BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	)	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	)	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)	Case No. 20-587-EL-AAM

INITIAL POST-HEARING BRIEF OF ENVIRONMENTAL LAW & POLICY CENTER, OHIO ENVIRONMENTAL COUNCIL, AND NATURAL RESOURCES DEFENSE COUNCIL

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Dated: June 14, 2021

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I. INTRODUCTION

In the above-captioned proceeding, the Ohio Power Company ("AEP Ohio") seeks approval from the Public Utilities Commission of Ohio ("PUCO" or "Commission") of a non-unanimous Stipulation and Recommendation ("Stipulation") first filed on March 12, 2021.[1] This case poses an unusual issue. When AEP Ohio filed its original application in the case, it proposed and strongly supported a demand-side management ("DSM") plan consistent with providing ratepayers service at just and reasonable rates. But as part of the "bargaining" process, AEP Ohio and the Signatory Parties agreed to remove the DSM program. The Environmental Law & Policy Center ("ELPC"), the Ohio Environmental Council ("OEC"), and the Natural Resources Defense Council ("NRDC") (collectively, the "Environmental Advocates") had no input on this outcome, nor a real opportunity to influence it.

Environmental Advocates will demonstrate in this brief that the Stipulation does not meet the standards for approval and that the Commission needs to address flaws in the Stipulation process that lead to unjust outcomes. As it stands, the Commission merely evaluates a stipulation from the perspective of the parties that made the deal, even though those parties made a deal that benefits their own interests. The Commission must reconsider the implications of that approach. This case is unusual in that the Environmental Advocates do not propose DSM as a new program or novel concept. AEP Ohio put the DSM program in its initial application because demand-side management benefits customers. The Commission must consider the Signatory Parties' support for the Stipulation in context. Signatory Parties always support the stipulation; it is their agreement. Most importantly, the Commission must ensure that this rate case will result in just

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[1] AEP Ohio filed a corrected version of the non-unanimous stipulation, which was subsequently admitted as Joint Exhibit 1.

and reasonable rates. AEP Ohio and the Signatory Parties' decision to remove the DSM program means AEP Ohio's rate plan violates that critical regulatory principle. Because the Stipulation fails the Commission's three-part test, the Commission must reject or modify it to require AEP Ohio to provide a robust DSM program that will help deliver just and reasonable rates to customers.

II. FACTS

A. AEP Ohio's Application to Increase Distribution Rates

AEP Ohio filed its notice of intent to file an application for an increase in its electric distribution rates with the Commission on April 29, 2020. AEP Ohio Ex. 1 at 2. On June 8, 2020, AEP Ohio submitted its application, proposing to increase its gross revenues by $42.281 million. *Id.* at 4. Included in that initial pre-Stipulation Application was a demand-side management proposal, which would have provided energy efficiency programs to all customer classes and helped all customers lower their electricity bills. *See* AEP Williams Testimony (withdrawn), ELPC Ex. 2 at 6, 9. While the proposed DSM program was modest in comparison to AEP Ohio's last energy efficiency portfolio programs, it would be highly cost-effective. In fact, AEP Ohio's Managing Director of Customer Experience and Distribution Technology testified that the plan cost $36 million annually, but would produce total benefits of $100 million annually. *Id.* at 6 ln. 7–13. Along those lines, AEP Ohio projected that the DSM programs would generate $3 in benefits for every $1 spent. *Id.*

The proposal included a variety of programs to reach both residential and business customers. AEP Ohio proposed offering rebates for efficient products, installing energy efficient measures for low-income customers for free, promoting smart thermostat usage, and helping design and implement energy efficiency measures above code for new homes. ELPC Ex. 1 at 23 ln. 381–89. The proposed business programs included rebates for energy efficient products, utility assistance on complex commercial and industrial efficiency projects, support for new energy efficient construction, and direct installation. *Id.* ln. 385–89. Further, the DSM programs would have provided benefits for non-participants and reduced need for investment in the grid. *See infra* Part IV.B.

B. The Non-Unanimous Stipulation

A coalition of parties submitted their Joint Stipulation and Recommendation on March 12, 2021 for the Commission's consideration. The signatory parties include AEP Ohio; Commission staff; the Kroger Company; the Ohio Hospital Association; the Ohio Energy Group, Walmart Stores East, L.P. and Sam's East, Inc.; the Industrial Energy Users-Ohio; Ohio Consumers' Counsel; Ohio Manufacturers' Association Energy Group; One Energy; Clean Fuels Ohio; Charge Point; EVgo; and the Ohio Cable Telecommunications Association. Joint Ex. 1.

