 1, 2012, AEP-Ohio has been collecting its full fuel expense and no further fuel expenses are being deferred.

We interpret Ormet's arguments to more accurately request the institution of a fuel rate cap on the FAC or to revise the FAC rate design. The Commission rejects Ormet's request to review and redesign the FAC. The FAC rate mechanism is reconciled to actual FAC costs each quarter and annually audited for accounting accuracy and prudency. Furthermore, as AEP-Ohio notes, Ormet's rates are set pursuant to its unique arrangement as opposed to the Company's SSO rates paid by other high load industrial and commercial customers. By way of Ormet's unique arrangement, Ormet is provided some rate stability and rate certainty and we see no need to redesign the FAC for Ormet's benefit. No other intervener took issue with the continuation and the proposed modification of the FAC. The Commission finds that the FAC rates should continue on a separate rate zone basis. We note that there are a few Commission proceedings pending that will affect the FAC rate for each rate zone which the Commission believes will be better reviewed and adjusted if the FAC mechanisms remain distinguishable. Further, as discussed, below, maintaining FAC rates on a separate basis is necessary to be consistent with our decision regarding recovery of the PIRR.

(b) <u>Alternative Energy Rider</u>

As noted above, AEP-Ohio proposes to begin recovery of REC expenses, associated with renewable energy purchase agreements (REPAs) or REC purchases by means of the new AER mechanism to be effective with this modified ESP. With the proposed modification, the Company will continue to recover the energy and capacity components of renewable energy cost through the FAC, until the FAC expires. After the FAC ends, energy and capacity associated with REPAs will be sold into the PJM Interconnection, LLC

(PJM) market and offset the total cost of the REPAs, with the balance of REC expense to be recovered from SSO customers through the AER. AEP-Ohio proposes that the AER be bypassable for shopping customers. The Company also proposes that where the REC is part of the REPA, the value of each component be based on the residual method using the monthly average PJM market price to value the energy component, the capacity will be valued using the price at which it can be sold into the PJM market and the remaining value would constitute the cost of the REC. The AER mechanism, according to AEP-Ohio, is consistent with Section 4928.143(B)(2)(a), Revised Code, and is essentially a partial unbundling of the FAC to provide greater price visibility of prudently-incurred REC compliance costs under Section 4928.66, Revised Code. The Company will make quarterly filings, in conjunction with the FAC, to facilitate the audit of the AER. AEP-Ohio reasons that the establishment of the AER for recovery of costs is uncontested, reasonable, and should be approved. The Company argues continuation and unification of the FAC and development and implementation of the AER, is reasonable and should be approved. (AEP-Ohio Ex. 103 at 18-19.)

Staff endorses the Company's requests to continue and consolidate the FAC rates for CSP and OP rate zones and to reclassify the RECs and REPA components for recovery through the AER, as proposed by the Company. However, Staff recommends that annual AER audit procedures be established and that the AER audit be conducted by the same auditor and in conjunction with the FAC audit to determine the appropriateness and recoverability of costs as a part of and between the AER and FAC mechanisms. As to the allocation of cost components, Staff agrees with the Company's proposal to allocate cost components of bundled products but suggests that the auditor detail how to best determine the cost components and how to apply the allocation to specific situations in the context of the FAC/AER audits. Staff recommends, and the Company agrees, that the auditor's allocation process be applied to AEP-Ohio's renewable generation from existing generation facilities. (Staff Ex. 104 at 2-3.)

No party took exception to the implementation of the AER mechanism. As proposed by AEP-Ohio, continuation of the FAC and establishment of the AER, through this modified ESP, is consistent with Section 4928.143(B)(2)(a), Revised Code, for the recovery of prudently incurred fuel costs and fuel-related costs and alternative energy and associated costs. We find the Company's proposal to continue the FAC and create the AER to better distinguish fuel and alternative energy costs to be reasonable and appropriate during the term of the modified ESP. We approve the continuation of the FAC and implementation of the AER mechanisms, consistent with the audit recommendations made by Staff. The next audit of AEP-Ohio's FAC shall also include an audit of the AER mechanisms and the allocation method for classification of the REPA components and their respective values. In all other respects, the Commission approves the continuation of the FAC rate mechanisms and the creation of the AER rate mechanism for each rate zone.

3. Timber Road

AEP-Ohio states that it conducted a request for proposal (RFP) process to competitively bid and secure additional renewable resources. As a result of AEP- Ohio's need for in-state renewables, AEP-Ohio only considered bids for projects in Ohio, and ultimately selected the proposal from Paulding for its Timber Road wind farm. Specifically, the Timber Road REPA will provide AEP-Ohio a 99 MW portion of Timber Road's electrical output, capacity and environmental attributes for 20 years as necessary for the Company to meet its increasing renewable energy benchmarks as required by Section 4928.64(C)(3), Revised Code. (AEP-Ohio Ex. 109 at 10-15; Paulding Ex. 101 at 1-4.)

AEP-Ohio testified that the 20-year agreement facilitates long-term financing by the developer, reduces up front costs, and allows for price certainty for AEP-Ohio customers. Paulding offers that although 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. AEP-Ohio argues that the Timber Road REPA provides the Company and its customers, with access to affordable renewable energy from an in-state resource supporting the state policy to facilitate the state's effectiveness in the global economy, Section 4928.02(N), Revised Code. (AEP-Ohio Ex. 109 at 16-18; Paulding Ex. 101 at 4-5.)

Staff supports AEP-Ohio's REPA with Paulding and the Timber Road contract as reasonable and prudent. Accordingly, Staff advocates its approval and that AEP-Ohio be permitted to recover costs associated with energy, capacity, and RECs outlined in the contract, subject to annual FAC and AER audits. The Company agrees with Staff that the implementation of the Timber Road REPA should be subject to the FAC and AER audit, as offered in the testimony of AEP-Ohio witness Nelson. AEP-Ohio commits to acquiring RECs to meet its portfolio requirements on behalf of its SSO load and to recover the costs through the AER once the FAC is terminated. (Staff Ex. 103 at 2-3; Tr. at 2498-2499; AEP-Ohio Ex. 103 at 18.)

The Commission finds that the long-term Timber Road REPA promotes diversity of supply, consistent with state policies set forth in Section 4928.02, Revised Code. Further, based on the evidence of record, the Timber Road project benefits Ohio consumers and supports the Ohio economy. Accordingly, the Commission finds it reasonable and appropriate to allow the Company to recover the cost of the Timber Road REPA through the bypassable FAC/AER mechanisms.

4. Generation Resource Rider

AEP-Ohio requests establishment of a non-bypassable, Generation Resource Rider (GRR) pursuant to Section 4928.143(B)(2), Revised Code, to recover the cost of new generation resources including, but not limited to, renewable capacity that the Company owns or operates for the benefit of Ohio customers. At this time, the Company proposes the rider as a placeholder and expects that the only project to be included in the GRR will be the Turning Point facility, assuming need is established in Case Nos. 10-501-EL-FOR and 10-502-EL-FOR.[7] To be clear, although the Company provided an estimate of the revenue requirement for the Turning Point project, as requested by the Commission, AEP-Ohio is not seeking recovery of any costs for the Turning Point facility in this ESP. The Company asks that the GRR be established at zero with the amount of the rider to be determined, and the remaining statutory requirements to be met, as part of a subsequent Commission proceeding. (AEP-Ohio Ex. 103 at 20-21; AEP-Ohio Ex. 104; Tr. at 2514, 599, 1170, 2139-2140.)

UTIE encourages the Commission's approval of the GRR as a regulatory mechanism pursuant to the authority granted under Section 4928.143(B)(2)(c), Revised Code, to adopt a non-bypassable surcharge for new electric generation (UTIE Br. at 1-2). NRDC and OEC support the proposed GRR, including the Timber Road REPA and the Turning Point project, with certain modifications, as permitted under Section 4928.143(B)(2)(c), Revised Code. NRDC and OEC recommend that the GRR be limited to only renewable and alternative energy projects or qualified energy efficiency projects, and also recommend that the Company develop a crediting system to ensure that shopping customers do not pay twice for renewable energy. NRDC and OEC reason that AEP-Ohio could make the RECs available to CRES providers based on the CRES provider's share of the load served or by liquidating the RECs in the market and crediting the revenue to the GRR. (NRDC Ex. 101 at 11; NRDC/OEC Reply Br. at 1.)

However, while Staff does not foresee any need for additional generation by AEP-Ohio, Staff and UTIE acknowledge and endorse the adoption of the GRR mechanism to facilitate the Commission's allowance for the construction of new generation facilities (Staff Ex. 110 at 7; Tr. at 4599; UTIE Reply Br. 1-2).

On the other hand, numerous interveners oppose the adoption of the GRR. IGS requests that the Commission reject the GRR or if it is not rejected, that the GRR be made bypassable or modified so the benefits flow to shopping customers (IGS Ex. 101 at 27-28). Wal-Mart requests that the GRR not be imposed on shopping customers because approval of a non-bypassable GRR would violate cost causation principles, send an incorrect price signal, and cause shopping customers to pay twice but receive no benefit (Wal-Mart Ex. 101 at 5-6).

7 A stipulation between the Company and the Staff was filed agreeing, among other things, that as a result of the requirements of Sections 4928.143(B)(2)(c) and 4928.64(B)(2), Revised Code, which require AEP-Ohio to obtain alternative energy resources including solar resources in Ohio, the Commission should find that there is a need for the 49.9 MW Turning Point Solar project. The Commission decision in the case is pending.

RESA and Direct contend that the GRR will inhibit the growth of the competitive retail electric market and violates the state policy set forth in Section 4928.02(H), Revised Code, which prohibits the collection of generation-based rates through a non-bypassable rider. Similarly, IGS reasons that the GRR is intended to recover the cost for new generation to serve SSO customers and, therefore, the GRR amounts to an anticompetitive subsidy on CRES providers for the benefit of noncompetitive retail electric service, or, according to Wal-Mart, requires shopping customers to pay twice. IGS recommends that AEP-Ohio develop renewable energy projects on its own with recovery through market prices. RESA and Direct reason that AEP-Ohio's request is premature and creates uncertainty for CRES providers who are also required to comply with Ohio's renewable energy portfolio standards. RESA and Direct contend that, to the extent the Commission adopts the GRR, the GRR should not be assessed to shopping customers. RESA and Direct propose that the GRR be set at zero and incorporation of the Turning Point project or other facilities should occur in a separate case. (RESA Ex. 102 at 12; RESA/Direct Br. 18-21; IGS Br. at 13; Wal-Mart Ex. 101 at 5.)

To make the GRR benefit shopping and non-shopping customers, IGS suggests that AEP-Ohio sell the generated electricity on the market with revenues to be credited against the GRR or the renewable energy credits used to meet the requirements for all customers. IGS notes that AEP-Ohio witnesses agree that crediting the revenues against the GRR is reasonable. (IGS Ex. 101 at 27-28; Tr. 599, 1169-1170.)

OCC, APJN, IEU and FES contend that AEP-Ohio has inappropriately conflated two unrelated statutes, Sections 4928.143(B)(2)(c) and 4928.64, Revised Code, in support of the GRR. The goals of the two sections are different according to the interpretation of the aforementioned interveners. They contend that the purpose of Section 4928.64, Revised Code, is to require electric distribution utilities and CRES providers to comply with renewable energy benchmarks and paragraph (E) of Section 4928.64, Revised Code, directs that costs incurred to comply with the renewable energy benchmarks shall be bypassable. Whereas, according to IEU and FES, Section 4928.143(B)(2)(c), Revised Code, permits the Commission to implement a market safety valve under specific requirements should Ohio require additional generation. FES notes that AEP-Ohio has sufficient energy and capacity for the foreseeable future. IEU and FES interpret the two statutory provisions to affirmatively deny non-bypassable cost recovery under Section 4928.143(B)(2)(c), Revised Code, for renewable energy projects. IEU and FES contend that their interpretation is confirmed by the language in Section 4928.143(B), Revised Code, which states "Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except...division (E) of section 4928.64... ." Thus, FES reasons the Commission is expressly prohibited from authorizing a provision of an ESP which conflicts with Section 4928.64(E), Revised Code. (FES Br. at 87-90; IEU Br. 74-76; Tr. at 226-227.)

Further, IEU, FES, OCC, IGS and APJN argue that the statute requires, and AEP-Ohio has failed to demonstrate, the need for and the terms and conditions of recovery for the Turning Point project in this proceeding pursuant to Section 4928.143(B)(2)(c), Revised Code. Finally, IEU submits that AEP-Ohio has failed to offer any evidence as to the effect of the GRR on governmental aggregation, as required in accordance with the Commission's obligation under Section 4928.20(K), Revised Code. For these reasons, IEU, IGS, FES, OCC and APJN request that the Company's request to implement the GRR be denied. (Tr. 1170, 570-574, 2644-2646; FES Br. at 87-94; FES Reply Br. at 22-24, IGS Reply Br. at 5-6; OCC/APJN Br. at 84-85; IEU Br. 74-76.)

Staff notes that there are a number of statutory requirements pursuant to Section 4928.143(B)(2)(c), Revised Code, that OP has not satisfied as a part of this modified ESP proceeding but will be addressed in a future proceeding, including the cost of the proposed facility, alternatives for satisfying the in-state solar requirements, a demonstration that Turning Point was or will be sourced by a competitive bid process, the facility is newly used and useful on or after January 1, 2009, the facility's output is dedicated to Ohio consumers and the cost of the facility, among other issues. Staff notes the need for the Turning Point facility has been raised by parties in another case and a decision by the Commission is pending.[8] Staff emphasizes that the statutory requirements would need to be addressed, and a decision made by the Commission, before recovery could commence via the GRR mechanism. Further, Staff suggests that it is in this future proceeding that parties should explore whether the GRR should be applied to shopping customers. (Staff Ex. 106 at 11-14.)

FES responds that the language of Section 4928.143(B)(2)(c), Revised Code, omits any asserted discretion of the Commission to consider the requirements to comply with the statute outside of the ESP case, as AEP-Ohio and Staff offer. Nor is it sufficient policy support, according to FES and IGS, that customers may transition from shopping to non-shopping and back during the useful life of the Turning Point facility as claimed by AEP-Ohio. The interveners argue AEP-Ohio overlooks that, as proposed by the Company, the load of all its non-shopping customers will be up for bid as of June 1, 2015. With that in mind, FES ponders why customers of AEP-Ohio competitors should pay for AEP-Ohio facilities after May 31, 2015. (FES Reply Br. at 24-25; IGS Reply Br. at 4.)

UTIE notes that parties that oppose the approval of the GRR, on the premise that it will require shopping customers to pay twice, overlook AEP-Ohio's proposal to allocate RECs between shopping and non-shopping customers, to sell the energy and capacity from the Turning Point facility into the market and credit such transactions against the GRR (UTIE Reply Br. at 2).

NRDC and OEC respond that it is disingenuous for parties to argue that establishing a placeholder rider as a part of an ESP is unlawful. The Commission has adopted placeholder riders in several previous Commission cases for AEP-Ohio, Duke

8 Case Nos. 10-501-EL-FOR and 10-502-EL-FOR.

Energy Ohio and the FirstEnergy operating companies.[9] Further, NRDC and OEC note that no party has waived its right to participate in subsequent GRR-related proceedings before the Commission. (NRDC/OEC Reply Br. at 2.)

The Company notes that four interveners support the adoption of the GRR and of the four supporters, two request modifications which are components already proposed by the Company.

First, AEP-Ohio addresses the arguments of FES and IEU that Section 4928.64(E), Revised Code, prohibits the use of Section 4928.143(B)(2)(c), Revised Code, for renewable generation projects. AEP-Ohio states that it recognizes the overlapping policies of the two statutes and offers that each section relates to the cost recovery aspect of the project, which as the Company interprets the statutes, will be addressed when cost recovery is requested in a future proceeding. Further, AEP-Ohio reasons that IEU's and FES's arguments are inappropriate as they would lead to the disallowance of a statutorily prescribed option merely because another option exists. In addition, AEP-Ohio contends, proper statutory construction seeks to give all statutes meaning and, therefore, both options are available to the Commission at its discretion.

It is premature, AEP-Ohio retorts, to assert as certain interveners have done, that the statutory requirements of Section 4928.143(B)(2)(c), Revised Code, have not been met by the Company. The statutory requirements of Section 4928.143(B)(2)(c), Revised Code, will be addressed in a separate proceeding before any costs can be recovered via the proposed GRR. AEP-Ohio asserts that the Commission is vested with the discretion to establish the GRR, as a zero-cost placeholder, as it has done in other Commission proceedings. The Company also proposes, and Staff agrees, that as a part of this future proceeding, the amount and prudency of costs associated with the Turning Point project and whether the GRR results in shopping customers paying twice for renewable energy compliance costs, among other issues will be determined. AEP-Ohio reiterates its plan to share the RECs from the Turning Point project between shopping and SSO customers on an annual basis. IGS, NRDC and Staff endorse AEP-Ohio's proposal to share the value of the Turning Point project between shopping and non-shopping customers. (AEP-Ohio Reply Br. at 7-10; Tr. at 2139-2140; NRDC/OEC Reply Br. at 1; Staff Ex. 110 at 7; Staff Br. at 20.)

The Commission interprets Section 4928.143(B)(2)(c), Revised Code, to permit a reasonable allowance for construction of an electric generating facility and the establishment of a non-bypassable surcharge, for the life of the facility where the electric utility owns or operates the generation facility and sourced the facility through a competitive bid process. Before authorizing recovery of a surcharge for an electric generation facility, the Commission must determine there is a need for the facility and to

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9 In re AEP-Ohio, ESP 1 (March 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (December 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (March 25, 2009).

continue recovery of the surcharge, establish that the facility is for the benefit of and dedicated to Ohio consumers. AEP-Ohio will be required to address each of the statutory requirements, in a future proceeding, and to provide additional information including the costs of the proposed facility, to justify recovery under the GRR. However, the Commission notes that there shall be no allowances for recovery approved unless the need and competitive requirements of this section are met.

Furthermore, we disagree with the arguments that the language in Section 4928.143(B)(2)(c), Revised Code, requires the Commission to first determine, within the ESP proceeding, that there was a need for the facility. The Commission is vested with the broad discretion to manage its dockets 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. *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 367, 379; *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 560. Accordingly, it is acceptable for the Commission to determine the need for the Turning Point facility as a part of the Company's long-term forecast case filed consistent with Section 4935.04, Revised Code, wherein the Commission evaluates energy plans and needs. To avoid the unnecessary duplication of processes, the Commission has undertaken the determination of need for the Turning Point project in the Company's long-term forecast proceeding. The Commission interprets the statute not to restrict our determination of the need and cost for the facility to the time an ESP is approved but rather to ensure the Commission holds a proceeding before it authorizes any allowance under the statute. FES raises the issue of whether shopping customers should incur charges associated with AEP-Ohio's construction of generation facilities. The Commission finds that Section 4928.143(B)(2)(c), Revised Code, specifically provides that the surcharge be non-bypassable. However, the statute also provides that the electric utility must dedicate the energy and capacity to Ohio consumers. AEP-Ohio has represented that any renewable energy credits will be shared with CRES providers proportionate with such providers' share of the load. Accordingly, as long as AEP-Ohio takes steps to share the benefits of the project's energy and capacity, as well as the renewable energy credits, with all customers, we find that the GRR should be non-bypassable. Further, in the subsequent application for any cost recovery AEP-Ohio will have the burden to demonstrate compliance with the statutory requirements set forth in Section 4928.143(B)(2)(c), Revised Code.

Accordingly, the Commission approves the Company's request to adopt as a component of this modified ESP the GRR mechanism, at a rate of zero. It is not unprecedented for the Commission to adopt a mechanism, with a rate of zero, as a part of an ESP.[10] The Commission explicitly notes that in permitting the creation of the GRR, it is not authorizing the recovery of any costs, at this time.

5. Interruptible Service Rates

In its modified ESP, AEP-Ohio suggests it would be appropriate to restructure its current interruptible service provisions to make its offerings consistent with the options that will be available upon AEP-Ohio's participation in the PJM base residual auction beginning in June 2015. AEP-Ohio witness Roush provides that interruptible service is more frequently represented as an offset to standard service offer rates as opposed to a separate and distinct rate (AEP-Ohio Ex. 111 at 8). To make AEP-Ohio's interruptible service options consistent with the current regulatory environment, AEP-Ohio proposes that Schedule Interruptible Power-Discretionary (IRP-D) become available to all current customers and any potential customers seeking interruptible service (*Id.*). The IRP-D credit would increase to $8.21 per kw-month upon approval of the modified ESP (AEP-Ohio Ex. 100 at 9). AEP-Ohio proposes to collect any costs associated with the IRP-D through the RSR to reflect reductions in AEP-Ohio's base generation revenues (*Id.*).

OCC believes the IRP-D proposal violates cost causation principles, as the beneficiaries are customers with more than 1 MW of interruptible capacity, and does not apply to residential customers. OCC witness Ibrahim argues it is unfair for non-participating customers to make AEP-Ohio whole for any lost revenues associated with the IRP-D (OCC Ex. 110 at 11-12). Therefore, OCC recommends the IRP-D should not allow for any lost revenue associated with IRP-D credits to be collected through the RSR (*Id.*).

Staff suggests modifying the IRP-D credit based upon the state compensation mechanism approved in the Capacity Case (Staff Ex. 105 at 6-9). Staff witness Scheck recommended lowering the IRP-D credit to $3.34/kw-month (*Id.*). Further, Staff notes its preference of any interruptible service to be offered in conjunction with Commission approved reasonable arrangements, as opposed to tariff service (*Id*). EnerNOC states that a reasonable arrangement process is more transparent than an interruptible service credit, and notes that a subsidized IRP-D rate may impede AEP-Ohio's transition to a competitive market by reducing the amount of demand response resources that may participate in RPM auctions (EnerNOC Br. at 6-9).

OMAEG and OEG support the proposed IRP-D credit, but recommend it not be tied to approval of the RSR (OMAEG Br. at 21, OEG Br. at 15). Ormet also supports the IRP-D credit, noting that customers should be compensated for taking on an interruptible load (Ormet Br. at 21-22). OEG explains it is reasonable and consistent with state policy

10 *In re AEP-Ohio*, ESP 1 (March 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (December 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (March 25, 2009).

objectives under Section 4928.02, Revised Code, as it will promote economic development and innovation and market access for AEP-Ohio's customers. OEG witness Stephen Baron provides that the credit is beneficial to customers that participate in the IRP-D program who received a discounted price for power in exchange for interruptible service, which retains existing AEP-Ohio customers and can attract new customers to benefit the state's economic development (Tr. IV at 1125-1126, OEG Ex. 102 at 6-8). Mr. Baron notes that the IRP-D is beneficial to AEP-Ohio as well by allowing AEP-Ohio to have increased flexibility in providing its service, thus increasing overall system reliability (OEG Ex. 102 at 6-8). However, Mr. Baron believes that costs associated with the IRP-D would be more appropriate to recover under the EE/PDR rider (*Id.* at 9-10). OEG also disputes Staff's proposal to lower the IRP-D credit to the capacity rate charged to CRES providers, as the credit is only available to SSO customers, and not customers of CRES providers (OEG Br. at 16-21).

The Commission finds the IRP-D credit should be approved as proposed at $8.21/kW-month. In light of the fact that customers receiving interruptible service must be prepared to curtail their electric usage on short notice, we believe Staff's proposal to lower the credit amount to $3.34/kW-month understates the value interruptible service provides both AEP-Ohio and its customers. In addition, the IRP-D credit is beneficial in that it provides flexible options for energy intensive customers to choose their quality of service, and is also consistent with state policy under Section 4928.02(N), Revised Code, as it furthers Ohio's effectiveness in the global economy. In addition, since AEP-Ohio may utilize interruptible service as an additional demand response resource to meet its capacity obligations, we direct AEP-Ohio to bid its additional capacity resources into PJM's base residual auctions held during the ESP.

The Commission agrees with several parties who correctly pointed out that the IRP-D credit should not be tied to the RSR. As we will discuss below, the RSR is tied to rate certainty and stability, and while we have no qualms in finding that the IRP-D is reasonable, it is more appropriate to allow AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider. As the IRP-D will result in reducing AEP-Ohio's peak demand and encourage energy efficiency, it should be recovered through the EE/PDR rider.

6. <u>Retail Stability Rider</u>

In its modified ESP, AEP-Ohio proposes a non-bypassable RSR. AEP-Ohio states the RSR is justified under Section 4928.143(B)(2)(d), Revised Code, as it promotes stability and certainty with retail electric service, and Section 4928.143(B)(2)(e), Revised Code, which allows for automatic increases or decreases by revenue decoupling mechanisms that relate to SSO service. AEP-Ohio provides that in addition to the RSR's promotion of rate stability and certainty, it is essential to ensure the Company does not suffer severe financial repercussions as a result of the proposed ESP's capacity pricing mechanism.

AEP-Ohio witness William Avera explains that the Commission has the duty to ensure there is not an unconstitutional taking that may result in material harm to AEP-Ohio (AEP-Ohio Ex. 150 at 4-6). Dr. Avera stresses that not only does the Commission maintain this obligation to avoid confiscation, but in the event the rate plan is confiscatory, AEP-Ohio's credit rating would likely drop, limiting the ability to attract future capital investments (*Id.*).

