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

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

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INTRODUCTION

Ohio Power Company ("AEP Ohio" or "Company") filed a request for authorization to increase its rates for electric distribution service. The Public Utilities Commission of Ohio ("Commission") is presented with a Stipulation that resolves all the issues in the case. The record before the Commission and long-standing precedent demonstrate that the Stipulation satisfies the legal standard that the Commission uses to evaluate the reasonableness of stipulations. The Stipulation, which has the support of 14 parties, and should be adopted by this Commission without modification.

ARGUMENT

I. The Stipulation should be approved.

Fourteen parties[1] (the "Signatory Parties") submitted a Stipulation and Recommendation for the Commission's consideration in this case, with an additional party expressing its non-opposition.[2] The agreement makes substantial modifications to both the Company's original Application[3] and the Staff's Report of Investigation[4] ("Staff Report"). It represents a delicate balance among an unusually diverse group of customers and constituents that will produce an equally diverse range of benefits, both to customers and the public interest.

The parties opposing the Stipulation would have preferred to see other elements as part of the package, and many have advanced proposals for the Commission's consideration. While some benefits may have been "left on the table" in the Stipulation before the Commission, other, and many significant, benefits may be lost should the Commission tinker with this delicate balance. Staff urges the Commission to adopt the Stipulation as offered without modification, and respectfully submits that both the law and the record support such a result.

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1 Ohio Power Company ("AEP Ohio" or "Company"); the staff of the Commission ("Staff"); The Kroger Company; the Ohio Hospital Association ("OHA"); the Ohio Energy Group ("OEG"); Walmart Stores East, L.P. and Sam's East, Inc; Industrial Energy Users – Ohio ("IEU"); the Office of the Ohio Consumers' Counsel ("OCC"); Ohio Manufacturers' Association Energy Group ("OMAEG"); One Energy; Clean Fuels Ohio ("CFO"); Charge Point; EVgo; and the Ohio Cable Telecommunications Association (OCTA).

2 Zeco Systems, Inc. d/b/a Greenlots.

3 Company Ex. 1.

4 Staff Ex. 1.

A. The settlement is a product of serious bargaining among capable, knowledgeable parties

"Serious bargaining" does not imply unanimity. The suggestion that the first prong of the stipulation "test" is not satisfied because the settlement was not unanimous is preposterous. The reasonableness test for stipulations was developed specifically to evaluate contested stipulations. There is simply no precedent for concluding that contested, opposed, stipulations are necessarily not the product of serious bargaining. There is simply no requirement that a stipulation be executed by all parties, or even by a diverse group of stakeholders (as was the case here), in order to be approved by the Commission.

The parties engaged in a number of settlement discussions, both with individual stakeholder groups and in meetings open to all intervening parties. The Stipulation was the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder groups. The evidence of record conclusively demonstrates participation in the negotiation sessions by signatory and non-signatory parties alike, and demonstrates the knowledge and experience of the parties.

The Commission has repeatedly determined that no any single party must agree to a stipulation in order to meet the first prong of the three-prong test.[5]

> The record in these proceedings demonstrates that representatives of each of the customer classes . . . participated in the settlement negotiations. . . . There is no

[5] *In re Vectren Energy Delivery of Ohio, Inc*., Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10.

> evidence in the record that an entire class of customers was excluded from the settlement negotiations.[6]

As in that case, all parties were invited to and participated in negotiations.[7]

The Environmental Law & Policy Center ("ELPC"), Natural Resources Defense Council ("NRDC"), and the Ohio Environmental Council ("OEC") (collectively "Environmental Advocates") argue that the Commission cannot find this first prong to have been satisfied because record contains little evidence of what the bargaining actually entailed.[8] What, then, is "bargaining"?

Bargaining, according to Meriam Webster, means to come to terms, to negotiate over the terms of a purchase, agreement, or contract, to "haggle."[9] Environmental Advocates complain that signatory parties only agree because they receive benefits. This, of course, is to be expected. As the Commission has noted, "while many signatory parties receive benefits under the Stipulations, we will not conclude that these benefits are the sole motivation of any party in supporting the Stipulations. We expect that parties to a stipulation will bargain in support of their own interests in deciding whether to support a stipulation."[10]

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[6] 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 (31 Mar. 2016) at 52-53.

[7] AEP Ex. 6 at 16.

[8] Environmental Advocates Brief at 3.