Under the Stipulation's terms, AEP Ohio withdrew the demand-side management proposal in its Application. Joint Ex. 1 at 18–19; AEP Ohio Ex. 6 at 15 ln. 12–13. While settlement bargaining involved many parties and discussions, the record contains little evidence of what the bargaining actually entailed. Moreover, the Attorney Examiners denied Non-Signatory Parties' attempts to discern on cross examination what actually took place in the negotiations. *See* infra Part IV.A.1.

III. STANDARD OF REVIEW

In reviewing a proposed stipulation, "[t]he ultimate issue for the Commission's consideration is whether the agreement . . . is reasonable and should be adopted." *In the Matter of the Application of Ohio Power Co. & Columbus S. Power Co. for Authority to Establish a Standard Service Offer*, Case No. 11-346-EL-SSO, *et al.*, Opinion & Order at 27 (Dec. 14, 2011). In conducting the inquiry, the Commission traditionally considers three 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?

Id. But the Commission needs to bear in mind that it must apply the test in a way that still protects the parties' and ratepayers' fundamental rights. While the Commission encourages agreement on issues, it is not bound to accept the terms of any stipulation. *See City of Akron v. Pub. Util. Comm'n*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). The Ohio Supreme Court has also clarified that a stipulation does *not* require less evidentiary support, and that a non-unanimous stipulation remains "litigated." *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 950 N.E.2d 164, 2011-Ohio-2383, ¶ 19. While the Commission can give weight to a stipulation, it must still determine whether the utility's proposals are just and reasonable based on the record evidence. *Id.*

While the Commission generally approves Stipulations, it has at times made the decision to modify a stipulation in order to better benefit the public. *See, e.g.*, *In the Matter of the Application Seeking Approval of the 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.*, Second Entry on Rehearing at 44 (Nov. 3, 2016) (affirming several modifications to the stipulation as "necessary to ensure that the stipulation benefits ratepayers and the public interest"); *In the Matter of the Application of the Dayton Power & Light Co. to Establish a Standard Serv. Officer in the Form of an Elec. Security Plan*, Case No. 16-395-EL-SSO, *et al.*, Opinion and Order at 34–35 (Oct. 20, 2017) (similar).

IV. ARGUMENT

A. The Non-Unanimous Stipulation Fails the Commission's Three-Part Test.

Under the Commission's three-part test for evaluating stipulations, the Signatory Parties' non-unanimous Stipulation fails to satisfy the requirements for (1) serious bargaining among parties and (2) the absence of any violation of an important regulatory principle. The burden of proof for these requirements rests on the Signatory Parties. As outlined below, they fail to meet that burden. Merely inviting parties to meetings does not constitute serious bargaining. Furthermore, the Stipulation's exclusion of the originally proposed DSM program violates an important regulatory principle—providing reasonably priced service to ratepayers—because ratepayers will no longer receive the substantial benefits of an energy efficiency plan.

1. Neither the Non-Unanimous Stipulation nor the Record Show Evidence of Serious Bargaining.

The Signatory Parties have failed to meet their burden of proof on this prong as they offer no record evidence that serious bargaining took place. The primary evidence Signatory Parties present is Andrea Moore's testimony in support of the Stipulation. *See* AEP Ex. 6 at 2 ln. 18–22. The Commission should give little weight to Ms. Moore's testimony. Her testimony provides, at best, conclusory statements about the bargaining process. She explains that "[t]here were numerous meetings in which the parties in this case had the opportunity to negotiate each provision of the Stipulation" and that "[a]ll parties were invited to these meetings and no party was left out of the opportunity to negotiate." AEP Ohio Ex. at 16 ln. 18–20. These statements comprise the bulk of the lone paragraph dedicated to discussing the first prong of the stipulation analysis. Ms. Moore provides no evidence to support that negotiations were inclusive in terms of parties' positions actually mattering. These conclusory statements should not sway the Commission. Every party supporting a stipulation will of course assert that the negotiations were serious and open; without more support, repeating the language of the test says nothing about the actual process.

