

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BRIEF
OF
NATIONWIDE ENERGY PARTNERS, LLC**

July 6, 2021

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I. Introduction

Nationwide Energy Partners, LLC (“NEP”) hereby replies to various statements and positions taken by other parties in their initial briefs with respect to the Joint Stipulation and Recommendation (the “Stipulation”). The Stipulation, in its current form, should not be approved by the Public Utilities Commission of Ohio (“Commission”) as it is not in the public interest and violates important regulatory principles. The arguments propounded by the signatories to the Stipulation (the “Signatory Parties”) do not help Ohio Power Company’s (“AEP Ohio”) Stipulation satisfy the requisite criteria for approval by the Commission; instead, the Signatory Parties’ arguments bolster the positions asserted by NEP in some ways. For example:

- Certain Signatory Parties misapply the Commission’s three-prong standard for review of the Stipulation by (i) focusing on AEP Ohio’s proposals in its application versus the terms of the Stipulation and (ii) improperly claiming that the Commission should approve a stipulation that provides any benefits;
- Instead of focusing on the ineffective wording in the Stipulation with respect to equipment purchases, AEP Ohio focuses on the number of words in NEP’s language proposal;
- AEP Ohio is advocating for a façade of customer service instead of actual customer service;
- **NEP witness Rehberg’s bill impact analysis on low-load factor commercial customers – the only such analysis presented in this proceeding – is not challenged**, and such analysis is mathematical in nature;
- The Signatory Parties overlook the fact that NEP’s proposed rate schedule, and alternative pilot program, are based on revenue neutrality and do not propose to shift any costs to other customers;
- Walmart fails to (i) realize that demand charges are variable based on demand and (ii) acknowledge that NEP’s proposal is designed to be revenue neutral just like AEP Ohio did for the PEV pilot;
- Kroger’s assertions that alternatives to the Stipulation are “irrelevant” violates the requisite public interest inquiry; and

- The Signatory Parties overlook the fact that commercial customers are bearing the brunt of the stipulated distribution rate increase with a subset of commercial customers receiving a disparate increase over other commercial customers.

Low-load factor customers will see significant and disparate increases in their distribution costs with this Stipulation. Low-load factor customers, while able to manage the amount of energy consumed, are not able to manage their timing of energy usage due to circumstances that are not within their control resulting in high demand charges. NEP presented the only mathematical analysis of the impacts of the Stipulation on low-load factor customers in the record, **and none of the Signatory Parties presented contrary evidence with respect to the Stipulation's effects on low-load factor commercial customers.¹ The Signatory Parties want the Commission to ignore the evidence in the record of the disparate impacts of the Stipulation on a portion of AEP Ohio's customer base.** The Commission has already recognized the unique position of low-load factor commercial customers and the importance of an analysis of billing impacts on such customer class.² The arguments by AEP Ohio and other Signatory Parties that, since the Stipulation poses a better deal for ratepayers than certain terms in AEP Ohio's application, the Stipulation must be in public interest does not pass logical muster. Additionally, the language in the Stipulation with respect to equipment purchase requests violates an important regulatory principle – that regulations and orders must have substance.

While the Signatory Parties represent some of the customers of AEP Ohio, such Signatory Parties, with the exception of Staff, do not represent all the customers. Low-load factor customers

¹ The total bill impacted presented by AEP Ohio is not the same as an analysis of the stipulated distribution rate changes, including the specific impact of same on low-load factor commercial customers.

² *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, *et al.*, Entry on Rehearing ¶19 (February 23, 2012).

are not represented. Additionally, customers who purchase equipment from AEP Ohio and who make construction requests are also not adequately represented, and such customers would be greatly benefitted by the standard processes being proposed by NEP.

Given the deficiencies in the Stipulation, the Commission should exercise its authority to modify the Stipulation so it provides benefits to all ratepayers and the public interest and complies with important regulatory principles. The Stipulation should be modified as follows:

- AEP Ohio should be required to adopt the revenue neutral low-load factor rate schedule design proposed by NEP witness Eric Rehberg, or, in the alternative, the Commission should adopt Mr. Rehberg's proposed 1,000-customer pilot so information can be obtained on the benefits of an energy/demand rate schedule for low-load factor customers; and
- In order to remedy deficiencies in AEP Ohio's handling of equipment purchases and construction requests, the Commission should adopt NEP witness Teresa Ringenbach's proposed revisions to both the Stipulation's provision on equipment purchases and to the Stipulation's proposed tariff section with respect to construction requests.

It should be noted that AEP Ohio, in its initial brief, did not specifically address or oppose NEP's proposed language with respect to construction requests. Perhaps AEP Ohio agrees that such language should be included in the tariff attached to the Stipulation. The construction request issue will be addressed herein only to acknowledge that such issue must be addressed by means of a modification to the Stipulation.

II. Argument

A. The Signatory Parties' application of the Commission's standard for evaluating the Stipulation misses the public interest mark.

1. The fact that the Stipulation contains a lower revenue requirement and rate of return than AEP Ohio requested in its application does not evidence the public benefit or reasonableness of the Stipulation.

Several Signatory Parties argue that because the Stipulation contains a lower revenue requirement than AEP Ohio's proposal in its application, the Stipulation as a package benefits

ratepayers and the public interest.³ Quite frankly, such proposition asserted by such Signatory Parties is not logical and advocates for a dangerous precedent for the Commission in a rate case – the assumption that the initial proposal by a utility is reasonable. Such improper assumption can be easily debunked. For example, assume a seller listed a used car for sale at \$20,000 and that such same (model, color, condition, mileage, options, etc.) car is readily available locally for \$10,000. If an unknowing buyer bought such car for \$17,000, the buyer did not get a good deal, despite buying the car for 15% below the seller’s asking price. The example above shows that just because a party asks for something, does not mean that the “ask” is reasonable or that the final agreed-to consideration represents a reasonable deal. Similarly, just because the Stipulation contains a lower revenue requirement than AEP Ohio’s proposed in its application does not mean the Stipulation is reasonable and does not have any bearing on whether the Stipulation benefits ratepayers and the public interest.

Employing the same flawed reasoning as with the revenue argument set forth above, several Signatory Parties argue that because the Stipulation contains a rate of return lower than AEP Ohio’s proposal in its application, the Stipulation as a package benefits ratepayers and the public interest.⁴ That argument should be rejected too. If the Signatory Parties are comfortable with buying a car worth \$10,000 for \$17,000, then so be it, but the Commission must give zero weight to the fact that the car was initially listed for \$20,000 as an argument in support of the reasonableness of the deal (i.e., the public interest of the Stipulation) reached by the Signatory Parties. The Stipulation is a rate increase, and only the Commission can decide if that increase from current rates is reasonable and will not cause harm to ratepayers. A threshold illusion created

³ AEP Ohio brief at 6; Staff brief at 9; OCC brief at 6; Kroger brief at 3; and OMAEG brief at 11.

⁴ AEP Ohio brief at 8; Staff brief at 9; OCC brief at 6; Kroger brief at 3; and OMAEG brief at 11.

by the Signatory Parties that the Stipulation is lower than AEP Ohio's request does not negate the fact that this is a rate increase and certain customers who did not enter into the Stipulation will bear a higher impact than others.