[9] "Bargain," https://www.merriam-webster.com/dictionary/bargaining?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (accessed 25 June 2021).

[10] In the Matter of the Application 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 R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO, Opinion and Order (31 Mar. 2016) at 44.

So, what does the Commission look for in determining whether serious bargaining occurred? The Commission looks to see whether signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters. This is not disputed in this case, nor could it have been reasonably disputed. The Commission also looks to see whether signatory parties represent diverse interests. The Signatory Parties represent an unusually broad spectrum of interests, including the Company, Staff, residential, commercial, and industrial customers. This is certainly among the broadest range of diverse interests to bring a distribution rate case agreement before the Commission in some time.

The Commission has found that changes made in the negotiation process are indicative of serious, intricate negotiations among the signatory parties.[11] The Signatory Parties have demonstrated that all of these were present in the negotiations that resulted in the stipulation. The very significant differences in terms both from the Company's original Application, and the Staff Report, attest to this fact.

Environmental Advocates reliance on Ohio Rule of Evidence 408 is misplaced. Rule of Evidence 408 generally states that offers of settlement are not admissible to prove liability. However, the Rule 408 "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."

[11] In the Matter of the Application 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 R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO, Opinion and Order (31 Mar. 2016) at 43-44.

Specifically, they rely on the Ohio Supreme Court's decision in *Ohio Consumers' Counsel v. Pub. Util. Comm'n of Ohio,* 111 Ohio St. 3d 300, 322, 856 N.E.2d 213 (2006), that "discovery of settlement terms and agreements is not always impermissible."[12] That case is, of course, completely inapplicable to this one. The issue there was whether serious bargaining could occur where an opposing party was denied discovery of undisclosed side agreements. In the first instance, that decision is limited to "information sought at the discovery stage."[13] There is no evidence in this record that Environmental Advocates were denied any information during discovery, either before or after the stipulation was finalized. Moreover, the Court specifically noted that the opposing, non-signatory party was "*not* seeking to discover the communications made *during* settlement negotiations but, rather, the terms of [undisclosed] side agreements and the agreements themselves."[14] By their own admission, Environmental Advocates endeavor to disclose "details related to settlement discussions," communications made during settlement negotiations.

Contrary to an assertion made by Direct Energy Business, LLC and Direct Energy Services, LLC (collectively "Direct"), there is no evidence of "backroom dealing"[15] here. The "shadow billing" provision about which they complain was a key factor in OCC's almost unprecedented participation as a Signatory Party.[16] Whether intended as a

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12 Environmental Advocates Brief at 7.

13 *Id.*

14 *Id.* at 322-323 (emphasis added).

15 Direct Brief at 1.

16 Staff explicitly took no position on the "shadow billing" provision of the Stipulation, Joint Ex. 1 at fn. 4, and is offering no reply to arguments to this provision raised by the opposing parties. That said, however, Staff acknowledges that the inclusion of this provision is a part of the settlement "package," and that the package should be approved without modification.

"reward," as Direct alleges, or as a punishment for the competitive suppliers not signing, or some other "favor trading," there is absolutely no evidence that there was a lack of "serious bargain among a cross-section of parties."

"Serious bargaining" is not determined by the content of the final agreement alone, but also by the process by which it resulted. There is no evidence in this record that the negotiation process was anything but open, or that the agreement was incomplete by its terms. The Stipulation differs in several respects from the proposal submitted in the Application because it reflects an overall compromise involving a balance of competing positions from multiple parties and incorporates many of the recommendations offered by Staff and interveners. Based on the record before the Commission, 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

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. Some provisions may, while others may not. Some provisions may benefit some customer classes more than others, or some members of a customer class more than others. This would not indicate that this portion of the test has failed, however, for the Commission must look at

the totality of the settlement, as a package, and not the relative merits of its constituent parts.

There is also no requirement that a settlement seek to "maximize" benefits to ratepayers. 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.

1. Opposing Parties' Proposals Should be Rejected

The various proposals advanced by the opposing parties are not necessarily without merit, and, in general, Staff does not intend to opine on them. Fundamentally, Staff wishes to emphasize that these proposals are not part of the Stipulation for a reason. Specifically, the inclusion of any one of these proposals would likely have meant that some, and in some cases many, of the Signatory Parties would not have joined. Indeed, it is entirely possible that a settlement would not have been reached had any of these proposals been included in the final settlement.