The proposed RSR functions as a generation revenue decoupling charge that all shopping and non-shopping customers would pay through June 2015. As proposed, the RSR relies on a 10.5 percent return on equity to develop the non-fuel generation revenue target of $929 million per year, which, throughout the term of the modified ESP, would collect approximately $284 million in revenue (AEP-Ohio Ex. 100, 116 at WAA-6). In establishing the 10.5 percent target, AEP-Ohio witness William Allen considered CRES capacity revenues as based on the proposed two-tiered capacity mechanism, auction revenues, and credit for shopped load to determine where the RSR should be set. AEP-Ohio notes that while the RSR is designed to produce consistent non-fuel generation revenues, the RSR does not guarantee a company total ROE of 10.5 percent, as there are other factors affecting total company earnings, which AEP-Ohio witness Sever estimated at 9.5 percent and 7.6 percent (AEP-Ohio Ex. 151 at 2-4, AEP-Ohio Ex. 108 at OJS-2). Thus, AEP-Ohio explains the RSR only ensures a stable level of revenues during the term of the ESP, not a stable ROE (*Id.* at 3). For every $10/MW-day decrease in the Tier 2 price for capacity, Mr. Allen explains the RSR would increase by $33M (or $.023/MWh) (AEP-Ohio Ex. 116 at 14-15). Mr. Allen explains that the $3 shopped load credit is based on AEP-Ohio's estimated margin it earns from off-system sales (OSS) made as a result of MWh freed as a result of customer shopping. In his testimony, Mr. Allen provides that AEP-Ohio only retains 40 percent of the OSS margins due to its participation in the AEP pool, and of that 40 percent only 50 to 80 percent of reduced retail sales result in additional OSS, thus demonstrating the $3/MWh credit is reasonably based on appropriate OSS assumptions (AEP-Ohio Ex. 151 at 5-8).

In designing the RSR, AEP-Ohio explains that a revenue target is preferable to an earnings target, as decoupling will provide greater stability and certainty for customers and is easier to objectively measure and audit as compared to earnings, which are prone to litigation as evidenced by SEET proceedings (AEP-Ohio Ex. 116 at 13-16). AEP-Ohio believes a revenue target provides for risks associated with generation operations to be on AEP-Ohio while avoiding the need for evaluating returns associated with a deregulated entity after corporate separation (*Id.*) As proposed, the RSR would average $2/MWh (*Id.* at WAA-6).

AEP-Ohio believes the RSR is beneficial in that it freezes non-fuel generation rates and allows for AEP-Ohio's transition to a fully competitive auction by June 2015 (AEP-Ohio Ex. 119 at 2-4). AEP-Ohio opines that the RSR mechanism reflects a careful balance that will encourage customer shopping through discounted capacity prices while retaining reasonable rates for SSO customers and ensure that AEP-Ohio is not financially harmed as it transitions towards a competitive auction (*Id.*). AEP-Ohio also touts an increase in its interruptible service (IRP-D) credit upon approval of the RSR. AEP-Ohio witness Selwyn Dias explains that the increase in the IRP-D credit will benefit numerous major employers in the state of Ohio and promote economic development opportunities within AEP-Ohio's service territory (*Id.* at 7).

Without the Commission's approval of the RSR as proposed, AEP-Ohio claims that the modified ESP would result in confiscatory rates. In his rebuttal testimony, Mr. Allen argues that if the established capacity charge is below AEP-Ohio's costs, AEP-Ohio will face an adverse financial impact (AEP-Ohio Ex. 151 at 9). As such, AEP-Ohio points out that the 10.5 percent return on equity used to develop the RSR's target revenue is not only appropriate to prevent financial harm but is also necessary to avoid violating regulatory standards addressing a fair rate of return. Mr. Allen contends that the non-fuel generation revenue, which the RSR addresses, is separate and distinct from the total company earnings, which are not addressed by the RSR. This distinction, Mr. Allen states, shows the 10.5 percent return on equity is appropriate for the RSR because when the RSR is combined with total company earnings, AEP-Ohio would be looking at a total company return on equity of 7.5 percent in 2013. Therefore, AEP-Ohio argues it would be inappropriate to allow a RSR rate of return of less than 10.5 percent, as any reduction would lower the total company return on equity downward from 7.5 percent, harming AEP-Ohio's ability to attract capital and potentially putting the company in an adverse financial situation (*Id.* at 4-5).

DER, DECAM, FES, NFIB, OCC, and IEU all contend that the RSR lacks statutory authority to be approved. FES claims that Section 4928.143(B)(2)(d), Revised Code, only authorizes charges that provide stability and certainty regarding retail electric service, which AEP-Ohio has failed to show. OCC witness Daniel Duann argues that the RSR will raise customer rates and cause financial uncertainty to all native load customers (OCC Ex. 111 at 10). OCC contends that even if the RSR provided certainty and stability, it does not qualify as a term, condition, or charge pursuant to Section 4928.143(B)(2)(d), Revised Code (OCC Br. at 40). IEU and Exelon also argue the RSR violates Section 4928.02(H) Revised Code, as it would be tied to a distribution rate based on its charge to shopping customers despite the fact it is a non-bypassable charge designed to recover generation related costs (IEU Br. at 63-64, Exelon Br. at 12).

IEU, Ohio Schools, Kroger, and DECAM/DER argue that AEP-Ohio is improperly utilizing the RSR to attempt to recover transition revenue. IEU notes that AEP-Ohio's attempt to recover generation-related revenue that may not otherwise be collected by statute is an illegal attempt to recover transition revenue (IEU Ex. 124 at 4-10, 24-26). Kroger and Ohio Schools point out that not only has the opportunity to recover generation transition costs expired with the establishment of electric retail competition in 2001, AEP-Ohio waived its right to generation transition costs when it stipulated to a resolution in Case Nos. 99-1729 and 99-1730 (Kroger Br. at 3-5, Ohio Schools Br. at 18-20). Exelon and FES maintain the RSR is anticompetitive and would stifle competition.

Ormet, OCC, Ohio Schools, OEG, and Exelon indicate that, if the RSR is approved, it should contain exemptions for certain customer classes. Ohio Schools request an exemption from the RSR, pointing out that not only are schools relying on limited funding, but also that the Commission has traditionally considered schools to be a distinct customer class that is entitled to special rate treatment (Ohio Schools Br. at 22-30, citing to Case Nos. 90-717-EL-ATA, 95-300-EL-AIR, 79-629-TP-COI, Ohio Schools Ex. 103, and Tr. XVI at 4573-4574). Exelon believes the RSR should not apply to shopping customers and should be bypassable. While Exelon notes it does not oppose affording AEP-Ohio protection as it transitions its business structure, witness David Fein argues that shopping customers will unfairly be forced pay both the CRES provider and AEP-Ohio for generation (Exelon Ex. 101 at 13-14).

On the contrary, Ormet believes the RSR should not apply to customers like Ormet who cannot shop, as Ormet neither causes costs associated with the RSR nor can Ormet receive the benefits associated with it (Ormet Ex. 106 at 15-17). Ormet maintains that the RSR, as currently proposed, violates cost causation principles (*Id.*). OCC and OEG suggest that if the RSR is approved, it should not be charged to SSO customers, as these customers are not the cause of the RSR costs, and it would be unfair to force these customers to subsidize shopping customers and CRES providers (OEG Br. at 5-6, OCC Ex. 111 at 16-17).

While OEG does not support the creation of the RSR, it understands the Commission may need to provide a means to ensure AEP-Ohio has the ability to attract capital, and as such suggests that the Commission look to AEP-Ohio actual earnings as opposed to revenue (OEG Ex. 101 at 12-18). OEG argues that the RSR's use of revenues does not accurately reflect a utility's financial condition or ability to attract capital in the way that earnings do, as evidenced by earnings being the foundation used by credit agencies to determine bond ratings (*Id.*). OEG witness Lane Kollen points out that revenues are just a single component of AEP-Ohio's earnings and do not reflect a full picture of AEP-Ohio's financial health (*Id.*). Mr. Kollen suggests that if the Commission were to look at AEP-Ohio's earnings, an appropriate return on equity (ROE) would be between seven percent and 11 percent (OEG Ex. at 4-6). If the Commission were to use revenues to determine AEP-Ohio's ROE, as proposed in the RSR, Mr. Kollen believes the ROE should be at seven percent, as it is still double the cost of AEP-Ohio's long-term debt and falls within the Ohio Supreme Court's zone of reasonableness (*Id.* at 7, Tr. X at 2877-79).

In the event the Commission adopts RPM priced capacity, RESA also supports the use of earnings as opposed to revenues in calculating the RSR in the event it is necessary to avoid confiscatory rates (RESA Ex. at 11, Br. at 13-16). RESA also suggests the Commission consider projecting an amount of money necessary for AEP-Ohio to earn a reasonable rate of return and set the RSR accordingly (RESA Br. at 14-16). RESA maintains that either of these alternatives may reduce the possibility that AEP-Ohio and its new affiliate make uneconomic investments or other risks that may result from AEP-Ohio receiving a guarantee of a certain level of annual income (*Id.*). NFIB and OADA express similar concerns that the RSR, as proposed, creates no incentive for AEP-Ohio to limit its expenses (NFIB Br. at 4-6, OADA Br. at 2-3).

In addition, several other parties suggest modifications to the RSR, including its proposed ROE. Ormet states that the 10.5 percent ROE is excessive and unreasonably high. Ormet witness John Wilson explained that AEP-Ohio failed to sustain its burden of showing 10.5 percent ROE was just and reasonable, and upon utilizing Staff's methodology in 11-351-EL-AIR, determined that, based on current economic conditions and AEP-Ohio and comparable utility financial figures, an appropriate ROE would be between eight and nine percent (Ormet Ex. 107 at 8-30). Kroger witness Kevin Higgins testified that the average ROE for electric utilities is 10.2 percent, and based on the fact that AEP-Ohio's proposed two-tier capacity mechanism is above market, the ROE should be below 10.2 percent (Kroger 101 at 10). FES and Wal-Mart state that AEP-Ohio failed to justify its 10.5 percent figure, with Wal-Mart witness Steve Chriss suggesting the ROE be no higher than 10.2 percent (Wal-Mart Ex. 101 at 8-9, FES Ex. 102 at 79-80).

OCC recommends that the Commission allocate the RSR in proportion to each class share of the switched kWh sales as opposed to customer class contribution to peak load, as an allocation based on contribution to peak load is not just and reasonable (OCC Ex. 110 at 8-9). OCC witness Ibrahim points out that the residential customer class share of switched kWh sales is only eight percent, thus, if the Commission reallocates RSR costs, residential customer increases would drop from six percent to three percent (*Id.* at 24-26). Kroger argues the RSR allocates costs to customers by demand, but recovers through an energy cost, resulting in cross subsidies amongst customers (Kroger Ex. 101 at 8). Kroger recommends that costs and charges should be aligned and based on demand as opposed to energy usage (*Id.*)

OCC, FES, and Ormet also submit modifications related to the calculation AEP-Ohio's shopping credit included within the RSR calculation. Ormet argues that AEP-Ohio underestimates its $3 shopping credit. Ormet states that based on AEP-Ohio's 2011 resale percentage of 80 percent, the actual shopping credit increases to $3.75 MWh, with the total amount increasing to $78.5 million (Ormet Br. at 10-12, citing to Tr. XVII at 4905). Ormet also shows that AEP-Ohio will not need to reduce the credit by 60 percent beginning in 2013, as AEP-Ohio will no longer be in the AEP pool, resulting in the credit increasing to

$6.50 per year in 2014 and 2015 (*Id.*). OCC also points out that the shopping credit should increase based on AEP-Ohio's 2011 shopping percentage, as well as the termination of the AEP pool agreement, and recommends the Commission adopt a shipping credit higher than $3/MWh but less than $12/MWh (OCC Br. at 49-54).

The Commission finds that, upon review of the record, it is apparent that no party disputes that the approval of the RSR will provide AEP-Ohio with sufficient revenue to ensure it maintains its financial integrity as well as its ability to attract capital. There is dispute, however, as to whether the RSR is statutorily justified, and, if it is justified, the amount AEP-Ohio should be entitled to recover, and how the recovery should be allocated among customers. The Commission must first determine whether RSR mechanism is supported by statute. Next, if we find that the Commission has the authority to approve the RSR, we must balance how much cost recovery, if any, should be permitted to ensure customers are not paying excessive costs but that the recovery is enough to allow AEP-Ohio to freeze its base generation rates and maintain a reasonable SSO plan for its current customers as well as for any shopping customers that may wish to return to AEP-Ohio's SSO plan.

In beginning our analysis, we first look to AEP-Ohio's justification of the RSR. While AEP-Ohio argues there are numerous statutory provisions that may provide support for the RSR, the thrust of its arguments in support of the RSR pertain to Section 4928.143(B)(2)(d), Revised Code, which AEP-Ohio notes is met by the RSR's promotion of rate stability and certainty. AEP-Ohio also suggests that Section 4928.143(B)(2)(e), Revised Code, which allows for automatic increases or decreases, justifies the RSR, as its design includes a decoupling mechanism.

Pursuant to Section 4928.143(B)(2)(d), Revised Code, an ESP may include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation that would have the effect of stabilizing retail electric service or provide certainty regarding retail electric service. We believe the RSR meets the criteria of Section 4928.143(B)(2)(d), as it promotes stable retail electric service prices and ensures customer certainty regarding retail electric service. Further, it also provides rate stability and certainty through CRES services, which clearly fall under the classification of retail electric service, by allowing customers the opportunity to mitigate any SSO increases through increased shopping opportunities that will become available as a result of the Commission's decision in the Capacity Case.

In addition, we find that the RSR freezes any non-fuel generation rate increase that might not otherwise occur absent the RSR, allowing current customer rates to remain stable throughout the term of the modified ESP. While we understand that the non-bypassable components of the RSR will result in additional costs to customers, we believe any costs associated with the RSR are mitigated by the effect of stabilizing non-fuel generation rates, as well as the guarantee that, in less than three years, AEP-Ohio will establish its pricing based on energy and capacity auctions, which this Commission again maintains is extremely beneficial by providing customers with an opportunity to pay less for retail electric service than they may be paying today.

Therefore, we find that the RSR provides certainty for retail electric service, as is consistent with Section 4928.143(B)(2)(d), Revised Code. Until May 31, 2015, AEP-Ohio's SSO rate, as a result of this RSR, will remain available for all customers, including those who are presently shopping, as well as those who may shop in the future. The ability for AEP-Ohio to maintain a fixed SSO rate is valuable, particularly if an unexpected, intervening event occurs during the term of the ESP, which could have the effect of increasing market prices for electricity. The ability for all customers within AEP-Ohio's service territory to have the option to return to AEP-Ohio's certain and fixed rates allows customers to explore shopping opportunities. This is an extremely beneficial aspect of the RSR and is undoubtedly consistent with legislative intent in providing that electric security plans may include retail electric service terms, conditions, and charges that relate to customer stability and certainty. Further, we reject the claim that the RSR allows for the collection of inappropriate transition revenues or stranded costs that should have been collected prior to December 2010 pursuant to Senate Bill 3, as AEP-Ohio does not argue its ETP did not provide sufficient revenues, and, in light of events that occurred after the ETP proceedings, including AEP-Ohio's status as an FRR entity, AEP-Ohio is able to recover its actual costs of capacity, pursuant to our decision in the Capacity Case. Therefore, anything over RPM auction capacity prices cannot be labeled as transition costs or stranded costs.

Moreover, we find that the certainty and stability the RSR provides would be all but erased by its design as a decoupling mechanism. We agree with OCC that the ability for AEP-Ohio to decouple the RSR would cause financial uncertainty, as truing up or down each year will create customer confusion in their rates. NFIB, OADA, and RESA correctly raise concerns that the RSR design creates no incentive for AEP-Ohio to limit its expenses and the Company may make uneconomic investments by its guaranteed level of annual income. While AEP-Ohio should have the opportunity to earn a reasonable rate of return, there is not a right to a guaranteed rate of return, and we will not allow AEP-Ohio to shift its risks onto customers. Thus, because its design may lead to a perverse outcome of AEP-Ohio making imprudent decisions, we find it necessary to remove the decoupling component from the RSR.

Although the RSR is justified by statute, AEP-Ohio has failed to sustain its burden of proving that its revenue target of $929 million is reasonable. The basis of AEP-Ohio's $929 million target is to ensure that its non-fuel generation revenues are stable and that stability may be ensured through a 10.5 percent ROE. However, as we previously established, it is inappropriate to guarantee a rate of return for AEP-Ohio, therefore, we find it more appropriate to establish a revenue target that will allow AEP-Ohio the opportunity to earn a reasonable rate of return. We note that our analysis of an ROE is not to guarantee a rate of return, as evidenced by the removal of the decoupling components but rather to determine a revenue target that adequately ensures AEP-Ohio can keep its base generation rates frozen and maintain its financial health. Although we believe the more appropriate method to balance these factors would have been through the use of actual dollar figures that relate to stability, because AEP-Ohio utilized a ROE in calculating its proposals, and parties responded with alternative ROE proposals, the record limits us to this approach. Therefore, in determining an appropriate quantification for the RSR, we will consider a ROE of the non-fuel generation revenue only for the purpose of creating an appropriate revenue target that will ensure AEP-Ohio has sufficient capital while maintaining its frozen base generation rates.

Only three witnesses, AEP-Ohio witness Avera, OEG witness Kollen, and Ormet witness Wilson, developed thorough testimony exploring how an appropriate revenue target for the RSR should be established, all of which were driven by an analysis of AEP-Ohio's ROE. Although OEG witness Kollen proposed a mechanism driven by adjusting AEP-Ohio's ROE upward or downward if it does not fall within a zone of reasonableness, Mr. Kollen established that anything between seven and 11 percent could be deemed reasonable (OEG Ex. 101 at 8-9). Mr. Kollen preferred focusing on a zone of reasonableness, but notes that if the Commission preferred to establish a baseline revenue target, it should be set at $689 million (*Id.* at 16-18). Ormet witness Wilson utilized Staff models from Case No. 11-351 including discounted cash flow and capital asset pricing models, and updated calculations in the Staff models to reflect current economic factors, reaching a conclusion that AEP-Ohio's ROE should be between eight and nine percent (Ormet Ex. 107 at 8-18). AEP-Ohio used witness Avera to rebut Dr. Wilson's testimony, noting that Dr. Wilson did not consider a sufficient number of utilities in the proxy group, and the utilities that were considered were not similarly situated to AEP-Ohio (AEP-Ohio Ex. 150 at 5-6). Based on this information, Dr. Avera recommended an ROE range of 10.24 percent to 11.26 percent (*Id.*).

The Commission finds that all three experts provide credible methodologies for determining an appropriate ROE for AEP-Ohio, therefore, we find OEG witness Kollen's zone of reasonableness of seven to 11 percent to be an appropriate starting point. We again emphasize that the Commission does not want to guarantee a ROE nor establish what an appropriate ROE would be, but rather, establish a reasonable revenue target that would allow AEP-Ohio an opportunity to earn somewhere within the seven to 11 percent range. We believe AEP-Ohio's starting point of $929 is too high, particularly in light of the fact that AEP-Ohio is entitled to a deferral recovery pursuant to the Capacity Case but that a baseline of $689 million would be too low to support the certainty and stability the RSR provides. Accordingly, we find that a benchmark shall be set in the approximate middle of this range, and the $929 million benchmark shall be adjusted downward to $826 million.

While we have revised the benchmark amount down to $826 million, we also need to revisit the figures AEP-Ohio used in determining its RSR revenue amounts. In designing the RSR benchmark, Mr. Allen focused on four areas of revenue: retail non-fuel generation revenues; CRES capacity revenues; auction capacity revenues; and credit for shopped load (AEP-Ohio Ex. at WAA-6). In calculating the inputs for these revenue figures, Mr. Allen relied on AEP-Ohio's own estimates ofshopping loads of 65 percent for residential customers, 80 percent for commercial customers, and 90 percent for industrial customers by the end of 2012 (*Id.* at 5).

However, evidence within this record indicates Mr. Allen's projected shopping statistics may be higher than actual shopping levels. On rebuttal, FES presented shopping statistics based on actual AEP-Ohio numbers provided by Mr. Allen as of March 1, 2012, and May 31, 2012 (FES Ex. 120). FES concluded that, based on AEP-Ohio's actual shopping statistics to date, Mr. Allen's figures overestimated the amount of shopping by 36 percent for residential customers, 17 percent for commercial customers, and 29 percent for industrial customers, creating a total overestimate across all customer classes of 27.54 percent. The Commission finds it is more appropriate to utilize a shopping projection which is roughly the midpoint between AEP-Ohio's shopping projections and the more conservative shopping estimates offered by FES. Therefore, we will estimate shopping in the first year at 52 percent, and then increase the shopping projections for years two and three to 62 percent and 72 percent, respectively. These numbers represent a reasonable estimate and are consistent with shopping statistics of other EDUs throughout the State (*See* FES Ex. 114).

Based upon the Commission's revised shopping projections, we need to adjust the calculation of the RSR. The record indicates that lower shopping figures will result in changes to retail generation revenues, CRES margins, and OSS margins, which affects the credit for shopped load, all resulting in an adjustment to the RSR (*See* FES Ex. 121). Our adjustments are highlighted below.

	PY 12/13	PY 13/14	PY 14/15
Retail Non-Fuel Gen Revenues	$528	$419	$308
CRES Capacity Revenues	$32	$65	$344
Credit for Shopped Load	$75	$89	$104
Subtotal	$636	$574	$757
Revenue Target	$826	$826	$826
Retail Stability Rider Amount	$189	$251	$68

All figures in millions

To appropriately correct the RSR based on more conservative shopping projections, we begin our analysis with retail non-fuel generation revenues. As the figures of $402, $309, and $182 are based on Mr. Allen's assumed shopping figures, when we adjust these figures to 52, 62, and 72 percent shopping, AEP-Ohio's revenues would increase to $528 million, $419 million, and $308 million, respectively.

Conversely, as a result of decreasing the shopping statistics, CRES capacity revenues would decrease. Assuming our shopping estimates of 52, 62, and 72 percent, as well as the use of RPM capacity prices, the CRES capacity revenues lower to $32 million, $65 million, and $344 million. Finally, we need to adjust the credit for shopped load based on the revised non-shopping assumptions. Because we assume lower shopping statistics, AEP-Ohio will have less opportunity for off-system sales due to an increased load of its non-shopping customers, which will lower the credit to $75 million, $89 million, and $104 million for each year of the modified ESP. Accordingly, upon factoring in our revised revenue benchmark based on a nine percent return on equity, we find a RSR amount of $508 million is appropriate. The $508 million RSR amount is limited only to the term of the modified ESP.

Although our corrected RSR mechanism ensures customer stability and certainty by providing a means for AEP-Ohio to move towards competitive market pricing, in addition to the $508 million RSR, which allows AEP-Ohio to maintain frozen base generation rates and an accelerated auction process, we must also address the capacity charge deferral mechanism, created in the Capacity Case. As our decision in the Capacity Case to utilize RPM priced capacity considered the importance of developing competitive electric markets, we believe it is appropriate to begin recovery of the deferral costs through AEP-

Ohio's RSR mechanism, as the RSR allows for AEP-Ohio to continue to provide certainty and stability for AEP-Ohio's SSO plan while competitive markets continue to develop as a result of RPM priced capacity. Therefore we believe it is appropriate to begin collection of the deferral within the RSR.

Based on our conclusion that a $508 million RSR is reasonable, as well as our determination that AEP-Ohio is entitled to begin recovery of its deferral, AEP-Ohio will be permitted to collect its $508 million RSR by a recovery amount of $3.50/MWh, through May 31, 2014, and $4/MWh between June 1, 2014 and May 31, 2015. The upward adjustment by 50 cents to $4/MWh reflects the Commission's modification to expedite the timing and percentage of the wholesale energy auction beginning on June 1, 2014. Of the $3.50/MWh and $4/MWh RSR recovery amounts, AEP-Ohio must allocate $1.00 towards AEP-Ohio's deferral recovery, pursuant to the Capacity Case. At the conclusion of the modified ESP, the Commission will determine the deferral amount and make appropriate adjustments based on AEP-Ohio's actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary. Further, although this Commission is generally opposed to the creation of deferrals, the extraordinary circumstances presented before us, which allow for AEP-Ohio to fully participate in the market in two years and nine months as opposed to five years, necessitate that we remain flexible and utilize a deferral to ensure we reach our finish line of a fully-established competitive electric market.

Any remaining balance of this deferral that remains at the conclusion of this modified ESP shall be amortized over a three year period unless otherwise ordered by the Commission. In order to ensure this order does not create a disincentive to shopping, at the end of the term of the ESP, AEP-Ohio shall file its actual shopping statistics in this docket. To provide complete transparency as well as to allow for accurate deferral calculations, AEP-Ohio should maintain its actual monthly shopping percentages on a month-by-month basis throughout the term of this modified ESP, as well as the months of June and July of 2012. All determinations for future recovery of the deferral shall be made following AEP-Ohio's filing of its actual shopping statistics.

