**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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# JOINT REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC. AND DIRECT ENERGY BUSINESS, LLC AND DIRECT ENERGY SERVICES, LLC

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## I. INTRODUCTION

When the Signatory Parties say the Stipulation and Recommendation ("Stipulation") "benefits customers," they do not mean all customers. What they mean are Standard Service Offer ("SSO") customers. But some of the "benefits" SSO customers receive through the Stipulation come at the expense of shopping customers. Pitting a favored group of customers (those who do not shop for generation) against a disfavored group (those who do shop) and calling this a "benefit" is not enough to salvage the Stipulation.

To truly benefit all customers, the Stipulation must be modified to address three significant problems. First, the Stipulation would force customers who have proactively shopped for their electric service to subsidize Ohio Power Company's ("AEP Ohio" or the "Company") standard service offer through distribution rates. Second, the Stipulation does not address the continued existence of fees charged to CRES providers with no cost justification for these fees. Third, the Stipulation also authorizes AEP Ohio to conduct and share misleading and confusing shadow billing data. These deficiencies must be addressed to ensure that competitive markets in Ohio move forward, not backward.

## II. ARGUMENT

### A. The Commission should approve a modification of the Stipulation to populate the Retail Reconciliation Rider and SSO Credit Rider.

The Stipulation provides that the Retail Reconciliation Rider and SSO Credit Rider will remain placeholders. Lost in all the noise advanced by AEP Ohio, the Office of the Ohio Consumers' Counsel ("OCC"), and Staff to support this provision of the Stipulation is one salient fact: AEP Ohio will continue to collect costs related to the provision of the standard service offer in its monopoly distribution rates if the Commission continues the riders at zero. No party disagrees with this conclusion. *See*, *e.g*., IGS/Direct Ex. 2, IGS Ex. 3, 13, and 14; Tr. at 36, 49-53,158-59; Tr. at 290-92, 346-49. The Commission, however, lacks authority to provide compensation for competitive services through distribution rates, so the Stipulation proposes an unlawful outcome. Likewise, because the costs are not properly assigned to the cost causers, distribution rates will subsidize the standard service offer, rendering the rates unlawful and unreasonable. Nonetheless, AEP Ohio and OCC for differing reasons want to allow this misalignment of revenue responsibility and the untoward legal and economic outcomes to continue.

AEP Ohio advances five arguments to support its agreement to set the Retail Reconciliation Rider and SSO Credit Rider at zero. First, it asserts that it complied with the Commission order to analyze its costs to provide the standard service offer in distribution rates. AEP Ohio Brief at 27. Second, it agrees with the Staff position that the costs are part of the "distribution function." *Id.* at 31. Third, AEP Ohio asserts that standard service offer sales should not be addressed by standard separation principles. *Id.* at 34. Fourth, it criticizes the cost allocation methodology advanced by IGS and Direct. *Id.* at 36. Finally, it urges the Commission to delay any action on proper cost allocation until another state commission steps up. *Id.* at 38.

OCC joins the argument by noting that the Stipulation would protect non-shopping customers from paying more for generation service. OCC Brief at 9.

As discussed below, this hodge-podge of claims and arguments ignores both the record and Ohio law and is premised on maintaining inadequate regulatory oversight of AEP Ohio.

***1. AEP Ohio provided an incomplete analysis of the costs collected in distribution rates, which it and the Staff now try to excuse.***

AEP Ohio was directed in the ESP IV Order to analyze the costs collected in distribution rates that were used to support the standard service offer. *In re 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 Nos. 16-1852-EL-SSO, et al.*, Opinion and Order at ¶ 215 (Apr. 25, 2018) ("ESP IV Order"). It provided an analysis that identified and quantified the directly assignable costs, but only identified some of the allocable costs. IGS Ex. 3, Ex. DMR-2. When asked to identify what other costs were either assignable or allocable, it claimed it could not, although it admitted that those costs were being collected. IGS Ex. 13, 14. Staff itself found that the analysis was incomplete but sought to excuse it based on a lack of accounting functionality. Staff Report at 31; Staff Ex. 3 at 10. The apparent lack of compliance thus has been endorsed by the regulator's staff, a truly odd state of affairs.

Initially, AEP Ohio advances two irrelevant claims to advance its argument that it complied with the ESP IV Order. First, it spends a page critiquing what the ESP IV Order did or did not order. AEP Ohio Brief at 28 (addressing why the Commission failed to address the population of the riders in ESP IV). It then spends another page discussing the fact that no one agreed with the results AEP Ohio produced as a response to the ESP IV Order. *Id.* at 29. Neither of these "claims," however, goes to the whether the analysis offered by AEP Ohio was complete. As noted previously, AEP Ohio, the Staff, and Mr. Lacey agree that the analysis was not complete, at least in regard to the allocable costs. The Commission, therefore, should treat these two "claims" for what they are: irrelevant.

