

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING
OF
NATIONWIDE ENERGY PARTNERS, LLC**

Pursuant to Section 4903.10, Revised Code (“RC”), and Rule 4901-1-35, Ohio Administrative Code (“OAC”), Nationwide Energy Partners, LLC (“NEP”) hereby respectfully requests rehearing of the November 17, 2021 Opinion and Order (the “Order”) issued by the Public Utilities Commission of Ohio (the “Commission”) in the above-captioned matters approving the Stipulation filed on March 12, 2021, and updated on May 11, 2021, in such proceedings. NEP contends that the Order is unlawful and unreasonable in the following respects:

1. The Commission acted unreasonably and unlawfully by not considering low-load factor ratepayers when determining that the Stipulation as a package benefits ratepayers and the public interest (*see*, Order at ¶¶ 135-140, 229, 232).
2. The Commission acted unreasonably and unlawfully by finding that its analysis of a stipulation is limited to whether the stipulation as a package benefits ratepayers and the public interest, and not whether a proposed modification benefits ratepayers and the public interest (*see*, Order at ¶¶ 133, 134 and 140).

3. The Commission acted unreasonably and unlawfully by concluding that there was an “unknown impact” of the low-load factor tariff on customer bills (*see*, Order at ¶ 140).
4. The Commission acted unreasonably and unlawfully by finding that the analysis on the low-load factor tariff was “very limited” (*see*, Order at ¶ 140).
5. The Commission acted unreasonably and unlawfully by not requiring a low-load factor tariff (*see*, Order at ¶¶ 135-140, 229, 232).
6. The Commission acted unreasonably and unlawfully by concluding that there was an “unknown impact” of the low-load factor pilot on customer bills and that the pilot should be rejected because of that “unknown impact” (*see*, Order at ¶ 140).
7. The Commission acted unreasonably and unlawfully by finding that the analysis on the low-load factor pilot proposal was “very limited” (*see*, Order at ¶ 140).
8. The Commission acted unreasonably and unlawfully by not approving a low-load factor pilot (*see*, Order at ¶¶ 135-140, 229, 232).

For these reasons, and as further explained in the Memorandum in Support attached hereto, NEP respectfully requests that the Commission grant its Application for Rehearing.

Respectfully Submitted,

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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.)	

MEMORANDUM IN SUPPORT

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I. INTRODUCTION

NEP seeks rehearing on the Commission’s November 17, 2021 Opinion and Order to ensure the Commission considers the impact of AEP Ohio’s proposed general service rate schedule on GS-2 and GS-3 low-load factor customers. The Commission did not conduct any analysis of how the proposed demand-based rate schedule in the Joint Stipulation and Recommendation (the “Stipulation”) would impact low-load factor customers. Per the testimony of Mr. Eric Rehberg, “[l]ow-load factor customers can consist of multi-family housing, restaurants, and in some cases warehouses. Other examples can be single shift manufacturers, churches, schools, and small medical and commercial offices”¹ throughout AEP Ohio’s service territory. The Commission could have done that analysis using NEP’s undisputed testimony from Mr. Rehberg, a professional engineer experienced in rate impact analysis. His testimony established that low-load factor customers would receive a disproportionate rate increase that will increase significantly as AEP Ohio seeks to recover additional infrastructure costs through a significant increase to demand rates coupled with riders that are based on a percent of a customer’s distribution charges. Rather than heeding his testimony, the Commission discounted it, stating that the impacts of the low-load factor were “unknown” and that the analysis was “very limited” because the load and demand used for the mathematical calculations only came from multi-family accounts.² The type of customer in the analysis is irrelevant – rather, the customer’s load factor drives demand costs under the proposed tariff in the Stipulation. The record evidence shows an ever increasing cost to low-load factor customers as a result of AEP Ohio’s new higher demand-based schedule, evidence that was based on a mathematical bill impact analysis that only considers load and demand, not the type of

¹ NEP Ex. 34 (Rehberg Direct Testimony) at 3.

² Order at ¶ 140.

customer account. The Commission made the same errors when considering NEP's alternative low-load factor pilot for only 1,000 customers that would not pass on any costs to other customers. The Commission erred by viewing the evidence based on type of customer rather than in terms of load factor percentage, which is the driver of costs for an GS customer under the new AEP Ohio rates. The Commission should have modified the Stipulation to, at a minimum, provide a pilot relief option for low-load factor GS customers to ensure no single group of customers was disproportionately harmed by the increase. Instead, the Commission repeatedly erroneously claimed that the only issue is whether the Stipulation as presented benefited ratepayers; the Commission did not determine from the evidence what is just and reasonable. For all of these reasons, the Commission's decision to approve the Stipulation without modification was unlawful and unreasonable.