We believe this balance is in the best interests of both customers and AEP-Ohio. For customers, this keeps the RSR costs stable at $3.50/MWh and $4/MWh, and with $1.00 of the RSR being devoted towards paying back AEP-Ohio's deferrals, customers will avoid paying high deferral charges for years into the future. In addition, our modifications to the RSR will provide customers with a stable rate that will not change during the term of the ESP due to the elimination of the decoupling components of the RSR. Further, as result of the Capacity Case, customers may be able to lower their bill impacts by taking advantage of CRES provider offers allowing customers to realize savings that may not have otherwise occurred without the development of a competitive retail market. In addition, this mechanism is mutually beneficial for AEP-Ohio because the RSR will ensure

AEP-Ohio has sufficient funds to maintain its operations efficiently and revise its corporate structure, as opposed to a deferral only mechanism.

Finally, we find that the RSR should be collected as a non-bypassable rider to recover charges per kWh by customer class, as proposed. We note that several parties pitched reasons as to why certain customers classes should be excluded, but we believe these arguments are meritless. Ormet contends that the RSR should not apply to customers like Ormet who cannot shop. Interestingly, Ormet again tries to play both sides of the table, forgetting that it is the beneficiary of a unique arrangement that results in Ormet receiving a discount at the expense of other AEP-Ohio customers. We reject Ormet's argument, and note that while Ormet cannot shop pursuant to its unique arrangement, it directly benefits from AEP-Ohio's customers receiving stability and certainty, as these customers ultimately pay for Ormet's discounted electricity. We also find Ohio Schools' request to be excluded from the RSR to be without merit, as it too would result in other AEP-Ohio customers, including taxpayers that already contribute to the schools, paying significantly higher shares of the RSR. It is unreasonable to make AEP-Ohio's customers pay the schools twice.

In addition, in light of the fact that the Commission has established a revenue target to be reached through the RSR in this proceeding, the Commission finds that it is also appropriate to establish a significantly excessive earnings test (SEET) threshold to ensure that the Company does not reap disproportionate benefits from the ESP. The evidence in the record demonstrates that a 12 percent ROE would be at the high end of a reasonable range for return on equity (OEG Ex. 101 at 4-6; Kroger 101 at 10; Ormet Ex. 107 at 8-30; Wal-Mart Ex. 101 at 8-9, FES Ex. 102 at 79-80), and even AEP-Ohio witness Allen agreed that a ROE of 10.5 percent is appropriate. Accordingly, for purposes of this ESP, the Commission will establish a SEET threshold for AEP-Ohio of 12 percent.

Likewise, multiple parties argue that either shopping customers or SSO customers should be excluded from paying the RSR. For non-shopping customers, the RSR provides rate stability and certainty, and ensures all SSO rates will be market-based by June 2015. For shopping customers, the RSR not only keeps a reasonably priced SSO offer on the table in the event market prices increase, but it also enables CRES providers to provide offers that take advantage of current market prices, which is a benefit for shopping customers. Accordingly, we find the RSR, as justified by Section 4928.143(b)(2)(d), Revised Code is just and reasonable, and should be non-bypassable.

Finally, the Commission notes that our determination regarding the RSR is heavily dependent on the amount of SSO load still served by the Company. Accordingly, in the event that, during the term of the ESP, there is a significant reduction in non-shopping load for reasons beyond the control of the Company, other than for shopping, the

Company is authorized to file an application to adjust the RSR to account for such changes.

7. Auction Process

As part of its modified ESP, AEP-Ohio proposes a transition to a fully-competitive auction based SSO format. The first part of AEP-Ohio's proposal includes an energy-only, slice-of system auction of five percent that will occur prior to AEP-Ohio's SSO energy auction. The energy-only slice-of-system auction would commence upon a final order in this proceeding and the corporate separation plan, with the delivery period to extend to December 31, 2014 (AEP-Ohio Ex. 101 at 20-21). AEP-Ohio notes that specific details would be addressed upon the issuance of final orders in this proceeding (*Id*).

AEP-Ohio's transition proposal also includes a commitment to conduct an energy auction for 100 percent of the SSO load for delivery in January 2015. By June 1, 2015, AEP-Ohio will conduct a competitive bid procurement (CBP) process to commit to an energy and capacity auction to service its entire SSO load (*Id.* at 19-21, AEP-Ohio Ex. 100 at 10-11). AEP-Ohio witness Powers explained that the June 1, 2015 energy and capacity auction will permit competitive suppliers and marketers to bid into AEP-Ohio's load, as its FRR obligation will be terminated (*Id.*). AEP-Ohio anticipates the CBP process will be similar to other Ohio utility CBP filings, and explains that specific details of the CBP will be addressed in a future filing.

AEP-Ohio explains that the June 1, 2015, date to service its entire SSO load by auction is based on the need for AEP's interconnection pool to be terminated and AEP-Ohio's corporate separation plan being approved. AEP-Ohio witness Philip Nelson explains that an SSO auction occurring prior to pool termination may expose AEP-Ohio to significant financial harm, and if the auction occurs prior to corporate separation, it is possible that AEP-Ohio's generation may not be utilized in the auction (AEP-Ohio Ex. 103 at 8). Further, AEP-Ohio points out that a full auction prior to June 1, 2015, would conflict with its FRR commitment that continues until May 31, 2015 (AEP-Ohio Reply Br. at 46).

FES and DER/DECAM argue that AEP-Ohio could hold an immediate CBP without waiting for pool termination and corporate separation. FES witness Rodney Frame testified that the AEP pool agreement contains no provisions that would prevent a CBP (FES Ex. 103 at 3). DER/DECAM provide that a delay in the implementation of the CBP process harms customers by preventing them from taking advantage of the current market rates (DECAM Ex. 101 at 5).

Other parties, including RESA and Exelon, propose modifications to AEP-Ohio's proposed auction process. Exelon believes the first energy and capacity auction for the SSO load should be accelerated to June 1, 2014, in order to permit customers to take advantage of competition. Exelon witness Fein notes the June 1, 2014 date would be six months after the date by which AEP-Ohio indicated its corporate separation and pool termination would be completed (Exelon Ex. 101 at 15-20). RESA makes a similar proposal, but that a June 1, 2014, auction be energy only, as this still allows AEP-Ohio six months to prepare for auction and provides customers with the benefits associated with a competitive market (RESA Br. at 16-17). On the contrary, OCC argues the interim auctions to be held during the first five months of 2015 would be detrimental to residential customers, and suggests that the Commission adopt a different approach (OCC Br. at 100-103). OCC contends that competitive market prices in 2015 may be higher than prices that would result from AEP-Ohio continuing to purchase energy from its affiliate, and recommends that the Commission require the agreement between AEP-Ohio and its affiliate to continue during the first five months of 2015, or, in the alternative, AEP-Ohio should purchase SSO capacity from its generation affiliate at RPM prices (*Id.* at 103).

In addition, Exelon also recommends that the Commission direct AEP-Ohio to conduct its CBP in a manner that is consistent with the processes that Duke Energy Ohio and FirstEnergy used in their most recent auctions. Exelon sets forth that establishing details of the CBP process in a timely manner will expedite AEP-Ohio's transition to competition and ensure there are no delays associated with settling these issues in later proceedings. Specifically, Exelon proposes that the CBP should be consistent with statutory directives set forth in Section 4928.142, Revised Code, and should ensure the dates for procurement events do not conflict with dates of other default service procurements conducted by other EDUs. Exelon warns that if the substantive issues of the procurement process are left open for interpretation, there may be uncertainty that could limit bidder participation and lead to less efficient prices. Exelon also recommends that the Commission ensure the CBP process is open and transparent by having substantive details established in a timely manner (Exelon Ex. 101 at 20-31).

The Commission finds that AEP-Ohio's proposed competitive auction process should be modified. First, we believe AEP-Ohio's energy only slice-of-system of five percent of the SSO load is too low, as AEP-Ohio will be at full energy auction by January 1, 2015, and the slice-of-system auctions will not commence until six months after the corporate separation order is issued. Accordingly, we find that increasing the percentage to a 10 percent slice-of-system auction will facilitate a smoother transition to a full energy auction.

Second, this Commission understands the importance of customers being able to take advantage of market-based prices and the benefits of developing a healthy competitive market, thus we reject OCC's arguments, as slowing the movement to competitive auctions would ultimately harm residential customers by precluding them from enjoying any benefits from competition. Based on the importance of customers having access to market-based prices and ensuring an expeditious transition to a full energy auction, in addition to making the modified ESP more favorable than the results that would otherwise apply under Section 4928.142, Revised Code, we find that AEP-Ohio is capable of having an energy auction for delivery commencing on June 1, 2014. Therefore, we direct AEP-Ohio to conduct an energy auction for delivery commencing on June 1, 2014, for 60 percent of its load, and delivery commencing on January 1, 2015, for the remainder of AEP-Ohio's energy load. AEP-Ohio's June 1, 2015, energy and capacity auction dates are appropriate and should be maintained. In addition, nothing within this Order precludes AEP-Ohio or any affiliate from bidding into any of these auctions.

Finally, we agree with Exelon that the substantive details of the CBP process need to be established to maximize the number of participants in AEP-Ohio's auctions through an open and transparent auction process. We direct AEP-Ohio to establish a CBP process consistent with Section 4928.142, Revised Code, by December 31, 2012. The CBP should include guidelines to ensure an independent third party is selected to ensure there is an open and transparent solicitation process, a standard bid evaluation, and clear product definitions. We encourage AEP-Ohio to look to recent successful CBP processes, such as Duke Energy-Ohio's, in formulating its CBP. Further, AEP-Ohio is ordered to initiate a stakeholder process within 30 days from the date of this opinion in order.

8. CRES Provider Issues

The modified application includes a continuation of current operational switching practices, charges, and minimum stay provisions related to the process in which customers can switch to a Competitive Retail Electric Service (CRES) provider and subsequently return to the SSO rates (AEP-Ohio Ex. 111 at 4). AEP-Ohio points out that the application includes beneficial modifications for CRES providers and customers, including the addition of peak load contribution (PLC) and network service peak load (NSPL) information to the master customer list. AEP-Ohio witness Roush testified that AEP-Ohio also eliminates the 90-day notice requirement prior to enrolling with a CRES provider, the 12 month stay requirements for commercial and industrial customers that return to SSO rates beginning January 1, 2015, and requirements for residential and small commercial customers that return to SSO rates be required to stay on the SSO plan until April 15th of the following year, beginning on January 1, 2015 (*Id.*)

Exelon argues that AEP-Ohio needs to make additional changes in order to develop the competitive market. Specifically, Exelon requests the Commission implement rate and bill ready billing and a standard purchase of receivables (POR) program, eliminate the 90-day notice requirement immediately, and implement a process to provide CRES providers with data relating to PLC and NSPL values. Exelon witness Fein recommends that, consistent with the Duke ESP order, the Commission order AEP-Ohio provide via electronic data interchange, pertinent data including historical usage and historical interval data, NSPL and PLC data, and provide a quarterly updated list for CRES providers to show accounts that are currently enrolled with the CRES provider. (Exelon Ex. 101 at 33-34). Exelon maintains that this information will allow CRES providers to more effectively serve customers and result in cost efficient competition (*Id.*) Mr. Fein further provides that clear implementation tariffs will lower costs for customers, plainly describe rules and contract terms, and allow both CRES providers and customers to easily understand AEP-Ohio's competitive process (*Id.* at 35-36).

RESA and IGS provide that AEP-Ohio's billing system is confusing to customers and creates numerous problems for CRES providers, all of which may be corrected through the implementation of a POR program that would provide customers with a single bill and collection point (RESA Ex. 101 at 12-17, IGS Ex. 101 at 15). IGS witness Parisi points out that switching statistics of natural gas utilities and Duke have increased upon the implementation of POR programs (IGS Ex. 1-1 at 18-19). RESA witness Rigenbach also recommends that the Commission direct AEP-Ohio to develop a web-based system to provide CRES providers access to customer usage and account data by May 31, 2014 (RESA Ex. 101 at 12-13). RESA and DER/DECAM also recommend that AEP-Ohio reduce or eliminate customer switching fees, as well as customer minimum stay periods (*Id.*, DER Ex. 101 at). FES witness Banks noted that the fees and minimum stay requirements hinders competition by making it difficult for customers to switch (FES Ex. 105 at 31).

While the Commission supports AEP-Ohio's provisions that encourage the development of competitive markets, modifications need to be made. AEP-Ohio witness Roush notes that customer PLC and NSPL information will be included in the master customer list, AEP-Ohio fails to make any commitment to the time frame this information would become available, nor the specific format in which customers would be able to access this data. We note that recent updates have been revised to the electronic data interchange (EDI) standards developed by the Ohio EDI Working Group (OEWG). This Commission values the efforts of OEWG in developing uniform operational standards and we expect AEP-Ohio to follow such standards and work within the group to implement solutions which are fair and reasonable, and do not discriminate against any CRES provider.

Accordingly, we direct AEP-Ohio to develop an electronic system to provide CRES providers access to pertinent customer data, including, but not limited to, PLC and NSPL values and historical usage and interval data no later than May 31, 2014. Within 30 days from the date of this opinion and order, we direct representatives from AEP-Ohio to schedule a meeting with members of the OEWG to develop a roadmap towards developing an EDI that will more effectively serve customers, and promote state policies in accordance with Section 4928.02, Revised Code. Further, as AEP-Ohio explains that it neither supports nor is opposed to the idea of a POR program (AEP-Ohio Reply Br. at 64-66), we encourage interested stakeholders to attend a workshop in conjunction with the five year rule review of Chapter 4901:1-10, O.A.C., as established in Case No. 12-2050-EL-ORD et al, to be held on August 31, 2012. In our recent order on FirstEnergy's electric security plan (*See* Case No. 12-1230-EL-SSO), we noted that this workshop would be an appropriate place of stakeholders in the FirstEnergy proceedings to review issues related to POR programs. Similarly, we believe this workshop would also provide stakeholders in this proceeding an opportunity to further discuss the merits of establishing POR programs for other Ohio EDUs that are not currently using them. The Commission concludes that the modified ESP's modification to AEP-Ohio's switching rules, charges, and minimum stay provisions that are set to take effect on January 1, 2015, are consistent with AEP-Ohio's previously approved tariffs. Further, as we previously established in our original opinion and order in this case, these provisions are not excessive or inconsistent with other electric distribution utilities, and will further support the development of competitive markets beginning in January 1, 2015. Therefore, we find these provisions to be reasonable.

9. Distribution Investment Rider

The Company's modified ESP application includes a Distribution Investment Rider (DIR), pursuant to the provisions of Section 4928.143(B)(2)(h) or (d), Revised Code, and consistent with the approved settlement in the Company's distribution rate case,[11] to provide capital funding, including carrying cost on incremental distribution infrastructure to support customer demand and advanced technologies. Aging infrastructure, according to AEP-Ohio, is the primary cause of customer outages and reliability issues. AEP-Ohio reasons that the DIR will facilitate and encourage investments to maintain and improve distribution reliability, align customer expectations and the expectations of the distribution utility, as well as streamline recovery of the associated costs and reduce the frequency of base distribution rate cases. Replacement of aging distribution equipment will also support the advanced technologies of gridSMART which will reduce the duration of customer outages based on preliminary gridSMART Phase 1 information. The Company argues that its existing capital budget forecast includes an annual investment in excess of $150 million plus operations and maintenance in distribution assets. The DIR mechanism, as proposed by the Company, includes components to recover property taxes, commercial activity tax, and to earn a return on plant in-service based on a cost of debt of 5.46 percent, a return on common equity of 10.2 percent utilizing a 47.72 percent debt and 52.28 percent common equity capital structure. The net capital additions to be included in the DIR reflect gross plant in-service after August 31, 2010, as adjusted for accumulated depreciation, because August 31, 2010, is the date certain in the Company's most recent distribution rate case and any increase in net plant that occurs after that date is not recovered in base rates. The Company proposes to cap the DIR mechanism at $86 million in 2012, $104 million for 2013, $124 million for 2014 and $51.7 million for the period January 1 through May 31, 2015, for a total of $365.7 million. As the DIR mechanism is designed, for any year that the Company's investment would result in revenues to be

11 *In re AEP-Ohio*, Case Nos. 11-351-EL-AIR, et al., Opinion and Order at 5-6 (December 14, 2011) in reference to paragraph IV.A.3 of the Joint Stipulation and Recommendation filed on November 23, 2011.

collected which exceed the cap, the overage would be recovered and be subject to the cap in the subsequent period. Symmetrically, for any year that the revenue collected under the DIR is less than the annual cap allowance, then the difference shall be applied to increase the cap for the subsequent period. The Company notes that the DIR revenue requirement must recognize the $62.344 million revenue credit reflected in the Commission approved Stipulation in the Company's distribution rate case.[12] As proposed by the Company, the DIR would be adjusted quarterly to reflect in-service net capital additions, excluding capital additions reflected in other riders, and reconciled for over and under recovery. The Company specifically requests through the DIR project, that when meters are replaced by the installation of smart meters, that the net book value of the replaced meter be included as a regulatory asset for recovery in a future filing. The DIR mechanism would be collected as a percentage of base distribution revenues. Because the DIR provides the Company with a timely cost recovery mechanism for distribution investment, AEP-Ohio will agree not to seek a change in distribution base rates with an effective date earlier than June 1, 2015. (AEP-Ohio Ex. 116 at 9-12; AEP-Ohio Ex. 110 at 18-19.)

The Company notes that Staff continuously monitors the Company's distribution system reliability by way of service complaints, electric outage reports and compliance provisions pursuant to Chapter 4901:1-10, O.A.C. In reliance on Staff testimony, the Company offers that the reliability of the distribution system was evaluated as a part of this case. (Staff Ex. 106 at 5-6; Tr. at 4339, 4345-4346.)

Customer expectations, as determined by AEP-Ohio, are aligned with the Company's expectations. AEP-Ohio witness Kirkpatrick offered that the updated customer survey results show that 19 percent of residential customers and 20 percent of commercial customers expect their reliability expectations to increase in the next five years. AEP-Ohio points out that when those customers are considered in conjunction with the customers who expect the utility to maintain the level of reliability, customer expectations increase to 90 percent of residential customers and 93 percent of commercial customers. AEP-Ohio states it is currently evaluating, based on several criteria, various asset categories with a high probability of failure and will develop a DIR program, with Staff input, taking into consideration the number of customers affected. (AEP-Ohio Ex. 110 at 11-19.)

OHA supports the adoption of the DIR as proposed by the Company (OHA Br. at 2). Kroger, OCC and APJN, on the other hand, ask the Commission to reject the DIR, as this case is not the proper forum to consider the recovery of distribution-related costs. Kroger, OCC and APJN reason that prudently incurred distribution costs are best considered in the context of a base distribution rate case where such cost are more thoroughly reviewed by the Commission. Kroger asserts that maintaining the distribution

12 *Id.*

system is a fundamental responsibility of the utility and the Company should continue to operate under the terms of its last distribution rate case until the next such proceeding. If the Commission elects to adopt the DIR mechanism, Kroger endorses Staff's position that the DIR be modified to account for accumulated deferred income taxes (ADIT) and accelerated tax depreciation. In addition, Kroger asserts that the DIR for the CSP rate zone and the OP rate zone are distinct and the cost of each unique service area should be maintained and the distribution costs assigned on the basis of cost causation. OCC and APJN add that the Company's reason for pursuing the DIR, as a component of the ESP rather than in the distribution case, is the expedience of cost recovery and when that rationale is considered in conjunction with the lack of detail on the projects to be covered within the DIR, suggest that the DIR is not needed. (Kroger Ex. 101 at 13-19; Kroger Reply Br. at 3-4; OCC/APJN Br. at 87-89; Tr. at 1184.)

OCC and APJN argue that in determining whether the DIR complies with the requirements of Section 4928.143(B)(2)(h), Revised Code, the Company focuses exclusively on the percentage of residential and commercial customers (71 percent and 73 percent, respectively) who do not believe that their electric service reliability expectations will increase rather than the minority of customers who expect their service reliability expectations to increase (19 percent and 20 percent, respectively). OCC and APJN note that 10 percent of residential customers and seven percent of commercial customers expect their reliability expectations to decrease over the next five years. At best, these interveners assert, the customer survey results are inconclusive regarding an expectation for reliability improvements as the majority of customers are content with the status quo. OCC and APJN state that with the lack of project details, and without providing an analysis of customer reliability expectation alignment with project cost and performance improvements, AEP-Ohio has failed to meet its burden of proof to support the DIR. Accordingly, OCC and APJN request that this provision of the modified ESP be rejected. (AEP-Ohio Ex. 110 at 11-12; OCC/APJN Br. at 987-994).

NFIB and COSE emphasize that the DIR, as AEP-Ohio witness Roush testified, would, if approved as proposed, result in General Service tariff rate customers receiving an increase of approximately 14.2 percent in distribution charges, about $2.00 monthly (NFIB/COSE Br. at 8-9;Tr. at 1162-1163).

Staff testified that consistent with the requirements of Rule 4901:1-10-10(B)(2), O.A.C., AEP-Ohio has rate zone specific minimum reliability performance standards, as measured by the customer average interruption duration index (CAIDI) and system average interruption frequency index (SAIFI).[13] According to Staff, development of each CAIDI and SAIFI takes into account the electric utility's three-year historical system performance, system design, technological advancements, the geography of the utility's

13 See *In re AEP-Ohio*, Case No. 09-756-EL-ESS, Opinion and Order (September 8, 2010).

service territory, customer perception surveys and other relevant factors. Staff monitors the utility's compliance with the reliability standards. Staff offers that based on customer surveys, 75 to 80 percent of residential and commercial customers are satisfied overall with the Company's service reliability. However, the Company's 2011 reliability measures were below their reliability measures for 2010 for CSP and the SAIFI measure was worse in 2011 than in 2010 for OP. Accordingly, Staff determined that AEP-Ohio's reliability expectations are not currently aligned with the reliability expectations of its customers. Staff further offered that a number of conditions be imposed on the Commission's approval of the DIR, including that the Company be ordered to work with Staff to develop a distribution capital plan, that the DIR mechanism include an offset for ADIT, irrespective of the Company's asserted inconsistency with the distribution rate case settlement, and that gridSMART related cost not be recovered through the DIR, so as to better facilitate the tracking of gridSMART expenditures and savings and benefits of the gridSMART project. Further, Staff proposes that AEP-Ohio be directed to make quarterly filings to update the DIR mechanism, with the filed rate to be effective, unless suspended by the Commission, 60 days after filing. The DIR mechanism, as advocated by Staff, would be subject to annual audits after each May filing and, in addition, subject to a final reconciliation filing on or about May 31, 2015. With the final reconciliation, Staff recommends that any amounts collected by AEP-Ohio in excess of the established cap be refunded to customers as a one-time credit on customer bills. (Staff Ex. 106 at 6-11; Staff Ex. 108 at 3-4; Tr. at 4398.)

AEP-Ohio disagrees with the Staff's rationale that the Company's and customer's expectations are not aligned. The Company reasons that the Staff relies on the reliability indices and the fact that the Company performed below the level of the preceding year. AEP-Ohio notes that in the most recent customer survey results, with the same questions as the prior year, the Company received an 85 percent positive rating from residential customers and a 92 percent positive rating from commercial customers for providing reliable service. Further, AEP-Ohio points out that missing one of the eight applicable reliability standards during the two year period does not, under the rules, constitute a violation. The Company also notes that the reliability standards are affected by storms, which are not defined as major storms, and other factors like tree-caused outages. (Tr. at 4344-4345, 4347, 4366-4367; OCC Ex. 113, Att. JDW-2.)

AEP-Ohio also opposes Staff's recommendation to file the DIR plan in a separate docket, subject to an adversarial proceeding. The Company expresses great concern that this recommendation, if adopted, will result in the Commission micromanaging and becoming overly involved in the "day-to-day operations of the business units within the utility."

As to Staff's and Kroger's proposal to reduce the DIR to account for ADIT, the Company responds that such an adjustment would have resulted in a reduced DIR credit if taken into account when the distribution rate case settlement was pending. AEP-Ohio argues that the decision on the DIR in the modified ESP should continue to mirror the understanding of the parties to the distribution rate case as any change would improperly impact the overall balanced ESP package. (AEP-Ohio Ex. 151 at 9-10.)

As authorized by Section 4928.143(B)(2)(h), Revised Code, an ESP may include the recovery of capital cost for distribution infrastructure investment to improve reliability for customers. 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 Company's investment in distribution service. 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.

In this modified ESP, there is some disagreement between Staff and the Company whether or not AEP-Ohio's reliability expectations are aligned with the expectations of its customers. The Company focuses on customer surveys to conclude that expectations are aligned while Staff interprets the slight degradation in the reliability performance measures to indicate that expectations are not aligned. Despite the different conclusions by the Company and Staff, the Commission finds that both Staff and the Company have demonstrated that indeed, customers have a high expectation of reliable electric service. Given that customer surveys are one component in the factor used to establish the reliability indices and the slight reduction in the level of measured performance on which the Staff concludes that reliability expectations are not aligned, we are convinced that it is merely a slight difference between the Company's and customers' expectations. We also recognize that customer satisfaction is dependent on whether the customer has recently experienced any service outages and how quickly service was restored.

The Commission finds that, adoption of the DIR and the improved service that will come with the replacement of aging infrastructure will facilitate improved service reliability and better align the Company's and its customers' expectations. The Company appears to be placing sufficient proactive emphasis on and will dedicate 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 AEP-Ohio's prudently incurred distribution investment costs. We emphasize that the DIR mechanism shall not include any gridSMART costs; the gridSMART projects shall be separate and apart from the DIR mechanism and projects. With this clarification, we believe it is unnecessary to address the Company's request to allow the remaining net book value of removed meters to be included as a regulatory asset recoverable through the DIR mechanism.