Going to the merits of its analysis, AEP Ohio recognizes its analysis was not complete and advances conflicting claims to avoid the consequences of the limited work that it did perform. On the one hand, it asserts that it did what it was ordered to do. AEP Ohio Brief at 27, 29. On the other, it asserts it could not do what it was ordered to do because its accounting systems were inadequate to the task. *Id.* at 30. These contradictory claims cannot support sound regulation.

Moreover, the purported lack of a sufficient accounting system is no excuse. In 2018, the Commission ordered AEP Ohio to examine the cost of providing the standard service offer as part of this application. AEP Ohio filed this application and the supporting testimony in 2020. By its own admission, AEP Ohio chose not to identify allocation factors to address what it mislabeled as "qualitative" costs or undertake any additional analysis to determine appropriate allocation factors. IGS Ex. 3, Ex. DMR-2; Tr. at 46. Thus, AEP Ohio had two years to address the order, but chose instead to wave its corporate hands and hope the problem went away. The Staff then conceded AEP Ohio's failure to address all the cost factors and turned that into an excuse for advancing its own preferred outcome of zeroing out the riders. Staff Ex. 1 at 31; Staff Ex. 3 at 10. This concession is hardly the basis for sound regulation. For the sake of its own position, the Commission should not concede its authority in this way based on such inadequate justification.

Although AEP Ohio's noncompliance in other circumstances might delay what has already been an odyssey toward correcting the unbundling issue, the record in this case has been sufficiently developed for the Commission to act. Even though AEP Ohio refused to step up and the Staff conceded its investigation to AEP Ohio, parties that are directly affected by the outcome of this issue did the heavy lifting and provide the

Commission with the costs and allocation factors so that the riders can be populated. IGS/Direct Ex. 2. Accordingly, AEP Ohio's failure to provide the Commission with the analysis it ordered should not further delay population of the riders.

***2. AEP Ohio's assertion that collection of SSO costs in distribution rates is justified because it is required to provide the service is not a coherent legal position.***

In its second argument, AEP Ohio adopts the Staff view that generation-related costs should be socialized and suggests that there is some sort of provider of last resort risk that would go uncompensated if the Commission populated the riders. AEP Ohio Brief at 31-32. AEP Ohio also argues that the recommended treatment of Choice program costs requires similar treatment of standard service offer costs. *Id.* at 33. Finally, it asserts that populating the rider will increase the cost of the standard service offer. *Id.* The first and second claims are not correct (and were previously addressed by IGS in its Initial Brief). IGS Brief at 22-27. The third is true but does not serve as a basis for failing to populate the riders.

To begin its second argument, AEP Ohio adopts the Staff's position that "indirect costs" should be socialized because the standard service offer is a benefit to all customers. *Id.* at 31.

Initially, this argument contains an implicit concession that "direct" costs should be assigned for collection to the standard service offer, a position that the Staff itself could not resolve consistently. In contrast to AEP Ohio's more finessed claim, the Staff argued that some direct costs should be segregated to the standard service offer and then recommended recovering all the remaining direct and indirect costs in distribution rates. Compare Staff Ex. 3 at 8-9 (response to question 11) with *id.* at 9-11 (response to question 12). Thus, there is very little that is "consistent" between the Staff and AEP

Ohio's positions regarding direct costs other than they both are defending the Stipulation's refusal to complete the legal and logical process of assigning the recovery of these costs to the cost causers.

Regarding the indirect costs where AEP Ohio and the Staff agree, however, the arguments advanced by the Staff which are adopted by AEP Ohio are unsound. As noted previously, these indirect costs are incurred to provide the standard service offer, but are recovered from all distribution customers. Even though all parties agree that these costs are incurred to provide the standard service offer, the Staff testified that these costs "are not generation related." Staff Ex. 3 at 7. AEP Ohio did not support this position at the hearing, instead adopting a more neutral position that "[o]ne conceptual underpinning of that position is that the SSO service is available all customers and SSO-related costs should be viewed as universal." AEP Ohio Ex. 4 at 3-4. Post-hearing, however, AEP Ohio now engages in the same relabeling that Staff tried to use to justify its unsound position. As noted in IGS's Initial Brief, however, the relabeling of generation service related costs as distribution costs is like calling a monkey a rabbit. IGS Brief at 23. Relabeling does not make it so.

AEP Ohio's new affinity with the Staff's position also does not address the underlying legal and economic problems inherent in recovering generation-related costs through distribution rates. As explained in detail in the IGS's Initial Brief, the Commission cannot lawfully authorize AEP Ohio to collect generation related costs in distribution rates. IGS Brief at 12-16. It also is improper for distribution customers to subsidize the standard service offer since the subsidization provides poor price signals that hurt customers, competitors, and competition. *Id.* at 16-18.