On page 4 of its initial brief, AEP Ohio makes the following statement: "Of course, merely repeating one's litigation position is not an appropriate basis for contesting a settlement." However, AEP is relying on its litigation positions – the revenue requirement and rate of return in AEP Ohio's proposal – in making arguments in support of the Stipulation. The Commission, in exercising its important role of reviewing the Stipulation as a whole must not be misled by AEP Ohio. What matters is the substance of the Stipulation and the evidence in the record, and, as set forth below, that is where the Stipulation falls short.

To determine reasonableness and whether public interest will benefit, the Commission must review the final deal (i.e., the Stipulation) and not the negotiation tactics for reaching such agreement. In other words, the public interest standard of inquiry **is**: whether the **settlement, as a package**, benefits ratepayers and the public interest. The Commission must not be misled with arguments about the process for reaching the Stipulation in the Commission's review of the public interest prong. The Stipulation, among other deficiencies, fails to address the unique needs and circumstances of low-load factor commercial customers as set forth below. NEP is not a party to the Stipulation, but NEP presented unrefuted evidence on the record regarding the disparate impacts of the Stipulation with respect to such low-load factor commercial customers.

The Commission can modify the Stipulation to further the public interest and make it reasonable. The Commission has rejected stipulations and it also has concluded that, to be reasonable, stipulations had to be modified. **Even stipulations containing benefits and terms "less than" what the utility originally proposed have been found to not be reasonable.** By

way of example, below are a few AEP Ohio cases in which the Commission concluded that the ratepayers and public interest deserved more than what the stipulations proposed:⁵

- *AEP Ohio Energy Efficiency/Peak Demand Reduction Plan Cases*: Stipulation modified to allow recovery temporarily for lost revenue because the record failed to establish the revenue necessary to recover its costs and earn a fair and reasonable return. With that modification, “the Commission [was] convinced that the Stipulation, as a package, benefits ratepayers and the public interest.”⁶
- *AEP Ohio ESP II Cases*: Stipulation modified for the electric security plan to be more favorable in the aggregate than a market rate offer, including changing an automatic base generation rate increases, removing a contingency related to two AEP Ohio’s initiatives, and increasing a credit for schools that shop. Then later, the stipulation was rejected entirely, after the Commission found that stipulated rider provisions for the Market Transition Rider and GS-2 load factor rate provisions did not promote rate certainty and certainty and would not benefit ratepayers and the public interest.⁷
- *AEP Ohio PPA Cases*: Stipulation modified, among other things, to detail the purchase power agreement (“PPA”) rider reviews, mandate provision of accounting information, outline when the liquidated damages provision can be triggered and preclude recovery of PPA unit conversion costs. The Commission’s modifications to the stipulation “were found necessary to enable [the Commission] to determine that the stipulation, as modified, meets the three-part test.”⁸

⁵ This list illustrates a few cases in which the Commission has rejected or modified stipulations presented by AEP Ohio. The Commission also rejected or modified stipulations in a countless number of cases involving numerous entities subject to its jurisdiction.

⁶ *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Program Portfolio Plans and Requests for Expedited Consideration*, Case Nos. 09-1089-EL-POR et al, Opinion and Order at 26 (May 13, 2010).

⁷ *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 Nos. 11-346-EL-SSO et al., Opinion and Order at 30-32, 38, 41-42, 50, 54-55, 59, 61, 63-65 (December 14, 2011); Entry on Rehearing at ¶ 19 (February 23, 2012).

⁸ *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 Nos. 14-1693-EL-RDR et al., Opinion and Order at 81-92, 106 (March 31, 2016) and Second Entry on Rehearing at ¶ 103 (November 3, 2016).

2. AEP Ohio’s statement that OMAEG and IEU represent low-load factor customers is not supported by the record and must be stricken or disregarded; NEP represents the interests of low-load factor commercial customers that are not manufacturers in this proceeding.

On page 17 of its brief, AEP Ohio states: “Tellingly, other parties that represent low-load factor customer interests, including OMAEG and IEU Ohio, agree [with certain of Mr. Roush’s analysis].” Such statement must be wholly ignored by the Commission – there is no record evidence that Ohio Manufacturers’ Association Energy Group (“OMAEG”) and Industrial Energy Users-Ohio (“IEU Ohio”) represented low-load factor customer interests in the proceeding.⁹ Eric Rehberg’s testimony identifies the stipulated rate impact and proposes an alternative rate structure specifically created for low-load factor customers.¹⁰ The Stipulation ignores the concerns and circumstances of a segment of commercial customers in the Stipulation, and such oversight cannot be mitigated by AEP Ohio’s unsupported assertion in its brief that such customers were represented by OMAEG and IEU Ohio, when in fact neither OMAEG nor IEU Ohio claimed or advanced the unique interests of low-load factor commercial customers in this proceeding. In addition, the specific examples of the types of low-load factor commercial customers listed in Eric Rehberg’s testimony are not only manufacturers, big box retailers, or grocery stores.¹¹ There are businesses or institutions who do not fall into the limited categories represented by the Signatory Parties and the only party to submit evidence showing the discriminatory impact to those businesses is NEP. NEP is the only party in this proceeding that has established on the record that it represents low-load factor commercial customers. NEP is the only party that presented calculations of the billing impacts of the Stipulation on such low-load factor customers.

⁹ Also, neither OMAEG nor IEU Ohio claimed in their intervention motions or on brief that their membership includes low-load factor customers and they were representing them.

¹⁰ NEP Ex. 34 (Rehberg Direct Testimony) at 2.

¹¹ NEP Ex. 34 (Rehberg Direct Testimony) at 3.

3. The Staff’s position that the Commission should approve a stipulation that, as a whole, provides any benefits is without merit.

In its brief, the Staff makes the following statement: “If the package, as a whole, *provides benefits* to ratepayers and the public interest, it should be approved.”¹² (italics in original). Staff’s position appears to be that if the Stipulation provides **any** benefit to ratepayers and the public interest, the Commission should approve it. Applying that interpretation to the used car example above, the Staff’s position would be that because the buyer bought a car (which is a benefit), such purchase was reasonable. A used car purchased for \$17,000 that is worth \$10,000 (and that can readily be purchased for \$10,000) is still a benefit as it provides transportation; however, that does not mean such transaction was reasonable. Staff’s position is not logical.

In order to determine the benefit to ratepayers and the public interest, it is necessary to review the Stipulation in detail and the alternatives. It is such alternatives that NEP is proposing – an alternative rate structure (or pilot program) and improved processes regarding equipment purchase and construction requests. The Commission can only analyze whether the Stipulation provides benefits to the ratepayers and the public interest, and consider the reasonableness of the Stipulation, through an in-depth analysis of the issues and alternatives based on evidence in the record.¹³

The Staff distorts the requisite public benefit inquiry by the Commission. The Commission must make the determination **whether the Stipulation as a whole is beneficial to ratepayers and the public.**¹⁴ **The inquiry is not:** Does the settlement, as a package, provide any benefit to ratepayers and the public interest? Further, the Ohio Supreme Court has made clear that the

¹² Staff brief at 8.

¹³ *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 19.

¹⁴ *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, *et al.*, Opinion and Order ¶50 (June 16, 2021).

