

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking :
Approval of Ohio Power Company's : Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power :
Purchase Agreement for Inclusion in the :
Power Purchase Agreement Rider. :

In the Matter of the Application of Ohio : Case No. 14-1694-EL-AAM
Power Company for Approval of Certain :
Accounting Authority. :

**REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF
OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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INTRODUCTION

The Stipulation presented in this case enhances the benefits to ratepayers identified in the Ohio Power Company's (AEP Ohio) Amended Application and addresses the concerns raised by the Staff of the Public Utilities Commission of Ohio (Staff) and other parties in this proceeding. The Stipulation is supported by a broad and diverse group of 22 stakeholders (the Signatory Parties). The plan represents compromises by AEP Ohio and the other Signatory Parties and provides for a balanced outcome for all stakeholders. Approval would give the stakeholders what is needed; stability today and predictability for tomorrow.

DISCUSSION

Several parties have challenged aspects of the Stipulation. As will be shown below, these objections have no merit.

I. The Stipulation meets the Three-Part Test for reasonableness

In considering the reasonableness of a stipulation, the Commission has used the following criteria;

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

The Signatory Parties, and the Commission staff, respectfully submit that the Stipulation here satisfies these three reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Serious Bargaining

The Stipulation is the product of serious negotiations among knowledgeable parties. The list of parties that signed the Stipulation represents a variety of diverse interests. The signatories are a listing of the major users of power in the AEP Ohio service territory and the Staff. The Stipulation is the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder

groups (the Parties).¹ The Parties met with AEP Ohio prior to the evidentiary hearing to discuss areas of potential settlement.² The Parties then participated in over a month of evidentiary hearing from September 28, 2015 through the rebuttal testimony on November 3, 2015.³

Then the Parties met and communicated over the next three week-period leading to the Signatory Parties agreeing to the proposed Stipulation filed on December 14, 2015. The meeting process that led to the Stipulation was open and available to all Parties. Meetings were noticed, well attended and many of non-signatory Parties participated in the discussions. The Parties involved in these negotiations were capable and knowledgeable about the issues raised in this case.

In sum, the Stipulation is the product of serious negotiations among knowledgeable Parties.

B. Public Interest

The benefits of the proposed Stipulation to the public are large and broad. These benefits include: (1) a commitment to seek an extension of the term of AEP Ohio's current electric security plan (ESP); (2) commitments to advocate at the federal level; (3) proposals to include enhancements to the competitive retail markets in Ohio; (4)

¹ AEP Ex. 52 (Allen Direct in Support of the Stipulation at 11).

² *Id.*

³ *Id.*

commitments to enhance energy efficiency programs; (5) commitments to reduce the carbon emissions of power plants in Ohio; (6) commitments to seek to expand the wind and solar energy resources in Ohio; and (7) commitments to explore grid modernization.⁴ These benefits add value to ratepayers and the public at large.

Overall the Stipulation, as a package, benefits ratepayers and is in the public's interest.

C. The Stipulation does not violate any important regulatory principle or practice, rather it promotes public policy.

The final prong of the Commission's three-part test is passed, as the Stipulation does not violate any important regulatory principle or practice. The terms of the Stipulation represent a compromise of the Signatory Parties. None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. On the contrary, the compromise reached by the diverse set of Signatory Parties results in a Stipulation that promotes a number of the state policies expressed in Ohio Revised Code 4928.02.

The Stipulation goes beyond not violating any important regulatory principles or policies; the Stipulation advances important regulatory policies and principles. For example, the Stipulation provides a hedge against potential rising energy prices, promotes competitive service offerings and diversity of suppliers to provide options to customers to

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Id.

meet their respective needs.⁵ The terms of the Stipulation promote advancements in technology for infrastructure and to provide efficient access to information.⁶ Likewise the terms of the Stipulation increases energy efficiency and a partnership with the low income customer advocate as energy efficiency efforts are implemented.⁷ The Signatory Parties also address and resolve other regulatory matters often considered by the Commission.⁸ For instance, the Signatory Parties clarify the fact that the Stipulation advances the positive results found in the ESP III Order relating to the market rate offer (MRO) test under R.C. 4928.143(C).⁹ Likewise, the Stipulation contemplates the use of an extended ESP term to address matters for Commission consideration.¹⁰ All of these matters are benefits of the Stipulation, as discussed below, but also promote important regulatory principles and practices as incorporated by the Signatory Parties in the Stipulation.¹¹

The Stipulation benefits customers, is in the public interest, and is designed to provide adequate, safe, and reliable electric service.¹² The Stipulation also supports

