**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Application of )

Ohio Power Company to Establish ) Case No. 12-3255-EL-RDR

Initial Storm Damage Recovery )

Rider Rates )

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**REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO**

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**March 17, 2014 Attorneys for Industrial Energy Users-Ohio**

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**REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO**

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# Introduction

The Ohio Power Company (“AEP-Ohio”),[[1]](#footnote-1) the Staff (“Staff”) of the Public Utilities Commission of Ohio (“Commission”),[[2]](#footnote-2) and Industrial Energy Users-Ohio (“IEU-Ohio”)[[3]](#footnote-3) have filed briefs in support of the Stipulation in this case. As each supporting party demonstrates, the Joint Stipulation and Recommendation (“Stipulation”) satisfies the three-prong test the Commission routinely applies when reviewing a settlement.

The Office of the Ohio Consumers’ Counsel (“OCC”), however, maintains that the Commission should substantially revise the terms of the Stipulation.[[4]](#footnote-4) In support of its position, OCC argues that the Stipulation does not satisfy the first prong of the three prong test because it is not a signatory party.[[5]](#footnote-5) Additionally, it argues that the substantive terms of the agreement are unreasonable for a variety of reasons including a claim that the revenue allocation should be modified so that it is based on “energy.”[[6]](#footnote-6) The Commission should reject these two arguments of OCC.[[7]](#footnote-7)

# The Stipulation is a product of serious bargaining among capable and knowledgeable parties representing diverse interests

In the initial comments, the parties other than OCC agree that the Stipulation satisfies the first prong of the test for approval of a stipulation because it is the product of serious bargaining among capable and knowledgeable parties representing diverse interests.[[8]](#footnote-8) In response, OCC argues that the Commission should reject the Stipulation because it did not sign the Stipulation.[[9]](#footnote-9) OCC’s failure to sign the Stipulation, however, does not demonstrate that the Stipulation is not the product of serious bargaining among capable and knowledgeable parties.

As it did at the hearing, OCC continues to advance the argument that the Commission must reject the Stipulation because “*the settlement* does not represent diverse interests”[[10]](#footnote-10) and points to the fact that it did not sign the Stipulation as support for this claim. Its sole citation in support of its position that it must be a signatory party for the first prong to be satisfied is the Commission’s decision approving the stipulation in AEP-Ohio’s last distribution rate case.[[11]](#footnote-11) The decision relied upon by OCC, however, is inapposite. The stipulation in the AEP-Ohio distribution case was uncontested. Thus, the Commission’s statement that signatory partieswere diverse is correct, but the Commission did not address the situation presented here in which OCC participated in the negotiations resulting in the Stipulation, but concluded that it could not sign it.

As demonstrated previously in IEU-Ohio’s initial brief, satisfaction of the first prong does not require that OCC sign the Stipulation. The Commission has “repeatedly held that [it] will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test.”[[12]](#footnote-12) To hold otherwise would give one party a veto over the outcome of the negotiations. Accordingly, the Commission should reject OCC’s argument that the Stipulation does not satisfy the first prong of the three-prong test.

# The Stipulation correctly allocates the recovery of the major storm costs on the basis of distribution revenue

OCC also argues that the Stipulation’s proposed allocation of the revenue authorized for recovery is unreasonable. Repeating its position at hearing, it first argues that the use of distribution revenue to set the allocation is inappropriate because distribution revenue includes customer charges.[[13]](#footnote-13) Second, it urges that residential customers should face a lower revenue responsibility since “they are near the bottom of the restoration hierarchy.”[[14]](#footnote-14) Finally, OCC urges that customers want “energy.”[[15]](#footnote-15)

OCC’s arguments fail to demonstrate that the allocation of revenue violates a significant ratemaking principle. As provided by the Stipulation, the approved revenue is allocated based on residential and nonresidential base distribution revenue.[[16]](#footnote-16) Because the major storm repair costs relate to maintenance expenses associated with the restoration of the distribution system, the allocation is consistent with the revenue responsibility for distribution related services.[[17]](#footnote-17)