II. ARGUMENT

A. The Commission acted unreasonably and unlawfully by not considering low-load factor ratepayers when determining that the Stipulation as a package benefits ratepayers and the public interest.

The Commission erred by not considering the position of customers with a low-load factor in its analysis of the Stipulation, even though the Commission has previously acknowledged such unique position. The Commission's failure to account for the Stipulation's impact on low-load factor customers in its analysis of the Stipulation under the three-prong test necessitates the reversal of its ruling.

The Commission has identified the unique position of low-load factor customers in prior rulings. For example, as recently as 2012, the Commission granted rehearing when the evidence in the record failed to accurately present the actual bill impacts to be felt by customers, particularly with respect to low-load factor customers. *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 relevant section from that entry is 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 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.

Although aware that **low-load factor customers have low usage but high demand**, the Commission still approved the Stipulation without considering the analysis put forward by NEP for the Stipulation's impact on low-load factor customers. The Commission approved the Stipulation even though it had before it the testimony of Mr. Eric Rehberg, a professional engineer with rate impact analysis experience.³ Notably, Mr. Rehberg was the **only witness** in these proceedings to analyze the actual rate impact of the Stipulation on GS-2 and GS-3 low-load factor customers. The Signatory Parties did not dispute his rate impact calculations and did not put on any testimony contradicting Mr. Rehberg's analysis.

³ NEP Ex. 34 (Rehberg Direct Testimony) at 1-2.

Mr. Rehberg's testimony established that the proposed Stipulation will result in a **disproportionately greater** rate increase for low-load factor GS customers of AEP Ohio than for other customers, which will grow even larger in magnitude because of expected increases to AEP Ohio's adjustable charges, such as the Distribution Investment Rider ("DIR").⁴ 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 had received.⁵ The Commission included a summary of Mr. Rehberg's analysis in its decision, but discounted his analysis solely because he used load and demand information from four multi-family accounts. But, bill impacts are mathematical calculations based on load and demand only, not the nature of the account holder's business.

Rather than mischaracterizing NEP's analysis as "very limited,"⁶ the Commission should have considered the math itself, which shows the Stipulation's disproportionate adverse impact on low-load factor customers, when deciding whether the Stipulation as a package benefits ratepayers and the public interest.⁷ The Commission did not and that oversight was unreasonable and unlawful. The Commission should reverse its ruling on rehearing and consider low-load factor customers in its analysis of whether the Stipulation, as a package, benefits ratepayers and the public interest. In doing so, it should rely upon Mr. Rehberg's unrefuted calculations that show that the GS rate schedule proposed by the Stipulation has a particularly significant and long-term rate

⁴ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

⁵ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

⁶ Order at ¶ 140.

⁷ NEP witness Rehberg testified that he considered a customer with a load factor of 40 percent or below based on the prior year's 12-month load factor average to be a low-load factor customer. NEP Ex. 34 (Rehberg Direct Testimony) at 3, 10.

impact on low-load factor customers by locking in significant cost increases through demand charges when applied to this type of customer.⁸

The Commission should grant rehearing to ensure the Stipulation's disproportionate impact on low-load factor customers on a distribution cost basis is considered in the evaluation of the Stipulation under the Commission's three-prong test. If it does, it will very likely reach the same decision it did in Case No. 10-2376-EL-UNC, where the Commission took action to address disproportionate AEP Ohio rate increases on low-load factor customers.

B. The Commission acted unreasonably and unlawfully by finding that its analysis of a stipulation is limited to whether the stipulation as a package benefits ratepayers and the public interest, and not whether a proposed modification benefits ratepayers and the public interest.

The Commission stated in its Order at ¶¶ 134, 140, 146, 149, and 151 that the second prong of the three-part test is not whether there are different or additional provisions that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. It further stated that the Stipulation “must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulation.”⁹ The Commission's analysis of the Stipulation under the second prong was limited to the Stipulation package, rejecting outright the evidence of “different or additional provisions” because they were outside the Stipulation package.

The Commission ignored the long-standing directive from the Supreme Court of Ohio that “[w]hile the commission ‘may place substantial weight on the terms of a stipulation,’ it ‘must determine, *from the evidence*, what is just and reasonable.’” *In re Columbus S. Power Co.*, 129

⁸ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

⁹ Order at ¶ 151.

Ohio St. 3d 46, 2011-Ohio-2383, 950 N.E.2d 164 ¶ 19 (emphasis in original), quoting *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 126, 592 N.E.2d (1992). Thus, to evaluate the second prong, the Commission was required to consider the evidence before it – which included evidence outside the Stipulation package and included alternatives and modifications. The Commission's repeated statements in the Order establish that the Commission failed to state findings and facts based on the evidence.