In fact, the record reflects that Signatory Parties and the Attorney Examiners blocked all opportunities for Non-Signatory Parties to discuss the bargaining process during the evidentiary hearing. *See* Tr. Vol. II at 244–56. ELPC attempted to cross examine Ms. Moore on the bargaining process, including whether parties were informed of substantial changes to the Stipulation and whether the negotiations focused on gaining the approval of specific parties at the expense of other parties. *See id.* at 250 ln. 16–19. At almost every turn, the Signatory Parties tried to block these questions. For example, ELPC counsel asked Ms. Moore whether it is "accurate to say that AEP [Ohio] changed some positions that benefited some parties but not other parties." *Id.* at 244 ln. 20–22. AEP Ohio counsel objected, asserting that these questions about process were too close to questions about "the content of the bargaining," offers, and acceptance. *Id.* at 246 ln. 17. Similarly, AEP Ohio objected to ELPC's question about whether the utility "ever prioritize[d] getting Staff to agree to the Stipulation." *Id.* at 248 ln. 14–15; *id.* ln. 16–25. AEP Ohio argued that the questions sought to "get into the specifics of the compromise and the negotiation," which is neither allowed under Ohio law nor "probative of whether there was serious bargaining." *Id.* at 249 ln. 11–14.

These arguments during the evidentiary hearing reflect a profound misunderstanding of the rules of evidence and the Supreme Court's application of those rules regarding settlement negotiations. While Ohio Rule of Evidence 408 provides that offers of settlement are not admissible to prove liability, it specifically "does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution." Ohio R.

Evid. 408. Interpreting Rule 408, the Ohio Supreme Court has noted that "[Rule] 408 provides that evidence of settlement may be used for several purposes at trial, making it clear that discovery of settlement terms and agreements is not always impermissible." *Ohio Consumers' Counsel v. Pub. Util. Comm'n of Ohio,* 111 Ohio St. 3d 300, 322, 856 N.E.2d 213 (2006). The Attorney Examiners' exclusion of details related to settlement discussions—even when not offered to prove liability—is a misapplication of the rule.

Logic requires that the Commission conduct a closer examination of settlement negotiations to determine whether serious bargaining occurred than what the Examiners allowed into the record. The Environmental Advocates lack first-hand knowledge because AEP Ohio and other Signatory Parties excluded the Environmental Advocates from discussions about removing the DSM program and ignored our position. The record, despite the efforts of the Environmental Advocates during the evidentiary hearing, lacks such detail. Without scrutiny beyond the cursory response that the Signatory parties provide in Ms. Moore's testimony, the first prong of the Stipulation test becomes little more than a hollow pronouncement with no evidentiary value.

2. The Non-Unanimous Stipulation Violates Important Regulatory Principles.

The Stipulation, as a package, violates important regulatory principles and practices because it does not comport with AEP Ohio's obligation to provide just and reasonable service. O.R.C. 4928.02 specifically states:

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;
> . . .
> (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;

O.R.C. 4928.02(A), (D). Ohio law tasks the Commission with ensuring that customers have access to "adequate, reliable, safe, *efficient*, nondiscriminatory, and *reasonably priced* retail electric service. O.R.C. 4928.02(A) (emphasis added). Moreover, it is state policy to encourage demand-side management. Additionally, O.R.C. Section 4905.70 states:

> The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.

Id. 4905.70. The Commission must deliver on this directive from the legislature. "In statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage." *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 102, 271 N.E.2d 834 (1971). In this case the first directive to the Commission lies in the operative words "[i]t is the policy of the state to do the following." This constitutes a "shall" not a "may." The operative language in section 4905.70 is even clearer in using the word "shall."

Thus, while the legislature eliminated the specific energy efficiency targets in HB 6, it clearly did not eliminate the State's view of the value of DSM. The PUCO Staff's fundamental error interpreting HB 6 set the misguided tone for the parties with its recommendation that the Commission eliminate the Company's proposed DSM Plan. The Staff asserted that "the framework for the DSM plan puts unnecessary risk on rate payers" due to the "current legislative uncertainty surrounding the potential repeal of H.B. 6." Staff Ex. 1 at 21. Staff's position ignored current law—which the Commission and Staff *must* apply—that does not place restrictions on voluntary energy efficiency programs such as AEP Ohio's originally proposed DSM Plan.

Moreover, Staff cited to no law or legislative intent to support its conclusion that HB 6 made any findings regarding voluntary efficiency. *See id.*

The bottom line is that AEP Ohio's withdrawal of its DSM proposal takes a decided step against both efficient and reasonably priced retail electric service within the AEP Ohio territory. It conflicts with both state goals and the legislature's directive to the Commission to take proactive measures to promote energy efficiency.

B. Providing AEP Ohio's Customers with Just and Reasonable Rates Requires a Robust Demand Side Management Program.

While the three-prong test offers the Commission a framework for evaluating the Stipulation, it does not lower the degree of scrutiny that the Commission must apply in a rate case. Ohio law requires that the Commission evaluate whether AEP Ohio has met its "burden of proof to show that [its] proposals . . . are just and reasonable." O.R.C. 4909.18. Proposing and then withdrawing an energy efficiency proposal that AEP projected would save its customers more money than it costs, is inconsistent with creating a just and reasonable rate. A DSM program would provide AEP Ohio's customers savings on their bills and other significant benefits. Without the DSM Plan proposed in the Application or a more robust energy efficiency program, the Stipulation cannot meet that standard.