We agree with Staff and Kroger that the DIR mechanism be revised to account for ADIT. The Commission finds that it is not appropriate to establish the DIR rate mechanism in a manner which provides the Company with the benefit of ratepayer supplied funds. Any benefits resulting from ADIT should be reflected in the DIR revenue requirement. Therefore, the Commission directs AEP-Ohio to adjust its DIR to reflect the ADIT offset.

As was noted in the December 14, 2012 Order on the ESP 2, we find that granting the DIR mechanism requires 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, therefore find it reasonable to permit the recovery of prudently incurred distribution infrastructure investment costs. AEP-Ohio is correct to aspire to move from a reactive to a more proactive replacement maintenance program. The Company is directed to work with Staff to develop a plan to emphasize proactive distribution maintenance that focuses spending on where it will have the greatest impact on maintaining and improving reliability for customers. Accordingly, AEP-Ohio shall work with Staff to develop the DIR plan and file the plan for Commission review in a separate docket by December 1, 2012.

With these modifications, we approve the DIR mechanism, and direct Staff to monitor, as part of the prudence review, by an independent auditor for in-service net capital additions and compliance with the proactive distribution maintenance plan developed with the assistance of the Staff. The proactive distribution infrastructure plan shall quantify reliability improvements expected, ensure no double recovery, and include a demonstration of DIR expenditures over projected expenditures and recent spending levels. The DIR mechanism will be reviewed annually for accounting accuracy, prudency and compliance with the DIR plan developed by the Staff and AEP-Ohio.

10. Pool Modification Rider

The modified ESP application includes the planned termination of the AEP East Pool Agreement (Pool Agreement). As a provision of this ESP,. AEP-Ohio requests approval of a Pool Termination Rider (PTR), initially set at zero. If the Company's corporate separation plan filed in Case No. 12-1126-EL-UNC is approved as proposed by the Company, and the Amos and Mitchell units are transferred as proposed to AEP-Ohio affiliates, then AEP-Ohio will not seek to implement the PTR irrespective of whether lost revenues exceed $35 million annually. However, if the corporate separation plan is denied or modified, then AEP-Ohio requests permission to file for the recovery of lost revenue in association with termination of the Pool Agreement via a non-bypassable rider. The PTR, according to AEP-Ohio, is designed to offset the revenue losses caused by the termination of the Pool Agreement since a significant portion of AEP-Ohio's total revenues come from sales of power to other Pool members. The Company argues that with the termination of the Pool Agreement, the Company will need to find new or additional revenue to recover the costs of operating its generating assets, or it will need to reduce the cost associated with those assets. As AEP-Ohio claims the lost revenues[14] from capacity sales to Pool Agreement members cannot be mitigated by off-system sales in the market alone. The Company agrees that it will only seek to recover lost pool termination revenues in excess of $35 million per year during the term of the ESP. (AEP-Ohio Ex. 103 at 21-23.)

OCC, APJN, FES and IEU oppose the adoption of the PTR, as they reason there is no provision of Section 4928.143(B)(2), Revised Code, which authorizes such a charge and no Commission precedent for the PTR. IEU asserts that approval of the PTR would essentially be the recovery of above-market or transition revenue in violation of state law and the electric transition plan (ETP) Stipulations.[15] As proposed, the interveners claim that the PTR is one-sided to the benefit of the Company. FES offers that there is insufficient information in the record to allow the Commission to evaluate the terms and conditions of the PTR, as a part of the modified ESP, to require ratepayers to submit $350-$400 million over the term of the ESP. Furthermore, OCC and APJN note that the Commission has disregarded transactions related to the Pool Agreement for the purpose of considering revenue or sales margins from opportunity sales (capacity and energy) as to FAC costs or consideration of off-system sales in the evaluation of significantly excessive earnings test.[16] Accordingly, OCC and APJN reason that because the Commission has previously disregarded transactions related to the Pool Agreement, that it would be unfair and unreasonable to ensure AEP-Ohio is compensated for lost revenue based on the Pool Agreement at the cost of ratepayers. For these reasons, OCC and APJN believe the PTR should be rejected or modified such that AEP-Ohio customers receive the benefits from the Company's off-system sales. IEU says the PTR provides a competitive advantage to GenResources and, therefore, violates corporate separation requirements. (OCC/APJN Br. at 85-87; IEU Br. at 69; IEU Ex. 124 at 30-31; FES Br. at 106-109; Tr. at 582, 698.)

The Company dispels the assertion that there is no statutory basis for a pool termination cost recovery provision in an ESP on the basis that the Commission has already rejected this argument in its December 14, 2011, Order on the ESP 2, where the Commission determined a pool termination rider may be approved "pursuant to Section

14 AEP-Ohio would determine the amount of lost revenue by comparing the lost pool capacity revenue for the most recent 12 month period preceding the effective date of the change in the AEP Pool to increases in net revenue related to new wholesale transactions or decreases in generation asset costs as a result of terminating the Pool Agreement.

15 *In re AEP-Ohio*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Order (September 28, 2000).

16 *In re AEP-Ohio*, ESP I Order at 17 (March 18, 2009); *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Order at 29 (January 11, 2011).

4928.143(B), Revised Code," and further concluded that establishing a rider "at a zero rate does not violate any regulatory principle or practice."[17] According to the Company, the other criticisms that these parties raise regarding the PTR are objections as to how, or the extent to which, pool termination costs should be recoverable through the rider which are not ripe and should be addressed if, and only if, AEP-Ohio actually pursues recovery of any such costs in the future as part of a separate proceeding. (AEP-Ohio Reply Br. at 59-60.)

We find statutory support for the adoption of the PTR in Section 4928.143(B)(2)(h), Revised Code. The PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement with the full transition to market for all SSO customers by no later than June 1, 2015. Therefore, we approve the PTR as a placeholder mechanism, initially established at a rate of zero, contingent upon the Commission's review of an application by the Company for such costs. The Commission notes that in permitting the creation of the PTR, it is not authorizing the recovery of any costs for AEP-Ohio, but is allowing for the establishment of a placeholder mechanism, and any recovery under the PTR must be specifically authorized by the Commission. If, and when, AEP-Ohio seeks recovery under the PTR, 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 PTR, AEP-Ohio must first demonstrate the extent to which the Pool Agreement benefitted Ohio ratepayers over the long-term and the extent to which the 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 PTR is based upon costs which were prudently incurred and are reasonable. Importantly, this Commission notes that AEP-Ohio will only be permitted to requests recovery should this Commission modify or amend its corporate separation plan as filed in Case No. 12-1126-EL-UNC only as to divestiture of the generation assets; we specifically deny the Company's request for recovery through the PTR based on any other amendment or modification of the corporate separation plan by this Commission or the Federal Energy Regulatory Commission (FERC) or FERC's denial or impediment to the transfer of the Amos and Mitchell units to AEP-Ohio affiliates. As such, AEP-Ohio's right to recover lost revenues under the PTR is based exclusively on the actions, or lack thereof, of this Commission.

11. <u>Capacity Plan</u>

Pursuant to the Commission's Entry on Rehearing issued February 23, 2012, in the ESP 2 cases, and the Entry issued March 7, 2012, in the Capacity Case, the Commission directed that the Capacity Case proceed, without further delay, to facilitate the development of the record to address the issues raised, outside of the ESP proceeding.

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17 *In re AEP-Ohio*, Case No. 11-346-EL-SSO et al., Order at 50 (December 14, 2011).

While the Capacity Case continued on an expedited schedule to determine the state compensation mechanism, AEP-Ohio nonetheless included, as a component of this modified ESP, a capacity provision different from its litigation position in the Capacity Case, which may be summarized as follows. As a component of this modified ESP, the Company proposes a two-tiered, capacity pricing mechanism, with a tier 1 rate of $145.79 per MW-day and a tier 2 rate of $255.00 per MW-day. Shopping customers, within each rate class, would receive tier 1 capacity rates in proportion to their relative retail sales level based on the Company's retail load. During 2012, 21 percent of the Company's total retail load would receive tier 1 capacity and in 2013, the percentage would increase to 31 percent. In 2014, through the end of the ESP, May 31, 2015, the tier 1 set aside percentage would increase to 41 percent of the Company's retail load. All other shopping customers would receive tier 2 capacity rates. For 2012, an additional allotment of tier 1 priced capacity will be available to non-mercantile customers who are part of a community that approved a governmental aggregation program on or before November 8, 2011, even if the set-aside has been exceeded. AEP-Ohio does not propose any special capacity set-aside for governmental aggregation programs after 2012. (AEP-Ohio Ex. 101 at 15; AEP-Ohio Ex. 116 at 6-7.)

AEP-Ohio argues that its embedded cost-based charge for capacity is $355.72 per MW-day, as supported by the Company in the Capacity Case. Further, AEP-Ohio projects, with forward energy pricing decreasing over the remainder of 2012 by approximately 25 percent and based upon the switching rates experienced by other Ohio electric utilities, that by the end of 2012 shopping rates in AEP-Ohio territory will increase to 65 percent of residential load, 80 percent of commercial load and 90 percent of industrial load (excluding one large customer). AEP-Ohio reasons that the two-tier capacity pricing mechanism is a discount from the Company's embedded cost of capacity which will provide CRES providers headroom, the ability to offer shopping customers lower competitive electric service rates and expand competition in the Company's service territory and, as a component of this modified ESP, balances the revenue losses likely to be experienced by the Company. Further, AEP-Ohio submits that the capacity pricing offered as a part of this modified ESP is intended to mitigate, in part, the financial harm the Company will potentially endure if the Company is required to provide capacity at PJM's RPM-based rate. (AEP-Ohio Ex. 116 at 4-5, 8-9; Tr. at 332-333.)

As an alternative to the two-tiered capacity mechanism, AEP-Ohio proposes as a component of the modified ESP, to charge CRES providers its embedded cost of capacity $355.72 per MW-day with a $10 per MWh bill credit to shopping customers, subject to a cap of $350 million through December 31, 2014. Shopping credits would be limited to up to 20 percent of the load of each customer class for June 2012 through May 2013, and increase to 30 percent for the period June 2013 through May 2014 and then to 40 percent for the period June 2014 through December 2014. AEP-Ohio's rationale for the alternative is to ensure shopping customers receive a direct and tangible benefit to shop that is fixed and known regardless of the CRES provider selected. (AEP-Ohio Ex. 116 at 15-17; Tr. at 427, 1434.)

On July 2, 2012, the Commission issued the Order in the Capacity Case (Capacity Order) wherein the Commission determined $188.88 per MW-day as the appropriate charge to enable the Company to recover its capacity costs pursuant to its Fixed Resource Requirements (FRR) obligations from CRES providers.[18] However, the Capacity Order also directed that AEP-Ohio's capacity charge to CRES providers shall be the auction-based rate, as determined by PJM via its reliability pricing model (RPM), including final zonal adjustments, on the basis that the RPM rate will promote retail electric competition.[19]

In the Capacity Order, the Commission also authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers, commencing June 1, 2012, through the end of this modified ESP, with the recovery mechanism to be established in this proceeding.[20]

In this Order on the modified ESP, the Commission adopts, as part of the RSR, the recovery of the difference between the RPM-based capacity rate and AEP-Ohio's state compensation mechanism for capacity as determined by the Commission.

Staff endorses the Company's recovery of the difference between the state compensation mechanism for capacity and the RPM rate (Staff Reply Br. at 13). On the other hand, IEU, OCC and APJN argue that there is no record evidence in this modified ESP case, or any other proceeding, to determine an appropriate mechanism to collect deferred capacity charges in contradiction of the requirements in Section 4903.09, Revised Code, and the parties were not afforded due process on the issue. Furthermore, OCC and APJN reason that the capacity charge deferrals cannot be a provision of an ESP as the charges do not fall within one of the specified categories listed in Section 4928.143(B)(2), Revised Code, and there is no statutory basis under Chapter 4928, Revised Code, for such charges. OCC and APJN also contend approval of the recovery of deferred capacity charges violates state policies expressed in Section 4928.02, Revised Code, at paragraph (A), which requires reasonably priced retail electric service; at paragraph (H), which prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail service; and at paragraph (L), which requires the Commission to protect at-risk populations. (OCC/APJN Reply Br. at 18; IEU Reply Br. 6-7).

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18 In re Capacity Case, Order at 33-36 (July 2, 2012).

19 In re Capacity Case, Order at 23 (July 2, 2012).

20 In re Capacity Case, Order at 23 (July 2, 2012).

Certain parties that oppose the Commission's incorporation of the Capacity Case deferrals in the modified ESP overlook the fact that the Capacity Case was opened prior to each of the ESP 2 applications filed by AEP-Ohio and that each of the applications proposed a state compensation capacity charge and plan for resolution of the issue. The Commission rejects the Company's two-tier capacity plan and rates, proposed as a part of this modified ESP 2.

Furthermore, in accordance with Section 4928.144, Revised Code, the Commission may order any just and reasonable phase-in of any rate or price established under Sections 4928.141, 4928.142, or 4928.143, Revised Code, including carrying charges. Where the Commission establishes a phase-in, the Commission must also authorize the creation of the regulatory asset to defer the incurred costs equal to the amount not collected, plus carrying charges on the amount not collected, and authorize the recovery of the deferral and carrying charges by way of a non-bypassable surcharge.

Several of the interveners argue that because the record in the modified ESP was closed when the Capacity Order was issued, the deferral of capacity charges was not made an issue in the modified ESP case, the record does not support the deferral of capacity charges or that the parties were not afforded due process on the issue. We disagree. AEP-Ohio proposed certain capacity charges and a plan as a part of this modified ESP and consistent with the Commission's authority we may approve or modify and approve an ESP. Nothing in the Section 4928.144, Revised Code, limits the Commission's authority to modify the ESP to include deferrals on its own motion. With the Commission's decision to begin collecting the deferral in part through the RSR, all other issues raised on this matter are addressed in that section of the Order.

12. <u>Phase-in Recovery Rider and Securitization</u>

As part of AEP-Ohio's ESP 1 case, to mitigate the impact of the rate increase for customers, the Commission ordered, pursuant to Section 4928.144, Revised Code, the Company to phase-in any increase authorized over an established percentage for each year of the ESP.[21] The Commission authorized CSP and OP to establish a regulatory asset to record and defer fuel expenses, with carrying costs at the weighted average cost of capital (WACC), with recovery through a non-bypassable surcharge to commence January 1, 2012, and continue through December 31, 2018.[22] This aspect of the ESP 1 Order is final and non-appealable. On September 1, 2011, CSP and OP filed the Phase-in Recovery Case application to request the creation of the Phase-In Recovery Rider (PIRR), a mechanism to recover the accumulated deferred fuel costs, including carrying costs, to be effective with the first billing cycle of January 2012. The Phase-in Recovery Case was a part of the proposed ESP 2 Stipulation which was initially approved by the Commission on

21 ESP 1 Order at 22.

22 ESP 1 Order at 20-23; First ESP EOR at 6-10.

December 14, 2011. Consistent with the Commission's directive in the February 23, 2012 Entry on Rehearing rejecting the ESP Stipulation, a procedural schedule was established for the Phase-in Recovery Case to proceed independently of any ESP. On August 2, 2012, the Commission issued its decision on the Company's PIRR application.

Notwithstanding the Phase-in Recovery Case, as a part of this modified ESP case, AEP-Ohio requests that recovery of the deferred fuel expenses be delayed, while continuing to accrue carrying cost at WACC, until June 2013. The Company does not propose to extend the recovery period. AEP-Ohio also proposes that the PIRRs of CSP and OP be combined. The rationale presented by the Company for delaying collection of the PIRR is to coincide with and offset the consolidation of the FAC, which the Company reasons will minimize customer rate impacts. According to AEP-Ohio witness Roush, combining the PIRR rates will increase the rate for customers in the CSP rate zone and reduce the rate for customers in the OP rate zone. In this modified ESP proceeding, AEP-Ohio also requests that the Commission suspend the procedural schedule in the PIRR cases. (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 119 at 3; AEP-Ohio Ex. 111 at 5-6.)

AEP-Ohio witness Hawkins acknowledges that legislation permitting the securitization of the PIRR was passed in December 2011 but claims that securitization of the PIRR regulatory asset will likely take about nine months to finalize after the issuance of a final, non-appealable order. AEP-Ohio admits that securitization of the PIRR regulatory assets would reduce customer costs as a result of the reduction in carrying costs and provide the Company with capital to assist with the transition to market. (AEP-Ohio Ex. 102 at 7-8.)

OCC opposes the notion that AEP-Ohio be permitted to earn a return on its own capital at WACC while the PIRR is delayed at the Company's request. Further, OCC and APJN agree with Staff that collection of the PIRR should commence as soon as possible after the Commission issues its Order, the delay in collection amounts to an additional cost of $64.5 million. OCC and APJN argue that there is no justification for the delay and the delay at WACC only serves to benefit the Company. Since the delayed collection is at the Company's request, OCC and APJN advocate that no further carrying charges accrue or the carrying charge be reduced to the long-term cost of debt. (OCC Ex. 115 at 4-7; OCC Ex. 111 at 20-22; OCC/APJN Br. at 64-72)

Similarly, IEU argues that the delay of the PIRR violates Section 4928.144, Revised Code, which requires that the delay in collection at WACC be consistent with sound regulatory practice, just, and reasonable. IEU estimates the additional carrying cost will be at least an additional $40 to $45 million and reasons that AEP-Ohio was only authorized to collect WACC on deferred fuel costs through December 31, 2011, the end of ESP 1. (IEU Ex. 129 at 30-31, 14; Tr. at 3639, 4549.)

Ormet argues that the increased carrying charge to defer the implementation of the PIRR until June 2013 is excessive and presents a number of legal and pragmatic issues. Ormet notes that the interest to be incurred by delaying the implementation of the PIRR is based on an interest rate of 11.26 percent, more than AEP-Ohio utilized to determine the RSR. Ormet encourages the Commission to reduce the carrying cost, in light of the change in economic and financial circumstances since the ESP 1 Order, to the short-term cost of debt and to delay PIRR implementation until securitization is complete or at least until June 2013. (Ormet Br. at 23-24.)

Ormet and IEU request that the Company be directed to maintain the separate PIRR mechanisms for CSP and OP to reduce the impact on ratepayers. IEU notes that CSP customers have contributed approximately one percent of the total PIRR balance. Ormet notes that the deferred fuel expenses that are the basis of the PIRR, as provided in the ESP 1 Order, is a final non-appealable order for which AEP-Ohio may rely to seek securitization. AEP-Ohio has argued such in this case in its filing of March 6, 2012, and Ormet contends that pursuant to *Nationwide Ins. Co. v. Hall*, No. 1258, 1978 WL 214906 at *3 (Ohio App. 7 Dist. Mar. 23, 1978) AEP-Ohio can not now assert a contradictory legal position. (Tr. at 4543-4548; Ormet Ex. 106B at 9; Ormet Br. at 23-27; IEU Ex. 129 at 9-11; IEU Br. at 72)

Ormet asserts that blending the PIRR rate for CSP and OP rate zones constitutes a retroactive change in fuel costs for which AEP-Ohio has failed to offer any justification. Ormet states that at the time the fuel cost were incurred, CSP and OP were not merged and that the overwhelming majority of the PIRR balance is from the OP rate zone. The rationale offered by Ormet is that the blending of the FAC rate is fundamentally different from the blending of the PIRR rate, as FAC is an ongoing look at current and future fuel costs where the PIRR is the collection of previously incurred, deferred fuel costs. Ormet argues that the Commission has previously concluded that the distinction between retrospective and prospective is key to what constitutes prohibited retroactive ratemaking. Ormet asks that, consistent with the Commission's determination in the ESP 1 Entry on Remand Order, that the Commission find the blending of the CSP and OP PIRR balances equates to changing the rate for previously incurred but deferred fuel costs. (Tr. at 1187, 4536-4537, 4540; Ormet Br. at 27-31.)

The Company reasons that the PIRR regulatory asset is on the books of OP, as the surviving entity post-merger, along with all of the other assets and liabilities of the former CSP. Therefore, it is appropriate for all AEP-Ohio customers to pay the PIRR. AEP-Ohio notes that Staff advocates that the FAC and PIRR be immediately unified and implemented, because CSP customers benefit from a rate impact perspective with the merging of both rates (Tr. at 4539-4540).

Staff opposes the Company's request to delay recovery of the merged PIRR rates and recommends that the Commission direct recovery to commence upon approval of the modified ESP to avoid increased carrying charges associated with the dely. Staff notes that with a PIRR balance of approximately $549 million, delaying PIRR recovery until June 2013 results in additional carrying charges of $71 million at the WACC. Further, Staff supports the merger of the PIRR rates. (Staff Ex. 109 at 4-5.)

AEP-Ohio answers that the difference between the Company's proposal to delay collection of the PIRR in comparison to the Staff and certain interveners opposition to the delay is essentially a balancing or prioritizing between two goals: mitigating present rate impacts and reducing the total carrying charges. The Company's proposal was aimed at addressing the first goal and the Staff's position prioritizes the second goal. The Company contends that its proposal to delay implementation of the PIRR until June 2013 to coincide with the unification of FAC rates is reasonable, results in minimal immediate rate impacts to customers, and should be approved.

AEP-Ohio's request to suspend the procedural schedule in the PIRR case is moot, as it does not appear that the Company made a similar request in the Phase-in Recovery Cases, and given that the Commission has issued its decision on the PIRR application. Consistent with the Company's limited request as to the PIRR in this modified ESP, we will address the commencement of the amortization period for the PIRR, combining the PIRR rates for the CSP and OP rate zones and securitization. Any remaining issue raised as to the deferred fuel expense or the PIRR that is not addressed in the Phase-in Recovery Order or this modified ESP Order is denied.

As AEP-Ohio correctly points out, delaying collection of the PIRR to offset against the merged FAC rates, as opposed to immediately commencing collection of the PIRR, is indeed the prioritizing between two goals. AEP-Ohio's request to delay commencement of the amortization period for the PIRR is denied. In this case, where the accrued carrying charges during the requested delay are estimated to be an additional $40 to $71 million, it is unreasonable for the Commission to approve the delay and permit carrying charges to continue to accrue merely to facilitate one charge offsetting another. AEP-Ohio is directed to commence recovery of the PIRR charges as soon as practicable after the issuance of this Order.

We agree with the recommendation of Ormet and IEU to maintain separate PIRR rates for the CSP and OP rate zones. The PIRR balance was incurred primarily by OP customers, and according to cost causation principles, the recovery of the balance should be from OP customers. Further, as discussed above, the Commission directs that FAC rates should be maintained on a separate basis.

IEU argues that the PIRR fails to address the requirements of Section 4928.20(I), Revised Code,[23] that requires non-bypassable charges arising from a phase-in deferral are applicable to customers in governmental aggregation programs only in proportionate to the benefit received. IEU's claim that the PIRR violates Section 4928.20(I), Revised Code, is misdirected. The PIRR is not part of this ESP proceeding but was the directive of the Commission in the Company's prior ESP case. Therefore, the Commission finds that IEU should have raised this issue in the ESP 1 case or when the Commission established the PIRR and that Section 4928.144, Revised Code, as to the collection of the PIRR, is not applicable to this modified ESP proceeding.

The Commission notes that AEP-Ohio witness Hawkins testified that securitization of the PIRR regulatory assets would reduce customer costs through the reduction of the carrying cost and provide AEP-Ohio with the needed capital to assist with the transition to competition. AEP-Ohio also states that recovery of the PIRR can commence before securitization is complete. Ormet supports securitization of the PIRR. (AEP-Ohio Ex. 102 at 8; Ormet Br. at 24-25.)

Finally, while AEP-Ohio does not specifically propose securitization of the PIRR in the modified ESP, AEP-Ohio notes that securitization offers a benefit to both customers and AEP-Ohio. Further, no parties opposed the idea of securitizing the PIRR. Accordingly, we direct AEP-Ohio to take advantage of this extremely useful tool our General Assembly created for electric utilities and their customers through House Bill 364 and securitize the PIRR deferral balance. Securitization not only leads to lower utility bills for all customers as a result of reduced carrying costs, but also leads to lower borrowing costs for AEP-Ohio. The Commission finds it extremely important, particularly when our State has been hit by tough economic times, to keep customer utility bills as low as possible, and securitization of the PIRR provides us with a means to ensure we protect customer interests. Therefore, AEP-Ohio shall initiate the securitization process for the PIRR deferral balance as soon as practicable..

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23 Section 4928.20(I), Revised Code, states:

Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.

13. Generation Asset Divestiture

The Company describes, but does not request as a part of this modified ESP, its proposed application for full corporate separation filed in Case No. 12-1126-EL-UNC (Corporate Separation Case), pursuant to the requirements of Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C.[24] AEP-Ohio asserts full corporate separation is a necessary prerequisite for generation asset divestiture and AEP-Ohio's transition to an auction-based SSO. Pursuant to the proposed modified ESP and the Company's proposed corporate separation plan, AEP-Ohio will retain transmission and distribution-related assets, its REPAs and the associated RECs. AEP-Ohio will transfer to its generation affiliate, GenResources, existing generation units and contractual entitlements, fuel-related assets and contracts and other assets and liabilities related to the generation business.[25] The generation assets will be transferred at net book value. AEP-Ohio proposes to retain senior notes and pollution control revenue bonds, as such long-term debt is not secured by the generation assets being transferred to GenResources. The Company expects to complete termination of the Pool Agreement and full corporate separation by January 1, 2014.[26] (AEP-Ohio Ex. 103 at 4-6, 8, 21-22.)