When evaluating a stipulation under the second prong in prior cases, the Commission has reviewed the evidence before it and not limited the review to the stipulation package. The Commission also has previously modified a stipulation to further the public interest. As NEP explained in its Reply Brief at 5-6, NEP identified the following AEP Ohio cases as examples in which that occurred, including cases in which the proposed stipulation otherwise contained benefits:

- *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.”¹⁰
- *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 increase, removing a contingency related to two AEP Ohio's initiatives, and increasing a credit for schools that shop. Note, later, the Commission rejected the stipulation entirely, after the Commission found that stipulated rider provisions for the Market Transition Rider and GS-2 load factor rate provisions did not

¹⁰ *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).

promote rate certainty and would not benefit ratepayers and the public interest.¹¹

- *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.”¹²

Here, however, the Commission repeatedly acted unreasonably and unlawfully in its Order in these proceedings by finding that its analysis of the Stipulation is limited exclusively to whether the Stipulation as a package benefits ratepayers and the public interest without any regard to evidence of significant harm to an entire group of customers and alternatives or modifications to the Stipulation. NEP’s application for rehearing should be granted and its low-load factor tariff proposal or pilot proposal, both of which it established to be beneficial to ratepayers and the public interest, should be approved.

C. The Commission erred in making its conclusions and findings regarding the proposed low-load factor tariff.

1. The Commission acted unreasonably and unlawfully by concluding that there was an “unknown impact” of the low-load factor tariff on customer bills.

In ¶ 140 of the Order, the Commission found that there was an “unknown impact” of the low-load factor tariff on customer bills, and such conclusion is unreasonable and against the

¹¹ *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).

¹² *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).

manifest weight of the evidence presented at the hearing. Such erroneous conclusion must be reversed.

Rather than the pre-decision tariff's separate rate schedules for GS-2, GS-3 and GS-4, the Stipulation proposed and the Commission approved a single GS rate schedule for all demand-metered commercial customers.¹³ 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 (\$).¹⁴ There is no dispute that demand charges are significantly increasing under the Order for commercial customers. There also is no dispute that, under a demand-only based rate schedule, low-load factor customers who cannot manage monthly peak demand effectively will not have the opportunity to lower monthly costs (unlike customers that can manage peak demand).¹⁵ In order to address this issue, NEP witness Rehberg proposed a schedule for low-load factor customers that provides for a combination of energy-based and demand-based charges. Under that schedule, low-load factor customers would have an opportunity to implement energy efficiency measures and manage their energy demand.

The low-load factor tariff proposed by NEP was constructed to benefit low-load factor customers but not have detrimental effects on others. If implemented, the low-load factor rate schedule **would not shift costs** to other classes of customers or lower revenues.¹⁶ Instead of the all-demand charge proposed by AEP Ohio under the GS rate schedule, Mr. Rehberg recommended setting the demand charge for customers with load factors equal to or less than 40% (based on prior year's 12-month load factor average) to be no more than 25% of the Stipulation's proposed

¹³ Joint Ex. 1 at Attachment C, Sheets 220-1 thru 220-11, 223-1 thru 224-1.

¹⁴ Joint Ex. 1 at Attachment C, Sheets 220-1 thru 220-3.

¹⁵ NEP Ex. 34 (Rehberg Direct Testimony) at 8.

¹⁶ Tr. IV at 730:10-731:8 and 742:5-20. *See also* Tr. IV at 733:13-23.

demand charges for GS secondary and GS primary customers.¹⁷ He then backed in an energy charge (\$/kwh) so that the amount collected in total (demand charges and energy charges) will equal the revenue from the demand-only charges expected to be collected per the Stipulation, assuming no usage reduction.¹⁸

Using that approach, Mr. Rehberg provided specific rates that the Commission can adopt in these proceedings that are designed to be revenue neutral.

- For GS secondary low-load factor customers, a demand charge of \$5.04 per kW and an energy charge of \$0.0067 per kWh.
- For GS primary low-load factor customers, a demand charge of \$3.98 per kW and an energy charge of \$0.0064 per kWh.¹⁹

The above rate structure will maintain the revenue requirement but split the stipulated cost increase between demand and energy for low-load factor customers, providing an appropriate balance of interests between a cost increase guarantee for AEP Ohio and some amount of cost control for low-load factor customers.²⁰

Importantly, the Commission overlooked the fact that **AEP Ohio used the exact same approach when setting rates for Schedule PEV** (Pilot Plug-In Electric Vehicle Schedule), which was approved in these proceedings.²¹ 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 a demand and energy charge:

¹⁷ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

¹⁸ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

¹⁹ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

²⁰ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

²¹ Tr. I at 93:3-10.