Commission must determine **from the evidence** presented what is just and reasonable.¹⁵ NEP has presented evidence of deficiencies in the Stipulation, and NEP has also proposed solutions to such deficiencies. Such evidence must be reviewed by the Commission in determining whether the Stipulation satisfies the public interest burden. The Commission should disregard Staff's erroneous position that a stipulation should be approved if it provides any benefits.

B. AEP Ohio's objections to NEP's equipment purchase language bolsters NEP's position that the language in the Stipulation with respect to customers purchasing AEP Ohio equipment is deficient and not in the public interest.

1. NEP has conclusively shown the deficient nature of the Stipulation language with respect to equipment purchases.

The language in the Stipulation does not advance the public interest with respect to the existing "black hole" system AEP Ohio has for customers seeking to purchase AEP Ohio's facilities. NEP witness Ringenbach explained the problems encountered in the past and identified the three items – or deficiencies with respect to AEP Ohio's handling of equipment purchase requests – that are missing from the Stipulation are as follows:

- **a process** that includes a standard submittal process and form;
- **a good faith negotiation standard** along with a deadline for commencing such negotiations; and
- a requirement that AEP Ohio provide **a meaningful response as part of the negotiation** (i.e., response to the submitted form including pricing for equipment that the utility can sell and list of equipment that AEP Ohio cannot sell).

All three of the foregoing items are critical, and all three items are not included in the Stipulation. Part III, Section E, paragraph 12 of the Stipulation only states as follows: "The Company agrees to make best efforts to respond within 21 days to customer requests to purchase AEP Ohio facilities on customer premises." **Such language included in the Stipulation is**

¹⁵ *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 19.

ineffective because it will have no meaningful impact. As Ms. Ringenbach pointed out, AEP Ohio may satisfy its requirements under the Stipulation, in its current form, by “responding” on the twentieth (20th) day after a purchase request that such request has been forwarded to an individual within AEP Ohio.¹⁶ The language does absolutely nothing to cause any meaningful change to AEP Ohio’s handling of equipment purchase requests for the benefit of the public.

As NEP predicted in its initial brief, AEP Ohio places reliance on AEP Ohio witness Moore’s testimony that there were eight (8) master meter requests for the purchase of equipment in 2020, and then wrongly jumps to the conclusion that NEP’s proposal with respect to equipment purchases is intended to solely satisfy NEP’s interests.¹⁷ First, master meter service reconfigurations do not necessarily include the universe of requests AEP Ohio received in the past or will receive in the future to purchase its facilities. Second, eight (8) requests to reconfigure service to master meter service are significant customer requests in that these reconfigurations are significant undertakings. Most importantly, all customer requests should be treated with importance by AEP Ohio and without a dismissive attitude or ineffective language. Ms. Moore’s testimony supports NEP’s position as Ms. Moore too expects each customer request to be treated with as much importance regardless of the number of requests.¹⁸ NEP’s proposal will better ensure AEP Ohio lives up to that expectation, which AEP Ohio has not been doing.¹⁹ Having a process for equipment purchases is important to the customers who make such requests and advances the public interest. The number of prior requests from one customer subset (master metered customers) does not reflect that such customers are not deserving of a reasonable and needed

¹⁶ NEP Ex. 33, (Ringenbach Direct Testimony) at 4.

¹⁷ AEP Ohio at 50.

¹⁸ Tr. II at 282:7-17.

¹⁹ Tr. II at 282:7-17.

framework for purchasing equipment from AEP Ohio. AEP Ohio's reliance on the fact that there were eight (8) requests to reconfigure service to master meter service in 2020 is a red herring.

2. The number of words in the Stipulation with respect to equipment purchases is entirely irrelevant to the Commission's review of the public benefit.

AEP Ohio argues that NEP's proposed expansion of Part III, Section E, paragraph 12 of the Stipulation from a **twenty-three (23) word** sentence, which, as set forth above, had no substance, to a **one hundred sixty-six (166) word**, four (4) sentence paragraph in the context of a 323 page Stipulation is unreasonable.²⁰ AEP Ohio is clearly grasping for an argument to present to the Commission. The fact is that NEP demonstrated how to implement a meaningful process for equipment purchases in four succinct sentences – a process that is needed and in the public interest. AEP Ohio is making a specious argument about the number of words proposed by NEP and it should be disregarded by the Commission.

3. Words without substance violate an important regulatory principle – regulations and orders should effectuate a purpose or desired outcome, and not be used to create a façade of customer service.

AEP Ohio argues in its initial brief that NEP has failed to show how the existing Stipulation language concerning customer requests to purchase facilities without the NEP suggested additions would contravene any accepted regulatory principle or practice.²¹ AEP Ohio disregards that words without substance violate an important regulatory principle – **regulations and orders should effectuate a purpose or desired outcome.**²² There can be no doubt that Part III, Section E,

²⁰ AEP Ohio brief at. 49.

²¹ AEP Ohio brief at 47-48, 51.

²² See, e.g., *Finley v. United States*, 490 U.S. 545, 556 (1989) (“What is of paramount importance is that Congress be able to legislate against a background of clear interpretive rules, so that it may know **the effect** of the language it adopts.”) (emphasis added); and *Simmons v. Himmelreich*, 136 S. Ct. 1843, 1848 (2016) (“Absent persuasive indications to the contrary, we presume Congress says what it means and means what it says.”)

paragraph 12 of the Stipulation is without substance – AEP Ohio can dictate what kind of response it gives under the language and the language does not provide a process that benefits customers. Regulations and orders must have substance; otherwise, they are instruments of futility. Moreover, if the Commission adopts the language proposed by AEP Ohio in the Stipulation with respect to equipment purchases, then the Commission will have no idea of the effect of such language. The Commission’s rulings should not be a guessing game.

A clear example of why regulations and orders must have substance exists in this case record. AEP Ohio was directed to perform a cost study related to standard service offer (“SSO”) costs and did not live up to that commitment.²³ The Commission should have no reason to trust that AEP Ohio will be truly responsive to equipment purchase requests given (i) Ms. Ringenbach’s testimony regarding AEP Ohio’s past conduct and (ii) the minimal, non-substantive commitment AEP Ohio agreed to in the Stipulation with respect to equipment purchase requests. By advocating for language without substance, AEP Ohio is seeking to put up a façade of customer service; NEP’s equipment purchase proposal contemplates actual customer service by AEP Ohio through the implementation of a process. Regulations and orders need to have meaning and substance and a Commission order on the Stipulation is no different. NEP’s proposed revisions to Part III, Section E, paragraph 12 of the Stipulation impart such meaning and substance to the language regarding equipment purchase requests by customers and, thus, advance an important regulatory principle.

²³ See Staff Ex. 1 (Staff Report) at 31. See, generally, IGS Energy initial brief at 10-11 for a more detailed discussion regarding the background and Staff’s response with respect to same.

C. NEP's proposed rate schedule or, in the alternative pilot program, addresses the unique needs and circumstances of low-load factor commercial customers and the adverse impact to same by the Stipulation, and the objections by the Signatory Parties with respect to NEP's proposals are not compelling.

