***OCC EXHIBIT\_\_\_\_\_\_\_***

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of  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  In the Matter of the Application of Energy Ohio Power Company for Approval of Certain Accounting Authority | )  )  )  )  )  )  )  )  ) | Case No. 23-23-EL-SSO  Case No. 23-24-EL-AAM |

**TESTIMONY RECOMMENDING MODIFICATION OF THE STIPULATION**

**OF**

**COLLEEN SHUTRUMP**

**On Behalf of the**

**Office of the Ohio Consumers' Counsel**

*65 East State Street, Suite 700*

*Columbus, Ohio 43215*

**September 20, 2023**

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# BACKGROUND

Q1. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

***A1.*** My name is Colleen Shutrump. I am employed as the Energy Resource Planning Advisor for the Office of the Ohio Consumers' Counsel ("OCC"). My business address is 65 East State Street, Suite 700, Columbus, Ohio 43215.

Q2. Please briefly summarize your education and professional experience.

***A2.*** I have a Bachelor of Science in Business Administration from the Youngstown State University with a major in Management and a Master of Business Administration from Baldwin Wallace College with emphasis in International Business. I have worked over ten years in electric utility regulation with emphasis on customer-funded energy efficiency programs. I started as a Utility Analyst at the Indiana Utility Regulatory Commission in 2009. I was promoted to Senior Utility Analyst in 2015. While there, I attended the Institute of Public Utilities Michigan State University Advanced Regulatory Studies Program and Camp NARUC. I began work as an Energy Resource Planning Advisor with OCC in August 2015. In spring 2016, I completed a graduate-level course on Utility Regulation and Deregulation at the Ohio State University, John Glenn College of Public Affairs.

q3. what are your duties at THE OHIO CONSUMERS' COUNSEL?

***A3*.** I provide analytical support on energy resource planning issues impacting Ohio consumers' interests. I serve as the Analytical Department's lead analyst and policy advisor for the OCC on cases and issues relating to resource planning such as customer-funded energy efficiency and demand side management programs. This includes, among other things, advocating for (i) consumer options to reduce their energy use and save money on their utility bills and (ii) developing agency policy that addresses consumer-protection issues. I was extensively involved in each of the four 2016 electric energy efficiency portfolio cases before the Public Utilities Commission of Ohio ("PUCO"). My involvement included providing testimony in the Dayton Power & Light[[1]](#footnote-2) and Duke Energy Ohio[[2]](#footnote-3) portfolio cases affecting consumers. I recently testified in Case No. 19-1940-GA-RDR (Columbia’s Demand Side Management rider adjustment) and in Vectren’s rate case, Case No. 18-298-GE-AIR. I participate in energy efficiency collaborative meetings for utility-led electric and gas programs.

# **PURPOSE OF TESTIMONY AND SUMMARY OF** RECOMMENDATIONS.

Q4. what is the purpose of your testimony?

***A4.*** In my testimony, I conclude that the August 1, 2023, Stipulation and Recommendation (the “settlement”) filed by AEP Ohio, fails the PUCO’s three-part test for evaluating settlements.

Q5. what does the puco consider when evaluating settlements?

***A5.*** The PUCO uses three criteria for evaluating the reasonableness of a proposed settlement:[[3]](#footnote-4)

1. Is the settlement the product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement violate any important regulatory principles or practices?

Q6. Please SUMMARIZE YOUR recommendations to protect consumers REGARDING THE SETTLEMENT as it relates to prongs two and three of the puco’s three-prong test.

***A6.*** I recommend that the PUCO reject the settlement for the following reasons:

1. The settlement does not protect consumers and the public interest because PUCO oversight for the low-income programs (funded by consumers) is optional. This does not benefit consumers or the public interest.
2. The settlement violates R.C. 4928.02 (H) because it allows a portion of consumer funding (intended for smart thermostat rebates to standard service offer consumers) to go to CRES providers so that they can close the sale to shoppers. State policy provides for the avoidance of anticompetitive subsidies.
3. The settlement violates R.C. 4928.02 (D) because it allows AEP Ohio to charge consumers for smart thermostats. PUCO-sanctioned and consumer-funded subsidies for non-low-income demand-side management (“DSM”) programs are not reasonable given that the market already provides these programs on an optional, not mandatory basis. State policy provides for innovation and market access for supply and demand side retail electric services, including demand-side management programs. And consistent with that policy, such programs should be provided by the competitive marketplace and not be subsidized by captive utility consumers.