Monthly Rates

	<u>Distribution</u>
Customer Charge (\$)	10.00
On-Peak Demand Charge (\$ per KW)	2.14
Energy Charge (¢ per KWH)	1.31563

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.”²² 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.²³ 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 and that avoids shifting costs to other customers. Furthermore, the policies being advanced by Schedule PEV are similar to the policies advanced by Mr. Rehberg for an obvious reason – Schedule PEV targets a certain subset of low-load factor customers.²⁴

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.²⁵ Mr. Rehberg – in both his testimony and math – is clear that his proposals are designed to avoid any cost shifting. Bill impacts are mathematical calculations – and Mr. Rehberg’s unrefuted calculations show that the approved GS rate schedule will have a particularly significant, disproportionate and long-term rate impact on low-load factor customers

²² Tr. I at 93:6-10.

²³ Tr. I at 93:13-94:6.

²⁴ EVgo Ex. 1 (Rafalson Direct Testimony) at 4.

²⁵ Tr. IV at 727:12-729:2.

through demand-only charges.²⁶ Thus, low-load factor customers subject to the Stipulation's GS rate 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.

The Commission's conclusion that there was an "unknown impact" of the low-load factor tariff on customer bills is unreasonable. **The evidence in the record establishes the following:**

- NEP's proposed low-load factor tariff is based on the stipulated revenue requirement and **is designed to be revenue neutral** and, thus, avoids shifting costs to other customers;
- NEP's proposed low-load factor tariff is **based on the same policies AEP Ohio used to develop Schedule PEV** for an obvious reason – Schedule PEV targets a certain subset of low-load factor customers; and
- NEP's proposed low-load factor tariff provides for a combination of energy-based and demand-based charges **which allows low-load factor customers to have the opportunity** to implement energy efficiency measures and manage their demand.

All of the foregoing items are known and there is no contrary evidence in the record. The Commission erred when it found that there was an "unknown impact" of the low-load factor tariff

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

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

while completely ignoring all the known facts in the record **and without explicitly identifying the “unknown impact” that left it concerned.**²⁸ NEP is the only party in these proceedings to present the actual rate impact of the Stipulation on GS-2 and GS-3 low-load factor customers. NEP proposed a tariff for low-load factor customers to address the fact that low-load factor customers that cannot manage monthly peak demand effectively. The Commission’s finding of an “unknown impact” regarding the proposed tariff is not only not supported by the record but is also indicative of the Commission’s error in determining that Mr. Rehberg’s analysis was solely related to certain multi-family customers rather than the math applies the same based on percentage of load factor regardless of the customer’s business type. At a minimum, the Commission must provide the findings of fact and reasoning that support its determination of what “unknown impact” it is concerned about with respect to NEP’s proposed low-load factor tariff.

2. The Commission acted unreasonably and unlawfully by finding that the analysis on the low-load factor tariff was “very limited.”

When rejecting NEP’s call for a low-load factor tariff, the Commission based its decision on the erroneous factual assumption that NEP’s analysis upon which the proposed low-load factor tariff was based was “very limited.”²⁹ The Commission also mistakenly concluded that the four accounts utilized to illustrate the cost increases to low-load factor customers do not “represent a broad base of the types of low-load factor accounts[.]”³⁰ These findings by the Commission are contrary to the record and render its decision to reject the low-load factor tariff proposal unreasonable and unlawful.

²⁸ Order at ¶ 140.

²⁹ *Id.*

³⁰ *Id.*

To understand the Commission's error, it is important to understand that the calculations that showed the cost impact to low-load factor commercial customers are independent of the type of customer account. In other words, regardless of whether the account is a multi-family unit, restaurant, a school or any other type of account, the analysis only requires a load (kilowatt-hour) and a demand (watts) to run the numbers and develop costs. Specifically, load factor is a ratio of how much energy a customer used over a period of time versus how much energy that customer could have used if it constantly consumed electricity at its peak use over that same period.³¹ On a monthly bill, load factor can be calculated by taking the monthly kilowatt-hour ("kWh") divided by the product of the monthly peak demand in kilowatts ("kW") multiplied by the total clock hours in the month.³² The specific type of account does not factor into the objective mathematical analysis.

A low-load factor customer is a customer that regularly uses a significantly lower amount of electricity versus its possible consumption based on the customer's peak demand.³³ For example, a commercial customer that uses 18,400 kWhs in a month with a peak demand of 67 kW would have a 37 percent load factor. If another customer used over twice as much electricity (43,416 kWhs) in the month with the same 67 kW demand, its load factor would be 90 percent. The below table provides the formula for the calculation and shows it is purely a math exercise (and not based on the nature of the customer account).