1. NEP's pilot program is designed to be revenue neutral and is based on math.

Mr. Rehberg's proposed rate schedule for low-load factor customers is based on the stipulated revenue requirement and is designed to be revenue neutral and, thus, avoids shifting costs to other customers.²⁴ Despite OMAEG's attempts to imply a cost shifting,²⁵ Mr. Rehberg – in both his testimony and math – is clear that his proposals are designed to avoid any such cost shifting. Any attempt by OMAEG to perpetuate an illusion otherwise should be rejected. Bill impacts are mathematical calculations – and Mr. Rehberg's unrefuted calculations show that the general service (“GS”) rate schedule proposed by the Stipulation will have a particularly significant and long-term rate impact on low-load factor customers by locking in cost increases to demand charges.²⁶ Thus, if low-load factor customers are subject to the Stipulation's GS rate proposal, they will not have the ability to effectively manage costs as their monthly peak demand will be the primary factor in determining their GS distribution rate schedule charges.²⁷ While other commercial customers will have the ability to lower costs under the Stipulation, low-load factor commercial customers will not, and that is not in the public interest. Such problem can be easily fixed with Mr. Rehberg's proposed revenue neutral rate schedule designed for low-load factor GS customers.

²⁴ Tr. IV at 727:12-729:2.

²⁵ OMAEG brief at 22-23.

²⁶ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

²⁷ NEP Ex. 34 (Rehberg Direct Testimony) at 9.

In their initial briefs, The Kroger Co. (“Kroger”) and OMAEG describe NEP’s proposed pilot as a \$3 million pilot program for low-load factor customers.²⁸ Mr. Rehberg offered a pilot option to test the rate impacts.²⁹ His testimony very clearly states that AEP Ohio would not seek to recover any lost revenue as a condition of the pilot.³⁰ His testimony also points out that AEP Ohio could in fact restrict participation in the pilot to ensure a maximum of \$1.2 million per calendar year impact should the pilot participants achieve a high level of 15% energy efficiency.³¹ Nowhere in the record has a cost of \$3 million been ascribed to the pilot program. Both Kroger and OMAEG curiously reference page 2 of NEP Exhibit 35. Nowhere in Exhibit 35 is \$3 million used. Such \$3 million figure is obviously wrong, and must be ignored by the Commission.

2. Eric Rehberg’s rate impact analysis is sound, and none of the Signatory Parties has attacked the actual analysis.

Rather than the current tariff’s separate rate schedules for GS-2, GS-3 and GS-4, the Stipulation proposes a single GS rate schedule for all demand-metered commercial customers.³² The monthly bill for customers under the new GS schedule includes a demand charge (\$/kW), an excess reactive demand charge (\$/kVA) and a flat, non-volumetric monthly customer charge (\$).³³ Mr. Rehberg’s analysis of four representative sets of billing inputs (two representing low-load factor and two representing high-load factor customers) shows the impact of the new GS schedule.³⁴ Specifically excluding generation, transmission and any usage-based non-distribution riders, commercial customers under the Stipulation’s rate schedule compared to December 2019

²⁸ Kroger brief at 6 and OMAEG brief at 22-23.

²⁹ NEP Ex. 34 (Rehberg Direct Testimony) at 11-12.

³⁰ NEP Ex. 34 (Rehberg Direct Testimony) at 12

³¹ NEP Ex. 34 (Rehberg Direct Testimony) at 11-12.

³² Joint Ex. 1 at Attachment C, Sheets 220-1 thru 220-11, 223-1 thru 224-1.

³³ Joint Ex 1 at Attachment C, Sheets 220-1 thru 220-3.

³⁴ NEP Ex. 34 (Rehberg Direct Testimony) at Exhibit A.

rates will see an approximately 33% to 40% increase in distribution costs with medium-consuming customers seeing a cost increase on average of \$1,652 per year and larger consuming customers seeing an annual cost increase on average of \$11,348 (based on a DIR of 5%).³⁵

When comparing the Stipulation rates to those in effect only a few months ago in March 2021, Mr. Rehberg found that the increase in distribution rates (using a 5% DIR charge) as a result of the Stipulation is approximately 26% to 32% of what GS 2 Secondary and GS 3 Primary customers are paying now for the same electric distribution service.³⁶ Medium-consuming GS 2 Secondary customers would see on average an increase of \$1,363 per year while larger-consuming GS 3 Primary customers are expected to average \$9,670 per year.³⁷ These increases will jump even higher to \$1,718 and \$11,828, respectively, as the DIR percentage increases to meet the proposed caps in 2023. And, the increases will continue to magnify year to year.³⁸

The below table summarizes the impacts that GS 2 Secondary and GS 3 Primary customers will immediately see if the proposed Stipulation goes into effect. In order to show the disparity, Mr. Rehberg analyzed the costs on an apples-to-apples customer comparison by turning the monthly distribution increase into a per kWh rate. This highlights the discriminatory impact of the new all single group of GS customers with different load factors. **The below chart shows how low-load factor GS customers will pay over twice as much for each kWh of electricity used as compared to high-load factor GS customers.**

³⁵ Tr. IV at 748: 1-10. *See also* NEP Ex. 34 (Rehberg Direct Testimony) at 6.

³⁶ NEP Ex. 34 (Rehberg Direct Testimony) at 6.

³⁷ NEP Ex. 34 (Rehberg Direct Testimony) at 6.

³⁸ NEP Ex. 34 (Rehberg Direct Testimony) at 6.

TABLE A

Distribution Charge Increase as Result of Stipulation – March 2021 Rates to Stipulation³⁹

Example Customer	Load Factor	March 2021 Monthly Distribution Charge	Stipulation Monthly Distribution Charge	Annual Distribution Charge Increase	% Distribution Charge Increase	Monthly Distribution Increase per kWh
GS 2 Secondary	37%	\$425.35	\$535.62	\$1,323.24	26%	<u>\$0.0060</u>
GS 2 Secondary	79%	\$449.92	\$566.97	\$1,404.58	26%	<u>\$0.0028</u>
GS 3 Primary	30%	\$3,283.37	\$4,347.34	\$12,767.72	32%	<u>\$0.0075</u>
GS 3 Primary	67%	\$1,804.64	\$2,352.47	\$6,574.07	30%	<u>\$0.0033</u>

Such impacts will continue to increase as the rates in the Stipulation increase. For example, the Stipulation’s impact to GS customers will increase year-to-year as costs increase and are collected through the DIR. Further, it does not matter what accounts or how many accounts were analyzed as the analysis consists of the mathematic calculations dependent on load factor, not the specific customer. Thus, any arguments by the Signatory Parties that Mr. Rehberg’s analysis cannot be relied upon given that he only analyzed four accounts should be disregarded because repeating the mathematical equation does not change the bottom line of the analysis.

The reason Mr. Rehberg’s testimony is so important is because he is the only witness in this proceeding to analyze the actual rate impact of the Stipulation on GS-2 and GS-3 low-load factor customers. His impact calculations shows that GS 2 Secondary and GS 3 Primary customers will see a sizable increase in distribution rates with no additional benefits or services from what they receive today.⁴⁰ Bill impacts are mathematical calculations – and Mr. Rehberg’s

³⁹ NEP Ex. 34 (Rehberg Direct Testimony) at 6 and Attachment A.