# The settlement as it relates to AEP Ohio’s low-income energy efficiency program does not benefit consumers and the public interest because it lacks Proper PUCO oversight.

Q7. what is your understanding of the settlement’S PROVISIONS RELATING TO the low-income ENERGY EFFICIENCY programs?

***A7.*** The settlement provides for $12 million annually ($48 million over four years) to fund a low-income energy efficiency program, a school program, and a community program. The High Efficiency Low-Income Program (“HELP”) is budgeted at $10 million annually ($40 million over four years). The school program is budgeted at $600,000 annually ($2.4 million over four years).[[4]](#footnote-5) Consumers will also pay for $400,000 annually ($1.6 million over four years) for the Neighbor-to-Neighbor program[[5]](#footnote-6) and education and training budgeted at $1 million annually ($4 million over four years). AEP will conduct a competitive bidding process to select a program administrator for the school and the HELP programs. The selected program administrator will be paid a 10% administration fee of total annual program costs incurred. The settlement allows the PUCO Staff to evaluate and audit the program, but not at the expense of AEP Ohio.

q8. explain why the settlement does not benefit AEP Ohio consumers and the public interest.

***A8.*** Under the settlement, consumers, including at-risk consumers, pay a charge on their utility bill to fund low-income energy efficiency programs. But the settlement lacks proper PUCO oversight over the competitive bidding process and a review by the PUCO Staff. The PUCO should reject the settlement because these deficiencies do not benefit consumers and the public interest.

The purpose of the competitive bidding process should be to get the best value for the consumers that fund the program. But the competitive bid process for the program administrator lacks PUCO oversight, fairness, and transparency. To protect consumers, the competitive bid process should satisfy the following criteria:

1. Any potential RFP bidder (whether a signatory party or not) should be completely impartial to the RFP selection criteria and **not** participate or provide input into the terms, requirements, and pricing of the RFP. Allowing a potential RFP bidder to participate or influence the RFP process creates an unfair competitive advantage over other bidders that did not participate in the selection criteria.
2. Program administration pricing should be a component of the selection criterium in the RFP and should not be pre-determined in the settlement. The settlement provides for a 10% administrative fee for the selected low-income program administrator. The administrative fee should be part of the decision-making process in selecting the best value for consumer money.

In addition, reviews by the PUCO Staff and rider audits should not be optional as reflected in the settlement. Consumers are entitled to PUCO oversight in order to protect the funding they provide.

Q9. Why is a management audit necessary for the low-income energy fficiency PROGRAM?

***A9.*** A low-income program management audit is necessary and different from the PUCO Staff’s review of energy efficiency programs under the mandates. The PUCO Staff’s review is a prudency review and includes accuracy of calculations. The PUCO Staff does not evaluate programs to determine recommendations on general guidelines that either protect consumer funding or lower administrative costs. And utilities that directly contract with program evaluators do not evaluate programs to determine recommendations on general guidelines that either protect consumer funding or lower administrative costs. Program guidelines that could protect consumer funding including (but are not limited to):

1. Structures receiving weatherization must not be vacant or for sale.
2. Eligible expenses for weatherization services should not include undue or excessive upgrades, or expenses that don’t directly reduce the consumer’s usage or that don’t relate to health and safety.
3. Weatherization services should not include current landlord obligations under R.C. 5321.04[[6]](#footnote-7) (entitled “Landlord Obligations”).

Q10. do you have a recommendation on audit timing and scope?

***A10.*** Yes. I recommend that the PUCO Staff’s audit take place at the end of 2026. The costs should be collected through the Energy Efficiency Rider and publicly docketed.