Customer A	$18,400 \text{ kWhs} \div (67 \text{ kW} \times 30 \text{ days per month} \times 24 \text{ hours per day}) = 37\%$
Customer B	$43,416 \text{ kWhs} \div (67 \text{ kW} \times 30 \text{ days per month} \times 24 \text{ hours per day}) = 90\%$

³¹ NEP Ex. 34, (Rehberg Direct Testimony) at 3.

³² NEP Ex. 34 (Rehberg Direct Testimony) at 3.

³³ NEP Ex. 34 (Rehberg Direct Testimony) at 3.

With that understanding, the Commission should revisit its conclusion that NEP’s analysis of the stipulated rates on low-load factor customers was “very limited” because the load and demand came from four multifamily accounts.³⁴ Mr. Rehberg’s analysis of four representative sets of billing inputs (two representing low-load factor and two representing high-load factor customers) happened to be based on multi-family accounts. But as noted above, the type of GS account does not matter. What matters is that low-load factor GS customers regardless of the nature of their business will pay over twice as much for each kWh of electricity used as compared to high-load factor GS customers under the new tariff schedules.

Distribution Charge Increase as Result of Stipulation – March 2021 Rates to Stipulation³⁵

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%	\$0.0060
GS 2 Secondary	79%	\$449.92	\$566.97	\$1,404.58	26%	\$0.0028
GS 3 Primary	30%	\$3,283.37	\$4,347.34	\$12,767.72	32%	\$0.0075
GS 3 Primary	67%	\$1,804.64	\$2,352.47	\$6,574.07	30%	\$0.0033

And contrary to the Commission’s conclusion, NEP provided the cost impact to a range of low-load factor customers to high load customers for both secondary and primary service. While Mr. Rehberg gave examples of businesses that typically fall into the low-load factor category, the ultimate analysis is based on simple math used for any rate analysis. **Again, the GS account business type does not matter in the calculation of the rate impact – it is pure numbers of**

³⁴ Order at ¶ 140.

³⁵ NEP Ex. 34 (Rehberg Direct Testimony) at 6 and Attachment A.

load and demand that drive the Stipulation tariff charge. The Commission failed to recognize this simple fact and should not have been swayed by the Signatory Parties' claim that the type of GS account matters in the analysis (multifamily, school, industrial etc.). And as the analysis showed, 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.

Bill impacts are mathematical calculations independent of the nature of the business associated with the account – and Mr. Rehberg's unrefuted calculations show that the approved GS rate schedule will have a particularly significant, disproportionate and long-term rate impact on low-load factor customers through demand-only charges.³⁶ The Signatory Parties did not present any rate impact analysis with respect to low-load factor customers. The Commission should grant rehearing to either implement NEP's proposal for a low-load factor tariff or require AEP Ohio to develop a low-load factor tariff and make a corresponding filing with the Commission.

3. The Commission acted unreasonably and unlawfully by not requiring a low-load factor tariff.

Given the evidence presented at the hearing (as set forth above), the Commission's refusal to adopt a low-load factor tariff was unreasonable. NEP witness Mr. Rehberg was the **only witness** in these proceedings to analyze the actual rate impact of the Stipulation on GS-2 and GS-3 low-load factor customers. His analysis showed that low-load factor customers will see significant, disproportionate and long-term increases in their distribution costs with the approved Stipulation. 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**

³⁶ NEP Ex. 34 (Rehberg Direct Testimony) at 7.

respect to the Stipulation's effects on low-load factor commercial customers.³⁷ The rate impact analysis is math, and Mr. Rehberg was very qualified to perform such analysis. Indeed, Mr. Rehberg's mathematical analysis has not been challenged by the Signatory Parties. Without any contrary evidence in the record, the Commission must either adopt Mr. Rehberg's analysis or explain why it decided to not adopt it. There is no contravening analysis for the Commission to adopt in these proceedings.

Instead, the Commission failed to cite to findings of facts to produce a well-reasoned decision and to support its statements of "unknown impact" and "very limited" in the Order, as required by R.C. 4903.09. The Order failed to provide any requisite analysis (and once again, the rate impact analysis is mathematical in nature) of the evidence in the record. The Order is completely silent on the evidence in the record of the significant, disparate and long-term impacts of the Stipulation on a portion of AEP Ohio's customer base. Accordingly, the Commission erred by not requiring a low-load factor tariff in connection with the Stipulation.

D. The Commission erred in making its conclusions and findings regarding the proposed low-load factor pilot.

1. The Commission acted unreasonably and unlawfully by concluding that there was an "unknown impact" of the low-load factor pilot on customer bills and that the pilot should be rejected because of that "unknown impact."

