

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power     )  
Company for Authority to Establish a Standard     )  
Service Offer Pursuant to R.C. 4928.143, in the     )  
Form of an Electric Security Plan.                     )

Case No. 16-1852-EL-SSO

In the Matter of the Application of Ohio Power     )  
Company for Approval of Certain Accounting         )  
Authority.   )

Case No. 16-1853-EL-AAM

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

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**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

**Werner L. Margard**  
**Robert A. Eubanks**  
Assistant Attorneys General  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, OH 43215  
(614) 466-4397 (telephone)  
(614) 644-8764 (fax)  
[werner.margard@ohioattorneygeneral.gov](mailto:werner.margard@ohioattorneygeneral.gov)  
[robert.eubanks@ohioattorneygeneral.gov](mailto:robert.eubanks@ohioattorneygeneral.gov)

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**INITIAL POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

The Commission is presented with a very popular Stipulation that resolves all the issues in this complex case. The Stipulation is reasonable, meets the three part test, and is better in the aggregate than an MRO would be. It should be adopted by this Commission.

**ARGUMENT**

**I. The Stipulation Satisfies The “Three-Part Test,” And Should Be Approved**

The Signatory Parties agree that the stipulation satisfies the three-part test used by the Commission to consider stipulations (Joint Ex. 1 at 39). The Office of the Ohio Consumers’ Counsel (OCC) alone disagrees.

**A. The Settlement Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties**

The parties engaged in a number of settlement discussions, both with individual stakeholder groups and in meetings open to all intervening parties. OCC does not contest that the stipulation is the product of serious bargaining among capable, knowledgeable parties, and satisfies the first prong of the three-part test.

**B. The Settlement, As A Package, Benefits Ratepayers And The Public Interest**

OCC criticizes a number of provisions in the stipulation. Many provisions impose costs, and not all ratepayers will benefit. Nor will all who benefit do so either equally or in the same manner. As the Ohio Partners for Affordable Energy (OPAE) noted in their brief, the fact that some parties benefit in some respects while others may not does not indicate that a settlement is unreasonable. That, of course, is not the test. Indeed, as the Company noted in its brief, even OCC acknowledged that individual provisions may or may not convey a benefit.

Rather, the Commission must determine whether the settlement, *as a package*, benefits ratepayers and the public interest. That is, it must look at the overall impact of the settlement. There is no requirement that each individual provision, or that any particular provision, of the settlement must satisfy some “cost / benefit” analysis. If the package, as a whole, provides benefits to ratepayers and the public interest, it should be

approved. Because the stipulation before the Commission benefits both ratepayers and the public interests it should be approved.

Many of the signatory parties have already outlined the many benefits of the various provisions with which OCC disagrees.

**Interruptible Rate Program (IRP-D).** As IEU-Ohio noted in its initial brief, the Commission has previously determined that this program is in the public interest, and that it promotes economic development and the retention of manufacturing jobs. IEU-Ohio further delineated how the IRP-D program differs from, and provides additional benefits to, PJM demand response programs. The stipulation also addresses a number of tariff issues, some of which have lingered since the Commission last reauthorized the program.

**Basic Transmission Cost Rider (BTCR).** The Commission has also already approved the BTCR, as a pilot, and found it to be in the public interest. The stipulation expands participation in the pilot program. Participants, who would now include schools, could enjoy lower costs, while residential customers would be shielded from cost shifts and enjoy more efficient use of the transmission grid. IEU-Ohio further explained that benefits and protections in its initial brief.

**Automaker Credit.** In addition to fulfilling part of the PPA Rider Stipulation approved by the Commission, this program will also help promote economic development and manufacturing job retention.

**Enroll in Your Wallet.** RESA testified that this pilot will ease customer enrollments, and represented “an important step forward for the competitive market and

consumers.” RESA Ex. 1 at 3. On brief, RESA also demonstrated how the Competitive Incentive Rider (CIR) is intended to mitigate subsidization of SSO services, and how the stipulation advances the Supplier Consolidated Billing pilot. All of these efforts are intended to enable customers to participate in competitive markets in a more user-friendly and flexible manner.