The Stipulation in this case is a delicate balance that took months to craft. Staff acknowledges that the Commission has, in the past, modified stipulations for a variety of reasons. A modification in this case, however, will likely lead some, and perhaps many, Signatory Parties withdrawing from the Stipulation, denying many of the benefits already agreed to in this package. Staff urges the Commission to resist making significant modifications to the Stipulation, and specifically to resist adopting any of the proposals advanced by the opposing parties.

As noted above, the criterion that the Commission must evaluate is whether the settlement as a *package* provides benefits to ratepayers and the public interest. It is not whether a *different* package might also provide benefits. Kroger appropriately notes that the standard is not whether there are other mechanisms that would better benefit ratepayers and the public interest."[17] Nor is it which of innumerable possible packages would offer the *most* benefits. Does the settlement, as a package, benefit ratepayers and the public interest?

For example, Armada claims that its water heater controllers would provide "specific grid reliability benefits" that it believes that the "Stipulation does not offer."[18] It claims that the public interest would not be served if its pilot is not adopted "because these benefits would be foregone."[19] Armada does not dispute that the Stipulation package provides benefits. Rather, it posits that its pilot would provide additional, unique additional benefits.[20] That, however, is not the standard for evaluating a Stipulation. Armada's proposal should, as OMAEG properly argues, be disregarded.[21]

Similarly, NEP argues that the Stipulation should have included a low-load factor rate schedule pilot that would "also benefit" low-load factor customers.[22] NEP

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17 Kroger Brief at 6, citing *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order (30 Dec. 2020) at ¶ 73.

18 Armada Brief at 9.

19 *Id*. at 10.

20 Indeed, as Armada correctly notes, Staff witness Schaeffer testified that Staff does not object to the pilot technology. Staff Exhibit 4 (Schaeffer Direct Testimony) at 2. Staff does object, however, to expanding the scope of the Distribution Investment Rider to recover the costs of such a pilot. *Id*.

21 OMAEG Brief at 17.

22 NEP Brief at 3.

emphasizes the magnitude of the rate increase to low-load factor GS customers "with no additional benefits or services from what they receive today."[23] But NEP does not dispute the overall revenue requirement, or the allocation of revenue responsibility to the GS class. Nor has NEP offered any evidence that low load factor customers are subsidizing others within the class. Indeed, NEP's proposal "will maintain the revenue requirement," just split the "increase between demand and energy for low-load factor customers."[24] Its intention is to offer a rate schedule "that is designed to be revenue neutral as to the allocated cost requirement and that avoids shifting costs to other customers."[25]

Of course, adopting the pilot proposed by NEP places AEP Ohio at risk. NEP acknowledges as much. "If the pilot participants engage in a high level of energy efficiency, a scenario could emerge of an under-collection of the revenue requirement."[26]

Similar to OPAE's argument that customers should not have to pay fixed charges, NEP argues that low-load factor GS customers should have their rates separated into a demand and an energy component. This would, of course, treat these GS customers differently than other GS customers. Not all customers in a customer class will be similarly impacted by changes in rates and services. Disproportionate impacts are *not* impermissible. *Discriminatory* impacts are. As with any rate design change, some customers will be better off and some will be worse off. But the test of stipulation reasonableness is not violated where similarly situated customers are treated in like

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23 NEP Ex. 34 (Rehberg Direct Testimony) at p. 7.
24 NEP Brief at 18.
25 *Id.* at 19.
26 *Id.* at 26.

manner. That is what the settlement here has done, even to the point of finally eliminating the separate rate zones that are the last vestige of the old CSP/OPC division.

NEP also seeks to modify a provision on equipment purchases to require more than a "best-efforts response."[27] Specifically, NEP seeks to use AEP Ohio's tariff to formalize processes and forms, rather than services. Putting such requirements into a tariff may create an enforceable rule, but it does not ensure better customer service. The Commission already has minimum customer service standards, Ohio Admin. Code 4901:1-10-09, and there is no evidence that AEP Ohio was not meeting those requirements.

And, while NEP correctly noted that Staff witness Smith testified that certain defined processes would benefit customers, it must be noted that this is an area that does not necessarily lend itself to standardization.