In ¶ 140 of the Order, the Commission found that there was an "unknown impact" of the low-load factor pilot proposal on customer bills. Such erroneous conclusion is unreasonable and against the manifest weight of the evidence presented at the hearing, and it must be reversed.

³⁷ The total bill impacts presented by AEP Ohio (AEP Exs. 6 at AEM-S1 and 6A) are not the same as an analysis of the stipulated distribution rate changes, including the specific impact of same on low-load factor commercial customers.

Mr. Rehberg described NEP's proposed low-load factor pilot in immense detail. Initially, Mr. Rehberg explained the pilot will be beneficial to the Commission, to AEP Ohio and to AEP Ohio's commercial customers. He explained that the pilot will not only provide an opportunity to evaluate a low-load factor rate schedule, it will also create an incentive for energy efficiency (cost control) that can be investigated without any additional cost to AEP Ohio's customers.³⁸ NEP's pilot would involve the previously described rate schedule (containing a demand component and an energy component) being available on a limited basis to the low-load factor GS customers in AEP Ohio's service territory. The pilot rates would be:

- For GS secondary low-load factor customers: a demand charge of \$5.04 per kW and an energy charge of \$0.0067 per kWh.
- For GS primary low-load factor customers: a demand charge of \$3.98 per kW and an energy charge of \$0.0064 per kWh.³⁹

A low-load factor customer would be defined as a customer with a load factor of 40 percent or below based on the prior year's 12-month load factor average.⁴⁰

The additional details related to participating in the pilot are:

- Participation would be limited to 1,000 low-load factor GS customers who select the pilot.⁴¹
- Participation would be on a first-come, first-serve basis.⁴² This is consistent with other AEP Ohio pilots (e.g., PEV pilot and BTCR pilot).⁴³

³⁸ NEP Ex. 34 (Rehberg Direct Testimony) at 12. To be clear, NEP is not proposing that other customers or other customer classes pay for NEP's proposed pilot. Tr. IV at 742:5-20.

³⁹ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

⁴⁰ NEP Ex. 34 (Rehberg Direct Testimony) at 3, 10.

⁴¹ NEP Ex. 34 (Rehberg Direct Testimony) at 11.

⁴² NEP Ex. 34 (Rehberg Direct Testimony) at 11.

⁴³ Jt. Ex. 1 at 17 and Attachment C, Sheet 270-1.

- The participation level can be decreased by AEP Ohio, if the impact to AEP Ohio is greater than \$1.2 million in any given year.⁴⁴

Finally, NEP recommended that, within 60 days after the Commission approves the pilot, interested parties in these proceedings meet to identify the process for customers to sign-up for the pilot.⁴⁵

NEP's pilot would also serve a very important purpose. It would evaluate how a low-load factor rate schedule can assist with the disproportionate, amplifying effect of AEP Ohio's stipulated rate increase on low-load factor customers, by giving the pilot participants tools to manage costs.⁴⁶ The proposed pilot is intentionally limited to avoid impacts on AEP Ohio by capping the amount that AEP Ohio would have to absorb (not customers) if usage within the pilot changed the amount AEP Ohio recovered under the pilot (which could be positive or negative depending on the usage and demand fluctuations). Additionally, since a customer must intentionally opt-in to the pilot program, the customer would **affirmatively elect to explore the impact**. Lastly, unlike the impact of the stipulated expansion of the BTCR Pilot wherein additional participation in the BTCR Pilot under the Stipulation will reallocate costs within the general service customer class,⁴⁷ **the NEP pilot will not result in costs being shifted to other customers**. Mr. Rehberg repeatedly explained during his cross-examination that the proposal does not shift costs to other customers.⁴⁸ All of the foregoing are "knowns" about the pilot, and such "knowns" are not included in the analysis contained in the Commission's Order.

⁴⁴ NEP Ex. 34 (Rehberg Direct Testimony) at 12.

⁴⁵ NEP Ex. 34 (Rehberg Direct Testimony) at 12.

⁴⁶ NEP Ex. 34 (Rehberg Direct Testimony) at 12; Tr. IV at 728:21-25.

⁴⁷ Jt. Ex. 1 at 17-18.

⁴⁸ Tr. IV at 730:10-731:8 and 742:5-20. *See also* Tr. IV. at 733:13-23.

The Commission also did not identify what “unknown impact” it was concerned about regarding the low-load factor pilot proposal, even though Mr. Rehberg, in his thorough analysis, considered the risks of the proposed pilot. For instance, 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.⁴⁹ Mr. Rehberg explained that was unlikely, and if a worst-case under-collection in the pilot occurred, it 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 is 15 percent).⁵⁰ The collection risk for AEP Ohio is not an unknown risk, as there was ample evidence in the record identifying such risk and quantifying such risk as unlikely. In fact, Mr. Rehberg also testified that there is an inverse risk as well – there is a risk of over-recoveries under the pilot because of factors like weather and economic behavior.⁵¹ 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.⁵² This balances AEP Ohio’s interest in cost recovery. Thus, the pilot proposed by NEP balances the interests of AEP Ohio and low-load factor customers, while not shifting costs onto other customers.