**Smart City Rider.** Staff testified that “the benefits associated with the demonstration projects within the rider will be provided to all distribution customers.” Tr. I at 90. Those benefits involve gaining a better understanding of the impacts that new services and technologies may have on the distribution system. The research generated by the demonstration projects will be publicly available to anyone, further enhancing innovation, competition and customer choice. RESA demonstrated that the EV charging station rebate program “will stimulate innovation, competition and customer choice.” RESA Ex. 1 at 4. Networked charging provides grid benefits over traditional load management, and will inform better planning, and help maintain reliability and affordability.

The microgrid proposal will benefit primarily, if not exclusively, non-profit, public-serving customers. Those customers, in turn, provide benefits to other customers and the general public. As with the EV charging stations, data and experience gained will better inform stakeholders in developing policy and making decisions in the future.

**Distribution Investment Rider (DIR).** The Commission has previously found that the DIR supports replacement of infrastructure and maintenance and improvement of

system reliability. The stipulation continues the program, and significantly reduces the revenue caps requested by the Company.

**Electric Service Reliability Rider (ESSR).** The Commission has also previously determined that the ESSR reasonably promotes maintenance and improvement of system reliability. The agreement reduced the Company's initial request, and maintains current funding levels. And despite their arguments to the contrary, even OCC acknowledged that the Company had exceeded its Commission-established service reliability standards, as measured by SAIFI and CAIDI, for the years 2013-2016.

There is no question that the stipulation provides benefits to ratepayers and the public interest. In addition to these benefits, sufficient in themselves to justify adoption of the stipulation, the stipulation benefits ratepayers and the public interest in multiple other ways.

As Staff noted in its Initial Post-Hearing Brief, customers and suppliers will be assured of greater certainty and predictability by extending the ESP through 2024. AEP Ex. 1 at 20. It continues the residential distribution credit, and the neighbor-to-neighbor program. It provides for one-way customer-favorable adjustment of the weighted average cost of capital (WACC) rate based on anticipated debt refinancing opportunities.

Nor is the requirement that the company file a base rate case illusory. In short order, the parties will have the opportunity to fully examine and evaluate the Company's operations, revenues, costs, and return. Especially relative to the Company's original

proposal to significantly change the residential rate design, this represents a significant compromise, and the very opportunity for which OCC routinely clamors.

There are numerous other provisions of the stipulation, many of which were not addressed by OCC. These, and the benefits that they provide, are outlined in the Company's initial brief.

AEP witness Allen, Staff witness Schaefer, and RESA witness White all testified that, taken as a whole, the provisions in the stipulation are in the public interest. Based on the record before the Commission, the stipulation, as a package, benefits ratepayers and the public interest, and satisfies the second prong of the three-part test.

**C. The Settlement Package Does Not Violate Any Important Regulatory Principle Or Practice**

Company witness Allen testified that none of the individual provisions of the stipulation are inconsistent with or violate any important Commission principle or practice. Staff witness Turkenton also testified that the stipulation complies with all relevant and important regulatory principles and practices. Staff witness Schaefer agreed, as did RESA witness White.

As with the benefits portion of the three-prong stipulation test, OCC chooses to focus on individual aspects of the stipulation with which it disagrees.

**Competition Incentive Rider (CIR)**. Staff does not disagree that the CIR “should be comprehensive and accurate on both ends,” and respectfully submits that the base rate case proceeding will enable all parties to ensure just that. If there are costs associated



with CRES providers that are subsidized by customers in distribution rates, those should be addressed in that proceeding, as well. While adding a CIR to SSO customer bills “alters” the results of competitive auctions, failing to do so may result in inappropriate subsidies.

The Commission agreed. In Case No. 14-1693-EL-RDR, the Company agreed to file and advocate for a pilot program to establish a bypassable CIR as an addition to the SSO non-shopping rate above the auction price for the purpose of incenting shopping and recognizing that there may be costs associated with providing retail electric service that are not reflected in SSO bypassable rates. *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, et al. (Opinion and Order) (Mar. 31, 2016). That was to be established in this case. The stipulation here, consistent with the Commission order approving the stipulation in Case No. 14-1693-EL-RDR, attempts to address this potential disparity on an interim basis.

**Supplier Consolidated Billing (SCB).** The Company, in its initial brief, demonstrated that OCC had already agreed to the very cost allocation that they purport to challenge here. Moreover, the Company has also reasonably argued that enhancements to the retail choice program and its features benefit all customers, whether they shop or not. Because consolidated billing may foster the competitive market, and since all customers

can take advantage of shopping and the benefits of consolidated billing, there is no violation of cost causation principle.