> Q [Mr. Settineri]: So -- and as a general proposition, standardization for how customer requests are handled by a utility could improve customer service, correct?
>
> A [Mr. Smith]: It would depend. Standardization -- when -- may include their customer service, but if you're -- if the item that you are trying to standardize is different for each customer, it may not be -- it may not pay off to standardize when they are all individually different. But it depends on the situation.[28]

NEP's suggestion that the Duke tariff provides an appropriate model for modifying the Stipulation is also without merit. There is no evidence that AEP Ohio and

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27 *Id.* at 4.

28 Tr. Vol. II at 386:10-386:19.

Duke are at a comparable technological stage with respect to their core CIS systems. As the Commission is well aware, Duke is at the end of a Company-wide CIS upgrade while AEP Ohio has not recently upgraded. It is not only inappropriate but unfair to compare these Companies' technological capabilities when it comes to customer service. Indeed, Staff witness Smith testified that a "one-stop" web portal similar to the one currently offered by Duke is not the panacea proffered by NEP.

> Q [Mr. Settineri]: Okay. And a web portal that allows a utility's business customers to submit requests to the utility and review the status of the request, would be efficient for those business customers, correct?
>
> A [Mr. Smith]: I'm not sure on that one because, again, it would depend on the customer and the nature of the issues. Like I said, some things going through the web should be -- any costs -- as long as it's simple, standardization makes sense, but as you get more unique and more difficult as the questions arise, you're probably better off not going through a standardized but going through, you know, an individual to answer your questions if it gets too complicated or too unique.[29]

2. DSM Programs

The biggest of these proposals is the argument that AEP Ohio should restore and enhance its demand side management ("DSM") programs. As with the other proposals, the Stipulation does not propose DSM programs as part of its package. Staff does not dispute the benefits of DSM programs, but they are not among the benefits expected to be achieved as part of this settlement package. Staff believes that a significant number of Signatory Parties would not have joined the Stipulation had the proposed DSM programs

[29] Tr. Vol. II at 387:11-387:25.

been included, at virtually any level, and that numerous other benefits would have been lost in the process. Frankly, these programs are not presently before the Commission, and the Commission should not consider their inclusion as part of this case.

Environmental Advocates ignore the Commission's three-part test to evaluate the Stipulation and the fact that the package, as a whole, benefits ratepayers and the public interest. The Environmental Advocates instead argue that the exclusion of the DSM programs means the Stipulation contains proposals that are not just and reasonable in violation of R.C. 4909.18. While the relevant question before the Commission remains whether the Stipulation benefits ratepayers and the public interest, the Stipulation, signed onto by several parties with diverse interests, *is* just and reasonable.

The Environmental Advocates point to recent cases in which the Commission approved energy efficiency plans.[30] That, however, does not bind the Commission to require the DSM here, an entirely different case involving a different energy efficiency plan. For one, the cases cited by the Environmental Advocates involve gas conservation, not electric efficiency. The cases cited also differ in that they were not rate cases; it has been established by witness testimony that the DSM is still on the table in future proceedings after the present rate case.[31] Further, the Stipulation has a number of other benefits, largely ignored by the Environmental Advocates in their brief, that make the final package just and reasonable.

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[30] See In re the Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Continue DSM Program, Case No. 19-2084-GA-UNC, Opinion & Order at 27 (Feb. 24, 2021); In re 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).

[31] (AEP Ohio Ex. 6 at 15.)

The Environmental Advocates list a number of other arguments to advance the position that any package without the DSM does not benefit ratepayers and the public interest, such as the potential for job creation, enhancement of grid modernization benefits, and added environmental benefits. However, they still fail to show how, even with these potential added benefits, the Stipulation as signed by a number of parties with diverse interests does not benefit ratepayers and the public interest.

The benefits, both to ratepayers and for the public interest, are numerous and widespread. Because this is a negotiated settlement, each party is likely to feel that some of the benefits that it sought were "left on the table." But the Commission's standard for evaluating stipulations does not require that agreements maximize benefits, or even result in the lowest cost to consumers. Rather, a stipulation must be reasonable, and provide benefits to ratepayers and the public. Staff respectfully submits that this Stipulation does precisely that. 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.

While there are many principles that guide the Commission in evaluating rate setting proposals, there is no "checklist," no scorecard, that enumerates which "regulatory principles or practices" are important. Each stipulation must be evaluated on a case-by-case basis.

The signatory parties submit that the Stipulation in this case satisfies this criterion.