The record establishes the impact of NEP’s proposed pilot on other customers (none), on AEP-Ohio (minimal) and how the pilot would be structured (only 1,000 customers who opt-in). The Commission’s finding regarding “unknown impact” regarding the proposed NEP pilot is not

⁴⁹ Tr. IV at 740:3-6.

⁵⁰ NEP Ex. 34 at 11-12; Tr. IV at 740:7-19, 741:13-25.

⁵¹ Tr. IV 852:20-853:4.

⁵² NEP Ex. 34 (Rehberg Direct Testimony) at 12.

supported by the record, must be reversed and must be replaced with a thorough analysis of the pilot using the evidence in the record. At a minimum, the Commission must explain what “unknown impact” it is concerned about, especially because of the well-defined and limited scope of the proposed pilot and the robust supporting evidence in the record.

Lastly, the whole purpose of a pilot is to gather information on how a low-load factor tariff would benefit low-load factor customers. All pilot programs have an unknown component to them, but properly constructed pilot programs – like NEP’s pilot proposal – serve as valuable tools for the gathering of information that can guide future policies. Furthermore, the pilot program was specifically structured to mitigate any such risk (as set forth above). In response to this specific and clear evidence, the Order simply refers generically to “unknown impact” without further explanation or findings of fact. The Commission provided no rational basis in the Order to conclude that the NEP pilot cannot be approved because its impact is unknown. Accordingly, the Commission acted unreasonably and unlawfully by concluding that there was an “unknown impact” of the low-load factor pilot on customer bills and that the pilot should be rejected because of that “unknown impact.”

2. The Commission acted unreasonably and unlawfully by finding that the analysis on the low-load factor pilot proposal was “very limited.”

The Commission also erred by finding that NEP’s analysis of NEP’s low-load factor pilot was “very limited.”⁵³ NEP provided the rationale and basis for how the low-load factor pilot would operate including detailed mathematical calculations and scenarios – a pilot that would only include 1,000 customers yet give the Commission valuable information on whether those customers would be better off under a low-load factor tariff. The record contradicts the

⁵³ Order at ¶ 140.

Commission's finding and that contradiction renders the Commission's decision on the low-load factor pilot unreasonable and unlawful.

Sufficient information exists in the record to allow the Commission to implement the pilot. As described in NEP's initial brief, the proposed low-load factor pilot would apply the same rate schedule proposed for the low-load factor tariff (containing a demand component and an energy component) on a limited basis to the low-load factor GS customers in AEP Ohio's service territory who affirmatively opt to participate. The pilot rates are described above in Section D.1. of this brief and were developed by NEP's expert, Mr. Rehberg, a professional engineer and experienced in rate analysis. Mr. Rehberg set the demand charge for customers with load factors equal to or less than 40% (based on the prior year's 12-month load factor average) to be no more than 25% of the Stipulation's proposed demand charges for GS secondary and GS primary customers.⁵⁴ He then backed in an energy charge (\$/kwh) so that the amount collected in total (demand charges and energy charges) will equal the revenue from the demand-only charges expected to be collected per the Stipulation, assuming no usage reduction.⁵⁵ Using that approach, Mr. Rehberg provided the above-referenced specific rates that the Commission can adopt in these proceedings that are designed to be revenue neutral.

Mr. Rehberg testified that the above rate structure will maintain the revenue requirement but split the stipulated cost increase between demand and energy for low-load factor customers, providing an appropriate balance of interests between a cost increase guarantee for AEP Ohio and some amount of cost control for low-load factor customers.⁵⁶ He also provided details related to

⁵⁴ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

⁵⁵ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

⁵⁶ NEP Ex. 34 (Rehberg Direct Testimony) at 10.

participating in the pilot as indicated above regarding participant count, participation requirements and how participation levels could be decreased in the unlikely event that usage and demand create an impact to AEP Ohio more than \$1.2 million per year (a risk that AEP Ohio faces on a much greater level with residential customer usage).⁵⁷

NEP provided the Commission with all the details on the low-load factor pilot and how it would be implemented. Coupled with the explanation above of how the GS account type does not matter for the impact analysis, the Commission had no basis to reject the low-load factor pilot on a claim that the analysis was “very limited.” The Commission had just as much if not more information on NEP’s proposed low-load factor pilot than the Commission had on AEP Ohio’s PEV proposed pilot (which the Commission approved). The Commission should grant rehearing and implement NEP’s proposed low-load factor pilot to allow the Commission to gather information on how a low-load factor tariff can benefit low-load factor customers rather than the approved all-demand schedule.