⁵ AEP Ex. 52 (Allen Direct in Support of the Stipulation at 13).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

economic development and job retention in Ohio.¹³ The PPA and the PPA Rider were initially proposed by AEP Ohio to support retail rate stability and economic development for Ohio and to benefit customers and the public interest.¹⁴ This Stipulation proposes a Revised Affiliate PPA that includes a lower fixed ROE.¹⁵

The Stipulation includes credits to customers that could amount to up to \$100 million during the last four years of the PPA.¹⁶ These changes serve to enhance the customer benefits that were initially proposed and shown in the record.¹⁷

The Stipulation will also be subject to continuing review and oversight and should be approved. These are just a few of the abundant benefits provided by the Stipulation. These benefits further the important policy goals of the General Assembly and show that the Stipulation meets the third prong of the Commission's three-part test on the reasonableness of a contested Stipulation.

¹³ *Id.*

¹⁴ *Id.* at 13-14.

¹⁵ *Id.* at 14.

¹⁶ *Id.*

¹⁷ *Id.*

II. The Revised Affiliate PPA is not anticompetitive.

Opponents of the Stipulation, argue that the Revised Power Purchase Agreement (PPA) and PPA rider are anticompetitive. On the contrary, the Stipulation provides that the generating units relevant to the PPA will be managed efficiently and bid competitively in the PJM markets, as has been the practice within the PJM region.¹⁸ Unsubsidized units that have bid and cleared the 2016/2017 and 2017/2018 Transitional Auctions and the 2018/2019 Base Residual Auction (BRA) for capacity performance have been competitive in the PJM market.¹⁹ PJM and Market Monitoring Analytics conduct detailed reviews of all auction results and conclude that every capacity auction, including the most recent capacity performance auctions produced competitive results, and the behavior of participants was competitive.²⁰ Nothing will change and opponents of the Stipulation have not and cannot demonstrate otherwise. The Staff fully expects, as part of the Stipulation, that the PPA units will be bid competitively into the PJM markets consistent with recent bidding behavior.

Furthermore, a quasi-market paradigm already exists in PJM which includes cost-based plants in regulated jurisdictions, municipal and co-op utilities, and renewables.²¹

¹⁸ Joint Ex. 1 (Stipulation and Recommendation at 5-6).

¹⁹ Tr. Vol. XXI at 5255-5256.

²⁰ *Id.*

²¹ Tr. Vol XXI at 5210; 5236-5237; and 5224.

For example, in Virginia, Dominion has cost-based generation and participates in the PJM energy and capacity markets.²² Dominion owns roughly 10% of the generation in the PJM capacity market.²³ The PJM independent market monitor admits that Ohio S.B. 221 reflects outcomes that are consistent with a quasi-market paradigm.²⁴ No irreparable harm exists in the PJM market today where cost-based units are treated the same as competitive units. As a result, the PPA rider would not harm the PJM market if approved.

The Stipulation is designed to provide adequate, safe, and reliable electric service, and more importantly, the Stipulation supports economic development and job retention here in Ohio.²⁵ Over the term of the Stipulation, it is estimated that customers will receive \$721 million in benefits related to the PPA.²⁶ Several Parties challenge AEP Ohio's estimated benefit of \$721 million, including PJM Power Providers (P3) and the Electric Power Supplier Association (EPSA). On cross examination, P3/EPSA's only witness admitted that he did not conduct any studies to show that \$721 million in savings was overestimated.²⁷ The Ohio Consumers' Counsel (OCC) contends that the Stipulation

²² *Id.* at 5238-5239.

²³ *Id.* at 5238-5239.

²⁴ *Id.* at 5235-5236.

²⁵ AEP Ex. 52 (Allen Direct in Support of the Stipulation at 13).

²⁶ *Id.*

²⁷ Tr. Vol. XXI at 5270.

will cost customers up to \$1.9 billion.²⁸ The major difference between AEP Ohio's estimate and OCC's estimate is in the use of long-term forward-looking forecasts. Long-term forecasts are largely speculative. In the end, regardless of whether the PPA provides customer savings, the other benefits of the Stipulation are equally, if not more, important. The other benefits include adequate, safe, and reliable electric service, while at the same time supporting economic development and job retention in Ohio.