AEP Ohio also shows a new affinity to the Staff's reference to some sort of provider of last resort risk to justify the provision of the Stipulation zeroing the riders. *Id.* at 31. Two responses demonstrate that this claim is irrelevant to this case. First, there is no uncompensated risk: AEP Ohio will have the opportunity to be compensated fully for its costs that are deemed recoverable in this case. IGS Brief at 25-26. Second, there is not an iota of evidence in this record of any provider of last resort risk. *See In re Columbus S. Power Co.,* 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 24-25 (reversing the approval of a provider of last resort charge because it lacked any record support). If there were some risk, AEP Ohio would have had every incentive to bring that to the Commission's attention but did not.

AEP Ohio argues that standard service offer costs should be paid by all distribution customers since costs to support the choice program are also paid by all distribution customers. The argument is unavailing for two reasons. First, it is wrong on the facts. Competitive suppliers pay substantial fees to AEP Ohio so that the suppliers can operate in the AEP Ohio service territory, and distribution customers directly benefit from those fees since they are included in the revenue used to calculate distribution rates. Direct Brief at 2. Second, the argument ignores that these services supporting the Choice program such as metering information are available only from AEP Ohio, which serves as the monopoly gateway. IGS/Direct Ex. 2 at 43.

Finally, AEP Ohio adopts an argument that populating the riders would result in a charge to the standard service offer customers that is more than what currently charged and a credit to customers taking service from competitive suppliers. AEP Ohio Brief at 33. Realignment of revenue responsibility, however, is not a basis for keeping the riders at zero. Because the distribution rates improperly collect costs associated with the provision of the standard service offer, nonshopping customers are paying too little and shopping customers are paying too much. Moving the rates closer to the costs is the whole point of the riders. IGS/Direct Ex. 2 at 15. To do otherwise is to endorse a system that is not legally defensible or economically sound.

### ***3. Ohio law mandates corporate separation of monopoly services and competitive services.***

AEP Ohio correctly notes that Mr. Lacey drew from several sources to support his view that generation related costs currently collected in distribution rates should be assigned or allocated for collection through the riders based on separation principles. Labeling Mr. Lacey's argument a "thematic position" that was "misguided," AEP Ohio pointed out that (1) default service is provided by AEP Ohio and (2) the AEP cost allocation manual does not require the segregation of costs. AEP Ohio Brief at 34-36. Neither position justifies the recovery of generation related costs in distribution rates.

First, there is the obvious legal problem of authorizing the recovery of generation-related costs in distribution rates. Since the initiation of generation choice in Ohio, rates for various utility functions were supposed to be separated. *Industrial Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 487 (2008). This functionalization was embedded in the legal requirements for transitioning electric generation service to fully marketed based generation service initiated in 2001. R.C. 4928.31. In addition to functionally separating rates, the law emphasized the importance of corporate separation. Thus, R.C. 4928.17 requires an electric distribution utility such as AEP Ohio to operate under a corporate separation plan. That plan, however, goes beyond the separation of affiliate activities and applies corporate separation requirements to the internal operations of AEP Ohio. Specifically, divisions (A)(2) and (3) of that section provide that a corporate separation plan shall satisfy the public interest in preventing unfair competitive advantage and prevent the abuse of market power and be “sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, *or part of its own business engaged in the business of supplying the competitive retail electric service* or nonelectric product or service. … *No* such utility, affiliate, division, or *part shall extend such undue preference*.” If the cost allocation manual does not accurately reflect that separation, the problem lies in the manual, not Mr. Lacey’s position that the generation business should be treated as an affiliate transaction. Mr. Lacey’s position fully conforms with what Ohio law requires of an electric distribution utility.

Second, as AEP Ohio notes and then ignores, AEP Ohio Brief at 35, Mr. Lacey looked to the recommendations of National Association of Regulatory Utility Commissioners (“NARUC”), the AEP cost allocation manual, and the regulatory literature for guidance regarding the proper approach for removing generation related costs from distribution rates. IGS/Direct Ex. 2 at 26. While the provision of the standard service offer is not by a separate affiliate, the cost principles and the policies underlying them still apply. *Id.*

Third, underlying the affiliate principles that Mr. Lacy invokes are basic cost causation concepts, the misapplication of which will result in misalignment of costs. IGS/Direct Ex. 2 at 16-33. In fact, the Staff in one of its own arguments argues that the same cost causation principles are applicable to the standard service offer. Staff Ex. 3 at 8-9.

Finally, the policy for fully allocating costs to provide the competitive product rests on sound economic theory: the monopoly provider of a service should not be permitted to use its monopoly position to subsidize its competitive products or impose higher costs on its monopoly customers. IGS Brief at 16-18. That poor outcome will occur if the Commission does not modify the provision of the Stipulation zeroing the Retail Reconciliation Rider and SSO Credit Rider.