1. A Cost-Effective AEP Ohio DSM Program Would Provide Important Benefits to the Grid and Ratepayers—Participants and Non-Participants.

The case for energy efficiency is simple. Electric distribution utilities must supply enough power to customers either by purchasing generation or using energy efficiency to lower customer usage and demand. Energy efficiency costs less than the generation it replaces. ELPC Ex. 1 at 10 ln. 129–30. Therefore, a cost-effective energy efficiency program, like the one AEP Ohio proposed in its Application, can simultaneously lower customers' rates over time while still providing the same level of service. The changes to demand also help the distribution system and even those ratepayers who choose not to participate.

The Commission just evaluated Vectren's proposed DSM program in February of 2021, only in that case the utility and several parties reached a stipulation that included DSM. They reached that agreement over the objection of OCC which opposed the Vectren DSM Plan. In its assessment of the Vectren Plan, the Commission said the following:

> The 2021-2023 Plan expressed in the Stipulation promotes and encourages energy efficiency and conservation, which leads to both Ccfs and dollars saved and to long-term environmental benefits . . . . By encouraging energy efficiency on the individual level, such as in the replacement of poorly- or non-functioning equipment, implementation of weatherization, or use of smart thermostats, the Stipulation can lead to a reduction of bills not only for the participating customer, but also for all VEDO customers via lower accrued arrearages.

Case No. 19-2084, Opinion & Order at 27 (Feb. 24, 2021). The Commission's Order succinctly explains the importance of DSM as part of Vectren's provision of service. Similarly, the Commission approved Ohio's Columbia Gas $27.9 million energy efficiency program even though no statutory mandates for gas energy efficiency programs exist. *See* ELPC Ex. 1 at 8 ln. 115–18; *id.* at 32 ln. 525–26; *In the Matter of the Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates*, Case No. 19-1940-GA-RDR, Opinion & Order (Dec. 2, 2020). Columbia Gas shares service territory with AEP Ohio. And on the electric side, AEP Ohio's proposed program would provide customers greater benefits because of the nature of electric service and the benefits to the grid.

In both his (withdrawn) testimony and at the hearing, AEP Ohio's Managing Director of Customer Experience and Distribution Technology, Jon Williams, discussed at length the benefits of the proposed plan and energy efficiency programs:

> AEP Ohio proposes a diverse suite of demand side management programs to assist customers in lowering the peak demand of electricity, optimize the use of energy, increasing customer satisfaction and supporting economic development in Ohio.

> The cost of the DSM Plan is $36.6 million annually, while the total benefits are $100 million annually. Net of other costs including the assumption that the Company earns the program administration fee and internal base labor costs, for every $1 spent over $3 in benefits are generated.

AEP Williams Testimony (withdrawn), ELPC Ex. 2 at 6 ln. 7–13. Breaking this down, Mr. Williams explained that AEP Ohio had found that for only $36.6 million annually, the DSM program could produce a total of $100 million in annual benefits.[2] As Mr. Williams explained, all customer classes could participate and take advantage of the benefits, whether those derived from energy waste reduction or a non-energy source. *See* Tr. Vol. V. at 953 ln. 7–15; *id.* at 959 ln. 15–25. This proposed DSM program would: (1) assist customers in lowering the peak demand of electricity; (2) help customers optimize their use of energy; (3) increase customer satisfaction; and (4) support economic development in Ohio." AEP Williams Testimony (withdrawn), ELPC Ex. 2 at 6 ln. 7–9; Tr. Vol. V. at 926–27 ln. 18–25, 1–3, 18–21. Moreover, as ELPC witness Chris Neme explained, the diverse range of proposals would have "enabled all customers to participate in some way." ELPC Ex. 1 at 24 ln. 395–96. That includes low-income customers, Mr. Neme noted, who typically cannot make energy efficiency investments without utility support. AEP Ohio's proposed DSM program had dedicated 40% of its residential budget to low-income customers. *Id.* at 24–25 ln. 400–01.