The Commission will also have rigorous review of the PPA Rider, including AEP Ohio's full information sharing, in annual compliance reviews to ensure that actions taken by AEP Ohio when selling the output from generation units included in the PPA Rider into the PJM market were not unreasonable.²⁹ AEP Ohio, not its customers, would be responsible for the adjustments made to the PPA Rider based on actions deemed unreasonable.³⁰

Such Commission review will include quarterly true ups, as well as a prudence review of the PPA Rider designed to ensure that AEP Ohio's policies and practices comport with sound ratemaking principles and Commission policies, confirm that its books and records are reliable sources of cost and revenue data, and ultimately determine if the PPA Rider is just and reasonable. This type of prudence review routinely includes an examination that the filed schedules, particularly PPA schedules, are consistent with

²⁸ OCC Ex. 34 (Wilson Direct in Opposition to the Stipulation at 10); OCC Initial Brief at 101-102.

²⁹ Joint Ex. 1 (Stipulation and Recommendation at 7).

³⁰ *Id.*

the Commission's Opinions and Orders and ensure proper accounting treatment was applied. The audit also typically consists of a review of the financial statements for completeness, occurrence, presentation, valuation, allocation, and accuracy. Commission reviews are conducted through a combination of document review, interviews, and interrogatories. Documentation will be requested as needed to determine that the PPA costs and revenues were substantiated or to conclude that a disallowance is warranted.

Dynegy Inc. (Dynegy) also argues that this process will lead to anticompetitive results. Dynegy argues that AEPGR is not subject to Commission review, so AEP Ohio would become "agnostic" or lack incentive to improve efficiency in operations (i.e. maximize profits).³¹ Dynegy ignores the rigorous Commission review of the actions taken by AEP Ohio that is part of the Stipulation.³² The Commission may look at more than just maximizing profits.³³ Dynegy also ignores the contract relationship between AEP Ohio and AEPGR through the PPA – the relationship does not work without cooperation of both parties. AEP Ohio witness Allen explained the relationship on cross:

EXAMINER PARROT: Does the company, and by "company," I mean AEP Ohio, have an opinion as to whether there are means for the company to contain the costs – the overall costs, the rate impacts that are associated with all of the many provisions in the stipulation?

THE WITNESS (Allen): With regard to the PPA rider itself, the company is a member of the operating committee, and as part of that

³¹ Dynegy Ex. 2 (Ellis Direct in Opposition to the Stipulation at 6); Dynegy Initial Brief at 19-20.

³² Joint Ex. 1 (Stipulation and Recommendation at 7).

³³ *Id.*

operating committee the company will be looking to find ways to most economically operate the units and so that's a manner of reducing cost.

This contractual relationship gives both AEP Ohio and AEPGR incentive to operate efficiently. In addition, the shorter term of the PPA (8 years) would give both AEP Ohio and AEPGR incentive to make efficient plans for competing in the market in the future.

III. Arguments that the other provisions of the Stipulation violate regulatory principles and practices are misguided and/or premature.

A. The Pilot Competition Incentive Rider and Pilot Supplier Consolidated Billing Program

The OCC argues that the Stipulation, as it relates to the Competitive Incentive Rider (CIR) and Supplier Consolidated Billing, is discriminatory to AEP Ohio customers.³⁴ On the contrary, these provisions promote shopping for generation in line with the Ohio General Assembly's policy seeking diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.³⁵

The CIR will further this goal by incenting shopping and recognizing that there may be costs associated with providing retail electric service that are not reflected in Standard Service Offer (SSO) bypassable rates.³⁶ The Commission has provided

³⁴ OCC Ex. 33 (Haugh Direct at 10); OCC Brief at 49-50.

³⁵ R.C. 4928.02(C).

³⁶ Joint Ex. 1 (Stipulation and Recommendation at 12).

shopping incentives over a number of years in Ohio.³⁷ The Commission has implemented shopping incentives related to AEP Ohio since 2000. In addition, the Commission most recently approved, as part of AEP Ohio's ESP II, the provision of discounted capacity to competitive retail electric service (CRES) providers to incent additional shopping.³⁸ The goal of the provision is to grow the market for shopping customers and to allow more opportunity for CRES providers to enter the market and provide more innovative offerings to customers as the market developed.³⁹

Supplier consolidated billing will provide the industry with data and information on the practicality of such a venture.⁴⁰ Furthermore, the CIR, as proposed, is a pilot program subject to future Commission review. The rate will be set by the Commission after a collaborated effort by interested parties. The participant CRES provider will work with Staff on all aspects of the program.⁴¹ As a pilot program, this matter will take effect for two years and be subject to subsequent Commission review.⁴² At the conclusion of the two-year period, the Staff will file a report recommending expansion or retirement of the program.⁴³

³⁷ Tr. Vol. XX at 4927.