#### 4. *The allocation methodology proposed by Mr. Lacey is substantively sound.*

IGS and Direct provided testimony containing a coherent method of identifying indirect costs and allocating them for recovery through the Reconciliation Rider and offsetting them through the SSO Credit Rider. IGS/Direct Ex. 2. They were the only parties in this proceeding to do so. Although AEP Ohio was directed to conduct that analysis, it did not offer any witness or testimony to support allocation of the indirect costs. Having placed itself in the position in which it cannot offer an alternative, AEP Ohio in its fourth argument instead complains about the numbers Mr. Lacey used to identify $64 million in costs that should be collected in the Retail Reconciliation Rider. Essentially, AEP Ohio argues that the methodology is "untested" and produces results that are unreliable or too much. AEP Ohio Brief at 36-38. None of these claims, however, is a ground for setting the riders at zero.

First, the claims addressing the various allocators go to the amount, not whether, allocation should be applied to those costs that are not directly assignable. The Commission should not confuse questions about the amount with a determination that some amount should be assigned for recovery through the riders.

Second, the specific challenges to the allocators offered by AEP Ohio are not sound. For example, AEP Ohio complains that the revenue allocator includes a distribution center building and fluctuates with standard service offer revenue. AEP Ohio Brief at 6. In fact, however, the first charge is wrong (the distribution facilities were removed from the calculation, Tr. at 1149) and the second charge was addressed by using more than an annual period to address the revenue volatility.

In regard to the customer allocator, the "C" allocator, AEP Ohio complains that it produces too high a portion of the $64 million that Mr. Lacey allocates to the riders because it assumes that "everyone from the CEO to the line worker spends a significant amount of time on the SSO." AEP Ohio Brief at 37. The assumption that AEP Ohio complains about, however, was fully explained: AEP Ohio sends bills, it houses employees, it books costs and revenues, it performs regulatory support. Tr. at 1140. The standard service offer requires support from personnel across AEP Ohio; "it can't operate in a vacuum." *Id.* Thus, AEP Ohio's complaints about the C allocator are simplistic and lack context.[1]

Regarding the actual cost allocator, allocator "A," which directly assigns certain costs, AEP Ohio treads around the edges, focusing on $1.3 million in advertising expense. AEP Ohio Brief at 37-38. Mr. Lacey fully explained his rationale for treating the efforts of AEP Ohio to burnish its reputation as justification for this allocation factor since

[1] Moreover, the amount in issue is proportionately small and would be fully recovered by AEP Ohio. IGS/Direct Ex. 2 at 38-39.

there is no reason for this advertising to support AEP Ohio's monopoly distribution business. Tr. at 1145-46.[2]

In another portion of its brief, AEP Ohio suggests that the Commission should not populate the riders because the revenue recovery would fall disproportionately on residential customers due to a volumetric rate design. AEP Ohio Brief at 33. Again, this complaint does not go to the lawfulness of the recovery itself. Further, the recovery largely reflects that the proportion of residential customers remaining on the standard service offer is far greater than non-residential customers. Tr. at 1060-65. Thus, it is not surprising that a generation-based rate design would assign more of the recovery to residential customer classes.[3]

Apart from its complaints about the allocators, AEP Ohio seeks to avoid assignment of directly and indirect costs by playing a game of "gotcha." It complains that Mr. Lacey is not familiar with the costs recovered in the Auction Cost Recovery Rider, but ignores that those costs are already excluded from the cost information that Mr. Lacey is using. AEP Ohio Brief at 37; Staff Report at 22 (all rider revenue removed). It questions the legitimacy of including all advertising expense but ignores $4.7 million of direct expenses to support the standard service offer that it identifies. These games are not a sound basis for addressing the cost recovery problems caused by zeroing the riders.

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[2] One caveat is in order. The Staff did make an adjustment to remove promotional advertising expense. Staff Ex. 1 at 23. This adjustment is appropriate because Ohio law provides that "institutional and promotional  institutional and promotional advertising expenses are to be disallowed, unless the utility can clearly demonstrate a direct, primary benefit to its customers from such ads." *Cleveland v. Pub. Utils. Comm.,* 63 Ohio St. 3d 62, 73 (1980). The Commission would be hard-pressed to find the advertisements found in the application were anything but promotional advertising. Staff Ex. 1, Part 15 at 20, 34 (attached as Attachment A). Mr. Lacey's assignment of advertising expense, therefore, may require an adjustment to remove disallowed expenses. Otherwise, it is proper for the reasons he stated during the hearing.
[3] Moreover, AEP Ohio does not offer any better alternative to the recovery of costs for a generation related product.

***5. Unbundling is neither new nor radical, but reflects the next logical and legally required step in advancing the competitive electric generation service market in Ohio.***

In its final argument in support of zeroing the riders, AEP Ohio argues that the Commission should not be the first regulatory body to embrace the IGS and Direct recommendations regarding unbundling, a position it describes as "extreme." AEP Ohio Brief at 38. The position advocated is anything but "extreme," as several states have recognized.