**Renewable Generation Rider.** OCC's argument that the Company must demonstrate the need for generation facilities in this proceeding in order for the Commission to approve a rider to recover those costs is simply wrong. As OCC notes, the Commission has previously addressed this very issue, stating:

We disagree that Section 4928.143(B)(2)(c), Revised Code, requires the Commission to first determine, within an ESP proceeding, the need for an electric generating facility before authorizing a nonbypassable surcharge. As the Commission stated in the ESP 2 Case, we do not read the statute to restrict our determination of the need for the electric generating facility to the time at which an ESP is approved, but rather to ensure that the Commission holds a proceeding before it authorizes any allowance under the statute. Neither does the Commission find any language in Section 4928.143(B)(2)(c), Revised Code, that expressly excludes alternative energy resources from its parameters.

*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) (Jan. 9, 2013), at 23.

The Company will need to demonstrate in respective EL-RDR cases that the criteria in R.C. 4928.143(B)(2)(c) have been met before any recovery will be permitted. Nor is there any basis now for rejecting any possible reasonable arrangements that may allow for discounts. The Revised Code, of course, permits such arrangements under the proper circumstances. Ohio Rev. Code 4905.31.

**Smart City Rider.** Base rate cases are, as OCC suggests, certainly an appropriate forum for determining how utility costs and expenses should be recovered from

customers. But the suggestion that riders should not be used outside of a base rate case ignores the SSO paradigm that the General Assembly authorized a decade ago. Similarly, the argument that the recovery of, in OCC's words, "relatively modest" costs must somehow be accompanied by "proportionate benefits" has no basis in either the statutory scheme or in regulatory practice.

Nor is there any provision in the ESP statute that prohibits recovery of the types of costs to be included in the Smart City demonstration projects. While the stipulation does not specifically refer to Ohio Rev. Code 4928.143(B)(2)(h), that paragraph permits provisions "regarding the utility's distribution service," and is not limited to a "'plan' to improve AEP's distribution reliability." OCC Brief at 34. The Commission must examine the reliability of the EDU's distribution system, ensuring that expectations are aligned, before approving any such provision, but the provision itself need not specifically pertain to reliability. Staff witness Nicodemus testified about the Company's system's reliability, and opined that the Company's expectations and those of its customers are, indeed, aligned. Staff Ex. 2.

**PowerForward Rider**. OCC's only argument with the PowerForward Rider, in essence, is that it doesn't know what it's for or how it will work yet. But that is precisely the point. Balancing the benefits of an extended ESP with the possible need to be responsive to intervening directives, the rider allows the Company to be responsive, even forward-thinking, to the Commission's PowerForward Initiative. Zero placeholder riders, even those where details of programs and recovery mechanisms are still to be determined,

have been commonplace in ESPs. OCC's speculative concerns hardly constitute a "violation of an important regulatory principle or practice."

**At Risk Populations.** OCC argues that any increase in rates is *per se* unreasonable. "The Settlement will increase the charges that customers are asked to pay. Thus, the Settlement will not assure that customers are provided reasonably priced retail electric service." OCC Brief at 37. This, of course, is patently absurd. Increases are not *per se* unreasonable.

**ROE / ROR / WACC.** The Company's initial brief adequately refutes OCC's arguments against the agreed upon ROE of 10.0% to be applied prospectively for all riders that have a capital component. Significantly, this ROE is lower than the ROE approved by the Commission in the Company's ESP III case. It is also not fixed for the term of the ESP, but only until new rates are effective with a newly authorized ROE in the Company's upcoming distribution rate case.

While the Company is not obligated to refinance its long-term debt, it risks the possibility that it would be found to be imprudent for not doing so if it could have at more reasonable rates. Although rates may certainly be higher, the WACC will not be. The parties have agreed that the WACC may only be adjusted in favor of customers. Similarly, Staff submits that any adjustment that could increase the WACC due to a change in the capital structure that shifted toward relatively more costly equity would also be prohibited by the stipulation.

Based on the record before the Commission, the stipulation does not violate any important regulatory principle or practice, and satisfies the third and final prong of the three-part test.