³⁸ *Id.* at 4928.

³⁹ *Id.*

⁴⁰ Joint Ex. 1 (Stipulation and Recommendation at 17).

⁴¹ *Id.* at 17-18.

⁴² *Id.*

⁴³ *Id.* at 18.

B. Cost Allocation

The Stipulation provides that: (1) 50% of the Energy Efficiency and Peak Demand Reduction Cost Recovery (EE/PDR) Rider costs for transmission and sub-transmission voltage customers will be transferred to the Economic Development Cost Recovery (EDR) Rider through May 31, 2024; (2) 50% of the Interruptible Power (IRP) credits from the EE/PDR Rider will be transferred to the EDR Rider; and (3) PPA Rider credits and charges will be allocated to rate classes/voltage levels based upon their PJM five monthly coincident peak demands for the prior year. OCC argues that the allocations do not follow the principles of cost causation.⁴⁴ OCC's argument is simply a criticism of the Stipulation's proposed rate design and does not demonstrate that the Stipulation violates any regulatory principle or practice. The Commission has considerable discretion in matters of rate design.⁴⁵ The rate design should be approved as presented in the Stipulation.

C. Additional Issues

Several Parties opposing the Stipulation take issue with other so-called "non-core" provisions of the Stipulation including: the Ohio Partners for Affordable Energy (OPAE) Community Assistance Program (CAP) Funding, Ohio Hospital Association (OHA)

⁴⁴ OCC Ex. 31 (Fortney Direct at 3-5); OCC Initial Brief at 68.

⁴⁵ *Indus. Energy Users-Ohio v. Ohio Power Co.*, 140 Ohio St. 3d 509, 2014-Ohio-4271, ¶ 27 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St. 3d 57, 2010-Ohio-134, ¶ 20; *Citywide Coalition for Util. Reform v. Pub. Util. Comm.*, 67 Ohio St. 3d 531, 534 (1993)).

EE/PDR Funding, the Automaker Credit, Volt/VAR Optimization, 2017-2019 EE/PDR Plan, the Carbon Reduction Plan, the Fuel Diversity Plan, the Grid Modernization Business Plan, and Battery Resources Deployment. These provisions provide many benefits to AEP Ohio's customers and the public interest. A few examples of note are as follows:

- (1) The CAP includes consumer energy efficiency programs such as low-income weatherization and refrigerator buybacks.⁴⁶ The Stipulation calls for OPAE to administer the CAP. OPAE has existing relationships with a number of community agencies and has administered this program in the past.⁴⁷ It makes sense for OPAE to administer the CAP;
- (2) The alternative feed service provides additional reliability to hospitals where it is of paramount import to ensure continuous electric services.⁴⁸ A customer can request to have two separate and distinct feeds into its facility such that if there is an outage to a substation that is serving that hospital, the hospital can then be served instead by a separate substation which greatly enhances reliability for hospitals;⁴⁹ and
- (3) The automaker credit provision promotes economic development.⁵⁰ The provision provides an incentive for automakers to utilize their facilities in the State of Ohio, and it provides a benefit, as compared to other states, of allowing more production to move into the State of Ohio.⁵¹

⁴⁶ Tr. Vol. XX at 4796.

⁴⁷ Tr. Vol. XX at 5570.

⁴⁸ Tr. Vol. XX at 4977.

⁴⁹ *Id.*

⁵⁰ Tr. Vol. XX at 4932.

⁵¹ *Id.*

Opponents of the Stipulation contend that these additional provisions are not related to the core concerns of the PPA and should not be given credence in this case. However, this contention overlooks the significant value these provisions seek to provide to Ohioans. The Stipulation provides benefits to Ohioans through multiple facets, including ensuring reliable service at hospitals, providing additional employment opportunities from automotive manufacturers, and aiding low income families. Such provisions are integral considerations when evaluating the societal impact of the Stipulation on Ohioans. As discussed above, the Stipulation is most appropriately evaluated as a package. Even if some attributes could have been accomplished separately, achieving them in one group is advantageous by concisely enhancing stability for the future of AEP Ohio and its customers. Furthermore, many of the Stipulation's package-attributes are subject to subsequent Commission review. Parties will have their due-process opportunities at that time.

CONCLUSION

As demonstrated in Staff's Initial Brief, the Stipulation meets all prongs of the three-part test for evaluating a settlement. The Commission should adopt the Stipulation as its final Opinion and Order in this case.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 8th day of February, 2016.

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