⁴⁰ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

unrefuted calculations show that the GS rate schedule proposed by the Stipulation will have a particularly significant and long-term rate impact on low-load factor customers by locking in cost increases to demand charges.⁴¹

Importantly, none of the Signatory Parties has challenged the actual mathematical analysis performed by Mr. Rehberg, and bill impacts are mathematical calculations. AEP Ohio challenged Mr. Rehberg's qualifications to give his opinion and then questioned the factors that Mr. Rehberg relied on in his opinion such as four master-metered NEP accounts and no analysis of the sub-metered accounts behind the four master-metered accounts, but none of such challenges is to the actual mathematical analysis.⁴² Only two of the four accounts Mr. Rehberg analyzed were low-load. Mr. Rehberg used actual accounts, but he did not need to do so. And significantly, in prior rulings, the Commission has identified the unique position of low-load factor customers. For example, *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, *et al.*, Entry on Rehearing ¶19 (February 23, 2012), the Commission stated as follows (emphasis added):

We further find that the Signatory Parties have not demonstrated these provisions benefit ratepayers and the public interest as required by the second prong of our three part test for the consideration of stipulations.

At the hearing, AEP-Ohio presented testimony regarding the rate impacts of the Stipulation upon customers, including small commercial customers in the GS-2 class (AEP-Ohio Ex. 2, Exhibit DMR-5). In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be

⁴¹ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

⁴² AEP Ohio brief at 14-16.

felt by customers, **particularly with respect to low load factor customers who have low usage but high demand.**

Due to the evidence that some commercial customers were going to receive significant total bill increases in approaching 30 percent, we modified the shopping credits provision to provide additional relief to GS-2 customers in the form of an additional allocation of shopping credits to new shopping customers. However, the actual impacts *suffered* by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at hearing.

The billing impacts would have been similar on low-load factor customers had Mr. Rehberg used 1,000 different commercial customers **because, as the Commission has already noted, low-load factor customers have low usage but high demand. The Stipulation's shift toward heavier reliance on demand charges for calculation of distribution costs will have a greater impact on low-load factor customers than high-load factor customers – and such impact is not determined by the sample size but, rather, by the unique characteristics of low-load factor customers (low consumption/high demand).**

Mr. Rehberg's testimony was allowed at the hearing, and the Commission should prescribe significant weight to his testimony, despite arguments from the Signatory Parties to the contrary.⁴³ Mr. Rehberg's background, knowledge, and experience establish that he was properly permitted to testify as an expert in these proceedings and his analysis was properly admitted into the record.⁴⁴ Mr. Rehberg's testimony is entitled to substantial weight given his expertise in conducting bill impact analyses. First, relevant to his testimony on behalf of NEP, Mr. Rehberg explained that his years of experience, extensive knowledge, and work activities involved conducting energy analyses (including bill impacts) for a variety of utility customers – from NEP to national and

⁴³ AEP Ohio brief at 51; Kroger brief at 7; and OMAEG brief at 22.

⁴⁴ Importantly, no party challenged that procedural ruling in their initial briefs.

global customers.⁴⁵ Mr. Rehberg also testified that for more than 10 years, his work has included energy consulting, business case analyses, and rate impact analyses.⁴⁶ He conducted analyses of electric rates, energy management, efficiency, and load management for various customer classes, such as single-family residential customers, multi-family commercial customers, office building commercial customers, and industrial facilities including large-scale refrigeration and wastewater treatment facilities.⁴⁷

Mr. Rehberg has expertise with the concept of low-load factor customers as well.⁴⁸ He analyzed energy usage:⁴⁹

So you can see the difference in customer class for commercial and industrial energy use where you basically have two different components where you've got one that's sort of behavioral driven which is what we saw in the load factors and power-consumption characteristics of things like restaurants, Nationwide Energy Partners, ones that we classify as low-load factor. And then on the industrial side by, you know, going to wastewater treatment plants and industrial refrigeration, we could see a higher load factor where -- or manufacturing for that example, where they are able to control their usage on a much more granular scale.

Mr. Rehberg further explained on cross-examination that certain details (i.e., this appliance or that property feature) are not needed in order to evaluate whether a customer is a low-load factor customer or to consider the impact of the Stipulation on the customer because "load factor is driven by the physics of the service or business they are providing and the considerable loads on their facilities."⁵⁰

⁴⁵ NEP Ex. 34 (Rehberg Direct Testimony) at 1;

⁴⁶ Tr. IV at 724:20-23, 727:1-2.

⁴⁷ NEP Ex. 34 (Rehberg Direct Testimony) at 2; Tr. IV at 766:5-8.

⁴⁸ Tr. IV at 761:24-25 – 762:1-12.

⁴⁹ Tr. IV at 726:2-14.

⁵⁰ Tr. IV at 766:8-10.

Additionally, statements like the following by OMAEG entirely miss the mark: “Critically, the study [referring to Mr. Rehberg’s analysis] did not examine whether any behaviors or independent factors may have influenced the four accounts to experience low-load factors.”⁵¹ The fact is that there are low-load commercial customers in AEP Ohio’s service territory, and the Commission and AEP Ohio know that. **The facts surrounding why they are low-load are completely irrelevant for purposes of analyzing billing impacts under the Stipulation.**

NEP was the only party in this proceeding to present an actual rate impact analysis with respect to low-load factor customers. Such rate impact analysis is math – and the mathematical calculations performed by NEP witness Rehberg have not been challenged. The math very clearly demonstrates that low-load factor customers will experience a disparate impact with respect to the distribution costs under the Stipulation. AEP Ohio did not present any contrary evidence. The testimony of Mr. Rehberg should be given substantial weight by the Commission, as Mr. Rehberg was very qualified to present such expert testimony and Mr. Rehberg’s rate impact analysis relates to an important group of commercial customers who were overlooked or lost in the Signatory Parties’ arguments in support of the Stipulation.

3. Any pilot program with an alternative rate schedule poses revenue shortfall risk, but such risk by itself is not sufficient reason to find the pilot program unreasonable.

Several of the Signatory Parties cite to a revenue shortfall risk as a reason not to approve NEP’s proposed pilot program.⁵² It should be noted that under the Stipulation, residential and non-demand metered commercial customers who take actions to reduce their kWh consumption will create a reduction in revenue. At no point has any Signatory Party raised a revenue concern or

⁵¹ OMAEG brief at 8.

⁵² AEP Ohio brief at 52; OMAEG brief at 23; and Walmart brief at 6-7.

even a calculation of the potential impacts of those efforts by customers in the residential or GS-1 classes. The NEP proposed pilot presented by Mr. Rehberg specifically lays out the maximum cost impact to AEP Ohio, which would only occur if a GS customer took actions to reduce consumption similar to the rights afforded residential and GS-1 customers in the Stipulation. The NEP pilot then provides a requirement that AEP Ohio not seek recovery of lost revenue and adds an additional control to AEP Ohio not available to AEP Ohio for residential or GS-1 actions to limit participation should the pilot be successful and customers achieve maximum savings. Any pilot program that changes a rate design versus the “control” design (in this case the rates in the Stipulation) has the potential to pose some revenue collection risk. Tellingly, the Stipulation does not contemplate the potential for revenue collection risk because certain customers may be able to control the timing of their energy usage to lower their demand costs.