## **II. The Proposed ESP Is More Favorable In The Aggregate As Compared To The Results That Would Otherwise Apply Under Section 4928.142 Revised Code**

The Commission's analysis must consider the entire ESP as a total package. The record demonstrates that the stipulation is, in fact, more favorable for customers, whether evaluated from a quantitative and a qualitative perspective, than would be expected of an MRO, and should be approved.

There are both quantitative and qualitative aspects of the MRO Test. Because the rates to be charged to customers under the ESP are entirely market-based, there would be no difference between the ESP and an MRO. Staff Ex. 3 at 5.

The Residential Distribution Credit Rider and Neighbor-to-Neighbor program benefits would not exist under an MRO. Similarly, any savings from updating the WACC upon anticipated debt refinancing would not be available as part of an MRO.

The Commission has determined that the revenue requirements associated with the recovery of incremental distribution investments from distribution-related riders, such as the DIR and ESSR, are properly excluded as part of the MRO/ESP analysis. Staff testified that the new Smart City rider was, in their opinion, also a distribution-related rider. Should the Commission, however, determine that the costs associated with the new

Smart City rider are not distribution-related, Staff further testified that such modest costs, even when included in the quantitative analysis would still be offset by the annual benefits discussed above.

Moreover, there are significant qualitative benefits that also justify approval of the stipulation, including the commitment to file a base rate case, the promotion of innovative programs and demonstration projects, the compilation of data, economic development, and enhancements to the retail competitive market. These, and other benefits, led both Mr. Allen and Ms. Turkenton to testify that the quantifiable benefits, in combination with the non-quantifiable benefits, demonstrate that the provisions of the ESP in the stipulation are clearly more favorable in the aggregate than would be expected from an MRO. AEP Ex. 1 at 19, Staff Ex. 3 at 6-7.

## **CONCLUSION**

The stipulation is reasonable, meets the three part test, and is more favorable than an MRO would be. Staff urges the Commission to approve the stipulation.

Respectfully submitted,

/s/Werner L. Margard III

Werner L. Margard III  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16th Floor  
Columbus, OH 43215-3414  
614.466.4395 (telephone)  
614.644.8764 (facsimile)  
werner.margard@ohioattorneygeneral.gov

**On behalf of the Staff of  
The Public Utilities Commission of Ohio**

## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief was served via e-mail upon the following parties of record, this 21<sup>st</sup> day of December, 2017.

/s/Werner L. Margard III

**Werner L. Margard III**

Assistant Attorney General

### Parties of Record:

Amy.spiller@duke-energy.com  
Bojko@carpenterlipps.com  
callwein@keglerbrown.com  
campbell@whitt-sturtevant.com  
charris@spilmanlaw.com  
christopher.miller@icemiller.com  
cblend@aep.com  
cmooney@ohiopartners.org  
cpirik@dickinsonwright.com  
dwilliamson@spilmanlaw.com  
egallon@porterwright.com  
ehewell@bricker.com  
Elizabeth.watts@duke-energy.com  
fdarr@mwncmh.com  
glover@whitt-sturtevant.com  
glpetrucci@vorys.com  
ibatikov@vorys.com  
jdortch@kravitzllc.com  
jeremy.grayem@icemiller.com  
jkylercohn@BKLawfirm.com  
joe.halso@sierraclub.org  
joliker@igsenergy.com  
kboehm@BKLawfirm.com  
kevin.moore@occ.ohio.gov  
Kurt.Helfrich@ThompsonHine.com  
lhawrot@spilmanlaw.com

mdortch@kravitzllc.com  
mfleisher@elpc.org  
Michael.Austin@ThompsonHine.com  
mjsettinieri@vorys.com  
mkurtz@BKLawfirm.com  
mleppla@theOEC.org  
mnugent@igsenergy.com  
mpritchard@mwncmh.com  
msmckenzie@aep.com  
paul@carpenterlipps.com  
perko@carpenterlipps.com  
rdove@attorneydove.com  
rick.sites@ohiohospitals.org  
rparsons@kravitzllc.com  
rsahli@columbus.rr.com  
sechler@carpenterlipps.com  
ssheely@bricker.com  
Stephanie.Chmiel@ThompsonHine.com  
stnourse@aep.com  
tdougherty@theOEC.org  
todonnell@dickinsonwright.com  
tony.mendoza@sierraclub.org  
whitt@whitt-sturtevant.com  
william.michael@occ.ohio.gov  
wvorys@dickinsonwright.com



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