AEP-Ohio is a Fixed Resource Requirement (FRR) entity, pursuant to the requirements of PJM Interconnection LLC (PJM), and must remain an FRR until June 1, 2015. To meet its FRR obligations after full corporate separation and before the proposed energy auctions for delivery commencing January 1, 2015, the Company states GenResources will provide AEP-Ohio, via a full requirements wholesale agreement, its load requirements to supply non-shopping customers. Pursuant to the proposed modified ESP, AEP-Ohio proposes that for the period January 1, 2015 through May 31, 2015, GenResources will provide AEP-Ohio only capacity, no energy, at $255 per MW-day and the contract between AEP-Ohio and GenResources will terminate effective June 1, 2015, when both energy and capacity will be provided to SSO customers through an auction. While AEP-Ohio is an FRR entity, the Company states it will make capacity payments to GenResources for the energy only auctions proposed in this modified ESP at $255 per MW-day. Generation-related revenues paid to AEP-Ohio by Ohio ratepayers will be passed through to GenResources for capacity and energy received for the SSO load, and AEP-Ohio will reimburse GenResources on a dollar-for-dollar basis for transmission, ancillary, and other service charges billed to GenResources by PJM to serve AEP-Ohio's

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24 See *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, filed March 30, 2012.

25 AEP-Ohio notes that after transferring the generation assets and liabilities to GenResources, GenResources will transfer Amos unit 3 and 80 percent of the Mitchell Plant to Appalachian Power Company (APCo) and transfer the balance of the Mitchell Plant to Kentucky Power Company (KYP), so the utilities can meet their respective load requirement absent the AEP East Pool Agreement (AEP-Ohio Ex. 101 at 22).

26 As a part of the modified ESP, AEP-Ohio requests approval for a Pool Termination Rider which is addressed in a separate section of this Order.

SSO load. In addition, AEP-Ohio will remit all capacity payments made by CRES providers pursuant to PJM's Reliability Assurance Agreement to GenResources as well as revenues from the Retail Stability Rider as compensation for fulfillment of AEP-Ohio's FRR obligations. (AEP-Ohio Ex. 101 at 23; AEP-Ohio Ex. 103 at 6-8; Tr. at 515-519.)

IEU, OCC and APJN argue that because AEP-Ohio has made the modified ESP filing contingent on receiving approval of the corporate separation plan yet failed to request consolidation of the Corporate Separation Case, the Commission cannot approve the corporate separation plan as a part of this proceeding. (OCC/APJN Br. at 73; IEU Br. 76-77.)

In fact, IEU argues that AEP-Ohio is not the FRR entity but, American Electric Power Service Corporation (AEPSC) is the FRR entity on behalf of all of the American Electric Power operating companies within PJM and, therefore, AEP-Ohio does not have any FRR obligation. Nor has AEP-Ohio offered into evidence, IEU notes, AEPSC's FRR capacity plan or indicated which of AEP-Ohio's generation assets are part of the capacity plan. IEU reasons that AEP-Ohio's generation assets are not dedicated to AEP-Ohio's distribution customers and may be replaced by other capacity resources. (IEU Ex. 125 at 23, AEP-Ohio Ex. 103 at 9.)

DER and DECAM argue that AEP-Ohio's proposal to contract with GenResources to serve the SSO load at the proposed capacity price after corporate separation is an illegal violation of the corporate separation laws and violates state policy causing a negative impact on the ability of unaffiliated CRES providers to compete in OP territory (Tr. at 812-813; DER/DECAM Br. at 11).

Staff opposes AEP-Ohio's request to retain $296 million in pollution control bonds, where there has not been, according to Staff, any demonstration that use of the intercompany notes would have a substantial negative affect on the generation affiliate's cost of debt. Staff proposes that AEP-Ohio be directed to make a filing with the Commission within six months after the completion of corporate separation, to demonstrate that there is not any substantial negative impact on AEP-Ohio if the debt or intercompany notes are not transferred to the generation affiliate. Therefore, Staff recommends that the Commission deny this aspect of the Company's ESP proposal at this time. Further, Staff recommends that the Corporate Organization chart be updated to reflect the legal entities that are related to American Electric Power Inc., as well as all reportable segments related to AEP-Ohio, in a format and manner similar to the information American Electric Power Inc. provides in its 10K filing to the Securities and Exchange Commission. (Staff Ex. 108 at 5-6; Tr. at 4405-4406.)

AEP-Ohio did not request consolidation of its pending corporate separation plan in conjunction with this modified ESP application, and as such the Commission will consider the corporate separation application in a separate docket. As such, the primary issues to be considered in this modified ESP proceeding is how the divestiture of the generation assets and the agreement between AEP-Ohio and GenResources will impact SSO rates.

We find IEU's arguments, that AEP-Ohio is not the entity committed to an FRR obligation with PJM to be form over substance. AEPSC entered into the FRR agreement on behalf of AEP-Ohio and other AEP-Ohio operating affiliates and the legal obligation of AEP-Ohio is no less binding than if AEP-Ohio entered into the agreement directly.

The Commission finds that sufficient information regarding the proposed generation asset divestiture and corporate separation, as reflected in more detail in the Corporate Separation Case, has been provided in this modified ESP case to allow the Commission to reasonably conclude that termination of the Pool Agreement and corporate separation facilitate AEP-Ohio's transition to a competitive market in Ohio. With the modification and adoption of the modified ESP, as presented in this Order, the Commission may reasonably determine the ESP rates, including the rate impact of the generation asset divestiture, on the Company's SSO customers for the term of the modified ESP, where upon SSO rates will subsequently be subject to a competitive bidding process. While, AEP-Ohio proposes to enter into an agreement with GenResources to provide AEP-Ohio capacity at $255 per MW-day, we emphasize that based on the Commission's decision in the Capacity Case, AEP-Ohio will not receive any more than the state compensation capacity charge of $188.88 per MW-day from Ohio customers during the term of this ESP.

As the Commission understands the Company's description of the generation divestiture, all AEP-Ohio generation facilities, except Amos and Mitchell, will be transferred to GenResources at net book value. Amos and Mitchell will ultimately be transferred to AEP-Ohio operating affiliates at net book value.

Staff raises some concern with the implementation of corporate separation and the lack of the Company's transfer of all debt and/or intercompany notes to GenResources. Despite the Staff's recommendation, the Commission approves AEP-Ohio's requests to retain the pollution control bonds contingent upon a filing with the Commission demonstrating that AEP-Ohio ratepayers have not and will not incur any costs associated with the cost of servicing the associated debt. More specifically, AEP-Ohio ratepayers shall be held harmless for the cost of the pollution control bonds, as well as any other generation or generation related debt or inter-company notes retained by AEP-Ohio. AEP-Ohio shall file such information with the Commission, in this docket no later than 90 days after the issuance of this Order. Accordingly, the Commission finds that, subject to our approval of the corporate separation plan, the electric distribution utility should divest its generation assets from its noncompetitive electric distribution utility assets by transfer to its separate competitive retail generation subsidiary, GenResources, as represented in this modified ESP. The Company states that it has notified PJM of its intention to enter PJM's auction process for the delivery year 2015-2016. The Commission will review the remaining issues presented in the Company's Corporate Separation Case.

In regards to the contract between AEP-Ohio and GenResources, FES contends that after corporate separation AEP-Ohio cannot simply pass-through the generation revenues it receives without evidence that the cost are prudent consistent with Section 4928.143(B)(2)(a), Revised Code, and AEP-Ohio has done nothing to establish that $255 per MW-day for capacity is prudent. The price of $255 per MW-day is unrelated to cost or market rates, and according to FES, appears to be well above market. Furthermore, Constellation and Exelon witness Fein testified that Exelon made an offer of energy and capacity and an offer for capacity only to serve AEP-Ohio's SSO load June 1, 2014 through May 31, 2016, at a cost lower than the Company is proposing as a part of this modified ESP. Constellation and Exelon emphasize that the PJM tariff does not prohibit an FRR entity from making bilateral purchases in the market to meet its capacity obligations. (Constellation/Exelon Ex. 101 at 17-19). FES notes that according to testimony offered by AEP-Ohio witness Nelson, the $255 MW-day for capacity is not based on costs nor indexed to the market rate. Furthermore, FES points out that AEPSC is negotiating the contract for both AEP-Ohio and GenResources. AEP-Ohio has no intent, based on the testimony of Mr. Nelson, to evaluate whether the cost of its contract with GenResources for SSO service could be reduced by contracting with another supplier. Based on the record evidence, FES argues that this aspect of the modified ESP does not comply with the requirements of Section 4928.143(B)(2)(a), Revised Code, and the contract between AEP-Ohio and GenResources, after corporate separation does not comply with the FERC *Edgar* guidelines, which direct that no wholesale sale of electric energy or capacity between a franchised public utility with captive customers and a market-regulated power sales affiliate may take place without first receiving FERC authorization for the transaction under section 205 of the Federal Power Act. (Tr. at 523-526; FES Br. at 102-105.)

The Commission finds, that once corporate separation is effective and AEP-Ohio procures its generation from GenResources that it is appropriate and reasonable for certain revenues to pass-through AEP-Ohio to GenResources. Specifically, the revenues AEP-Ohio receives, after corporate separation is implemented, from the RSR which are not allocated to recovery of the deferral, revenue equivalent to the capacity charge of $188.99/MW-day authorized in Case No. 10-2929-EL-UNC, generation-based revenues from SSO customers, and revenue for energy sales to shopping customers, should flow to GenResources. We recognize, as AEP-Ohio acknowledges and FES discusses in its reply brief, that the contract between AEP-Ohio and GenResources is subject to prior FERC approval. We do not make, as a part of our review of the Company's modified ESP application, any expressed or implied endorsement of the terms or conditions of the AEP-Ohio contract with GenResources, as presented in this case.

14. GridSMART

The Company's modified ESP application proposes the continuation of the gridSMART rider approved by the Commission in the ESP 1 Order, with two modifications. First, AEP-Ohio requests that the gridSMART rates for the CSP rate zone be expanded to the OP rate zone. Second, AEP-Ohio requests that the net book value of meters retired as a result of the gridSMART project be deferred as a regulatory asset for accounting purposes. Currently, the net book value of meters replaced as a result of Phase 1 of the gridSMART project are charged to expense net of salvage and net of meter transfers and included in the over/under calculation of the rider. The Company expects to complete the installation of gridSMART equipment in Phase 1 and to complete gridSMART data submission to the U. S. Department of Energy on Phase 1 of the project by December 31, 2013, with the evaluation to be completed around March 31, 2014. Further, AEP-Ohio states that the Company intends to deploy elements of the gridSMART program throughout the AEP-Ohio service territory as part of the proposed DIR program proposed in this proceeding. (AEP-Ohio Ex. 107 at 10; AEP-Ohio Ex. 110 at 9-13.)

OCC and APJN submit that, to the extent that the Company proposes to include gridSMART costs in the DIR, there are numerous concerns that need to be addressed before the Company is authorized to proceed. Staff, OCC, and APJN retort that the Company's proposed expansion of the gridSMART project, before any evaluation and analysis of the success of gridSMART Phase 1, is inconsistent with sound business principles and should be rejected by the Commission. Therefore, these parties recommend that the Company not proceed with Phase 2 until evaluation of Phase 1, is complete, on or about March 31, 2014. (Staff Ex. 105 at 5-6; OCC/APJN Br. at 96-97.)

More specifically, Staff reasons that the costs of the expansion of various gridSMART technologies have not been determined, the benefits of the gridSMART expansion defined nor customer acceptance of such technologies evaluated. In addition, Staff claims that the Company has stated that certain components of the aging distribution infrastructure do not support gridSMART technologies. Despite Staff's position on the commencement of Phase 2 of the gridSMART project, Staff does not oppose the Company's installation, at the Company's expense and risk of recovery, of proven distribution technologies that can proceed independently of gridSMART, which address near term generation reliability concerns, such as integrated voltage variation control (IVVC), and do not present any security or interoperability issues or violate requirements set forth by the National Institute of Standards and Technology Interagency Report. Staff endorses the continuation of the gridSMART rider to be collected from all AEP-Ohio customers. Staff emphasizes that equipment should not be recoverable in the gridSMART rider until it is installed, has completed and passed thorough testing, and has been placed in-service. (Staff Ex. 105 at 3-6; Staff Ex. 107 at 3-13.)

AEP-Ohio points out that no intervener has expressed any opposition to the continuation and completion of gridSMART Phase 1 and, accordingly, AEP-Ohio requests approval of this aspect of the modified ESP. AEP-Ohio also requests that the Commission provide some policy guidance on whether the Company should proceed with the expansion of the gridSMART program.

As the Commission noted in AEP-Ohio's ESP 1 Order:

> [I]t is important that steps be taken by the electric utilities to explore and implement technologies... that will potentially provide long-term benefits to customers and the electric utility. GridSMART Phase 1 will provide CSP with beneficial information as to implementation, equipment preferences, customer expectations, and customer education requirements... More reliable service is clearly beneficial to CSP's customers. The Commission strongly supports the implementation of AMI [advanced metering infrastructure] and DA [distribution automation initiative], with HAN [home area network], as we believe these advanced technologies are the foundation for AEP-Ohio providing its customers the ability to better manage their energy usage and reduce their energy costs.

(ESP 1 Order at 34-35.)

The Commission is not wavering in its conviction as to the benefits of gridSMART. Thus, we direct AEP-Ohio to continue the gridSMART Phase 1 project and to complete the review and evaluation of the project. We are approving the Company's request to initiate Phase 2 of the gridSMART project, prior to the March 31, 2014, completion of the evaluation of gridSMART Phase 1, with those technologies that have to-date demonstrated success and are cost-effective. To require the Company to delay any further expansion or installation of gridSMART is unnecessarily restrictive with respect to the further deployment of successful individual smart grid systems and technologies used in the project. The Company shall file its proposed expansion of the gridSMART project, gridSMART Phase 2, as part of a new gridSMART application, including sufficient detail on the equipment and technology proposed for the Commission to evaluate the demonstrated success, cost-effectiveness, customer acceptance and feasibility of the proposed technology. However, the Company shall include, as Staff recommends, IVVC only within the distribution investment rider, as IVVC is not exclusive to the gridSMART project. IVVC supports the overall electric system reliability and can be installed without the presence of grid smart technologies, although IVVC enhances or is necessary for grid smart technology to operate properly and efficiently. Furthermore, the gridSMART Phase 1 rider was approved with specific limitations as to the equipment for which recovery could be sought, and a dollar limitation.[27] Any gridSMART investment beyond the Phase 1 pilot, which is not subject to recovery through the DIR mechanism, should be recovered through a mechanism other than the current gridSMART rider, for example, through a gridSMART Phase 2 rider. The current gridSMART rider allows for recovery on an "as spent" basis, with audits directed toward truing-up expenditures with collections through the rider rate. Keeping subsequent non-DIR gridSMART expenditures in a new separate recovery mechanism facilitates enforcement and a Commission determination that recovery of gridSMART investment occur only after the equipment is installed, tested, and is in-service. With these clarifications, the Commission approves the Company's request to continue, as a part of this modified ESP, the current gridSMART rider mechanism, subject to annual true-up and reconciliation based on the Company's prudently incurred costs, and to extend the rate to include OP as well as CSP customers.

We note that the gridSMART Phase 1 rider was last evaluated for prudency of expenditures, reconciled for over- and under-recoveries and the rate mechanism adjusted in Case No. 11-1353-EL-RDR, with the rate effective beginning September, 1, 2011. Despite the Commission's February 23, 2012 rejection of the application in this ESP 2 proceeding, the recovery of the gridSMART rate mechanism continued consistent with the Entry issued March 7, 2012. Accordingly, the gridSMART rider rate mechanism approved in Case No. 11-1353-EL-RDR shall continue at the current rate until revised by the Commission. We also note that in Case No. 11-1353-EL-RDR, the Commission deducted an amount from the Company's claim for the loss on the disposal of electro-mechanical meters. The Commission notes, as we stated in the Order issued August 4, 2011, that we will address the meter issue in the Company's pending gridSMART rider application, Case No. 12-509-EL-RDR, and nothing in this Order on the modified ESP should be interpreted to the contrary.

15. Transmission Cost Recovery Rider

Pursuant to Commission authority, as set forth in Section 4928.05(A)(2), Revised Code, and the rules in Chapter 4901:1-36, O.A.C., electric utilities may seek recovery of transmission and transmission-related costs. Through this modified ESP, AEP-Ohio proposes only that the transmission cost recovery rider (TCRR) mechanisms of the CSP and OP rate zones be combined. The Company proposes no other changes to the TCRR mechanism as a part of this ESP. (AEP-Ohio Ex. 111 at 6-7; AEP-Ohio Ex. 107 at 8.)

The Commission notes that the current TCRR process has been in place since 2009, and operates appropriately. As structured, with the TCRR mechanism any over- or under-recovery is accounted for in the next semi-annual review of the TCRR mechanism. For this reason, we do not expect any adverse rate impact for customers with the combining of the CSP and OP TCRR rate mechanisms. Given the merger of CSP into OP, effective as of

27 ESP 1 Order at 37-38; ESP 1 Entry on Rehearing at 18-24 (July 23, 2009).

December 31, 2011, the Commission finds AEP-Ohio's request to combine the TCRR mechanism to be reasonable. The Commission directs that any over-recovery of transmission or transmission-related costs, as a result of combining the TCRR mechanisms, be reconciled in the over and under-recovery component of the Company's next TCRR rider update.

16. Enhanced Service Reliability Rider

As part of AEP-Ohio's ESP 1 case, AEP-Ohio proposed an enhanced service reliability rider (ESRR) program which included four components, of which only the transition to a cycle-based vegetation management program was approved by the Commission. In this modified ESP, AEP-Ohio requests continuation of the ESRR and the Company's transition to a four-year, cycle-based trimming program. Further, the Company proposes the unification of the ESRR rates for each rate zone into a single rate, adjusted for anticipated cost increases over the term of the ESP, with carrying cost on capital assets and annual reconciliation. AEP-Ohio admits that before the initiation of the transitional vegetation management program, the number of tree-related circuit outages had gradually increased. However, the Company states that with the initiation of the new vegetation management program, the number of tree-caused outages has been reduced and service reliability has improved. AEP-Ohio proposes to complete the transition from a performance-based program to a four-year, cycle-based trimming program for all of the Company's distribution circuits as approved by the Commission in the prior ESP. However, the Company notes that the vegetation management plan was implemented as a five-year transition program and, as a result of the delay in adopting a second ESP and increases in the expected costs to complete implementation of the cycle-based trimming program, it is now necessary to extend the implementation period to include an additional year into 2014. AEP-Ohio requests incremental funding for 2014 for both the completion of the transition to a cycle-based vegetation management program of $16 million and an incremental increase of $18 million annually to maintain the cycle-based program. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 110 at 5-9.)

Staff supports the continuance of the ESRR through 2014 but not any cost incurred thereafter. Staff reasons that after 2014, the Company's transition to a four-year, cycle-based vegetation management program will be complete and regular maintenance pursuant to the program will be part of the Company's normal operations, the cost of which should be recovered through base rates not through the ESRR. Further, Staff argues that the ESRR funding level for the period 2012 through 2014 is overstated due to the increased ESRR baseline reflected in the Company's recent distribution rate case.[28] According to Staff, to reach the rate base in the Stipulation in the distribution rate case, Staff agreed to an increase in the revenue requirement for CSP and OP which incorporated an annual increase in vegetation management operation and maintenance expense of $17.8

28 *In re AEP-Ohio*, Opinion and Order, Case No. 11-351-EL-AIR, et al. (December 14, 2011).

million annually for 2012 through 2014 over its recommendation in the Staff Report. For that reason, Staff asserts that vegetation management operation and maintenance expense must be reduced by $17.8 million annually for the period 2012 through 2014. Further, Staff recommends that the Commission direct AEP-Ohio to file, pursuant to Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2013, a revised vegetation management program which commits the Company to complete end-to-end trimming on all of its distribution circuits every four years beginning January 1, 2014 and beyond. (Staff Ex. 106 at 11-14; Tr. at 4363-4365.)

AEP-Ohio retorts that Staff ignores the fact that the Stipulation, and the Commission Order approving the Stipulation, in the Company's distribution rate case do not detail any increase in the ESRR baseline. AEP-Ohio requests that the Commission reject Staff's view of the rate case settlement as unsupported and improper, after the issuance of a final, non-appealable order in the case. As to Staff's proposed termination of funding after 2014, the Company offers that such would undermine the benefits of the cycle-based trimming. (AEP-Ohio Reply Br. at 76-77.)

The Commission concludes that while the Stipulation in the distribution rate case reflects an increase in the baseline operations and maintenance expense from the level recommended in the Staff Report, there is no evidence in the Stipulation or the Commission's Order adopting the Stipulation which specifically supports a $17.8 million increase in operations and maintenance expense for the vegetation management program. Accordingly, the Commission approves the continuation of the vegetation management program, via the ESRR, and merger of the rates, as requested by the Company for the term of the modified ESP, through May 31, 2015. Within 90 days after the conclusion of the ESRR, the Company shall make the necessary filing for the final year review and reconciliation of the rider. We direct AEP-Ohio to file a revised vegetation management program consistent with this Order and Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2012. We see no need to wait until December 2013 for the filing, as requested by Staff, in light of our ruling in this Order.

17. Energy Efficiency and Peak Demand Reduction Rider

Through this modified ESP, the Company proposes the continuation of the EE/PDR Rider, with the unification of the rates into a single rate. The EE/PDR rider would continue to be, as it has been since its adoption in the ESP 1 cases,[29] updated annually. AEP-Ohio notes the proposed regulatory accounting for the EE/PDR rider, is over-under accounting with no carrying charge on the investment and no carrying charge on the over/under balance. The Company states that it has developed energy efficiency and demand response programs for all customer segments and through the implementation of the programs customers have the potential to save approximately $630

29 ESP 1 Order at 41-48; ESP 1 EOR at 27-31.

million in reduced electric service cost over the life of the programs. Further, the EE/PDR programs cause power plant emissions to be reduced. AEP-Ohio testified that its energy efficiency and peak demand response programs for 2009 through 2011 have been very successful in meeting the benchmarks. Staff endorses the Company's request to continue the EE/PDR rider. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 11-12; Staff Br. at 31.)

The Commission approves the merger of the EE/PDR rider rates for the CSP and OP rate zones and, for the term of this modified ESP, the continuation of the EE/PDR rider as adopted in the ESP 1 Order and subsequently confirmed in each of the Company's succeeding EE/PDR cases. In addition, as we established in our analysis of the IRP-D credit, because the IRP-D credit promotes energy efficiency, it is appropriate for AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider, as opposed to the RSR. Further, the Commission directs AEP-Ohio to take the appropriate steps necessary to bid the energy efficiency savings funded by the EE/PDR rider into the next PJM base residual auction and all subsequent auctions held during the term of the ESP.

18. Economic Development Rider

AEP-Ohio's modified ESP application request approval to continue, with one modification, the non-bypassable Economic Development Rider (EDR). The EDR mechanism recovers the costs, incentives, and forgone revenues associated with new or expanding Commission-approved special arrangements for economic development and job retention. As currently designed, the EDR rate is a component of each customer's base distribution rates. The Company wishes to merge the EDR rates for each of the rate zones into a single EDR rate with the EDR rate to continue in all other respects as approved by the Commission in the ESP 1 Order and the Company's subsequent EDR cases. As currently approved by the Commission, the EDR is updated periodically and the regulatory accounting for the EDR, being over-under accounting with no carrying charge on the investment and a long-term interest carrying charge on any unrecovered balance. AEP-Ohio states that the EDR supports Ohio's effectiveness in the global economy as required in Section 4928.02(N), Revised Code. AEP-Ohio asserts that the proposed EDR is reasonable and should be adopted as part of the modified ESP. (AEP-Ohio Ex. 111 at 3, 7 and Ex. DMR-5; AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 7, 13.)

Staff supports the Company's EDR proposal (Staff Br. at 31). However, OCC and APJN argue the Company allocates the EDR rider based only on distribution revenues as opposed to current total revenues (distribution, transmission and generation) between the customer classes in compliance with Rule 4901:1-38-08(A), O.A.C.[30] OCC and APJN note

30 Rule 4901:1-38-08(A)(4), O.A.C., states:

> The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change,

that the Commission approved Dayton Power & Light Company's EDR application with a similar allocation to the one they are proposing AEP-Ohio be required to adopt.[31]

The Company argues that because transmission and generation revenues are recovered only from its nonshopping customers, that OCC's and APJN's proposal would actually result in residential customers being responsible for a greater share of the delta revenues than under the current allocation method based only on distribution revenues paid by shopping and non-shopping customers. Further, AEP-Ohio notes that the Commission rejected this same proposal by OCC in the ESP 1 cases and requests that the Commission again reject the proposed change in the allocation methodology. (AEP-Ohio Reply Br. at 78.)