1. Fixed vs. Volumetric Rates and Charges

OPAE argues that fixed charges of all types adversely impact low-use customers. At the outset, Staff notes that this philosophical argument lacks any substantive support, as thoroughly demonstrated by AEP's brief. Even if true, OPAE has offered no evidence that a fixed customer charge causes low-use customers to improperly subsidize higher-use customers.

The Commission has a long practice of permitting utilities to recover their costs through fixed charges. The Ohio Supreme Court has recognized that the choice of rate design is within the Commission's expertise and discretion. As the Court has repeatedly that it will not weight evidence or "choose between alternative, fairly debatable rate structures," because to do so "would be to interfere with the jurisdiction and competence of the commission."[32]

Customer charges are intended to spread fixed costs equally among members of the class, without distinction based on demand, usage, or income. There is simply no evidence in the record that the agreed upon customer charge improperly discriminates against any customer. The Commission addressed the recovery of fixed costs through a fixed customer charge years ago in approving a straight fixed variable ("SFV") rate design for gas distribution companies. In a case similarly opposed by OPAE on essentially the same grounds advocated here, the Ohio Supreme Court upheld the

[32] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 2010-Ohio-6239 at ¶13, quoting *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105, 108, 346 N.E.2d 778 (1976).

Commission's decision approving the recovery of fixed costs through a fixed charge. There, the Court approved the Commission's rationale that such a

> rate design -- one that separates or "decouples" the utilities' recovery of its cost of delivering gas (which are predominately fixed) from the amount of gas that customers actually use (which varies month to month) -- was necessary to ensure that Duke and Dominion have sufficient revenues to cover their fixed costs. The PUCO determined that such a rate design would best provide the utilities with adequate and stable revenues and ensure that they would be able to continue to provide safe and reliable service.[33]

The Court found that the Commission had broad authority to adopt such a rate design, noting that "[t]he lack of a governing statute telling the commission how it must design rates vests the commission with broad discretion in this area."[34] The record in this case supports the stipulated customer charge. As AEP noted in its brief, there are significant fixed costs included in a volumetric charge for residential customers. The stipulated customer charge is intended, at least in part, to better align the collection of those fixed costs with the actual cost causer.[35] OPAE's argument that this realignment somehow violates state policy is not availing. It is well established that the polities articulated in the Revised Code are intended to be "guidelines," not directives.[36]

OPAE's arguments opposing the delayed payment fee are equally without support, including its baseless claim that late paying customers are low-income.[37] As AEP noted

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33 *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134 at ¶17.
34 *Id.*, at ¶20.
35 AEP Brief at 22-23.
36 Ohio Partners for Affordable Energy v. Pub. Util. Comm., 115 Ohio St.3d 208, 2007- Ohio-4790 at ¶27.
37 It is important to bear in mind that, to the extent that late paying customers are low income and qualify as PIP customers, they would not pay the delayed payment charge in any event.

in its brief, a residential delayed payment fee has been previously approved by this Commission for every other certified provider of electric distribution service in Ohio.[38] Moreover, approving such a charge would ensure that late payments from residential customers are treated comparably to late payments from the Company's other customer classes, as well as customers of other utilities.

The purpose of such a charge, of course, is to encourage residential customer to pay their bills on time. While there is no evidence that this objective would be accomplished in AEP Ohio's territory, the Company's experience with other customer classes is instructive. While OPAE argues that the Company's experience with assessing such charges to commercial customers is "not significant," the data demonstrates that the imposition of the charge has resulted in an 8.25% reduction in late payments. Staff respectfully submits that the record contains sufficient evidence to justify the adoption of a delayed payment charge, especially in light of the Company's forbearance from imposing it during the first year after rates have been placed into effect.

2. Supplier Fees

Direct acknowledges that "[i]ntuitively, it makes sense to conclude that processing a customer switch costs AEP *something*."[39] Staff acknowledged that it did not request or conduct an investigation into the basis for continuing the previously authorized fees at their present level. Similarly, Direct acknowledged that the Commission previously

[38] AEP Brief at 26.
[39] Direct Brief at 4 (emphasis in original).

authorized these fees, even ordering that they be reduced.[40] While the fees were originally agreed to as part of a settlement, they were set at their current levels by the Commission on the basis of "state policy objectives contained within Section 4928.02, Revised Code, as well as recent Commission precedent."[41] There is no reason to believe that maintaining these fees are their current levels does not continue to be justified both by state policy and past Commission precedent. While Direct correctly notes that R.C. 4909.15 unequivocally requires that rate increases be based on costs of rendering service, the Company sought no increases in these fees in this case. In the absence of evidence to the contrary, Direct's "that was then, this is now" argument offers no justification for changing these fees.