The management audit should consider whether the policies, practices, and organization of the low-income program are prudent. The scope of the management audit for the low-income program should include a review of: (1) program expenditures, including average dollars expended per household and per property; (2) any administrative fees collected by AEP Ohio and the program providers; (3) eligibility documentation for AEP Ohio program applicants; (4) spending of the AEP Ohio program budget (or failure to spend the program budget); (5) prioritization, if applicable, of energy efficiency program services; (6) accounting of expenses that relate directly to reducing electric usage by the low-income consumer; (7) the timeline of providing low-income weatherization program products/services; (8) the impact of health and safety spend on services specific to weatherization; (9) the number and types of properties (*e.g*., owner-occupied, rental, etc.) that receive weatherization funding; (10) compliance with weatherization program guidelines, including determining eligibility of program recipients and, if applicable, limitations on funding; and (11) to the extent AEP Ohio knows, identifying any rental properties sold or converted by the property owner to non-low-income properties within two years of receiving weatherization services to that property.

The management audit should also include recommendations to streamline administrative and operational costs, to leverage funding sources, to maximize the numbers of discrete recipients of low-income energy efficiency services, and to assist the consumers most in need.

The PUCO Staff audit of the rider should also be required, not optional. And interested parties should be permitted a reasonable opportunity to address the findings of the PUCO Staff audit and should be permitted to request an evidentiary hearing based on the auditor’s findings. AEP Ohio should make available to the PUCO Staff and OCC, upon request, program expenditures per property and property addresses where weatherization services are performed.

Q11. Do you have any recommendations regarding the low-income programs that would benefit consumers and the public interest?

***A11.*** Yes. Consumer funds are limited. AEP Ohio shareholders should completely fund the Neighbor-to Neighbor program, which would decrease consumer funding by $1.6 million over four years.[[7]](#footnote-8) In the Columbia Gas settlement, the PUCO stated that shareholder funding met state policy in three ways because:

[t]here is a shared investment between the utility and its customers because the continuation of the WarmChoice Program[[8]](#footnote-9) is paired with a customer bill assistance program, funded by Columbia with funds that will not be recovered from ratepayers.

The settlement as written does not provide for such shared investment.

# THE SETTLEMENT Violates Important REgulatory principles and practices because it includes a demand response program that subsidizes smart thermostats.

Q12. what is your understanding of the settlement for non-low-income ENERGY EFFICIENCY programs?

***A12.*** Consumers will be charged $5 million annually through the gridSMART rider to fund a demand response program that includes smart thermostats.[[9]](#footnote-10) The settlement provides that a working group will be established to address how to optimize electric marketer participation in the smart thermostat demand response program, including but not limited to using a portion of the annual $5 million to implement a solution.

Q13. how does the settlement violate important regulatory principles and practices?

***A13.*** The settlement violates important regulatory principles and practices on several fronts.

1. The settlement violates R.C. 4928.02(H) because the solution described above may in fact make SSO consumers pay for smart thermostats that will be used to help electric marketers market and sell their product. R.C. 4928.02 (H) states that it is the policy of the state to:

Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a non-competitive retail electric service (AEP Ohio) to a competitive retail electric service (CRES) or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.

1. The settlement violates R.C. 4928.02(D) because consumers should not fund smart thermostats as they are readily available in the competitive market with numerous choices in retailers, brand, and price. Consumers can purchase smart thermostats at Lowes, Home Depot, Menards, Amazon, Walmart, local hardware stores, Best Buy, Office Depot, etc. In the market, consumers can choose various brands such as Amazon, Honeywell, Google Nest, Emerson, Bosch and Ecobee. In the competitive market, consumers get educated on the benefits of smart thermostats from sources that lead to product sales (for example Amazon, EnergyStar, YouTube, Google) and sources that primarily inform their readers on how latest technologies can save them money.

R.C. 4928.02 (D) states that the policy of the state to:

Encourage innovation and *market access* for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.

1. The settlement violates 4928.02(G), which states that it is the policy of the state to: “[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.”

The use of flexible regulatory treatment by the PUCO to recognize competitive markets was described in the settlement for Columbia Gas of Ohio’s recent base rate case.[[10]](#footnote-11) The PUCO stated:

[T]he Commission notes that, as codified at R.C. 4929.02(A), it is the policy of the state to promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers; and encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods.

The PUCO continued: “[i]t is time to look to competitive markets to play a more significant role in the provision of energy efficiency services in his state.[[11]](#footnote-12)”

Similarly, on its own motion in a recent Duke electric case,[[12]](#footnote-13) the PUCO struck Duke’s shared savings provision contained in the utility’s June 2020 request for a new energy efficiency portfolio, emphasizing 4929.02(A)(4):

[A]pproval of the shared savings provision contained in Duke’s application, where such shared savings are recovered…would be against the objectives of this state which favors outcomes that provide customers with effective choices of the selection of supplies and suppliers and would discourage market access for cost effective supply-and demand-side retail services.