The Commission already assigns some direct costs through the four riders that make up the price to compare. Staff Ex. 3 at 8-9. The problem remains that other direct and all indirect costs associated with the standard service offer are recovered through distribution rates.

Moreover, other states have already moved beyond Ohio in the effort to correctly bill standard service offer costs from standard service offer customers.

- In a 2004 order, the New York Public Service Commission issued a policy statement directing the unbundling of various costs based on cost causation and specifically addressed recovery of credit and collections costs, customer care costs such as call centers, uncollectible expense, and other expenses. *Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets and Fostering Development of Retail Competitive Opportunities-Unbundling Track,* Case 00-M-0504, Statement of Poly on Unbundling and Order Directing Tariff Filing (NY Pub. Serv. Comm'n Aug. 25, 2004). In a 2005 order, it further directed electric and gas utilities to submit new billing materials that showed unbundled charges for commodity supply service, billing, and metering. Case

00-M-0504, Order Directing Submission of Unbundled Bill Formats at 3 and 27 (NY Pub. Serv. Comm'n Feb. 27, 2005). As part of the revision, companies would address changes in rate design. *Id.* at 7.

- In a 2019 order, the Maryland Public Service Commission allocated billing system costs, credit and collection costs, call center costs, regulatory, legal, and accounting costs, customer accounts expenses, general and administrative expenses, and other items to the standard service offer. *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to its Electric and Gas Base Rates*, Case No. 9610, Order No. 89400 (Maryland Pub. Serv. Comm'n Dec. 17, 2019).
- In a 2014 order, the Illinois Commerce Commission addressed unbundling the costs of customer care and allocated a portion of the costs to the utility's supply customers. *Commonwealth Edison Company; Annual Formula Rate Update and Revenue Requirement Reconciliation under Section 16-108.5 of the Public Utilities Act*, Case No. 14-0312, Order at 92-104 (Ill. Commerce Comm'n Dec. 10, 2014).

Thus, AEP Ohio is simply wrong when it asserts that the Commission would be the first to assign or allocate the direct and indirect costs to the provision of default service.

The more particular question raised by AEP Ohio is the methodology advanced by IGS and Direct. While it correctly points out that similar approaches have not been adopted in Pennsylvania and New Jersey, that is not the end of the story.

In the Pennsylvania case, the focus was on the indirect costs, but the utility did not have a mechanism for recovering those costs from default service customers. Tr. at 1115.

*See Pennsylvania Public Utility Commission Office of Consumer Advocate v. PECO Energy Company*, 2018 Pa. PUC LEXIS 459 at *57 and *114 (Pa. Pub. Utils. Comm'n Dec. 20, 2018). Thus, a decision removing those costs placed the utility at risk for not recovering its revenue requirement. That situation does not exist here: AEP Ohio through the riders will have the opportunity to be made whole.

Additionally, the scope of costs already recovered under default service addressed in the Pennsylvania case included uncollectible costs. Tr. at 1148-49. This fact makes problematic AEP Ohio's assertion that its rates and those of PECO are similar. AEP Ohio Brief at 41. Unlike the rates for PECO, the assigned costs in AEP Ohio bypassable riders do not include uncollectible expense; that expense remains embedded in distribution expenses. IGS Ex. 3, Ex. DMR-2. Thus, the PECO case stands for the assignment of additional costs to default service than what is currently the case.

AEP Ohio fares no better with its reliance on the New Jersey decision. According to AEP Ohio, the New Jersey Board of Public Utilities did not accept an unbundling proposal similar to the one in this case. AEP Ohio Brief at 41-42. AEP Ohio is correct that the New Jersey Board did not act on the proposal, but neglects to share the reason for the Board's disagreement. *Id.* at 42. In the operative paragraph, the New Jersey Board states: "[T]he Board understands Direct Energy's argument but does not agree with its conclusion. *Rather, the Board agrees with the EDCs that general operating costs as well as BGS specific operating costs accommodating the TPSs* [third party suppliers] *are being allocated are identified and evaluated in the distribution base rate cases and would be double counted if allocated into the BGS Auction costs*." *In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1, 2019,* 2018 N.J. PUC Lexis

266 at *44 (N,J, Bd. of Pub. Utils Nov. 19, 2018) (emphasis added). Similar to the use of a rate case to address proper cost assignment in New Jersey, this case is an opportunity to look at distribution rates. Further, there is no allegation of a potential double recovery in this case. Thus, the New Jersey case stands for taking the steps in this case to properly assign and allocate costs to support the standard service offer to the proper recovery mechanism.

More broadly, the Commission is bound by Ohio law and the record in this case to take steps to unbundle generation related costs from distribution rates regardless of what Pennsylvania or New Jersey regulators concluded. Based on Ohio law it cannot authorize the recovery of generation related costs in distribution rates. R.C. 4928.05. The record in this case demonstrates that generation related costs will be recovered in distribution rates if the Retail Reconciliation Rider and SSO Credit Rider are set at zero. To avoid a violation of law, therefore, the Commission should reject the provision of the Stipulation recommending that the riders remain at zero.