2. Program Participants and Non-Participants Benefit Through Lower Prices and Less Spending on the Grid

Both DSM program participants and non-participants benefit in a number of ways. First, energy efficiency programs reduce the market clearing price for energy that all customers pay. As Mr. Neme explained, "[a]ll other things equal, when demand goes down because of

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[2] AEP Ohio also reached a similar estimate of benefits through its Utility Cost Test analysis. *See* ELPC Ex. 1 at 26 ln. 422–25.

efficiency programs, the market clearing price goes down." ELPC Ex. 1 at 16 ln. 244–45. AEP Ohio witness Adrien McKenzie emphasized the relationship between energy efficiency and the lowered need for purchasing capacity. Mr. McKenzie established that energy efficiency is a source of energy capacity for AEP Ohio's distribution system. *See* Tr. Vol. I, at 125 ln. 11–16. By investing in energy efficiency measures, AEP Ohio can purchase less energy from the market to meet the energy demands of its customers. *Id.* at 125–26, ln. 25, 1–4. Mr. Neme explained how the Commission Staff has reached the same conclusion, noting that "a recent PUCO Staff Report found that Ohio's utility efficiency programs reduced market clearing prices for electric energy by 5.7%." *Id.* ln. 245–47. In simple terms this means that when the utilities and CRES providers purchase power on the competitive market to serve customers, everyone pays about 5.7% less because the most expensive power is not needed. Therefore, all customers pay lower prices. *Id.* at 15–16 ln. 241–48.

Customers would also save from lower uncollectible charges on their monthly bills. When customers default on their bills the utilities collect those funds from the paying customers who have to make up the deficit. As Mr. Williams explained that the DSM program could lower bills through "avoided costs from noncollectible accounts to reduce the USF fund costs" and the "Community Assistance Program." Tr. Vol. V at 959 ln 20–22.

In addition to the immediate cost savings benefits, the DSM programs produce long-term benefits related to reducing the need for new power plants and grid investments. For every kWh not needed through an energy efficiency investment, a power plant no longer has to generate a kWh, meaning that the energy system can avoid the costs of new generating capacity necessary to meet peak demand. ELPC Ex. 1. at 14 ln. 220–23. Reductions in peak demand also allow the distribution utility to avoid future transmission and distribution system upgrade costs, which passes on savings to ratepayers. *Id.* at 15 ln. 224–40. Mr. Williams discussed on cross examination that energy efficiency creates more than just individual energy bill saving. "[L]owering peak demand has system cost benefits at the generation, transmission, and distribution levels." Tr. Vol. V. at 934 ln. 1–3.

Mr. Williams explained that energy efficiency measures can also allow the utility to take advantage of "specific opportunities to lower that demand at the station or circuit level," thereby lowering distribution costs. Tr. Vol. V. at 936 ln. 7–8; *see id.* at ln. 1–3. Also, as Mr. Neme noted, AEP Ohio's decision to focus on annual rather than marginal line losses in calculating the savings from line loss reductions further contributed to an underestimation of the DSM program's savings potential. ELPC Ex. 1 at 28. Savings from reduction in line losses are possible by reducing the amount of energy needed to go from a generating plant to a customer's home or business. Because "[m]arginal line losses are greater than average loss rates" and efficiency

Figure 1: AEP Originally Proposed Programs, Savings, Costs, and Cost-Effectiveness. ELPC Ex. 1 at 24

Proposed Program	Coincident Demand Savings (kW)	Energy Savings (MWh)	Annual Budget	UCT Benefits	UCT	Non-Energy Benefits	Total Benefits	RVT
Efficient Products	5,900	30,039	$ 4,423,500	$ 13,454,935	3.0	$ -	$ 13,454,935	3.0
Retrofit Low Income	800	2,758	$ 7,000,000	$ 1,253,712	0.2	$ 7,595,000	$ 8,848,712	1.3
Residential Demand Response	17,400	58,015	$ 2,000,000	$ 2,540,391	1.3	$ -	$ 2,540,391	1.3
New Homes	2,400	4,317	$ 2,000,000	$ 2,768,313	1.4	$ -	$ 2,768,313	1.4
e3smart	400	3,817	$ 1,000,000	$ 1,535,912	1.5	$ -	$ 1,535,912	1.5
Residential Subtotal	**26,900**	**98,945**	**$ 16,423,500**	**$ 21,553,263**	**2.2**	**$ 7,595,000**	**$ 29,148,263**	**2.2**
Efficient Products for Business	13,200	88,244	$ 8,426,500	$ 34,815,742	4.1	$ 14,434,436	$ 49,250,178	5.8
Process Efficiency	900	18,068	$ 1,500,000	$ 7,629,883	5.1	$ 3,003,927	$ 10,633,811	7.1
Business New Construction	1,900	13,503	$ 1,500,000	$ 5,009,133	3.3	$ 2,174,870	$ 7,184,003	4.8
Small Business Express	1,200	7,091	$ 2,000,000	$ 2,835,349	1.4	$ 1,159,898	$ 3,995,246	2.0
C&I Demand Response	0	0	$ -	$ -	N/A	$ -	$ -	N/A
Business Subtotal	**17,200**	**126,906**	**$ 13,426,500**	**$ 50,290,107**	**3.7**	**$ 20,773,131**	**$ 71,063,237**	**5.3**
Community Energy Savers			$ 500,000					
Targeted Customer Outreach			$ 500,000					
Innovation and Technology			$ 1,300,000					
Education and Training			$ 450,000					
Electric Transportation			$ 4,000,000					
Cross Sector Subtotal			**$ 6,750,000**					
Total*	**44,100**	**225,851**	**$ 36,600,000**	**$ 71,843,370**	**2.3**	**$ 28,368,131**	**$ 100,211,500**	**3.0**