Additionally, OCC’s position is internally inconsistent. Its first criticism urges that the Stipulation is inconsistent with principles of cost causation. Yet, OCC’s own witness testified that costs associated with distribution and production plant should not be allocated in the same manner.[[18]](#footnote-18) Ignoring the difference between distribution and production plant, OCC then urges that the Commission base distribution related charges on what amounts to an allocation based on production, its “energy”-based allocation. Further drifting from its “cost causation” claims, OCC also appears to be suggesting that the Commission consider a “value of service” alternative for allocating revenue responsibility by pointing to the “restoration hierarchy” that places the restoration of service to emergency services as a priority. Certainly, OCC has not suggested that restoration of high priority services should be altered, but there also is no indication that the “restoration hierarchy” has anything to do with cost causation “principles.” Thus, OCC’s argument is internally inconsistent and should be rejected because the revenue allocation proposed in the Stipulation does not violate any important regulatory principles.

# Conclusion

As to the issues addressed above, OCC’s initial brief does not provide a basis for modifying the Stipulation. Accordingly, the Commission should approve the Stipulation for the reasons demonstrated in the initial briefs of AEP-Ohio, the Staff, and IEU-Ohio.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that a copy of the foregoing *Reply Brief of Industrial Energy Users-Ohio* was served upon the following parties of record this 17th day of March 2014, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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1. Initial Post Hearing Brief of Ohio Power Company in Support of the Joint Stipulation (Mar. 3, 2014) (“AEP-Ohio Brief”). [↑](#footnote-ref-1)
2. Initial Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Mar. 3, 2014) (“Staff Brief”). [↑](#footnote-ref-2)
3. Initial Brief of Industrial Energy Users-Ohio (Mar. 3, 2014) (“IEU-Ohio Brief”). [↑](#footnote-ref-3)
4. Initial Post-Hearing Brief by the Office of the Ohio Consumers’ Counsel at 1, 4 (Mar. 3, 2014) (“OCC Brief”) (Commission should limit total recovery to no more than $24.2 million). [↑](#footnote-ref-4)
5. *Id*. at 8-9. [↑](#footnote-ref-5)
6. *Id*. at 38-39. [↑](#footnote-ref-6)
7. Once again, IEU-Ohio does not take a position regarding the Stipulation’s recommendation for a carrying charge, and it leaves the defense of Storm Services, a contractor used by AEP-Ohio to address the Derecho-related restoration work, to AEP-Ohio. [↑](#footnote-ref-7)
8. AEP-Ohio Brief at 8-11; Staff Brief at unnumbered page 2; IEU-Ohio Brief at 4-5. [↑](#footnote-ref-8)
9. OCC Brief at 4. [↑](#footnote-ref-9)
10. *Id*. at 8 (emphasis added). [↑](#footnote-ref-10)
11. *Id*. at 7, citing *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (Collectively AEP-Ohio) for an Increase in Electric Distribution Rates,* Case No. 11-351-EL-AIR, *et al*., Opinion and Order at 9 (Dec. 14, 2011.) [↑](#footnote-ref-11)
12. *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for Continuation of its Distribution Replacement Rider*, Case No. 13-1571-GA-ALT, Opinion and Order at 10 (Feb. 19, 2014). [↑](#footnote-ref-12)
13. OCC Brief at 38. [↑](#footnote-ref-13)
14. *Id*. at 38-39. [↑](#footnote-ref-14)
15. *Id*. at 39. [↑](#footnote-ref-15)
16. Stipulation at 4. [↑](#footnote-ref-16)
17. OCC’s witness indicates that that allocation of revenue should be guided by cost-causation principles. Tr. Vol. V at 898. [↑](#footnote-ref-17)
18. *Id*. at 899. [↑](#footnote-ref-18)