### *6. OCC is ignoring the interests of residential shopping customers.*

According to OCC, a separate reason for approving the Stipulation provision zeroing the riders is that standard service offer customers will be protected from paying the higher cost implied by populating the Retail Reconciliation Rider. OCC Brief at 9. Apart from ignoring cost causation principles and Ohio law, OCC ignores the hundreds of thousands of residential customers that take generation service from competitive suppliers.

It is correct that standard service offer customers will see an increase in their generation costs if the Commission approves populating the riders. That outcome is the necessary outcome of properly assigning the costs of providing the standard service offer to the customers that benefit from it. To do otherwise would violate notions of cost causation that OCC would support if it looked at the problem from the point of view of those residential customers that purchase generation service from a competitive supplier. Since those other customers would no longer be subsidizing their neighbors on default service, their bills will decrease.

The point of assigning costs to cost causers, however, is not to create winners or losers. Instead, the goal is to assure that costs are assigned correctly so that customers can correctly judge the cost of default and competitive service offers. This sort of transparency is what OCC advocates when it seeks shadow billing[4] but somehow loses track of when the issue is unbundling. It is the sort of inconsistency that does not merit Commission support.

***7. The Commission should take the next step in properly pricing default service.***

As demonstrated in this section, the hodge-podge of claims and arguments opposing unbundling the generation related costs currently set for collection in distribution rates ignores both the record and Ohio law and is premised on maintaining inadequate regulatory oversight of AEP Ohio. In contrast to these attempts to saddle customers and the market with rates that distort generation service pricing, the Commission should take the next step in advancing generation competition in Ohio by directing AEP Ohio to populate the Retail Reconciliation Rider and SSO Credit Rider. Further, the record in this case supports a finding that the Retail Reconciliation Rider should be set at $0.0057/KWh and the SSO Credit Rider should be set at $0.0015/KWh. IGS/Direct Ex. 2 at 37.

[4] Of course, the shadow billing proposed in the Stipulation is a far cry from transparent and will likely inject even more confusion if approved.

**B. The Signatory Parties have failed to address the unlawful, unsupported Supplier Fees authorized by the Stipulation.**

No retail supplier signed the Stipulation. No group representing shopping customers signed the Stipulation. No party that *did* sign the Stipulation is subject to the switching fees and other fees charged to retail suppliers by AEP Ohio.[5] It comes as no surprise that each and every Signatory Party avoided discussing these fees in their Initial Briefs.

The parties supporting the Stipulation have the burden of proving that the settlement does not violate an important regulatory principle or policy. *See Ohio Edison Co. v. Pub. Util. Comm.,* 63 Ohio St.3d 555, 558, 589 N.E.2d 1292 (1992) ("R.C. 4909.18 [] places the burden upon the applicant to prove all issues raised in its application."). The Commission must examine *all* implications of the settlement, not just those discussed by a Signatory Party and cited as a "benefit." The Commission must also consider contrary positions, and it may not ignore other parties' arguments. In short, the Commission must "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence." *In re Application of Columbus S. Power Co.,* 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 30.

The objective of this case is to establish "just and reasonable" rates and charges; *i.e.,* rates that reflect AEP Ohio's cost of service (excluding the cost of generation service), including a reasonable allowance for profit. To the extent AEP Ohio incurs a cost to switch customers to and from the SSO, it is entitled to recover those costs. Those costs *should* be accounted for through the Retail Reconciliation and SSO Credit Riders, but that is a

[5] These "other" fees are the $100 initial registration fee and $100 annual renewal fee (Schedule E-2 Part I, Page 45); Initial registration fee and annual registration fee of $500 and $100, respectively, chargeable to meter service providers; (Schedule E-2 Part I, Page 53); $100 meter data management agent annual registration fee (Schedule E-2 Part I, Page 54); and interval metering fees (Schedule E-2 Part I, Page 56).

separate issue. The more fundamental question is whether AEP Ohio in fact incurs costs to provide the services associated with the supplier fees and if so, how much. Neither question has been answered in this proceeding, let alone addressed in any Signatory Party's Initial Brief. "When the commission reviews a contested stipulation, the requirement of evidentiary support remains operative." *In re Application of Columbus S. Power Co.,* 129 Ohio St.3d 46, 2011-Ohio-2383, 950 N.E.2d 164, ¶ 18-19. Given the lack of record support for the supplier fees, the Commission cannot allow AEP to continue charging them.