The Commission rejects OCC's and APJN's request to revise the basis for the EDR allocation, given the fact that the EDR is a non-bypassable rider recovered from shopping and non-shopping customers alike. We recognize that the EDR acts to attract new business and to facilitate the expansion of existing businesses in Ohio. In order to allow AEP-Ohio to effectively promote economic development to customers in its service territories, and continue its positive corporate presence in communities throughout Ohio, as evidenced by multiple witnesses at the public hearings, we find it reasonable for AEP to maintain its corporate headquarters in Columbus, Ohio, at a minimum, for the entire term of this ESP and the subsequent collection period associated with the deferral costs included in the RSR. Further, the Commission finds that, the EDR, as a non-bypassable rider, is recovered from all AEP-Ohio shopping and non-shopping customers. Therefore, we approve the Company's request to merge the EDR rates for the CSP and OP rate zones into a single rate and to otherwise continue the EDR mechanism as previously approved by the Commission in the Company's ESP 1 Order, as revised or clarified in its subsequent EDR proceedings.

Additionally, in light of the extenuating economic circumstances, the Commission hereby orders the Company to reinstate the Ohio Growth Fund, to be funded by shareholders at $2 million per year, or portion thereof, during the term of this ESP. The Ohio Growth Fund creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio.

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alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

31 See In re Dayton Power & Light Company, Case No. 12-815-EL-RDR, Order (April 25, 2012).

19. Storm Damage Recovery Mechanism

AEP-Ohio proposes a storm damage recovery mechanism be created to recover any incremental expenses incurred due to major storm events (AEP-Ohio Ex. 110 at 20). AEP-Ohio provides that the mechanism would be created in the amount of $5 million per year in accordance with the settlement in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR. In support of the storm damage recovery mechanism, AEP-Ohio witness Kirkpatrick notes that absent the mechanism, forecasted operation and maintenance (O&M) funds would be constantly diverted to cover the expense of major storms, which could disrupt planned maintenance activities and impact system reliability. The determination of what a major storm is or is not would be determined by methodology outlined in the IEEE Guide for Electric Power Distribution Reliability Indices, as set forth in Rule 4901:1-10-10(B), O.A.C. (*Id.*) Any capital costs that would be incurred due to a major storm would either become a component of the DIR or would be addressed in a distribution rate case (*Id.* at 21). Upon approval of the storm damage recovery mechanism, AEP-Ohio will defer the incremental distribution expenses above or below the $5 million storm expense beginning with the effective date of January 1, 2012 (AEP-Ohio Ex. 107 at 10).

OCC notes that while AEP-Ohio's actual storm costs expenses are currently unknown, it is likely that AEP-Ohio will incur more than $5 million based on historic data, which indicates the average annual expenses amount to approximately $8.97 million per year (OCC Ex. 114 at 20-21). In addition, OCC explains that AEP-Ohio failed to specify the carry charge rate for any storm damage deferrals, but suggests the carrying charges not be calculated using AEP-Ohio's WACC, as the mechanism does not include capital costs (OCC Br. at 97-98). OCC suggests that AEP-Ohio utilize its cost of long-term debt to calculate carrying charges (*Id.*).

In establishing its storm damage recovery mechanism, AEP-Ohio failed to specify how recovery of the deferred asset would actually work or would occur. As proposed, it is unknown when AEP-Ohio would seek recovery, or whether anything over or under $5 million would become a deferred asset or liability. As it currently stands, the storm damage recovery mechanism is open-ended and should be modified.

Therefore, we find that AEP-Ohio may begin deferral of any incremental distribution expenses above or below $5 million, per year, subject to the following modifications. Further, throughout the term of the modified ESP, AEP-Ohio shall maintain a detailed accounting of all storm expenses within its storm deferral account, including detailed records of all incidental costs and capital costs. AEP-Ohio shall provide this information annually for Staff to audit to determine if additional proceedings are necessary to establish recovery levels or refunds as necessary.

In the event AEP-Ohio incurs costs due to one or more unexpected, large scale storms, AEP-Ohio shall open a new docket and file a separate application by December 31 each year throughout the term of the modified ESP, if necessary. In the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating all the costs were prudently incurred and reasonable. Staff and any interested parties may file comments on the application within 60 days after AEP-Ohio dockets an application. If any objections are not resolved by AEP-Ohio, an evidentiary hearing will be scheduled, and parties will have the opportunity to conduct discovery and present testimony before the Commission. Thus, OCC's concern on the calculation of appropriate carrying charges is premature.

20. Other Issues

(a) Curtailable Service Riders

In ESP 1, based on the lack of certain information in the record, the Commission determined that customers under reasonable arrangements with AEP-Ohio, including, but not limited to, energy efficiency/peak demand reduction arrangements, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates, are prohibited from also participating in a PJM demand response program (DRP), unless and until the Commission decides otherwise (First ESP EOR at 41). While the Commission opined on the ability of customers in reasonable arrangements with AEP-Ohio to participate in PJM DRPs, the Commission did not, in the context of the ESP 1, address the ability of AEP-Ohio's retail customers to participate in PJM DRPs.

On March 19, 2010, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, AEP-Ohio filed an application to amend its emergency curtailment service riders to permit customers to be eligible to participate in AEP-Ohio's DRPs, integrate their customer-sited resources and assign the resources to AEP-Ohio to meet with the Company's peak demand reduction mandates or conditional retail participation in PJM DRPs.

As a part of this modified ESP, AEP-Ohio recognizes customer participation in the PJM directly or through third-party aggregators and proposes to eliminate two tariff services, Rider Emergency Curtailable Services and Rider Price Curtailable Service, as no customer currently receives service pursuant to either rider. EnerNOC endorses this aspect of AEP-Ohio's modified ESP application on the basis that its supports the provisions of Section 4928.02(D), Revised Code. (AEP-Ohio Ex. 100 at 9; AEP-Ohio Ex. 111 at 9; EnerNOC Br. at 5-6.).

We concur with the Company's request. Accordingly, the Company should eliminate Rider Emergency Curtailable Services and Rider Price Curtailable Service from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed.

(b) Customer Rate Impact Cap

In order to ensure no customers are unduly burdened by any unexpected rate impacts, as well as to mitigate any customer rate changes, we direct AEP-Ohio to cap customer rate increases at 12 percent over their current ESP I rate plan bill schedules for the entire term of the modified ESP, pursuant to our authority as set forth in Section 4928.144, Revised Code. The 12 percent limit shall be determined not by overall customer rate classes, but on an individual customer by customer basis. The customer rate impact cap applies to items approved within this modified ESP. Any rate changes that arise as a result of past proceedings, including any distribution proceedings, or in subsequent proceedings are not factored into the 12 percent cap. Further, the 12 percent cap shall be normalized for equivalent usage to ensure that at no point any individual customer's bill impacts shall exceed 12 percent. On May 31, 2013, AEP-Ohio should file, in a separate docket, a detailed accounting of its deferral impact created by the 12 percent rate cap. Upon AEP-Ohio's filing of its deferral calculations, the attorney examiners shall establish a procedural schedule, to consider, among other things, the deferral costs created, and the Commission will maintain the discretion to adjust the 12 percent limit, as necessary, throughout the term of the ESP.

(c) AEP-Ohio's Outstanding FERC Requests

The Commission takes notice that American Electric Power Service Corporation filed a renewed motion on AEP-Ohio's behalf for expedited rulings on July 20, 2012, in FERC docket numbers ER11-2183-001 and EL11-32-000. In the event FERC takes any action that may significantly alter the balance of this Commission's order, the Commission will make appropriate adjustments as necessary. Specifically, pursuant to Section 4928.143(F), Revised Code, at the end of each annual period of this modified ESP, the Commission shall consider if any such adjustments, including any that may arise as a result of a FERC order, lead to significantly excessive earnings for AEP-Ohio. In the event that the Commission finds that AEP-Ohio has significantly excessive earnings, AEP-Ohio shall return any amount in excess to consumers.

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.

AEP-Ohio contends that the ESP, as proposed, 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 an MRO. To properly conduct the statutory test, AEP-Ohio states that the proposed ESP must be viewed in the aggregate, which includes the statutory price test, other quantifiable benefits, and the consideration of non-quantifiable benefits (AEP Ex. 114 at 3-4). In evaluating all of these criteria, AEP-Ohio witness Laura Thomas concludes that the proposed ESP, in the aggregate, is more favorable that the results that would otherwise apply under an MRO by approximately $952 million (AEP-Ohio Ex. 115 at Exhibit LJT-1, page 1). In addition, Ms. Thomas states that there are numerous benefits that are not readily quantifiable (*Id.*).

In conducting the statutory price test, Ms. Thomas explains that she utilized Section 4928.20(J), Revised Code's interpretation of market prices for guidance in determining the competitive benchmark price. In establishing the competitive benchmark price, AEP-Ohio used ten components, including the capacity component, which includes the capacity cost that a supplier would incur to serve a retail customer within AEP-Ohio's service territory (AEP-Ohio Ex. 114 at 15). AEP-Ohio concluded that the capacity cost to be utilized in the statutory price test should be $355.72/MW-day, based on the notion that AEP-Ohio will be operating under its FRR obligation and the full capacity cost rate for AEP-Ohio should be utilized in the competitive benchmark price. By using $355.72/MW-day, Ms. Thomas concludes that the statutory price test shows the ESP is more favorable than an MRO by $256 million (AEP-Ohio Ex. 114 at LJT-1 page 3). Ms. Thomas also conducted an alternative price test utilizing the two-tier capacity proposal numbers of $146 and $255 as the capacity costs, and concludes that modified ESP would be more favorable than an MRO $80 million (*Id.* at LJT-5 page 2). In light of the Commission's decision in Case No. 10-2929, AEP-Ohio indicates the use of the $188.88 capacity price would result in the MRO being slightly less favorable by $12.6 million, but when factoring in AEP-Ohio's energy-only slice-of-system auction the statutory price test comes out almost even, with the MRO being slightly more favorable by approximately 2.6 million (AEP-Ohio Reply Br. at 97-99, Attachment B).

In addition, as AEP-Ohio explains that the statutory test requires the proposed ESP be reviewed in the aggregate in addition to the price test, other quantifiable benefits need to be considered. Specifically, AEP-Ohio points to capacity price discount from AEP-Ohio's $355.72/MW-day to the two-tier discounted capacity pricing for CRES provides, which results in a benefit of $988 million. In addition, in her aggregate test, Ms. Thomas acknowledges that while the RSR is a benefit of the proposed modified ESP, the RSR will cost $284 million during the term of the modified ESP. Ms. Thomas explains that the GRR should not be considered in the aggregate analysis as the results would be the same under the proposed ESP or an MRO, but notes if the Commission determines otherwise the consideration of GRR would reduce the quantifiable benefits by approximately $8 million. By taking these additional quantifiable factors into consideration in addition to the results under the statutory test, AEP-Ohio asserts that the total quantifiable benefits of the modified ESP are $952 million based on the statutory price test using $355.72/MW-day (AEP-Ohio Ex. 115 at LJT-1).

Regarding non-quantifiable benefits, AEP-Ohio states that the modified ESP will provide price certainty for SSO customers while presenting increased customer shopping opportunities. AEP-Ohio provides that the modified ESP will ensure financial stability of

AEP-Ohio and provides for a necessary transition towards the competition while acknowledging AEP-Ohio's existing contractual and FRR obligations. AEP-Ohio also opines that the modified ESP advances state policies and is consistent with Section 4928.02, Revised Code.

In addition to the statutory test conducted by AEP-Ohio witness Thomas, several other parties conducted the statutory test pursuant to Section 4928.143, Revised Code. OCC, FES, IEU, DER and Staff allege that the statutory price test actually indicates that the modified ESP produces results that are less favorable than what would otherwise apply under an MRO by figures ranging from $50 million to $1.427 billion (*See* OCC Ex. 114, DER Ex. 102, IEU Ex. 125, FES Ex. 104, and Staff Ex. 110). Specifically, OCC witness Hixon points out that AEP-Ohio's assumption of a $355.72/MW-day capacity charge is inappropriate, but rather, the capacity charge approved by the Commission in Case No. 10-2929-EL-UNC should be utilized. Further, OCC notes that any costs associated with the GRR should be included in the statutory test, as the GRR would not be available under an MRO (*Id.* at 14-17). In addition, OCC points out that in considering any non-quantifiable benefits associated with the modified ESP, the aggregate test should consider additional costs to customers associated with items such as the DIR, ESRR, and gridSMART rider, which, while not readily quantifiable, are currently known to be costs associated with the modified ESP (*Id.* at 18).

FES and IEU raise similar concerns in utilizing AEP-Ohio's $989 million as a quantifiable benefit. FES states that the Commission previously found the consideration of discounted capacity pricing cannot be considered a benefit because it is too speculative (FES Ex. 104 at 14-16, IEU Ex. at 50-53). IEU, DER, and FES provide that AEP-Ohio overstated the competitive benchmark price by failing to use a market-based capacity price, and failed to properly consider the costs associated with the modified ESP including the RSR, GRR, and possibly the PRR (FES at 16-25, IEU at 49-72, DER Ex. 102 at 3-6). Mr. Schnitzer also concluded that the statutory test indicates that the modified ESP is worse for customers than the Stipulation ESP, and approval of the modified ESP would harm the development of a competitive retail market by limiting CRES providers' ability to provide alternative offers to customers (FES Ex. 104 at 38-41).

IEU, DER, and OCC argue that Ms. Thomas incorrectly assumed the MRO's blending requirement should have been accelerated, as it is unlikely the Commission would authorize an MRO with any blending other than the fault blending provisions of 70 percent ESP pricing and 30 percent market pricing, as is consistent with Section 4928.142, Revised Code (DER Ex. at 3-6, OCC Ex. 114 at 8-9). Further, IEU suggests the Commission consider the June 2015 to May 2016 deliver year as part of the statutory test analysis, as AEP-Ohio is seeking Commission approval to conduct a CBP for the entire SSO load beginning in June 2015 under this modified application (IEU Ex. 125 at 79).

Staff witness Fortney conducted the statutory test by blending the market rate with the SSO rates pursuant to Section 4928.142(D), Revised Code, but noted that the market rate is extremely uncertain due to volatility of forward contract prices. Mr. Fortney calculated the average rates under AEP-Ohio's modified ESP and compared them to the results that would occur under an MRO on RPM price capacity, $146.41, and $255. Mr. Fortney concluded that under all three scenarios the modified ESP is less favorable, but noted there are other non-quantifiable benefits, including AEP-Ohio's transition to competitive markets, which would be achieved more quickly than through an MRO (Staff Ex. 110 at 3-7). FES revised Mr. Fortney's statutory price test using the $188.88 price of capacity and concluded an MRO would be less expensive by $277 million (FES Reply Br. at B-1).

The Commission finds that, while AEP-Ohio made multiple errors in conducting the statutory test, we believe that these errors are correctible based on evidence contained within the record. Under Section 4928.143(C)(1), Revised Code, we must determine whether AEP-Ohio's has sustained its burden of proof of indicating whether the proposed electric security plan, as we've modified it, including its pricing, other terms and conditions including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to results that would otherwise apply under Section 4928.142, Revised Code. Further, we must ensure our analysis looks at the entire modified ESP as a total package, as the Supreme Court of Ohio has held that Section 4928.143(C)(1), Revised Code, does not bind the Commission to a strict price comparison, but rather, instructs the Commission to consider other terms and conditions, as there is only one statutory test that looks at an entire ESP in the aggregate (*In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 407).

Therefore, as AEP-Ohio presented its analysis of this statutory test, we first look at the statutory pricing test, and then will explore other provisions, terms, and conditions of the proposed ESP that are both quantifiable and non-quantifiable. In considering AEP-Ohio's statutory price test, consistent with Section 4928.143(C)(1), Revised Code, we must look in part at the price AEP-Ohio's proposed ESP, as we've modified it, with the price of the results that would otherwise apply under Section 4928.142, Revised Code. The way AEP-Ohio calculated its statutory price test precludes us from accurately determining the results that would otherwise apply under a market rate offer, as it begins its analysis on June 1, 2012.

To accurately determine what would otherwise apply under Section 4928.142(A)(1), Revised Code, for the purposes of comparing it with this modified ESP, we begin by looking at the statute for guidance. Section 4928.142(A)(1), Revised Code, mandates that any electric distribution utility that wishes to establish its standard service offer price through a market rate offer must ensure the competitive bidding process provides for an open, fair, and transparent competitive solicitation process, with a clear product definition, standardized bid evaluation criteria, oversight of the process by an independent third party, and an evaluation of the submitted bids prior to selecting a winner. For the Commission to appropriately predict the results that would otherwise occur under this section, we cannot, in good conscience, compare prices during a time period that has elapsed prior to the issuance of this order. Nor can we, by statute, compare this modified ESP price with what would otherwise apply under Section 4928.142, Revised Code, beginning today, as it would be impossible for AEP-Ohio to immediately establish an alternate plan under Section 4928.142, Revised Code, that meets all the statutory criteria. Therefore, for the Commission to appropriately compare the price components of this modified ESP with the results that would otherwise apply under Section 4928.142, Revised Code, we must determine the amount of time it would take AEP-Ohio to implement its standard service offer price with what would otherwise apply under Section 4928.142, Revised Code.

As FES witness Banks testified, a June 1, 2013 start date would provide AEP-Ohio sufficient time to plan for auctions, develop bidding rules, and the auction structure, all of which are requirements of Section 4928.142, Revised Code (FES Ex. 105 at 20). In light of this testimony, we believe that we should begin evaluating the statutory price test analysis approximately ten months from the present, in order to determine what would otherwise apply. Therefore, in considering this modified ESP with the results that would otherwise apply under the statutory price test, we will conduct the statutory price test for the period between June 1, 2013, and May 31, 2015.

Further, in conducting the statutory price test, Ms. Thomas erred by utilizing \$355.72/MW-day for the capacity component of the competitive benchmark price. This number was unilaterally determined by AEP-Ohio and justified as AEP-Ohio's cost of capacity, which is entirely inconsistent with the Commission's determination of AEP-Ohio's cost of capacity being \$188.88. Although we believe AEP-Ohio's use of the \$355.72/MW-day capacity figure is flawed, we are not persuaded by parties who argue the capacity component should be market based and reflect RPM prices. These parties fail to consider that AEP-Ohio, as an FRR entity, will be supplying capacity for its customers throughout the term of this ESP, whether the customer is an SSO customer or the customer takes service through a CRES provider. Thus, even under the results that would otherwise apply consistent with Section 4928.142, Revised Code, due to AEP-Ohio's remaining FRR obligations, it would still be supplying capacity to all of its customers through 2015. We find it is inappropriate to consider market prices in establishing this capacity component, even though RPM prices are consistent with the state compensation mechanism, as AEP-Ohio is and will remain an FRR entity for the immediate future. In conducting the statutory price test, we shall use AEP-Ohio's cost of capacity of \$188.88, as supported by Case 10-2929, for the competitive benchmark.

Next, we need to address the appropriate blending method under the statutory price test for the period of January 1, 2015 through June 1, 2015. In light of the clearly defined statutory blending percentages contained within Section 4928.142(D), Revised Code, as well as past Commission precedent in conducting the statutory price test, we do not find it appropriate to use a 100 percent blending rate for the final five months of the modified ESP. *See* Duke Energy Ohio, Case No. 10-2586-EL-SSO (February 23, 2011). Accordingly, we need to adjust the percentages of the MRO pricing component that is indicated in AEP-Ohio's reply brief to 90 percent of the generation service price and ten percent of the expected market price for the period between June 1, 2013 to May 31, 2014, consistent with Section 4928.142(D), Revised Code, and increase the MRO pricing component to 80 percent of the generation service price and 20 percent of the expected market price for the period of June 1, 2014, to May 31, 2015. By making these modifications to the competitive benchmark price, as well as the $188.88 cost of capacity figure, we conclude that the statutory price test indicates the modified ESP is more favorable than the results that would otherwise occur under Section 4928.142, Revised Code, by approximately $9.8 million.

Our analysis does not end here, however, as we must now consider the proposed ESP's other provisions that are quantifiable. As we previously established in the December 14, 2011, Opinion and Order, we believe AEP-Ohio must address costs associated with the GRR, as it is non-bypassable pursuant to Section 4928.143(B)(2)(c), Revised Code, and thus would not occur under an MRO. Therefore, the costs of approximately $8 million must be considered in our quantitative analysis. We understand that the GRR is a placeholder rider, but we find that the costs associated with the GRR are known and should therefore be included in the quantitative benefits. Likewise, we must consider the costs associated with the RSR of approximately $388 million in our quantitative analysis.[32] The inclusion of any deferral amount does not need to be included in our analysis, as it would still be recovered under an MRO pursuant to the Commission's decision in the Capacity Case. After including the statutory price test in favor of the ESP by ~~$9.8 million~~, and the quantifiable costs of $388 million under the RSR and $8 million for the GRR, we find an MRO is more favorable by approximately $386 million.

By statute, our analysis does not end here, however, as we must consider the non-quantifiable aspects of the modified ESP, in order to view the proposed plan in the aggregate. We acknowledge that there may be costs associated with distribution related

32 The RSR determination of $388 million is calculated by taking the $508 million RSR recovery amount and subtracting the $1 figure to be devoted towards the Capacity Case deferral, as recovery of this deferral will occur under either an ESP or an MRO. Using LJT-5 in AEP-Ohio Ex. 114, when we consider the total connected load of 48 million kWh and multiply it by $1 over the term of the modified ESP, we reach a figure of $144 million to be devoted towards the Capacity Case deferral. However, as the RSR recovery amount increases to $4/MWh in the final year of the modified ESP, we also must account for an increase in the RSR of $24 million, which is also calculated by connected load in LJT-5. Therefore, the actual amount which should be included in the test is $388 million.

riders and the gridSmart and ESRR that currently are not readily quantifiable, we believe any of these costs are significantly outweighed by the non-quantifiable benefits this modified ESP leads to. Although these riders may end up having costs associated with them, they would support reliability improvements, which will benefit all AEP-Ohio customers, as well as provide the opportunity for customers to utilize efficiency programs that can lead to lower usage, and thus lower costs. Further, these costs will be mitigated by the increase in auction percentages, including the slice-by-slice auction, as we modified to ten percent each year, which will offset some of these costs in the statutory test and moderate the impact of the modified ESP. Further, the acceleration to 60 percent of AEP-Ohio's energy only auction by June 1, 2014, not only enables customers to take advantage of market based prices, but also creates a qualitative benefit which, while not yet quantifiable, may well exceed the costs associated with the GRR and RSR.

In addition, while the RSR and the inclusion of the deferral within the RSR are the most significant cost associated with the modified ESP, but for the RSR it would be impossible for AEP-Ohio to completely participate in full energy and capacity based auctions beginning in June 1, 2015. Although the decision for AEP-Ohio to transition towards competitive market pricing is something this Commission strongly supports and the General Assembly anticipated in enacting Senate Bill 221, the fact remains that the decision to move towards competitive market pricing is voluntary under the statute and in the event this ESP is withdrawn or even replaced with an MRO, there is no doubt that AEP-Ohio would not be fully engaged in the competitive marketplace by June 1, 2015.

The most significant of the non-quantifiable benefits is the fact that in just under two and a half years, AEP-Ohio will be delivering and pricing energy at market prices, which is significantly earlier than what would otherwise occur under an MRO option. If AEP-Ohio were to apply for an MRO it is not feasible to conclude that energy would be at market prices prior to June 1, 2015, even if the Commission were to accelerate the percentages set forth under Section 4928.142, Revised Code. Thirteen years ago our general assembly approved legislation to begin paving the way for electric utilities to transition towards market-based pricing, and provide consumers with the ability to choose their electric generation supplier. While the process has not been easy, we are confident that this plan will result in the outcome the general assembly intended under both Senate Bill 3 and Senate Bill 221, and this modified ESP is the only means in which this can be accomplished in less than two and a half years. Further, while the modified ESP will lead us towards true competition in the state of Ohio, it also ensures not only that customers will have a safe harbor in the event there is any uncertainty in the competitive markets by having a constant, certain, and stable option on the table, but also that AEP-Ohio maintains its financial stability necessary to continue to provide adequate, safe, and reliable service to its customers. Accordingly, we believe these non-quantifiable benefits significantly outweigh any of the costs.

Therefore, in weighing the statutory price test which favors the modified ESP by $9.8 million, as well as the quantifiable costs and benefits associated with the modified ESP, and the non-quantifiable benefits, as we find the modified ESP, is more favorable in the aggregate than what would otherwise apply under an MRO.

IV. CONCLUSION

Upon consideration of the modified ESP application filed by the Company and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the modified ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this Order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Therefore, the Commission finds that the proposed ESP should be approved, with the modifications set forth in this Order. As modified herein, the plan provides rate stability for customers, revenue certainty for the Company, and facilitates a transition to market. To the extent that interveners have proposed modifications to AEP-Ohio's modified ESP that have not been addressed by this Opinion and Order, the Commission concludes that the requests for such modifications are denied.

AEP-Ohio is directed to file, by August 16, 2012, revised tariffs consistent with this Order, to be effective with bills rendered as of the first billing cycle in September 2012.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

(2) Effective December 31, 2011, CSP was merged with and into OP consistent with the Commission's December 14, 2011 Order in the ESP 2 cases. The merger was confirmed by entry issued March 7, 2012 in Case No. 10-2376-EL-UNC.