*Plan cost effectiveness tests include estimated base rate internal labor and program administration fee. Exclusions include: Retrofit Low Income and Cross Sector programs.

programs "reduce consumption at the margin," the marginal line loss rates are both the correct calculation to use and would show greater savings. *Id.* ln. 444–51.

These substantial benefits are quantifiable. AEP Ohio provided its projections of overall benefits from the proposed DSM Plan through the Utility Cost Test ("UTC") in the chart above. As OEC witness Brendon Baatz explained, these benefits come from many sources, as the direct energy savings from the proposed DSM program result in reduced "utility system costs, lower air emissions from power plants (which produce health related benefits), and stimulate local economies while creating jobs." OEC Ex. 1 at 5 ln. 6–7. In short, the DSM programs save all customers money while providing benefits that, as discussed below, extend well beyond individual bills.

3. The DSM Programs Enhance the Benefits of Grid Modernization

In recent years AEP customers have paid for hundreds of millions of dollars in grid modernization. From 2018 to 2021 alone, the Commission approved AEP Ohio to spend just over $1 billion on grid improvements through its Distribution Investment Rider. Case No. 16-1852 at 18. Customers receive reliability benefits from the grid enhancements, but AEP designed some of the DSM programs to increase customer savings. Mr. Williams explained in his testimony in support of the original Application that AEP Ohio "has invested in the smart grid with smart meters and a network that provides the opportunity to work with customers and a wide variety of partners in new ways to help optimize the grid through demand side management." ELPC Ex. 2 at 9. He stated in his testimony that demand side management combined with AEP's investment in smart grid "technology can help[] all customers control costs and maximize their benefit as well as the system benefit for all customers." *Id.* This "combination of the DSM Plan" with the grid modernization investments "can help customers manage demand and usage to optimize the grid." *Id.* Most importantly, the DSM Plan could "support and encourage the demand side management technologies that provide the most customer and system benefit." *Id.*

4. Utility Energy Efficiency Programs Help Unlock Energy Savings that Are Unlikely to Be Achieved Without Utility Involvement.

Leaving energy efficiency programs to the free market ignores the fact that AEP Ohio is the best positioned to provide energy-saving benefits to customers. As Mr. Williams explained, AEP Ohio "has, through its ability to serve all customers, a unique position" to offer demand side management programs. Tr. Vol. V at 957 ln. 4–5. Utility energy efficiency programs provide energy savings that customers would not otherwise receive or easily access in the competitive market. For example, "customers who would not otherwise invest in cost-effective measures" are able to access energy efficiency savings through utility programs. ELPC Ex. 1 at 10 ln. 128–29. Mr. Neme explained in his testimony that some of this results from customers' lack of knowledge that "pay[ing] more for products up front" can be in their "economic interest." *Id.* ln. 310–11. According to Mr. Neme, there is clear evidence that without utility programs, customers do not invest in energy efficiency at the same level, meaning that both customers and the system as a whole miss out on energy savings. *Id.* at 20 ln. 225–35.

A utility-run energy efficiency program also circumvents issues arising from customers' lack of access to capital and information about the most cost-effective measures. A cost-effective energy efficiency program will, by definition, save ratepayers money on their bills over time, but, as Mr. Neme explained, the up-front costs can keep some ratepayers from making an investment themselves. ELPC Ex. 1 at 20 ln. 317–18. Mr. Neme gave the example of ratepayers who rent their homes, meaning that they do not control the capital investments made there. Id. at 319–22. The landlord retains control of capital investments but lacks any incentive to make such investments in energy efficiency if the renter pays the energy bills. A utility program bridges that capital gap. *See id.* at 19, 20 ln. 306–08, 319–22. Information barriers also keep ratepayers from making energy efficiency measures. While a utility like AEP Ohio can analyze the savings potential of different energy efficiency products and services, ratepayers often lack the same information or the resources necessary to analyze what would be most beneficial. *Id.* at 19–20 ln. 315–17.