As explained above, NEP’s proposed rates in both the rate structure or pilot program were built on the stipulated revenue requirement and a revenue neutral foundation that includes both energy charges and demand charges. Mr. Rehberg’s proposed rate structure will maintain the revenue requirement but splits the stipulated cost increase between demand and energy for low-load factor customers, providing a balance between a cost increase guarantee for AEP Ohio and some amount of cost control for low-load factor customers.⁵³ The pilot program would allow participating low-load factor GS demand-metered customers to manage their energy usage to lower distribution costs. The rate schedule design would have a demand component *and an energy component* to recover the same revenue requirement reflected in the Stipulation.⁵⁴ If the pilot

⁵³ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

⁵⁴ Tr. IV at 726:18-727:11, 728:19-21.

participants took no usage reduction actions, the low-load factor rate would result in AEP Ohio collecting the same amount of revenue as proposed in the Stipulation.

Importantly, **the Commission should take note that AEP Ohio used the exact same revenue neutral approach when setting rates for the proposed Schedule PEV (Pilot Plug-In Electric Vehicle Schedule).**⁵⁵ Under that schedule (see Joint Exhibit 1, pdf page 276 of 323, Original Sheet No. 270-1), the monthly charges for residential customers taking service include both a demand and energy charge. Mr. Roush testified that to establish that rate schedule, "... the demand charge was one-half of the demand charge established for Schedule RSD, the demand metered residential tariff, and then the energy charge was designed to be revenue neutral in the aggregate."⁵⁶ Mr. Roush also testified that the rate structure (revenue neutral) would not result in customers on other schedules paying more as a result of Schedule PEV.⁵⁷ That is exactly what Mr. Rehberg is proposing for low-load factor customers – a rate schedule that is designed to be revenue neutral as to the allocated cost requirement.

Mr. Rehberg acknowledged that, hypothetically, if the pilot participants engage in a high level of energy efficiency, a scenario could emerge of an under-collection of the revenue requirement and AEP Ohio would not seek to recover that reduction in revenue due to energy efficiency achieved in the program.⁵⁸ Mr. Rehberg explained that a worst-case under-collection in the pilot might be \$1.2 million per year (assuming the pilot participants' average consumption is 100,000 kWh per month and assuming the high level of energy efficiency of 15 percent).⁵⁹ NEP

⁵⁵ Tr. I at 93:3-10.

⁵⁶ Tr. I at 93:6-10.

⁵⁷ Tr. I at 93:13-94:6.

⁵⁸ Tr. IV at 740:3-6.

⁵⁹ NEP Ex. 34 at 11-12; Tr. IV at 740:7-19, 741:13-25.

was forthcoming and prudent in laying out the potential revenue shortfall risk under its proposed pilot program, including no recovery by AEP Ohio if there was a reduction in revenue as a result of the pilot. Importantly, **revenue shortfall risks are just that – risks and not certainties – and such risks are present in any pilot program with an alternative rate scheme, including the pilot program set forth in Schedule PEV of the Stipulation.**

The collection risk for AEP Ohio is not a basis to reject NEP’s pilot. First, this collection risk is nothing new for AEP Ohio. AEP Ohio already faces the same kind of risk with its residential and GS-1 customers because they are charged at only volumetric-based rates.⁶⁰ Second, AEP Ohio and others have agreed in the Stipulation to allow that existing risk to continue – the residential and GS-1 customer rates will continue to be volumetric, kWh-based rates and the Stipulation contains no terms to otherwise mitigate that risk for AEP Ohio. Third, any under-collection (as compared to the revenue requirements) is hypothetical because it assumes that all pilot participants maximize their energy efficiency, which may not happen.⁶¹ Fourth, Mr. Rehberg also testified that there is a risk of over-recoveries under the pilot because of factors like weather and economic behavior.⁶² Fifth, NEP’s pilot allows AEP Ohio to lower the number of participants below the 1,000-customer cap if any under-collection amount reaches \$1.2 million in any given year.⁶³ This balances AEP Ohio’s interest in cost recovery.

⁶⁰ Tr. IV at 731:9-14.

⁶¹ Tr. IV at 740:10-12.

⁶² Tr. IV 852:20-853:4.

⁶³ NEP Ex. 34 (Rehberg Direct Testimony) at 12.

4. In the case of under- or over- collection of revenue under NEP's pilot program, NEP has not proposed that other customers of AEP Ohio be required to pay more or less.

Several of the Signatory Parties objected to NEP's proposed pilot program because they claim it would shift costs to other customers.⁶⁴ This claim is wrong. Mr. Rehberg repeatedly explained during his cross-examination that the proposal does not shift costs to other customers:⁶⁵

Q. Okay. So agree -- then what I would like for you to do is agree with me that the distribution system is fixed costs, okay? Under your scenario, if you are proposing to recover fixed costs through a volumetric energy charge, aren't other customers of the utility going to have to make up for those costs that your proposed pilot program customers will be able to avoid by changing their behavior?

A. Well, I am not eliminating the demand charge in my -- in my proposed rate. I mean, we are still accounting for that fixed cost or, you know, essentially the capacity component of distribution. I'm essentially proposing reducing it -- I'm sorry, increasing it at a -- at a smaller rate.

So instead of just doubling the demand charge, nearly doubling the demand charge as the Stipulation proposes, I am proposing to only increase it by a smaller, more gradual amount, but then, in order to make the calculated revenue come out roughly the same, to account for that through the kilowatt-hour component of the bill. So I am not ignoring that there is a fixed capacity component to it; I am just saying it shouldn't be increased quite so fast.

* * *

Q. Well, if there is under -- if NEP's proposal for a new rate schedule for low-load factor customers is adopted by this Commission or a pilot is implemented by this Commission, and there is a revenue shortfall for AEP [Ohio], NEP is not proposing here that that revenue shortfall be made up by other customers or customer classes, are you?

A. I -- no, I have not made a proposal like that in my testimony.

⁶⁴ AEP Ohio brief at 52; Kroger brief at 6; and Walmart brief at 7.

⁶⁵ Tr. IV at 730:10-731:8 and 742:5-20. *See also* Tr. IV. at 733:13-23.

To be clear, NEP's combined demand charge/energy charge rate design is reasonable for the alternative proposal of a pilot because the combined rate design will not shift any costs to other customers. The arguments to the contrary should be rejected.

5. Walmart's arguments with respect to NEP's proposed pilot program are wrong as they (a) fail to recognize that demand is variable and (b) fail to recognize that the NEP pilot program was designed to be revenue neutral.

Walmart Inc. ("Walmart") makes incorrect and misleading arguments contra NEP's proposed pilot that NEP is compelled to address separately. Walmart makes the assertion that distribution costs are fixed and that "fixed costs should be recovered through fixed bill components."⁶⁶ What Walmart fails to realize is that demand charges are variable – they are variable based on demand. Mr. Rehberg attempted to educate Walmart about such during his cross-examination: "[Y]our hypothesis here is that a demand charge is a one-to-one comparison to a fixed cost, but it's not. It's variable, right? It's variable to your demand."⁶⁷

While ignoring the evidence that NEP's proposed pilot program was designed to be revenue neutral, Walmart makes the following assertion with respect to NEP's proposed pilot program: "Adopting a pilot program that either imposes costs on other customers and/or prevents the Company from recovering its prudently incurred costs should be rejected."⁶⁸ What Walmart did not mention in its brief is that the NEP pilot (and rate schedule) is proposed to be revenue neutral. AEP Ohio does have a risk of under-collection but also has the opportunity for over-collection (just like the residential schedule and the PEV pilot). The NEP pilot, however, will not

⁶⁶ Walmart brief at 6.