3. The Retail Reconciliation and SSO Credit Riders

Direct's argument that "a prior Commission order direct[ed] AEP to *not* set these riders at zero" quite simply misreads that order. Here is what the Commission ordered:

> The Commission, therefore, finds that AEP Ohio should carry out its commitment to analyze, as part of the rate case, its actual costs of providing SSO generation service. AEP Ohio should also analyze, in the rate case, its actual costs associated with the choice program. Following a thorough analysis of AEP Ohio's distribution rates in the rate case, the Commission will determine whether it is necessary to reallocate costs between shopping and non-shopping customers, in order to ensure that the Company's rates are fair and reasonable for all customers.[42]

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40 Direct Brief at 5.

41 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, Entry on Rehearing (30 Jan. 2013) at ¶45.

42 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, Opinion and Order (25 Apr. 2018) at ¶215.

There was no order not to set the riders at zero. Rather, there was a commitment and an order to conduct an analysis.

The Commission made the purpose of that analysis equally clear – to "determine whether there are known, quantifiable costs that are collected from all customers through distribution rates and that are clearly incurred by AEP Ohio to support the SSO." It did so specifically noting that many costs may "be incurred by AEP Ohio to support either the SSO or the customer choice program."[43]

This is precisely what the Company did. There was no "failure to follow instructions."[44] It performed an analysis. And it concluded that it was unable to identify "known, quantifiable costs that are collected from all customers through distribution rates and that are clearly incurred by AEP Ohio to support the SSO." Staff agrees.

"Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there are an equal amount of CRES costs, and there is no reason to differentiate the two."[45] AEP Ohio accurately characterized Staff's policy and position in this case. Staff not only endorses the Company's articulation of that position but adopts here in its entirety.

It is beyond dispute that SSO customers and CRES customers are both served by AEP Ohio's distribution system. It is equally beyond dispute that, on any given day, that

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43 *Id.* at ¶214.
44 Direct Brief at 12.
45 AEP Ohio Brief at 27.

virtually any AEP Ohio distribution customer can choose to be either a default or a shopping customer. Indeed, IGS witness Lacey acknowledged as much[46]. For this reason alone, allocating indirect distribution costs between SSO and CRES customers is not only impractical, but illogical. Doing so would almost necessarily result in a misalignment of cost responsibility since migration between the two is so fluid.

Moreover, AEP Ohio stands ready, as it must, to provide default service to any and every customer on its system. Contrary to IGS's assertion, all customers are necessarily served, either directly or indirectly, by "all of the basic elements of running a business, such as rent, personnel, computers, systems, accounting and finance." All customers.

This is what the Company determined in the analysis that it committed to perform, and that the Commission directed it to perform. IGS finds that analysis deficient, but it is clear that AEP Ohio violated no Commission order in conducting the analysis that it did. Although, as IGS is quick to point out, Staff found that the Company "did not examine all cost causation factors" in endeavoring to differentiate the costs between SSO customers and shopping customers[47], Staff ultimately agreed that the Company simply did not have the ability to do so, but did its best to comply with the Commission's order.[48] Staff did not, as IGS suggests, fail to "complete the investigation required by Ohio law under

46 Tr. V at 1088:21-23.
47 IGS Brief at 9.
48 Tr. II at 362:2-8.

4909.19."[49] Rather, it concluded, properly, that it could not, especially given time and resource constraints during a global pandemic, do what the Company itself could not do.

The Ohio Supreme Court has declared that a "market-based standard service offer is a competitive retail generation service rate."[50] The issue, Staff believes, is which "incremental cost components," what *direct* costs, comprise the generation service that serves *only* SSO customers. The answer in the *Elyria Foundry* case was straight forward because it dealt only with fuel. Here, only SSO customers pay for the fuel used to generate the electricity that they use. Here, only SSO customers pay for the costs of procuring that electricity. These direct, incremental costs to serve SSO customers only are already recovered through bypassable riders that CRES customers do not pay.[51] Although IGS witness Lacey was able to associate those riders with "generation costs," he was remarkably unfamiliar with the riders, how they were developed, or what they actually recovered.[52]

The revenue requirement does, as IGS argues, recover costs associated with providing the SSO service. As referenced by IGS, those costs include certain costs associated with the call center[53], regulatory, accounting and legal services[54], the billing

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49 IGS Brief at 11.