5. The DSM Programs Create Jobs

The primary benefits of the programs relate to customer savings and the grid, but the Commission has recognized the job benefits. In the Vectren DSM case, the Commission included jobs in its rationale for approving the stipulation. "The programs that populate the portfolio create and preserve job opportunities for individuals and corporate entities involved in EE products and services." *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Continue Its Demand Side Management Program*, Case No. 20-2084, Opinion & Order at 27 (Feb. 24, 2021). In this case, AEP Ohio estimates the 2021 Plan creates and retains 2,635 jobs including 1,012 direct jobs and 1,623 indirect jobs. AEP Ohio DSM Plan at 22, Williams Testimony (withdrawn) at 18, ELPC Ex. 2. ELPC witness Neme also noted the importance of those jobs. ELPC Ex. 1 at 19, ln. 300–01.

Similarly, OEC witness Baatz modeled job creation over ten years, where one job refers to "a job in a specific industry over a one-year time period." *Id.* at 13.

Energy Savings Scenario	Residential Job-Years	Business Job-Years	Total Job-Years
1%	27,164	37,580	64,744
1.5%	54,328	75,160	129,488
2%	72,438	100,213	172,651

Job-year creation by scenario and sector, Table 13, OEC Exhibit 3, at 14.

While these calculations explore scenarios where Ohio has a statewide energy efficiency policy, the principle is broadly applicable and can be contextualized to only AEP Ohio adopting energy efficiency programs. The benefits will not be as significant as calculated above, but the benefits are still real, as demonstrated by AEP Ohio's originally included DSM Plan.

6. AEP Ohio's DSM Program Would Provide Additional Environmental Benefits.

AEP Ohio's DSM originally proposed program would result in significant environmental benefits for all Ohio residents. AEP Ohio's own analysis shows reduced greenhouse gas emission reductions, peak demand,[3] and additional economic and quality of life benefits for Ohioans.

Efficiency resources directly result in environmental benefits for Ohioans, particularly in the form of reduced greenhouse gas emissions and other air pollutants. Importantly, the energy savings from programs like the DSM program directly reduce "the need for electricity to be generated by fossil-based generators which release emissions into the environment and atmosphere," including "carbon dioxide (CO_2), sulfur dioxide (SO_2), nitrogen oxide (NOx), and particulate matter with a diameter of 2.5 micrometers and smaller ($PM_{2.5}$)." *Id.* at 5, ln. 29–31. CO2, SO_2, and NOx, in particular, "produce harmful effects on human health and the natural environment." OEC Ex. 3, at 7. Reducing CO_2 emissions and other greenhouse gas emissions, in particular, directly combats Ohio's contributions to climate change, a direct damage and environmental harm caused by fossil-based generators.

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[3] AEP Ohio witness Jon Williams emphasized in the withdrawn original DSM Plan proposal the suite of demand side management programs was designed "to assist customers in lowering the peak demand of electricity, optimizing the use of energy, increasing customer satisfaction, and supporting economic development in Ohio." ELPC Ex. 2, at 6, ln 7–9.

In OEC Exhibit 3, OEC witness Baatz demonstrated the power of energy efficiency to directly reduce air pollution. In particular, more aggressive energy efficiency targets result in compounding air pollution reductions. Under three energy savings policy scenarios for Ohio, 1.0%, 1.5%, and 2.0% annually over ten years, the following table illustrates the avoided air emissions by pollutant in tons:

Pollutant	1.0%	1.5%	2.0%
CO_2	70,066,300	140,132,599	186,843,466
SO_2	51,637	103,274	137,698
NO_x	46,555	93,110	124,147

Air emissions by pollutant (tons), Table 7, OEC Exhibit 3, at 8.

Utilizing energy efficiency to avoid air pollution results when energy efficiency directly reduces reliance on energy generation reliant on fossil fuels, though the calculations provided here were significantly de-escalated "to reflect the likely shift away from fossil-based generation towards less polluting generation sources." *Id.*

C. The Commission Should Modify the Stipulation to Require AEP Ohio to Implement Its Originally Proposed DSM Program.

AEP Ohio wiped away significant energy efficiency benefits when it signed on to the Stipulation even after proposing and originally supporting a DSM plan. As discussed above, this choice, and the process leading to it, mean that the Stipulation does not pass the Commission's three-prong test. However, even if this Commission takes a more lenient view of the proposed Stipulation, it should still use its authority to modify that proposal to include a robust energy efficiency program. Such a change would ensure that customers have access to just and reasonable rates through the cost savings associated with energy efficiency.