The supplier fees are "related to" AEP's test year revenue requirement and should have been investigated like any other rate or charge. *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.,* 51 Ohio St.3d 150, 151-152, 555 N.E.2d 288 (1990). The consumers groups who signed the Stipulation would be *outraged* if AEP proposed to increase the base residential charge without a full accounting of costs and revenues. The Commission presumably would not allow AEP Ohio to increase this charge without evidence of the costs associated with the charge and the proportionality of the charge to the underlying costs. There is no basis in law nor reason to hold supplier fees to any less scrutiny. The supplier fees are a "charge" and "*[a]ll* charges made or demanded for *any* service rendered, or to be rendered, shall be just [and] reasonable[.]" R.C. 4905.22 (emphasis added). To merely assume the justness or reasonableness of a charge is contrary to placing the burden on the utility to produce evidence on "all issues raised in its application." *Ohio Edison Co. v. Pub. Util. Comm.,* 63 Ohio St. 3d 555, 558, 589, N.E.2d 1292 (1992).

No Signatory Party has cited record support for the supplier fees. The Commission should order AEP Ohio to remove the references to these fees from its tariff or set each of them at $0.

**C. The Shadow Billing provisions must be removed from the Stipulation.**

Neither the Company nor OCC has explained how their shadow billing proposals benefit ratepayers, or why their joint venture to pursue shadow billing should be included in the Stipulation. These provisions should be struck in their entirety.

The Initial Briefs of OCC and AEP Ohio merely recite the shadow billing provisions and claim it will offer "transparency." But how this "transparency" will allegedly be achieved is left to the imagination. OCC and AEP Ohio may have vague notions about what "shadow billing calculations" might look like or the details of an "amended application" to be filed in the *Bill Formatting Case*,[6] but the other Signatory Parties do not—and neither does the Commission. The side-deal masquerading as a "settlement" term does not represent a definitive, enforceable settlement, and the very idea motivating this provision violates Ohio law.

***1. No party has demonstrated any value or benefits that will result from the Shadow Billing provisions in the Stipulation.***

Although AEP Ohio alleges the shadow billing commitments "are intended to promote transparency and consumer education related to shopping," AEP Ohio fails to state how. AEP Ohio Brief at 45. Likely this failure is because the aggregate shadow billing data provided under the Stipulation is anything but transparent. *See* IGS Initial Brief at 38-40. It will produce a heavily manipulated analysis that excludes some customers based upon who issues the bill while failing to exclude the customers that would truly be

[6] *In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format,* Case No. 20-1408-EL-UNC ("*Bill Formatting Case*").

an apples-to-oranges comparison. *Id.* Specifically, charges will be excluded from the analysis “only when the charge description provided by the supplier is not a kWh-based charge.” AEP Ohio Brief at 47. This means a green product sold through kWh-based charge would not be excluded from the analysis.

Further, AEP Ohio may allege that the data is “intended” to promote customer education, but there is no evidence that it will. As AEP Ohio acknowledges, “individual consumers will not receive the data or use it in making shopping decisions.” AEP Ohio Brief at 45. Instead, it will be provided to “Staff, OCC and other policy constituents interested in evaluating the retail choice market…” *Id.* Yet Staff does not even support the shadow billing provisions. Jt. Ex. 1 at 11, fn. 4. As for how OCC might use this information, OCC “has no current plans.” AEP Ohio Brief at 46, citing Tr. II at 301-302. Moreover, the data cannot and should not be used to evaluate “the retail choice market” because it is inaccurate. IGS Initial Brief at 38-40.

And finally, of course there is no benefit from the second provision, an agreement to potentially propose something in a completely unrelated proceeding. With no evidence that the shadow billing provisions will provide any benefits coupled with evidence that it will actually provide a misleading apples-to-oranges comparison, the shadow billing provisions should be struck.

### *2. The Shadow Billing provisions are too indefinite to enforce.*

A stipulation is a type of settlement. ”To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear.” *Rulli v. Fan Co.,* 79 Ohio St.3d 374, 376, 683 N.E.2d 337 (1997). “A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract.” *Id.*

The “commitments” relative to shadow billing are open-ended and indefinite. First, AEP Ohio is to “perform aggregate ‘shadow billing’ calculations for residential customers… and [] make such calculations promptly available to OCC and Staff annually or at OCC’s or Staff’s request [.]” Jt. Ex. 1 at 11. Attachment D does not provide clear instructions on the manner of populating the report; the problem is evident in the fact that AEP Ohio had to provide an additional list containing over 80 separate potential exclusions in discovery to explain what was not included in the Attachment. IGS Ex. 6. Further, testimony in the proceeding alludes to different ways “aggregate” data could be calculated. Based on this apparent lack of definition, ambiguity warrants rejection of this provision, not approval. “[T]he law disfavors court enforcement of contracts laden with ambiguity.” *Rulli,* 79 Ohio St.3d at 376, 683 N.E.2d 337.

In any case, the information produced from this mathematical exercise is meaningless. The attempt to determine who are winners and losers will result in a number that bears no relationship to what customers may have saved or other benefits they elected. IGS Brief at 38-39.