3. The Commission acted unreasonably and unlawfully by not approving a low-load factor pilot.

The low-load factor pilot was a specifically tailored solution designed for low-load factor customers, with specific safeguards in place to protect AEP Ohio against substantial loss of revenue (which the evidence shows is unlikely in any event). The pilot was designed to be revenue neutral, and AEP Ohio used the exact same revenue-neutral approach when setting rates for the Schedule PEV pilot (Pilot Plug-In Electric Vehicle Schedule) proposed and approved in these proceedings.⁵⁸ The low-load factor pilot was created at least in part to address similar concerns as was addressed with the PEV Pilot – inability to manage the electric demand for charging electric

⁵⁷ NEP Ex. 34 (Rehberg Direct Testimony) at 11-12, Jt. Ex. 1 at 17 and Attachment C, Sheet 270-1.

⁵⁸ Tr. I at 93:3-10.

vehicles. NEP's pilot was for 1,000 GS customers previously classified as GS-2 and GS-3 customers who have a low-load factor of 40% or less on a first come, first served basis.⁵⁹

The NEP pilot would obtain information on the benefits of an energy/demand rate schedule for low-load factor customers in AEP Ohio's service territory. The low-load factor rate schedule in the pilot would also assist with the disproportionate, amplifying effect of AEP Ohio's stipulated rate increase on low-load factor customers, by giving the pilot participants tools to manage costs.⁶⁰ A combined demand/energy charge for the pilot is a reasonable approach, and one that will allow the Commission, AEP Ohio and the customers an opportunity to evaluate if a low-load factor rate schedule can assist with the disproportionate, amplifying effect of AEP Ohio's stipulated rate increase on low-load factor customers. The pilot appropriately balances the interests of AEP Ohio and the customers, while not shifting costs onto other customers. It was unfair and unreasonable to low-load factor customers to approve the Stipulation without including NEP's proposed pilot.

Instead of performing an in-depth analysis of the low-load factor pilot, the Commission based its decision on vague and conclusory statements, without citations to the evidence in the record, and declined to adopt NEP's proposed pilot program. The statements included the Commission's: (1) erroneous statement (as set forth above) that the Commission need not analyze whether there are additional or better mechanisms or provisions that would benefit ratepayers and the public interest, (2) the concern with no record support about the "unknown impact" of the pilot proposal on customer bills, and (3) the erroneous statement that the analysis on which the low-load factor pilot was based is "very limited," which statement evidences the Commission's failure to recognize the mathematical underpinnings of the Stipulation's disproportionate impact on low-

⁵⁹ NEP Ex. 34 (Rehberg Direct Testimony) at 11-12.

⁶⁰ NEP Ex. 34 (Rehberg Direct Testimony) at 12; Tr. IV at 728:21-25.

load factor customers. Based on math, the Stipulation's shift toward reliance on demand-only charges (versus usage-based charges) for calculation of distribution costs will have a greater and unfair impact on low-load factor customers, who have low consumption but high demand, than the high-load factor customers. The pilot proposed by NEP would have mitigated such impact for the pilot participants and allowed for data collection for the benefit of other low-load factor customers, AEP Ohio and the Commission. The Commission acted unreasonably by not approving the pilot.

III. CONCLUSION

In 2012, the Commission took action to remedy rate increases on commercial customers, particularly low-load factor customers, after a stipulation was approved in an AEP Ohio proceeding. That action was precipitated by an outcry from commercial customers about the impact of the rate increases. NEP's undisputed testimony in the record establishes that the Stipulation's shift from a usage/demand-based distribution charge schedule to an all-demand-based distribution charge schedule will have a significant and adverse effect on low-load factor customers. The Commission should not ignore or summarily discount that testimony solely to avoid any modification to the Stipulation. The Commission is not restricted in these proceedings to only accept what AEP Ohio and other Signatory Parties have agreed to – it must do what is best for AEP Ohio's ratepayers including low-load factor customers. The Commission should adopt a low-load factor rate schedule. If not, the Commission should implement a low-load factor pilot so

it can be prepared to implement a low-load factor tariff across AEP Ohio's service territory if what happened in 2012 happens again. Rehearing should be granted and the Stipulation modified.

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CERTIFICATE OF SERVICE

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12/17/2021 4:28:37 PM

in

Case No(s). 20-0585-EL-AIR, 20-0586-EL-ATA, 20-0587-EL-AAM

Summary: App for Rehearing Application for Rehearing electronically filed by Mr.
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