(3) On March 30, 2012, the Company filed modified applications for an SSO in accordance with Section 4928.141, Revised Code.

(4) On April 9, 2012, a technical conference was held regarding AEP-Ohio's modified ESP applications.

(5) Notice was published and public hearings were held in Canton, Columbus, Chillicothe, and Lima where a total of 66 witnesses offered testimony.

(6) A prehearing conference on the modified ESP application was held on May 7, 2012.

(7) The following parties filed for and were granted intervention in AEP-Ohio's modified ESP 2 proceeding: IEU, Duke Retail, OEG, OHA, OCC, OPAE, Kroger, FES, Paulding, APJN, OMAEG, AEP Retail, P3, Constellation, Compete, NRDC, Sierra Club, RESA, Exelon, Grove City, AICUO, Wal-Mart, Dominion Retail, ELPC, OEC, Ormet, Enernoc, IGS, Ohio Schools, Ohio Farm Bureau Federation, Ohio Restaurant Association; Duke, DECAM, Direct, The Ohio Automobile Dealers Association, Dayton Power and Light Company, NFIB, Ohio Construction Materials Coalition, COSE, Border Energy Electric Services, Inc., UTIE; (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; city of Hillsboro, Ohio; and CPV Power Development, Inc.

(8) Motions for protective orders were filed by AEP-Ohio on July 1, 2011, May 2, 2012, by OMAEG, IEU, FES, and Exelon on May 4, 2012, AEP-Ohio on May 11, 2012. The attorney examiners granted the motions for protective order in the evidentiary hearing on May 17, 2012.

(9) Additional motions for protective order were filed by Ormet on June 29, 2012, and July 9, 2012, by IEU on June 29, 2012, and by AEP-Ohio on July 5, 2012 and July 12, 2012.

(10) The evidentiary hearing on the modified ESP 2 was called on May 17, 2012, and concluded on June 15, 2012.

(11) Briefs and reply briefs were filed on June 29, 2012, and July 9, 2012, respectively.

(12) Oral arguments before the Commission were held on July 13, 2012.

(13) The proposed modified ESP, as modified pursuant to this opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VI. ORDER:

It is, therefore,

ORDERED, That IBEW's and Hilliard's requests to withdraw from these proceedings are granted. It is, further,

ORDERED, That the motions for protective order as discussed herein be granted for 18 months from the date of this Order. It is, further,

ORDERED, That the Company should eliminate Rider Emergency Curtailable Services (ECS) and Rider Price Curtailable Service (PCS) from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed. It is, further,

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

ORDERED, That OCC/APJN's motion to take administrative notice be denied. It is, further,

ORDERED, That OCC/APJN's motion to strike AEP-Ohio's reply brief be granted in part and denied in part. It is, further,

ORDERED, That the Company shall file proposed final tariffs consistent with this Order by August 16, 2012, subject to review and approval by the Commission. 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

Todd A. Snitchler, Chairman

Steven D. Lesser

A. T. Porter

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

Lynn Slaby

JJT/GNS/vrm

Entered in the Journal
AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DISSENTING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I decline to join my colleagues in finding that the quantitative advantage of $388 million dollars that an MRO would enjoy over the proposed ESP is overcome by the non-quantifiable benefit of moving to market two years and three months faster than what would have occurred under an MRO. For this reason, I do not find that the proposed modified ESP, as modified pursuant to the opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Because of this conclusion, it is unnecessary for me to discuss further any individual conclusion within the order or feature of the ESP.

Cheryl L Roberto

Cheryl L. Roberto

CLR/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION OF COMMISSIONER LYNN SLABY

I agree with the conclusions of the majority. However, I write separately to express my reservations on the use of a retail stability rider (RSR). It is my opinion that generally the use of an RSR with decoupling components lacks certain benefits to consumers. In addition, a company that receives that RSR has little, if any, incentive to look for more operating efficiencies to reduce consumer costs. Consequently, these inefficiencies could lead to additional costs to consumers in the long run. Although these concerns led to my reservations in this present case, I am also fully aware that certain cases present specific circumstances that necessitate setting aside individual concerns for the greater good.

In Case No. 10-2929-EL-UNC, the Commission agreed to defer the recovery of the difference between the market price and the companies' cost of generation. This created a need to establish a mechanism to recover those costs. Although I generally disagree with the use of RSRs for recovering deferred costs, in this case I side with the majority in order to meet our mission. Our mission is to ensure all residential and business consumers access to adequate, safe and reliable utility services at a fair price, while facilitating an environment that provides competitive choices. We as a Public Utilities Commission have to balance the rights of the consumer to ensure safe and reliable service at a fair cost while also making sure that companies receive sufficient revenues to provide that service in a safe and reliable manner.

This decision will help move the company to a fully competitive market at the end of the ESP term, which has been the overall goal of the state legislature since the adoption of Senate Bill 3 in 1999. Furthermore, by creating an RSR without decoupling components, we are stabilizing the rate structure over the next three years. This provides customers a stabilized rate or the opportunity to shop for a better rate, depending on what the market presents during the term of the ESP. Overall, this decision is not only important to the State statutory goal of free and open competition in the market place, but also to the philosophy of this Commission. Therefore, in this isolated case, I find the use of an RSR to be an appropriate mechanism to allow the Company to begin to recover its deferred costs.

Lynn Slaby

Lynn Slaby

LS/sc

Entered in the Journal
AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

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The Commission finds:

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

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

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

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

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

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

I. PROCEDURAL MATTERS

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

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

The Commission finds OCC/APJN's assignment of error should be dismissed. OCC/APJN failed to raise its objections to the use of stipulation references contained within AEP-Ohio's application for rehearing in its memorandum contra to AEP-Ohio's application for rehearing, so it is unnecessary for us to address those references. Regarding the stipulation references in AEP-Ohio's memorandum contra the applications for rehearing, we find that, consistent with our Opinion and Order in this proceeding, the references to other stipulations by AEP-Ohio were limited in scope and did not create prejudicial impact on any parties, nor were the references used to in any way bind parties to positions they had in any previous proceeding.[1] In fact, OCC/APJN referred to specific stipulation provisions from a separate proceeding in its own application for rehearing.[2] Accordingly, we find that OCC/APJN's motion to strike should be denied.

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

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

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

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

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

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

1 Opinion and Order at 10.

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

3 Opinion and Order at 10.

4 *Id.* at 12-13.

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

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

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

II. STATUTORY TEST

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

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

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

5 OCC AFR at 7.

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

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

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

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

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

6 Opinion and Order at 74

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

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

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

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

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

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

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

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

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

8 Opinion and Order at 75

9 *Id.* at 49

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

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

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

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

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

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

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10 Oral Argument Tr. at 46

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

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

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

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

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

13 Opinion and Order at 37

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

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

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

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

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14 *Id.* at 73-75

15 AEP-Ohio Ex. 114

16 Tr. at 1260-1342

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

III. RETAIL STABILITY RIDER

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

17 See Opinion and Order at 73-77.

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

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

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

18 See OCC/APJN AFR pg. 36-38

19 Opinion and Order at 31

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

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

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

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

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20 *Id.* at 31-32

21 IEU AFR at 38.

22 *Id.* at 41

23 See Opinion and Order at 31-34.

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

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

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

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

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

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

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

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

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

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

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

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

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24 *Id.* at 37.

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

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

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

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

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

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

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25 *Id.*

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

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

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

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

26 *Id.* at 32.

27 Capacity Case EOR at 56-57

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

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

The Commission finds that the applications for rehearing should be denied. Claims that the RSR overcompensates AEP-Ohio fail to consider the actual construct of the $188.88/MW-day capacity price, as the deferral established in the Capacity Case will not be booked as a revenue during the deferral period.[28] The revenue AEP-Ohio will collect for capacity is limited only to the RPM price of capacity. Therefore, all assertions that parties make about AEP-Ohio receiving sufficient revenue from the capacity deferral alone are incorrect and should be rejected. Further, we note that OCC/APJN again mischaracterize the function of the RSR, because, as we have emphasized both in the Opinion and Order and again in this Entry, the RSR allows for stability and certainty for AEP-Ohio's non-shopping customer prices, while the deferral relates to capacity, thereby making it inappropriate to claim customers are being forced to pay twice for capacity.

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

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

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

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

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

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

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

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

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

31 Opinion and Order at 37.

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

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

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

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

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

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

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

The Commission rejects the arguments raised by IEU, FES, and OCC/APJN, and finds their applications for rehearing should be denied. As previously addressed in the Commission's Opinion and Order, AEP-Ohio, as an FRR entity, must continue to fulfill its obligations by providing adequate capacity to its entire load. Therefore, in order for AEP-Ohio, and the newly created generation affiliate to continue to provide capacity consistent with its FRR obligations, we maintain our position that AEP-Ohio is entitled to its actual cost of capacity, which will in part, be collected through the RSR in order for AEP-Ohio to begin paying off its capacity deferral. As we previously established, parties cannot claim that AEP-Ohio's generation affiliate is receiving an improper subsidy when in fact, it is only receiving its actual cost of service.[32]

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

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

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

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

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

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

32 *Id.* at 60

33 *Id.* at 37.

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

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

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

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

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

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34 *Id.* at 33.

35 *Id.* at 36.

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

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

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

IV. FUEL ADJUSTMENT CLAUSE

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

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

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

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

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

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

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

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

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

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

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

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

39 Opinion and Order at 17.

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

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

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

V. BASE GENERATION RATES

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

In its memorandum contra, AEP-Ohio responds that the Commission properly determined that freezing base generation rates for non-shopping SSO customers is beneficial because it allows for a stable and reasonably priced default generation service that will be available to all customers. AEP-Ohio further explains that OCC/APJN do not present any evidence to support its assertion that the base generation rate design makes it difficult for the Commission to ensure that all SSO customers are receiving non-discriminatory generation service, and points out that OCC/APJN wrongfully attempt to extrapolate the Commission's Capacity order. AEP-Ohio adds that any accusations of the base generation rates being discriminatory are also improper because AEP-Ohio offers different services to its SSO customers than it does to CRES providers. Specifically, AEP-Ohio explains that it only offers capacity service to CRES providers, but it offers a bundled supply of generation service to its SSO customers, thereby eliminating any claim of AEP-Ohio providing discriminatory services.

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

VI. INTERRUPTIBLE POWER-DISCRETIONARY SCHEDULE CREDIT

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

42 See Opinion and Order at 15-16.

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

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

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

VII. AUCTION PROCESS

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

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

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

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

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

43 *Id.* at 39-40.

44 *Id.* at 38-40.

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

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

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

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

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

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

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

46 See Opinion and Order at 57

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

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

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

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

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

The Commission rejects AEP-Ohio's request to incorporate revenue-neutral solutions within the auction rate docket. However, in the event it becomes apparent that there may be disparate rate impacts amongst customers, the Commission reserves that right to initiate an investigation, as necessary, as set forth in the Opinion and Order.

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

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

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

VIII. CUSTOMER RATE CAP

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

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

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

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

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

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

IX. SEET THRESHOLD

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

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

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

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

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

X. CRES PROVIDER ISSUES

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

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

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

48 Opinion and Order at 33

49 *Id.* at 37.

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

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

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

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

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

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

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

53 *Id.*

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

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

XI. DISTRIBUTION INVESTMENT RIDER

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

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

54 *Id.* at 41

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

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

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

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

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

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

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

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

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

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

The Commission notes that the DIR is a new plan approved by the Commission in the ESP and the distribution investment plan will take into consideration the service needs of the AEP-Ohio as a whole. Kroger's request to establish separate and distinct DIR accounts and rates would result in maintaining and essentially continuing CSP and OP as separate entities. Kroger has not provided the Commission with sufficient justification to continue the distinction between the rate zones or demonstrated any unreasonable disadvantage or burden to either rate zone. The focus of the DIR will be on replacing infrastructure, irrespective of rate zone, that will have the greatest impact on improving reliability for customers. The Commission denies Kroger's request to reconsider adoption of the DIR on a rate zone basis.

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

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

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

56 Opinion and Order at 42-47.

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

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

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

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

57 *Id.* at 47

58 OCC/APJN Initial Brief at 96-114.

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

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

XII. PHASE-IN RECOVERY RIDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION RIDER

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

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

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

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

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

XIV. GRIDSMART

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

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

XV. ECONOMIC DEVELOPMENT RIDER

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

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

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

XVI. STORM DAMAGE RECOVERY MECHANISM

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

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

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

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

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

XVII. GENERATION RESOURCE RIDER

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

Each of the above-noted requests for rehearing as to the GRR mechanism was previously considered by the Commission and rejected in the Opinion and Order. Nothing offered in the applications for rehearing persuades the Commission that the Opinion and Order is unreasonable or unlawful. Accordingly, the applications for rehearing on the establishment of the GRR are denied. Further, the Commission notes that we recently concluded that AEP-Ohio and Staff failed to make the requisite demonstration of need for the Turning Point project.[64]

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

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

XVIII. POOL MODIFICATION RIDER

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

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

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

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

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

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

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

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

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

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

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67 Opinion and Order at 49.

68 *Id.*

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

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

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

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

71 Opinion and Order at 49.

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

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

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

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

73 Opinion and Order at 49.

74 *Id.* at 50.

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

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

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

75 Section 4928.143(B)(2)(d), Revised Code, states:

> Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

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

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

XIX. GENERATION ASSET DIVESTIURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is, therefore,

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

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

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

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

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

GNS/JJT/vrm

Entered in the Journal
JAN 3 0 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

SECOND ENTRY ON REHEARING

The Commission finds:

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

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

(3) On August 16, 2012, AEP-Ohio submitted its proposed compliance rates and tariffs to be effective as of the first billing cycle of September 2012. By entry issued on August 22, 2012, the Commission approved the proposed tariffs and rates to be effective with the first billing cycle of September 2012.

(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 matter determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(5) On September 7, 2012, AEP-Ohio, The Kroger Company, Ormet Primary Aluminum Corporation, Industrial Energy Users-Ohio

(IEU), Retail Energy Supply Association, OMA Energy Group (OMAEG) and the Ohio Hospital Association (OHA), the Ohio Energy Group (OEG), FirstEnergy Solutions Corporation (FES), jointly by The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively the Ohio Schools), and jointly by the Ohio Consumers' Counsel (OCC) and Appalachian Peace and Justice Network filed applications for rehearing of the Commission's August 8, 2012 Order. Memoranda contra the various applications for rehearing were filed jointly by Duke Energy Ohio, Inc. and Duke Energy Commercial Asset Management Inc., FES, OCC/APJN, IEU, OMAEG/OHA, OEG, Ohio Schools, and AEP-Ohio on September 17, 2012.

(6) By entry dated October 3, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the Order.

(7) On January 30, 2013, the Commission issued its Entry on Rehearing addressing the merits of the various applications for rehearing (January 30 EOR).

(8) On March 1, 2013, OCC and IEU filed applications for rehearing of the January 30 EOR. On March 11, 2013, AEP-Ohio filed a memorandum contra the applications for rehearing.

(9) In its application for rehearing, IEU argues that Section 4928.143(B)(2)(d), Revised Code, does not provide the Commission authority to approve AEP-Ohio's retail stability rider (RSR). Specifically, IEU states that the fact that the RSR will result in a non-fuel base generation rate freeze does not satisfy the requirements of Section 4928.143(B)(2)(d), Revised Code, and the determination that the RSR provides certainty and stability goes against the manifest weight of the evidence in this proceeding. IEU also points out that the Commission may not approve a rider that causes the modified ESP to be less favorable in the aggregate than a market rate offer.

AEP-Ohio responds that IEU raised similar arguments in its first application for rehearing and fails to raise any new arguments in its second application for rehearing. AEP-Ohio adds that IEU's interpretation of Section 4928.143(B)(2)(d), Revised Code, unnecessarily narrows the statute. In addition, AEP-Ohio points out that IEU previously raised arguments regarding the statutory test in its initial application for rehearing and fail to provide any new arguments.

The Commission finds that IEU fails to raise any new arguments for the Commission's consideration in its application for rehearing. In both the order and the entry on rehearing, the Commission determined that the RSR is justified pursuant to Section 4928.143(B)(2)(d), Revised Code. (Order at 31-32; January 30 EOR at 15-16). Similarly, IEU previously raised its arguments pertaining to the statutory test, which the Commission denied in the January 30 EOR. Accordingly, IEU's application for rehearing should be denied.

(10) In its application for rehearing, OCC claims that the classification of the RSR as a charge related to default service is not supported by the record, violating Section 4903.09 Revised Code, and Section 4903.13, Revised Code.

In its memorandum contra, AEP-Ohio responds that the Commission clearly explained how the RSR falls into default service, and adds that even one of OCC's witnesses agreed that the RSR relates to AEP-Ohio's generation revenues.

The Commission finds OCC's assignment of error is without merit and should be denied. In the entry on rehearing, the Commission emphasized that the RSR meets the statutory criteria contained in Section 4928.143(B)(2)(d), Revised Code, as it is a charge relating to default service that provides certainty and stability for AEP-Ohio's customers. (January 30 EOR at 15-16.) Specifically, the Commission explained that the RSR allows for price certainty and stability for AEP-Ohio's standard service offer (SSO) customers, which, is AEP-Ohio's default service for customers who choose not to shop. (*Id.*) Accordingly, OCC's assignment of error should be rejected.

(11) In its application for rehearing, IEU claims that the customer rate impact cap fails to identify the incurred costs that may be deferred, but rather only provides that AEP-Ohio may defer the difference in revenue as a result of the customer rate cap. In addition, IEU argues the Commission should identify the

specific carrying charges that will apply to the deferred amount. IEU states that if the Commission continues to authorize the customer rate impact cap deferral, it should set the level of the carrying charges on the deferral balance to a reasonable level below AEP-Ohio's long or short term cost of debt.

In its memorandum contra, AEP-Ohio provides that the carrying cost rate should be the weighted average cost of capital, consistent with Commission precedent and AEP-Ohio's phase in recovery rider. AEP-Ohio opines that the same regulatory principles should be applied here, and any deferrals under the customer rate impact cap would accrue a carrying charge during the period of deferral and a lower debt rate charge during the recovery period.

The Commission finds that IEU's application for rehearing should be denied, as the customer rate impact cap is permissible pursuant to Section 4928.144, Revised Code. Section 4928.144, Revised Code, provides the Commission with discretion to establish a deferral to ensure rate or price stability for customers, which the customer rate cap establishes by limiting any customer rate increases to no more than a 12-percent increase. The Commission determined this was necessary in its order, and emphasized it again in its entry on rehearing. (Order at 70; January 30 EOR at 40). Further, the entry on rehearing clarified that AEP-Ohio was entitled to the deferral of the incurred costs equal to the amount not collected, as well as carrying costs associated with the deferral. We do clarify, however, that these carrying costs should be set at AEP-Ohio's long-term cost of debt rate, as recovery of these costs are not only guaranteed but also are consistent with Commission precedent. Finally, the collection of the deferral is on a non-bypassable surcharge, and protects customers from any potential rate increases associated with AEP-Ohio's newly established non-bypassable riders, consistent with Section 4928.144, Revised Code. Therefore, as the customer rate impact cap complies with Section 4928.144, Revised Code, IEU's arguments should be dismissed.

(12) IEU argues that the Commission cannot lawfully authorize a non-bypassable rider to recover lost generation revenue pursuant to Section 4928.143(B)(2)(d), Revised Code. IEU

argues that only divisions (b) and (c) of Section 4928.143(B)(2), Revised Code, allow for a generation-related, non-bypassable charge for the recovery of construction costs. Therefore, according to IEU, there is no basis under Section 4928.143(B)(2)(d), Revised Code, to approve the Pool Termination Rider (PTR).

AEP-Ohio notes that while Section 4928.143(B)(2)(b) and (c), Revised Code, specifically require that the charges established there under be nonbypassable, subdivision (d) contains no such requirement. AEP-Ohio reasons that Section 4928.143(B)(2)(d), Revised Code, specifically grants the Commission the authority to establish a non-bypassable charge as part of an ESP.

The Commission finds that IEU's argument is without merit. Section 4928.143(B)(2)(d), Revised Code, specifically permits the Commission to consider the "bypassability" of the "[t]erms conditions or charges relating to limitations on customer shopping for retail electric generation service ... as would have the effect of stabilizing or providing certainty regarding retail electric service" as a component of an ESP. The Commission interprets the language in this section to grant the Commission the authority to approve a particular component of an ESP as bypassable or non-bypassable. Thus, we deny IEU's request for rehearing.

(13) IEU also argues that the Commission failed to make the necessary findings to demonstrate that the PTR would have the effect of stabilizing or providing certainty regarding retail electric service. IEU asserts that nothing in the record in this case demonstrates that the Pool Agreement prevented an auction for the provision of standard offer service (SSO) and did not have any bearing on the Commission's conclusion in AEP-Ohio's Capacity Case.[1] Accordingly, IEU reasons that there is no basis for the Commission to conclude that termination of the Pool Agreement is "key to the establishment of effective competition." IEU reasserts that the PTR recovers from retail customers lost wholesale Pool Agreement revenue and shifts AEP-Ohio's wholesale risks to retail customers. Therefore, IEU submits that there is no basis for the Commission to find that the PTR has the effect of providing

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

certainty or stability in the provision of retail electric service to retail customers.

In its memorandum contra, AEP-Ohio submits that IEU's claim that an increase in service offers is not equivalent to certainty or stability in service is misplaced. AEP-Ohio states, as it and other parties to this proceeding have previously asserted, that the nature of the Pool Agreement has historically been to stabilize rates for Ohio ratepayers and, on that basis, AEP-Ohio claims that the PTR, therefore, qualifies as a charge that would have the effect of stabilizing or providing certainty regarding retail electric service in compliance with the requirements of Section 4928.143(B)(2)(d), Revised Code. Further, AEP-Ohio emphasizes the rationale offered in the August 8 Order, that the PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers. Furthermore, AEP-Ohio explains that the rationale offered in the August 8 Order is consistent with the reasoning offered by the Commission in the January 30 EOR, which is essentially that termination of the Pool Agreement and increases in service offers likely will promote price stability, through the development of a more robust and transparent retail electric service market. With that understanding, AEP-Ohio reasons that the Commission properly determined that Section 4928.143(B)(2)(d), Revised Code, authorizes the PTR and adequately explained the basis for its decision.

We find no merit in IEU's claims that the Commission failed to make the necessary findings to demonstrate that the PTR would have the effect of stabilizing or providing certainty regarding retail electric service. While the Commission reconsidered its statutory basis for approval of the PTR in the January 30 EOR, the rationale for approval has not changed. As noted in the August 8 Order "the PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement" (Order at 49). The basis for Ohio electric utilities transitioning to a competitive market is to encourage retail electric suppliers to pursue customers with a variety of service offers. A competitive market will ultimately result in more offers for retail electric service for shopping customers and put pressure on AEP-Ohio to retain non-shopping customers with better service offers. Nonetheless, the Commission limited AEP-Ohio's right to recover under the PTR (January 30 EOR at 59-60), and even assuming that the conditions for pursuing recovery under the PTR were met, AEP-Ohio maintained the burden set forth in Section 4928.143, Revised Code, to first file an application to "demonstrate the extent to which the Pool Agreement benefitted Ohio ratepayers over the long-term and the extent to which the costs and/or revenues should be allocated to Ohio ratepayers... that any recovery it seeks under the PTR is based upon costs which were prudently incurred and are reasonable" (Order at 49). Thus, at this juncture, the PTR has only been approved to facilitate the possibility of recovery. The Commission finds that the rationale previously offered is sufficient to allow AEP-Ohio the possibility to file an application for recovery under the PTR and, therefore, we deny IEU's application for rehearing.

(14) Finally, IEU again asserts, as argued in its application for rehearing of the August 8 Order, that the approval of the PTR, violates Sections 4928.02(H) and 4928.17, Revised Code. IEU submits that Section 4928.02(H), Revised Code, prohibits the recovery of any generation-related costs through distribution or transmission rates after corporate separation is effective.

In response, AEP-Ohio notes that the IEU made the same arguments in its application for rehearing of the August 8 Order which were rejected by the Commission in the January 30 EOR. AEP-Ohio recommends that the Commission decline to consider the argument again on rehearing.

In yet another attempt to support its arguments about Section 4928.02(H), Revised Code, IEU overstates the January 30 EOR and the Sporn Decision.[2] We thoroughly considered and addressed these claims in the January 30 EOR. IEU fails to raise any new arguments which persuade the Commission that approval of the PTR violates Sections 4928.02(H) and 4928.17, Revised Code. Thus, we must again deny IEU's request for rehearing.

It is, therefore,

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2 *In re Ohio Power Company*, Case No. 10-1454-EL-RDR, Finding and Order (January 11, 2012).

ORDERED, That the applications for rehearing of the January 30 EOR filed by OCC and IEU are denied as discussed herein. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

M. Beth Trombold

GNS/JJT/vrm

Entered in the Journal

MAR 27 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary

1.47 Presumptions in enactment of statutes.

In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended;

(B) The entire statute is intended to be effective;

(C) A just and reasonable result is intended;

(D) A result feasible of execution is intended.