AEP Ohio’s other commitment is to “develop a proposal that amends the Company’s application in the *Bill Formatting Case* to display on customers’ bills additional computations that reflect potential consumer savings or losses as compared to the Company’s SSO.” Jt. Ex. 1 at 11. Again, no indication is given as to the inputs or methodology for these “additional computations” or what exactly will be computed. There is no indication of what messages, if any, will accompany these computations. The timeline for filing this amended proposal is open-ended, and whether OCC or other

Signatory Parties have rights to collaborate with AEP Ohio on the amended application is left unstated.

All of these unknowns could be addressed in the *Bill Formatting Case*, but that again is the point—a case is already in progress to address these issues. There is absolutely no reason to memorialize what some parties might do in that proceeding in a stipulation purportedly resolving this proceeding. Neither proceeding has anything to do with the other. Even AEP Ohio recognizes that the "commitment to amend the Company's application obviously does not result in any final action in the 20-1408 case [.]" AEP Ohio Brief at 45. Simply put, this provision is merely a talking point; it does not provide any value to anyone.

AEP Ohio points to the indefinite and non-binding nature of these provisions as an argument for approving them because approval would not involve "any final or prejudicial action affecting the CRES opponents or retail choice." *Id*. While it is true that parties would still have the right to contest an amended application filed in the *Bill Formatting Case,* that is certainly not the case regarding the publication of aggregate shadow billing data. Approval of the Stipulation would result in the indefinite monthly production of misleading data that is "intended" to promote customer education regarding retail choice but will ultimately be inaccurate and misleading misinformation. It would be a final action in this proceeding - the *Bill Formatting Case* would not be a proper venue for collaterally attacking an order allowing AEP Ohio to furnish shadow billing calculations to OCC. There is no question that approval of the shadow billing provision would prejudice Direct and IGS.

The shadow billing provisions are not presumptively valid. Signatory Parties have the burden of proving that this settlement term (1) is a product of serious bargaining among capable, knowledgeable parties, (2) benefits ratepayers and the public interest, and (3) does not violate any important regulatory principle or practice. The shadow billing proposals fail on all three counts.

**D. Failing to provide interested customers with the ability to control transmission costs, especially in light of the rising charges, is unreasonable.**

As AEP Ohio's transmission rates continue to rise, the need for customers to have an opportunity to control these costs also increases. In order to accomplish this, IGS Witness Haugen proposed opening the Basic Transmission Cost Recovery Rider ("BTCR") Pilot Program to more participants than provided for under the Stipulation. IGS Ex. 1 at 9. As a result, all interested customers would have the ability to mitigate against rising transmission rates. *Id.* at 7, 9.

As recognized by multiple parties, IGS does not dispute that the BTCR Pilot provides benefits to customers. *See* OMAEG Brief at 18; AEP Ohio Brief at 13. That is why IGS believes the Pilot should be expanded. Instead, the issue is failing to extend eligibility to more customers because depriving customers of this opportunity is contrary to the public interest and important regulatory principles. *See* IGS Brief at 41-50.

It is disingenuous for parties to argue that Mr. Haugen's proposal is unreasonable because the rate impacts are unknown, when the rate impacts of the BTCR Pilot expansion under the Stipulation are unknown as well. *See* OEG Brief at 4; AEP Ohio Brief at 44-45. This is a pilot program.[7] Allowing additional customers to participate in the BTCR Pilot will expand eligibility to all rate classes and produce more well-rounded results when evaluating the Pilot, instead of limiting expansion and data collection to only those members of associations representing large energy users.

Further, the collaborative discussions "to explore potential future expansion of the BTCR and other potential retail and wholesale demand response programs for transmission customers," need to be open all interested stakeholders. *See* Jt. Ex. 1 at 18. It is unfair and unreasonable to limit expansion of the BTCR Pilot Program to only three customer groups ***and*** limit participation in the discussion of future transmission programs to only those same three groups. The needs and wants of all other nonresidential customers will never be heard or considered.

## III. CONCLUSION

IGS and Direct Energy urge the Commission to modify the Stipulation to address the errors identified herein. Specifically, the Commission should condition approval of the Stipulation on properly populating the Retail Reconciliation Rider and the SSO Credit Rider, removing the shadow billing provisions, eliminating the collection of non-cost based charges levied on CRES providers, and expanding the BTCR Pilot Program and transmission collaborative. These modifications are necessary to bring the Stipulation into line with Ohio law and to protect the public interest.

[7] This distinguishes Mr. Haugen's proposal from the case cited by AEP Ohio in its Initial Brief. In that case, the Commission rejected a proposal to modify the cost allocation of the BTCR because the resulting impacts on customer bills were unknown. That proposal would have modified the entire BTCR. Here, Mr. Haugen's proposal is limited to a pilot program. AEP Ohio Brief at 44.

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 6, 2021. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

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