⁶⁷ Tr. IV at 736:11-14.

⁶⁸ Walmart brief at 7.

result in costs being shifted to other customers. Walmart's objections to NEP's proposed pilot are without merit and misleading, and should be disregarded.

6. Kroger's assertion that any proposals by non-Signatory Parties "are irrelevant" violates the requisite public interest inquiry and is inconsistent with the Commission's precedent to analyze all evidence in the record of a contested stipulation.

Kroger takes the position that "[t]he Commission should not consider ... proposals [from non-Signatory Parties] as they are irrelevant to the three-part test and/or are based on unsound methodologies."⁶⁹ In order to properly consider the Stipulation, advance the public interest and comport with Commission precedent, the Commission must consider NEP's proposals, and then, and only then, decide whether the Stipulation must contain such proposals in order to, as a package, benefit ratepayers and the public interest. NEP has advanced issues that were not advanced by any of the Signatory Parties, and NEP represents interests and positions that are not adequately represented by the Signatory Parties. NEP has also clearly laid out in its initial brief why the Stipulation, without adoption of NEP's proposals, is unreasonable. The Commission must do its own analysis. Under Kroger's tenuous position, any settlement or stipulation must necessarily be approved by the Commission, as any proposals or alternatives to the contrary are "irrelevant". As set forth above, the Commission has the authority to modify the Stipulation, and it must exercise such power in this proceeding to advance the interests of ratepayers and the public.

The evidence establishes the disparate impacts of the Stipulation with respect to such low-load factor commercial customers and NEP's proposed solution is reasonable. Furthermore, Staff witness Craig Smith testified that Staff did not perform an operations and process review regarding AEP Ohio's system for customers purchasing AEP Ohio's facilities; instead, the Staff focused on

⁶⁹ Kroger brief at 6.

the vegetation management program and capital spares program.⁷⁰ Staff witness Craig Smith also testified, Staff did not perform an operations and process review regarding AEP Ohio's process for construction service requests.⁷¹ Thus, NEP's proposed solutions for those issues are reasonable.

7. The Stipulation unfairly allocates AEP Ohio's revenue requirements toward GS customers while giving residential customers too small a portion of the overall amount.

AEP Ohio's revenue requirement allocations must be reasonable and in the public interest in order for the Commission to approve the Stipulation. While AEP Ohio references the percentage impacts provided by AEP Ohio witness Roush (which are not true bill impacts),⁷² an analysis of the revenue requirement allocation using Mr. Roush's own spreadsheet shows that the revenue requirement allocation inordinately favors residential customers over other classes of customers. In other words, residential customers are not bearing their fair share of the distribution charge increase under the Stipulation's proposed revenue requirement allocation. NEP's proposed alternative rate design is therefore even more important for providing low-load factor commercial customers with at least some ability to manage their distribution costs by adopting a hybrid demand component and an energy component, which distributions costs are going to be significantly increased due to the proposed revenue requirement allocation in the Stipulation.

⁷⁰ Staff Exhibit 3 (Smith Direct Testimony) at 16; Tr. II at 384:8-25.

⁷¹ Staff Ex. 3 (Smith Direct Testimony) at 16; Tr. II at 385:7-13.

⁷² AEP Ohio brief at 17-18

a. The Stipulation reduces the allocation of the revenue requirement for residential customers and imposes that difference on commercial customers.

The Stipulation unfairly reduces the Application's 58.86% revenue requirement allocation to residential customers to 56.77%.⁷³ While one may think that a 2% reduction is not significant, the result causes significant percentage increases to certain commercial customers from what was proposed in the Application. The below table illustrates the Stipulation's proposed change in revenue allocation:

TABLE B

Customer Class	Application	Stipulation	% Change
Residential	58.86%	56.77%	-3.55%
Non-metered General Service Customers	3.14%	3.38%	7.643%
Secondary Demand-Metered General Service Customers	25.2%	26.52%	5.238%
Primary General Service Customers	9.57%	9.73%	1.672%
Sub/Transmission Voltage General Service Customers	1.17%	0.75%	-35.897%
Lighting Customers	1.36%	2.85%	109.559%
Street Lighting	0.71%		-100%

What is troubling about the stipulated allocations is the increase in allocation to GS customers. As Table B above indicates, secondary GS customers saw an increase of allocation of 5.238 percent. GS primary customers were allocated an additional 1.672%. And, remember, GS customers under the Stipulation would be on all demand schedules, which means the increase in allocated costs would greatly affect low-load factor customers (schools, restaurants, multi-family

⁷³ Jt. Ex. 1 at 16; Staff brief at 10.

complexes and small commercial offices). The record is clear that the Stipulation makes a significant shift in the revenue requirement allocation to GS customers.

b. The Stipulation is not in the public interest because the record shows that commercial customers are bearing the brunt of the distribution rate increase.

A Stipulation must be in the public interest and when it is not, it must be modified or rejected. For example, in 2012, the Commission approved an ESP stipulation in Case Nos. 10-2376-EL-UNC, et al., finding it in the public interest.⁷⁴ However, after outcry from commercial customers, the Commission reversed course and rejected the stipulation finding it not to be in the public interest.⁷⁵ The same kinds of concerns that affected the Commission's decision in 2012 arise in this proceeding. Both the lack of an energy/demand schedule for low-load factor customers and the inordinate allocation of the revenue requirement to commercial customers are not in the public interest.

As Table B above shows, the Stipulation's revenue allocation shifted recovery of distribution costs to commercial customers. The impact of that shift is reflected in the percentage that AEP Ohio's bill impact increases affect residential customers versus GS customers. Fortunately, Mr. Roush's spreadsheet that was the basis for his Revised Exhibit DMR-S2 where he showed "current bill" versus "proposed bill" impacts can be used to do that analysis.⁷⁶

Prior to doing that analysis, though, certain corrections must be made to Mr. Roush's approach. Specifically:

- The PTBAR charge must be removed from the calculation from the "proposed bill" column calculation because as Mr. Roush admitted, he

⁷⁴ *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (December 14, 2011).

⁷⁵ *Id.*, Entry on Rehearing ¶19 (February 23, 2012).

⁷⁶ NEP Ex. 8 (native Microsoft Excel spreadsheet file used by Mr. Roush to create AEP Ohio Ex. 4A (Revised Exhibit DMR-S1 and Revised Exhibit DMR-S2)).

made a mistake by including that in that part of his analysis.⁷⁷ Removal of that charge will result in an even larger decrease for residential customers (but not for GS customers who do not pay the PTBAR charge).