Effective Date: 01-03-1972

1.49 Determining legislative intent.

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

(A) The object sought to be attained;

(B) The circumstances under which the statute was enacted;

(C) The legislative history;

(D) The common law or former statutory provisions, including laws upon the same or similar subjects;

(E) The consequences of a particular construction;

(F) The administrative construction of the statute.

Effective Date: 01-03-1972

4903.09 Written opinions filed by commission in all contested cases.

In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

Effective Date: 10-26-1953

4903.13 Reversal of final order - notice of appeal.

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable. The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

Effective Date: 10-01-1953

4905.02 Public utility defined.

(A) As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:

(1) An electric light company that operates its utility not for profit;

(2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;

(3) A public utility that is owned or operated by any municipal corporation;

(4) A railroad as defined in sections 4907.02 and 4907.03 of the Revised Code;

(5) Any provider, including a telephone company, with respect to its provision of any of the following:

(a) Advanced services as defined in 47 C.F.R. 51.5;

(b) Broadband service, however defined or classified by the federal communications commission;

(c) Information service as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20);

(d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;

(e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:

(i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(B)

(1) "Public utility" includes a for-hire motor carrier even if the carrier is operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section.

(2) Division (A) of this section shall not be construed to relieve a private motor carrier, operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section, from compliance with any of the following:

(a) Chapter 4923. of the Revised Code;

(b) Hazardous-material regulation under section 4921.15 of the Revised Code and division (H) of section 4921.19 of the Revised Code, or rules adopted thereunder;

(c) Rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

Amended by 129th General AssemblyFile No.127,HB 487, §101.01, eff. 6/11/2012.

Amended by 128th General AssemblyFile No.43,SB 162, §1, eff. 9/13/2010.

Effective Date: 09-17-1996

4905.03 Public utility company definitions.

As used in this chapter

, any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

(A) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state;

(B) A for-hire motor carrier, when engaged in the business of transporting persons or property by motor vehicle for compensation, except when engaged in any of the operations in intrastate commerce described in divisions (B)(1) to (9) of section 4921.01 of the Revised Code, but including the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories;

(C) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission;

(D) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(E) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer of Ohio-produced natural gas or Ohio-produced raw natural gas liquids, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, shall cause the producer or gatherer to be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. The commission, upon application made to it, may relieve any producer or gatherer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, so long as the producer or gatherer is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas, or so long as the producer or gatherer does not engage in the distribution of natural gas to consumers.

Nothing in division (E) of this section limits the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

(F) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids;

(G) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(H) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

(I) A messenger company, when engaged in the business of supplying messengers for any purpose;

(J) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;

(K) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(L) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such an interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code.

(M) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

(C) **[As added by 129th General AssemblyFile No.127,HB 487, §101.01**]As used in this section:

(1) "Gathering lines" has the same meaning as in section 4905.90 of the Revised Code.

(2) "Raw natural gas liquids" and "finished product natural gas liquids" have the same meanings as in section 4906.01 of the Revised Code.

Amended by 129th General AssemblyFile No.125,SB 315, §101.01, eff. 9/10/2012.

Amended by 129th General AssemblyFile No.127,HB 487, §101.01, eff. 6/11/2012.

Amended by 128th General AssemblyFile No.43,SB 162, §1, eff. 9/13/2010.

Effective Date: 01-01-2001

4928.01 Competitive retail electric service definitions.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

Amended by 129th General AssemblyFile No.125,SB 315, §101.01, eff. 9/10/2012.

Amended by 128th General AssemblyFile No.47,SB 181, §1, eff. 9/13/2010.

Amended by 128th General AssemblyFile No.48,SB 232, §1, eff. 6/17/2010.

Amended by 128th General AssemblyFile No.9,HB 1, §101.01, eff. 10/16/2009.

Effective Date: 10-05-1999; 01-04-2007; 2008 SB221 07-31-2008

4928.02 State policy.

It is the policy of this state to do the following throughout this state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

4928.05 Extent of exemptions.

(A)

(1) On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation by a municipal corporation under Chapter 743. of the Revised Code or by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4905.10 and 4905.31, division (B) of section 4905.33, and sections 4905.35 and 4933.81 to 4933.90 ; except sections 4905.06, 4935.03, 4963.40, and 4963.41 of the Revised Code only to the extent related to service reliability and public safety; and except as otherwise provided in this chapter. The commission's authority to enforce those excepted provisions with respect to a competitive retail electric service shall be such authority as is provided for their enforcement under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter. Nothing in this division shall be construed to limit the commission's authority under sections 4928.141 to 4928.144 of the Revised Code. On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except as otherwise expressly provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised Code.

(2) On and after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility shall be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter, to the extent that authority is not preempted by federal law. The commission's authority to enforce those provisions with respect to a noncompetitive retail electric service shall be the authority provided under those chapters and this chapter, to the extent the authority is not preempted by federal law. Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission. The commission shall exercise its jurisdiction with respect to the delivery of electricity by an electric utility in this state on or after the starting date of competitive retail electric service so as to ensure that no aspect of the delivery of electricity by the utility to consumers in this state that consists of a noncompetitive retail electric service is unregulated. On and after that starting date, a noncompetitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4933.81 to 4933.90 and 4935.03 of the Revised Code. The commission's authority to enforce those excepted sections with respect to a noncompetitive retail electric service of an electric cooperative shall be such authority as is provided for their enforcement under Chapters 4933. and 4935. of the Revised Code.

(B) Nothing in this chapter affects the authority of the commission under Title XLIX of the Revised Code to regulate an electric light company in this state or an electric service supplied in this state prior to the starting date of competitive retail electric service.

Effective Date: 10-05-1999; 2008 SB221 07-31-2008

4928.06 Commission to ensure competitive retail electric service.

(A) Beginning on the starting date of competitive retail electric service, the public utilities commission shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated. To the extent necessary, the commission shall adopt rules to carry out this chapter. Initial rules necessary for the commencement of the competitive retail electric service under this chapter shall be adopted within one hundred eighty days after the effective date of this section. Except as otherwise provided in this chapter, the proceedings and orders of the commission under the chapter shall be subject to and governed by Chapter 4903. of the Revised Code.

(B) If the commission determines, on or after the starting date of competitive retail electric service, that there is a decline or loss of effective competition with respect to a competitive retail electric service of an electric utility, which service was declared competitive by commission order issued pursuant to division (A) of section 4928.04 of the Revised Code, the commission shall ensure that that service is provided at compensatory, fair, and nondiscriminatory prices and terms and conditions.

(C) In addition to its authority under section 4928.04 of the Revised Code and divisions (A) and (B) of this section, the commission, on an ongoing basis, shall monitor and evaluate the provision of retail electric service in this state for the purpose of discerning any noncompetitive retail electric service that should be available on a competitive basis on or after the starting date of competitive retail electric service pursuant to a declaration in the Revised Code, and for the purpose of discerning any competitive retail electric service that is no longer subject to effective competition on or after that date. Upon such evaluation, the commission periodically shall report its findings and any recommendations for legislation to the standing committees of both houses of the general assembly that have primary jurisdiction regarding public utility legislation. Until 2008, the commission and the consumer's counsel also shall provide biennial reports to those standing committees, regarding the effectiveness of competition in the supply of competitive retail electric services in this state. In addition, until the end of all market development periods as determined by the commission under section 4928.40 of the Revised Code, those standing committees shall meet at least biennially to consider the effect on this state of electric service restructuring and to receive reports from the commission, consumers' counsel, and director of development.

(D) In determining, for purposes of division (B) or (C) of this section, whether there is effective competition in the provision of a retail electric service or reasonably available alternatives for that service, the commission shall consider factors including, but not limited to, all of the following:

(1) The number and size of alternative providers of that service;

(2) The extent to which the service is available from alternative suppliers in the relevant market;

(3) The ability of alternative suppliers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions;

(4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of suppliers of services. The burden of proof shall be on any entity requesting, under division (B) or (C) of this section, a determination by the commission of the existence of or a lack of effective competition or reasonably available alternatives.

(E)

(1) Beginning on the starting date of competitive retail electric service, the commission has authority under Chapters 4901. to 4909. of the Revised Code, and shall exercise that authority, to resolve abuses of market power by any electric utility that interfere with effective competition in the provision of retail electric service.

(2) In addition to the commission's authority under division (E)(1) of this section, the commission, beginning the first year after the market development period of a particular electric utility and after reasonable notice and opportunity for hearing, may take such measures within a transmission constrained area in the utility's certified territory as are necessary to ensure that retail electric generation service is provided at reasonable rates within that area. The commission may exercise this authority only upon findings that an electric utility is or has engaged in the abuse of market power and that that abuse is not adequately mitigated by rules and practices of any independent transmission entity controlling the transmission facilities. Any such measure shall be taken only to the extent necessary to protect customers in the area from the particular abuse of market power and to the extent the commission's authority is not preempted by federal law. The measure shall remain the commission, after reasonable notice and opportunity for hearing, determines that the particular abuse of market power has been mitigated.

(F) An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter. An electric utility shall provide the commission with such information as the commission considers necessary to carry out divisions (B) to (E) of this section. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information. The commission shall require each electric utility to file with the commission on and after the starting date of competitive retail electric service an annual report of its intrastate gross receipts and sales of kilowatt hours of electricity, and shall require each electric services company, electric cooperative, and governmental aggregator subject to certification to file an annual report on and after that starting date of such receipts and sales from the provision of those retail electric services for which it is subject to certification. For the purpose of the reports, sales of kilowatt hours of electricity are deemed to occur at the meter of the retail customer.

Effective Date: 10-05-1999

4928.14 Failure of supplier to provide service.

The failure of a supplier to provide retail electric generation service to customers within the certified territory of an electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer under sections 4928.141, 4928.142, and 4928.143 of the Revised Code until the customer chooses an alternative supplier. A supplier is deemed under this section to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met:

(A) The supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy.

(B) The supplier is no longer capable of providing the service.

(C) The supplier is unable to provide delivery to transmission or distribution facilities for such period of time as may be reasonably specified by commission rule adopted under division (A) of section 4928.06 of the Revised Code.

(D) The supplier's certification has been suspended, conditionally rescinded, or rescinded under division (D) of section 4928.08 of the Revised Code.

Effective Date: 10-05-1999; 2008 SB221 07-31-2008

4928.141 Distribution utility to provide standard service offer.

(A) Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code. Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code, and, as applicable, pursuant to division (D) of section 4928.143 of the Revised Code, any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term. A standard service offer under section 4928.142 or 4928.143 of the Revised Code shall exclude any previously authorized allowances for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the utility's rate plan.

(B) The commission shall set the time for hearing of a filing under section 4928.142 or 4928.143 of the Revised Code, send written notice of the hearing to the electric distribution utility, and publish notice in a newspaper of general circulation in each county in the utility's certified territory. The commission shall adopt rules regarding filings under those sections.

Effective Date: 2008 SB221 07-31-2008

4928.142 Standard generation service offer price - competitive bidding.

(A) For the purpose of complying with section 4928.141 of the Revised Code and subject to division (D) of this section and, as applicable, subject to the rate plan requirement of division (A) of section 4928.141 of the Revised Code, an electric distribution utility may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer.

(1) The market-rate offer shall be determined through a competitive bidding process that provides for all of the following:

(a) Open, fair, and transparent competitive solicitation;

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

(d) Oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division (A)(1)(a) to (c) of this section are met;

(e) Evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners. No generation supplier shall be prohibited from participating in the bidding process.

(2) The public utilities commission shall modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A)(1) of this section.

(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A)(2) of this section, and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon their taking effect. An application under this division shall detail the electric distribution utility's proposed compliance with the requirements of division (A)(1) of this section and with commission rules under division (A)(2) of this section and demonstrate that all of the following requirements are met:

(1) The electric distribution utility or its transmission service affiliate belongs to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or there otherwise is comparable and nondiscriminatory access to the electric transmission grid.

(2) Any such regional transmission organization has a market-monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.

(3) A published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis. The commission shall initiate a proceeding and, within ninety days after the application's filing date, shall determine by order whether the electric distribution utility and its market-rate offer meet all of the foregoing requirements. If the finding is positive, the electric distribution utility may initiate its competitive bidding process. If the finding is negative as to one or more requirements, the commission in the order shall direct the electric distribution utility regarding how any deficiency may be remedied in a timely manner to the commission's satisfaction; otherwise, the electric distribution utility shall withdraw the application. However, if such remedy is made and the subsequent finding is positive and also if the electric distribution utility made a simultaneous filing under this section and section 4928.143 of the Revised Code, the utility shall not initiate its competitive bid until at least one hundred fifty days after the filing date of those applications.

(C) Upon the completion of the competitive bidding process authorized by divisions (A) and (B) of this section, including for the purpose of division (D) of this section, the commission shall select the least-cost bid winner or winners of that process, and such selected bid or bids, as prescribed as retail rates by the commission, shall be the electric distribution utility's standard service offer unless the commission, by order issued before the third calendar day following the conclusion of the competitive bidding process for the market rate offer, determines that one or more of the following criteria were not met:

(1) Each portion of the bidding process was oversubscribed, such that the amount of supply bid upon was greater than the amount of the load bid out.

(2) There were four or more bidders.

(3) At least twenty-five per cent of the load is bid upon by one or more persons other than the electric distribution utility. All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, shall be timely recovered through the standard service offer price, and, for that purpose, the commission shall approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

(D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:

(1) The electric distribution utility's prudently incurred cost of fuel used to produce electricity;

(2) Its prudently incurred purchased power costs;

(3) Its prudently incurred costs of satisfying the supply and demand portfolio requirements of this state, including, but not limited to, renewable energy resource and energy efficiency requirements;

(4) Its costs prudently incurred to comply with environmental laws and regulations, with consideration of the derating of any facility associated with those costs. In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division.

(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, including because of the length of time, as authorized under division (C) of this section, taken to approve the market rate offer, cause the duration of the blending period to exceed ten years as counted from the effective date of the approved market rate offer. Additionally, any such alteration shall be limited to an alteration affecting the prospective proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the commission under this division.

(F) An electric distribution utility that has received commission approval of its first application under division (C) of this section shall not, nor ever shall be authorized or required by the commission to, file an application under section 4928.143 of the Revised Code.

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4928.143 Application for approval of electric security plan - testing.

(A) For the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility may file an application for public utilities commission approval of an electric security plan as prescribed under division (B) of this section. The utility may file that application prior to the effective date of any rules the commission may adopt for the purpose of this section, and, as the commission determines necessary, the utility immediately shall conform its filing to those rules upon their taking effect.

(B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code:

(1) An electric security plan shall include provisions relating to the supply and pricing of electric generation service. In addition, if the proposed electric security plan has a term longer than three years, it may include provisions in the plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the plan as authorized under that division.

(2) The plan may provide for or include, without limitation, any of the following:

(a) Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes;

(b) A reasonable allowance for construction work in progress for any of the electric distribution utility's cost of constructing an electric generating facility or for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Any such allowance shall be subject to the construction work in progress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Further, no such allowance shall be authorized unless the facility's construction was sourced through a competitive bid process, regarding which process the commission may adopt rules. An allowance approved under division (B)(2)(b) of this section shall be established as a nonbypassable surcharge for the life of the facility.

(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Additionally, if a surcharge is authorized for a facility pursuant to plan approval under division (C) of this section and as a condition of the continuation of the surcharge, the electric distribution utility shall dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements.

(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;

(e) Automatic increases or decreases in any component of the standard service offer price;

(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:

(i) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code;

(ii) Provisions for the recovery of the utility's cost of securitization.

(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;

(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

(i) Provisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.

(C)

(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

(2)

(a) If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code.

(b) 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 of the Revised Code, respectively.

(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section 4928.64, or division (A) of section 4928.66 of the Revised Code.

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section

4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. If the test results are in the negative or the commission finds that continuation of the electric security plan will result in a return on equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that will face comparable business and financial risk, with such adjustments for capital structure as may be appropriate, during the balance of the plan, the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.

(F) With regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. Consideration also shall be given to the capital requirements of future committed investments in this state. The burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility. If the commission finds that such adjustments, in the aggregate, did result in significantly excessive earnings, it shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments; provided that, upon making such prospective adjustments, the electric distribution utility shall have the right to terminate the plan and immediately file an application pursuant to section 4928.142 of the Revised Code. Upon termination of a plan under this division, rates shall be set on the same basis as specified in division (C)(2)(b) of this section, and the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan. In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.

Amended by 129th General AssemblyFile No.61,HB 364, §1, eff. 3/22/2012.

Effective Date: 2008 SB221 07-31-2008

4928.37 Receiving transition revenues.

(A)

(1) Sections 4928.31 to 4928.40 of the Revised Code provide an electric utility the opportunity to receive transition revenues that may assist it in making the transition to a fully competitive retail electric generation market. An electric utility for which transition revenues are approved pursuant to sections 4928.31 to 4928.40 of the Revised Code shall receive those revenues through both of the following mechanisms beginning on the starting date of competitive retail electric service and ending on the expiration date of its market development period as determined under section 4928.40 of the Revised Code:

(a) Payment of unbundled rates for retail electric services by each customer that is supplied retail electric generation service during the market development period by the customer's electric distribution utility, which rates shall be specified in schedules filed under section 4928.35 of the Revised Code;

(b) Payment of a nonbypassable and competitively neutral transition charge by each customer that is supplied retail electric generation service during the market development period by an entity other than the customer's electric distribution utility, as such transition charge is determined under section 4928.40 of the Revised Code. The transition charge shall be payable by each such retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved and shall be billed on each kilowatt hour of electricity delivered to the customer by the electric distribution utility as registered on the customer's meter during the utility's market development period as kilowatt hour is defined in section 4909.161 of the Revised Code or, if no meter is used, as based on an estimate of kilowatt hours used or consumed by the customer. The transition charge for each customer class shall reflect the cost allocation to that class as provided under bundled rates and charges in effect on the day before the effective date of this section. Additionally, as reflected in section 4928.40 of the Revised Code, the transition charges shall be structured to provide shopping incentives to customers sufficient to encourage the development of effective competition in the supply of retail electric generation service. To the extent possible, the level and structure of the transition charge shall be designed to avoid revenue responsibility shifts among the utility's customer classes and rate schedules.

(2)

(a) Notwithstanding division (A)(1)(b) of this section, the transition charge shall not be payable on electricity supplied by a municipal electric utility to a retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved, if the municipal electric utility provides electric transmission or distribution service, or both services, through transmission or distribution facilities singly or jointly owned or operated by the municipal electric utility, and if the municipal electric utility was in existence, operating, and providing service as of January 1, 1999.

(b) The transition charge shall not be payable on electricity supplied or consumed in this state except such electricity as is delivered to a retail customer by an electric distribution utility and is registered on the customer's meter during the utility's market development period or, if no meter is used, is based on an estimate of kilowatt hours used or consumed by the customer. However, no transition charge shall be payable on electricity that is both produced and consumed in this state by a self-generator.

(3) The transition charge shall not be discounted by any party.

(4) Nothing prevents payment of all or part of the transition charge by another party on a customer's behalf if that payment does not contravene sections 4905.33 to 4905.35 of the Revised Code or this chapter.

(B) The electric utility shall separately itemize and disclose, or cause its billing and collection agent to separately itemize and disclose, the transition charge on the customer's bill in accordance with reasonable specifications the commission shall prescribe by rule under division (A) of section 4928.06 of the Revised Code.

Effective Date: 10-05-1999

4928.38 Commencing and terminating transition revenues.

Pursuant to a transition plan approved under section 4928.33 of the Revised Code, an electric utility in this state may receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, beginning on the starting date of competitive retail electric service. Except as provided in sections 4905.33 to 4905.35 of the Revised Code and this chapter, an electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.

Effective Date: 10-05-1999

4928.39 Determining total allowable transition costs.

Upon the filing of an application by an electric utility under section 4928.31 of the Revised Code for the opportunity to receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, the public utilities commission, by order under section 4928.33 of the Revised Code, shall determine the total allowable amount of the transition costs of the utility to be received as transition revenues under those sections. Such amount shall be the just and reasonable transition costs of the utility, which costs the commission finds meet all of the following criteria:

(A) The costs were prudently incurred.

(B) The costs are legitimate, net, verifiable, and directly assignable or allocable to retail electric generation service provided to electric consumers in this state.

(C) The costs are unrecoverable in a competitive market.

(D) The utility would otherwise be entitled an opportunity to recover the costs. Transition costs under this section shall include the costs of employee assistance under the employee assistance plan included in the utility's approved transition plan under section 4928.33 of the Revised Code, which costs exceed those costs contemplated in labor contracts in effect on the effective date of this section. Further, the commission's order under this section shall separately identify regulatory assets of the utility that are a part of the total allowable amount of transition costs determined under this section and separately identify that portion of a transition charge determined under section 4928.40 of the Revised Code that is allocable to those assets, which portion of a transition charge shall be subject to adjustment only prospectively and after December 31, 2004, unless the commission authorizes an adjustment prospectively with an earlier date for any customer class based upon an earlier termination of the utility's market development period pursuant to division (B)(2) of section 4928.40 of the Revised Code. The electric utility shall have the burden of demonstrating allowable transition costs as authorized under this section. The commission may impose reasonable commitments upon the utility's collection of the transition revenues to ensure that those revenues are used to eliminate the allowable transition costs of the utility during the market development period and are not available for use by the utility to achieve an undue competitive advantage, or to impose an undue disadvantage, in the provision by the utility of regulated or unregulated products or services.

Effective Date: 10-05-1999

4928.40 Establishing transition charge for each customer class.

(A) Upon determining under section 4928.39 of the Revised Code the allowable transition costs of an electric utility authorized for collection as transition revenues under sections 4928.31 to 4928.40 of the Revised Code, the public utilities commission, by order under section 4928.33 of the Revised Code, shall establish the transition charge for each customer class of the electric utility and, to the extent possible, each rate schedule within each such customer class, with all such transition charges being collected as provided in division (A)(1)(b) of section 4928.37 of the Revised Code during a market development period for the utility, ending on such date as the commission shall reasonably prescribe. The market development period shall end on December 31, 2005, unless otherwise authorized under division (B)(2) of this section. However, the commission may set the utility's recovery of the revenue requirements associated with regulatory assets, as established pursuant to section 4928.39 of the Revised Code, to end not later than December 31, 2010. The commission shall not permit the creation or amortization of additional regulatory assets without notice and an opportunity to be heard through an evidentiary hearing and shall not increase the charge recovering such revenue requirements associated with regulatory assets. Factors the commission shall consider in prescribing the expiration date of the utility's market development period and the transition charge for each customer class and rate schedule of the utility include, but are not limited to, the total allowable amount of transition costs of the electric utility as determined under section 4928.39 of the Revised Code; the relevant market price for the delivered supply of electricity to customers in that customer class and, to the extent possible, in each rate schedule as determined by the commission; and such shopping incentives by customer class as are considered necessary to induce, at the minimum, a twenty per cent load switching rate by customer class halfway through the utility's market development period but not later than December 31, 2003. In no case shall the commission establish a shopping incentive in an amount exceeding the unbundled component for retail electric generation service set in the utility's approved transition plan under section 4928.33 of the Revised Code, and in no case shall the commission establish a transition charge in an amount less than zero.

(B)

(1) The commission may conduct a periodic review no more often than annually and, as it determines necessary, adjust the transition charges of the electric utility as initially established under division (A) of this section or subsequently adjusted under this division. Any such adjustment shall be in accordance with division (A) of this section and may reflect changes in the relevant market.

(2) For purposes of this chapter, the market development period shall not end earlier than December 31, 2005, unless, upon application by an electric utility, the commission issues an order authorizing such earlier date for one or more customer classes as is specified in the order, upon a demonstration by the utility and a finding by the commission of either of the following:

(a) There is a twenty per cent switching rate of the utility's load by the customer class.

(b) Effective competition exists in the utility's certified territory.

(C) Notwithstanding any provision of this chapter, the commission shall issue an order under section 4928.33 of the Revised Code approving a transition plan for an electric utility that contains a rate reduction for residential customers of that utility, provided that the rate reduction shall not increase the rates or transition cost responsibility of any other customer class of the utility. The rate reduction shall be in effect only for such portion of the utility's market development period as the commission shall specify and shall be applied to the unbundled generation component for retail electric generation service as set in the utility's approved transition plan under section 4928.33 of the Revised Code subject to the price cap for residential customers required under division (A)(6) of section 4928.34 of the Revised Code. The amount of the rate reduction shall be five per cent of the amount of that unbundled generation component, but shall not unduly discourage market entry by alternative suppliers seeking to serve the residential market in this state. The commission, after reasonable notice and opportunity for hearing, may terminate the rate reduction by order upon a finding that the rate reduction is unduly discouraging market entry by such alternative suppliers. No such termination of the rate reduction shall take effect prior to the midpoint of the utility's market development period.

(D) Beginning on the starting date of competitive retail electric service, no electric utility in this state shall prohibit the resale of electric generation service or impose unreasonable or discriminatory conditions or limitations on the resale of electric generation service.

(E) Notwithstanding any provision of Title XLIX [49] of the Revised Code to the contrary, any customer that receives a noncompetitive retail electric service from an electric distribution utility shall be a retail electric distribution service customer, irrespective of the voltage level at which service is taken.

Effective Date: 10-05-1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appendix to the First Merit Brief of Appellant the Office of the Ohio Consumers' Counsel was served upon all parties of record via electronic transmission this 12th day of August 2013.

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