50 *Elyria Foundry Co. v. Pub. Util. Comm.,* 114 Ohio St.3d 305, 2007-Ohio-4164 at ¶50.

51 IGS's argument that the bypassable recovery of auction costs somehow renders Staff's position "internally consistent" because the SSO serves as the default service is irresponsible, and makes a mockery of Schrodinger's cat. These are, in fact, directly assignable costs, whenever a customer takes default service. They are entirely distinguishable from costs necessary to serve all customers regardless whether they shop/

52 Tr. V at 1092:6-1094:23.

53 Tr. I at 36.

54 Tr. I at 49.

system[55], information technology[56], and plant[57]. But, as both Company and Staff witnesses testified, those costs are incurred for *both* SSO and shopping customers. This is not "mislabeling" something as a distribution function, but rather recognizing that these costs are incurred to serve all customers as customers, to provide distribution service. Simply disputing this as "calling a monkey a rabbit"[58] disregards this fundamental fact.

Furthermore, the Company had no means of determining whether a cost was being incurred whether solely to support SSO service, or solely to support CRES service. While the Commission recognized that there may be costs that should be assigned and allocated to the established riders, neither the Company nor the Staff has been able to do so. IGS's argument that AEP Ohio *could have*[59] allocated costs that it could not separately identify ignores the fact, in Staff's opinion, that it is simply not reasonable to allocate costs common to both.

Indirect costs of serving both SSO and CRES customers, as distribution customers, are not generation costs, and should neither be assigned nor allocated to one set or the other. Staff respectfully submits that this is consistent with the Commission's statutory mandate and sound policy.

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55 Tr. I at 52.
56 Tr. II at 347.
57 Tr. II at 349.
58 IGS Brief at 23.
59 IGS Brief at 24.

4. Customer Sited Generation Projects

There is no evidence in this record that AEP Ohio is cross-subsidizing its marketing activities with distribution rate dollars. Although IGS claims that such subsidization exists, it acknowledges that the extent, if any, that improper costs are being recovered in distribution rates is "unknown."[60] To highlight seemingly apparent "alarm bells," IGS points to marketing efforts to attempted solar project arrangements that "did not trigger any test year expenses."[61] The development of such projects, whether initiated by the Company or its customers, ultimate impacts the distribution system and its operations. While entirely appropriate to require that customers bear those costs once a "proposal" becomes a "project," it is not reasonable to deny recover costs associated with the due diligence of conducting its ordinary business.

5. BTCR Pilot

IGS argues that the BTCR pilot is not in the public interest and violates regulatory principles. In reality, what IGS asks is that its "pilot" status should be terminated, and the program opened to all customers. More specifically, IGS complains that only signatory parties benefit from the expansion of the pilot program. It does not deny the benefits of the pilot program. Indeed, IGS notes that the Pilot "moves transmission rates in the correct direction," and its rates "further the policy outcome of aligning the cost recovery to cost causation."[62] It complains that it cannot participate.

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60 IGS Brief at 36.
61 IGS Brief at 35.
62 IGS Brief at 47.

For many of the very reasons cited by IGS, Staff supports expansion of the BTCR pilot. The manner in which it was done so was an integral part of achieving agreement among a very diverse group of Signatory Parties. Again, the Commission's standard for review partial stipulations is not whether there are other measures that would better benefit ratepayers and the public interest. The limited expansion does not represent any impermissibly discriminatory treatment. Indeed, as AEP Ohio correctly notes, it is entirely consistent with the Commission's prior adoption and reaffirmation of both the BTCR and BTCR Pilot.

Staff respectfully submits that the Stipulation is consistent with, and complies with, all relevant and important regulatory principles and practices.

CONCLUSION

The parties in this case have reached a Stipulation that resolves the issues among the signatory parties. That Stipulation satisfies the Commission's three-part test for reasonableness. Staff respectfully requests that the Stipulation should be approved without modification.

Respectfully submitted,

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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 electronic mail, upon the following parties of record, this 6th day of July, 2021.

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