- Generation charges must be removed from the analysis because they are not distribution charges and have the effect of minimizing (i.e., diluting) the distribution charge percent increase. The charges removed were the Alternative Energy Rider, Generation Capacity Rider, and the Auction Cost Reconciliation Rider.
- The EEPDR rider should be included in the “proposed bill” column because that is not being removed as a result of the Stipulation. By not including the same EEPDR rider charge in that calculation, Mr. Roush’s analysis artificially reduces the distribution charge increase.

With the above corrections and using Mr. Roush’s own spreadsheet (NEP Ex. 8), Mr. Roush’s bill impacts can be re-calculated for a 1,000 kilowatt-hour customer and two example GS customers for the Columbus Southern rate zone. Table C below summarizes the data from NEP Ex. 8 with such modifications – and clearly shows that GS-2 and GS-3 customers will both see a large percentage increase versus a slight rate decrease that a 1,000 kilowatt-hour residential customer will receive:

TABLE C

Customer	Demand	Usage kWh	Current Bill	Proposed Bill	\$ increase	% increase
Residential	N/A	1,000	\$66.24	\$65.68	\$(0.56)	(0.85%)
GS-2 Secondary (34.7% load factor)	500 kW	125,000 kWh	\$6,186.06	\$6,814.44	\$628.38	10.16%
GS-3 Primary (48.6% load factor)	1,000 kW	350,000 kWh	\$12,572.38	\$13,930.82	\$1,358.44	10.8%

⁷⁷ Tr. I at 85:21-86:6.

The percentage increase worsens for the GS customers when the DIR is adjusted in Mr. Roush's analysis to reflect AEP Ohio witness Moore's 2021 projection of 4.12127% for the DIR rate versus Mr. Roush's rate of **negative** 3.27995%, as shown in Table D below.

TABLE D

Customer	Demand	Usage kWh	Current Bill	Proposed Bill	\$ increase	% increase
Residential	N/A	1,000	\$66.24	\$68.37	\$2.13	3.21%
GS-2 Secondary (34.7% load factor)	500 kW	125,000 kWh	\$6,186.06	\$7,074.55	\$888.49	14.36%
GS-3 Primary (48.6% load factor)	1,000 kW	350,000k Wh	\$12,572.38	\$14,374.05	\$1,801.67	14.33%

Note, that Mr. Roush's spreadsheet included charges not included in Mr. Rehberg's analysis (transmission charges and non-distribution related riders). The above tables are intended to show the disparity between the percent increases for residential and existing GS-2 and GS-3 commercial customers – while Mr. Rehberg's analysis shows the actual distribution charge increases (which Mr. Roush's spreadsheet does not).

There must be a fair and reasonable allocation of the revenue requirement for the Stipulation to be in the public interest. It is not in the public interest for a public utility through settlement to shift cost recovery to commercial customers in a way that creates a great disparity in distribution cost increases – solely to benefit one class of customers and induce a settlement by some parties. For that reason, if the Commission accepts the revenue allocation in the Stipulation despite the significant shifting of the revenue increase onto commercial customers, then the Commission should adopt NEP's proposed rate structure to mitigate the disparate impacts of the

Stipulation on **low-load factor commercial customers, who would be hit with a double whammy** – (1) increased distributions costs because of the unfair shifting of the distribution increase onto commercial customers and (2) increased distribution costs because of the Stipulation’s reliance on demand charges to collect same, which demand cannot be controlled by low-load factor customers.

D. IGS’ arguments regarding the Retail Conciliation Rider and SSO Credit Rider are compelling.

Interstate Gas Supply, Inc. (“IGS”) argues that the Commission should reject the provision of the Stipulation that sets the Retail Reconciliation Rider and SSO Credit Rider at zero and populate the riders at rates that reflect the costs to AEP Ohio to provide the standard service offer.⁷⁸ NEP supports such position by IGS. Costs used to supply the standard service offer must be unbundled from distribution rates. Moreover, as set forth above, this is a problem of AEP Ohio’s own making. AEP Ohio was directed to perform a cost study related to SSO costs but then failed to undertake such cost study. AEP Ohio has ignored the directive and the Commission must recognize such failure by AEP Ohio in its review of the Stipulation with respect to the unbundling issue.

III. Conclusion

The Stipulation has several deficiencies the Commission must address. The Stipulation creates a tariff construct with the rate increase that has a discriminatory and hard to mitigate impact on low-load factor commercial customers, for which managing demand can be difficult and dependent on the circumstances not easily controlled.⁷⁹ This discriminatory rate construct should be rejected due to the lack of a low-load factor schedule for GS demand metered customers. Or,

⁷⁸ IGS brief at 10-12.

⁷⁹ NEP Ex. 34 (Rehberg Direct Testimony) at 4.

at a minimum, the Commission should modify the Stipulation to adopt NEP's proposed 1,000-customer pilot for low-load factor GS customers. In addition, the Stipulation does not address the lack of process and insight for customer equipment purchases and construction requests. The Commission must also modify the Stipulation paragraph on equipment purchases to require more than a "best-efforts response" from AEP Ohio and adopt the simple process proposed by NEP, and modify the proposed tariff sheet in the Stipulation regarding construction requests to adopt NEP's suggestions and require AEP Ohio to implement a website portal like the Duke Energy Ohio portal.

NEP's proposed modifications to the Stipulation in this proceeding are all in the public interest and advance important regulatory principles. The evidence supports them. **The Commission must not abdicate its responsibilities to low-load factor commercial customers.** NEP's proposals address the unique situations of low-load commercial customers, who are not able to control demand, and would benefit from a low-load factor rate schedule. Any customer considering purchasing utility infrastructure on the customer's property and any customer with a construction or line extension request will benefit from NEP's proposed edits to the Stipulation's "best effort" equipment purchase paragraph and the proposed tariff sheet for construction and line extensions.

The standard for whether or not a rate increase is reasonable is not and should not be how much less it is than what was requested. It is the need and the impact which must guide this Commission. Despite dubious math based on a reduction to what AEP requested, the Stipulation is in fact a rate increase for commercial customers. That increase is discriminatory and higher for certain commercial customers over others. Under the Stipulation, the distribution cost increases will be exacerbated for low-load factor customers because of the increase in demand rates. **The positions taken by the Signatory Parties against NEP's proposals should be disregarded. The**

Signatory Parties did not present any analysis regarding the impacts of the rates in the Stipulation on low-load factor commercial customers. Thus, the Signatory Parties are not able to challenge Mr. Rehberg's analysis with their own analysis. AEP Ohio did not do its own analysis specific to low-load factor customers despite the fact that the Commission has clearly recognized the unique situation of such customers.⁸⁰ The Stipulation discriminates (i) against commercial customers through a higher revenue increase than residential and (ii) by means of a disproportionate intra-commercial increase that causes a disparate impact on the very class of customers Mr. Rehberg points to in his analysis. The Commission must view the Stipulation as a whole (not the benefits to certain parties), and, given the fundamental deficiencies laid out by NEP through evidence in the record, the Stipulation as a whole is not beneficial to ratepayers and the public. The Commission clearly has the authority to modify the Stipulation (an authority the Commission has exercised numerous times in the past), and the Commission should exercise its authority to modify the Stipulation in order to advance the public benefit and important regulatory principles.

Respectfully Submitted,

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⁸⁰ *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, *et al.*, Entry on Rehearing ¶19 (February 23, 2012).

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Nationwide Energy Partners, LLC