ELPC witness Neme's analysis of AEP Ohio's proposed DSM program concluded that AEP Ohio should expand the program, and it still would have maintained its cost-effectiveness. Mr. Neme compared the DSM proposal to AEP Ohio's $64.4 million energy efficiency program in 2020. Although AEP Ohio's 2020 spending was almost double the proposed amount for the Application's DSM plan, the utility achieved a benefit-cost ratio under the Utility Cost Test of more than 5 to 1. The Application's DSM plan, in contrast, would achieve only a 2 to 1 ratio. *See* ELPC Ex. 1 at 26–27 ln. 425–27. The higher level of spending Mr. Neme recommends is also in line with the amount that the Commission approved Columbia Gas to spend in a recent proceeding. *Id.* at 32,33 ln. 525-530. Applying the same percentage of total bills Columbia can spend on DSM to AEP Ohio, the result would be an AEP efficiency program of $60 to $65 million. *Id.*

AEP Ohio's experience running its energy efficiency portfolio plans further supports the need to incorporate a DSM program into this rate case. AEP Ohio has explained that its effort to help customers optimize their demand and energy use is a means to assist customers. Tr. Vol. V at 923, ln. 17–18. These efforts can "lower their costs." *Id.* at ln. 23. Without a DSM program, however, customers will lack affordable means to control their energy usage and all ratepayers will see higher bills. AEP Ohio's track record on energy efficiency programs speaks to how well-suited the Company is to assist customers and how much of an impact the DSM program could have. In 2020, for example, AEP Ohio achieved over 200% of its 1% savings target. *See* Tr. Vol. V. at 936, ln. 10–12, 937, ln. 11–15. Mr. Williams stated during cross examination that AEP Ohio's prior experience, including a 2019 market potential study and AEP Ohio's results from previous programs, shows that AEP Ohio's proposed DSM Plan improves on its prior plan. Tr. Vol. V. at 924, ln. 1–4, 926, ln. 9.

The Commission has stated previously that additional energy efficiency provides benefits to customers and "to the extent the Companies accelerate the delivery of cost-effective energy savings opportunities to their customers, they will also accelerate the net savings which customers enjoy." *In re FirstEnergy ESP IV*, Case No. 14- 1297 EL-SSO, Opinion & Order at 95 (Mar. 31, 2016) (citing Case No. 09-1947, Entry on Rehearing at 6 (Sept. 7, 2011)). Indeed, the Commission has explained that "every kWh of energy that can be displaced through cost-effective energy efficiency programs is a savings, not a cost to the Companies' customer." Id. The Commission should follow that logic here and require AEP Ohio to implement a robust energy efficiency program through the DSM Plan.

V. CONCLUSION

Ultimately, while the Commission has a legitimate interest in encouraging settlements, it cannot approve settlements that violate the rights of parties or violate regulatory principles. Signatory Parties' decision to forgo DSM is not supported by any record and is contrary to both current Ohio law and codified policy post HB 6. The Environmental Advocates urge the Commission to reject or modify the Stipulation and order AEP Ohio to restore the DSM programs at the proposed or greater levels.

The Stipulation eliminates the significant energy efficiency benefits AEP Ohio once touted, before it signed on to the Stipulation. AEP Ohio itself said:

> AEP proposes a diverse suite of demand side management programs to assist customers in lowering the peak demand of electricity, optimize the use of energy, increasing customer satisfaction and supporting economic development in Ohio. The cost of the DSM Plan is $36.6 million annually, while the total benefits are $100 million annually. Net of other costs including the assumption that the Company earns the program administration fee and internal base labor costs, for every $1 spent over $3 in benefits are generated.

AEP Williams Testimony (withdrawn), ELPC Ex. 2 at 6 ln. 7–13. As discussed above, the elimination of the DSM Plan and the process leading to its elimination do not pass the

Commission's three-prong test. However, even if this Commission takes a more lenient view of the proposed Stipulation, it should still use its authority to modify that proposal to include a robust energy efficiency program. Such a change would ensure that AEP Ohio provides customers just and reasonable rates through the cost savings associated with energy efficiency, while also creating jobs and providing significant environmental benefits.

Dated June 14, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Initial Post-Hearing Brief* submitted on behalf of the Environmental Law & Policy Center, Ohio Environmental Council, and the Natural Resources Defense Council was served by electronic mail upon the following Parties of Record on June 14, 2021.

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