The PUCO continued:

[T]he Commission believes that, in light of HB6, the future for EE programs in this state will be best served by reliance upon market-based approaches…[T]he competitive market can provide cost-effective energy efficiency programs to the customers who choose to participate in such programs.[[13]](#footnote-14)

And again, in approving the settlement in AEP’s recent rate case,[[14]](#footnote-15) the PUCO stated:

[F]urther, as we have previously stated, the future of energy efficiency programs in this state, in light of Am. Sub. H.B. 6, will be best served by reliance on market-based approaches such as those available through PJM and CRES providers. Accordingly, the Commission finds that the Stipulation need not be amended to incorporate a DSM program to comply with part two of the test used to evaluate stipulations.

The settlement departs from these recent PUCO cases in that it would allow AEP Ohio to charge consumers for smart thermostats that are accessible in the market. Absent smart thermostat subsidies, participating consumers that already have a smart thermostat (or choose to purchase a smart thermostat in the market) can still participate in this program and benefit from the rate design that allows consumers to reduce their usage and AEP to reduce demand in times when the grid is stressed.

Q14. do you have any other concerns about the settlement?

***A14.*** Yes. Although not mentioned in the settlement, the application in this case proposes to continue AEP Ohio’s Alternative Energy Rider (“Rider AER”). In Case No. 20-1745,[[15]](#footnote-16) AEP Ohio is proposing to implement future rate adjustments designed to collected consumer charges for mis-managed REC inventories that are used to meet compliance with the renewable standard. By entry issued on December 22, 2020, AER rates were frozen[[16]](#footnote-17) until the PUCO Staff can evaluate AEP Ohio’s proposal. This issue should be addressed before Rider AER is allowed to continue.

# CONCLUSION

Q15. Does this conclude your testimony?

***A15.*** Yes. However, I reserve the right to supplement my testimony if additional testimony is filed, or if new information or data in connection with this proceeding becomes available.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Testimony Recommending Modification of the Stipulation of Colleen Shutrump on Behalf of the Office of the Ohio Consumers’ Counselwas served on the persons stated below via electronic transmission, this 20th day of September 2023.

*/s/ William J. Michael*

William J. Michael

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. <http://dis.puc.state.oh.us/CaseRecord.aspx?Caseno=16-0649&link=PDC>. [↑](#footnote-ref-2)
2. <http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=16-0576-EL-POR>. [↑](#footnote-ref-3)
3. *Consumers' Counsel v. PUCO*, 64 Ohio St.3d 123, 125 (1992). [↑](#footnote-ref-4)
4. Also included in the budget is a schools program funded at $600,000 annually, a Neighbor-to-Neighbor program, and administrative costs. [↑](#footnote-ref-5)
5. <https://www.dollarenergy.org/need-help/ohio/neighbor-to-neighbor-program/>. [↑](#footnote-ref-6)
6. Examples of landlord requirements include structural repairs to protect the health and safety of tenants. [↑](#footnote-ref-7)
7. Figure 1, p. 25. Neighbor to Neighbor programs is funded at $400,000 annually, or $1.6 million over four years. [↑](#footnote-ref-8)
8. WarmChoice is Columbia’s low-income weatherization program. [↑](#footnote-ref-9)
9. Settlement at p. 21, ¶ 34. [↑](#footnote-ref-10)
10. Case No. 21-637-GA-AIR, et al., Opinion & Order (January 26, 2023) at 19. [↑](#footnote-ref-11)
11. *Id*. [↑](#footnote-ref-12)
12. Case No. 20-1013-EL-POR, et al., Entry (June 17, 2020) at 2. [↑](#footnote-ref-13)
13. *Id.* at 3. [↑](#footnote-ref-14)
14. Case No. 20-585-EL-AIR, et al., Opinion & Order (November 17, 2021) at 47-48. [↑](#footnote-ref-15)
15. November 25, 2020. [↑](#footnote-ref-16)
16. Case No. 15-1052-EL-RDR. [↑](#footnote-ref-17)