**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BRIEF**

**BY**

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The Settlement[[1]](#footnote-2) negotiated and signed by the Office of the Ohio Consumers’ Counsel (“OCC”), Ohio Power Company (“AEP Ohio”), Staff of the Public Utilities Commission of Ohio (“PUCO Staff”) and many others will provide numerous benefits to Ohio consumers and result in just and reasonable rates for electric distribution service.[[2]](#footnote-3) Parties opposing the Settlement ignore these benefits and argue that the Settlement should be rejected because it does not include (and charge consumers for) specific concessions the opposing parties[[3]](#footnote-4) want. However, the evidence overwhelmingly shows that the Settlement as a package satisfies the PUCO’s three-part test for evaluating settlements. The PUCO should approve the Settlement without modification.

# I. RECOMMENDATIONS

## A. The PUCO should not modify the Settlement to adopt the Marketers’ proposal to artificially increase rates for the standard service offer charged to consumers.

Energy marketers IGS Energy and Direct Energy (together, the “Marketers”) want standard service offer (“SSO”) customers to pay more to AEP Ohio, and Marketers’ customers to pay less, so that the Marketers can attempt to gain an unfair competitive advantage over the SSO.[[4]](#footnote-5)

Through the testimony of Marketer witness Lacey, the Marketers propose $64 million in charges to SSO customers through AEP Ohio’s “Retail Reconciliation Rider.”[[5]](#footnote-6) They also propose a $64 million offsetting credit to all consumers (both SSO and shopping) through AEP Ohio’s “SSO Credit Rider.” Under the Marketers’ proposal (which they sometimes refer to as “unbundling”), a typical residential SSO customer would pay an extra $4.20 per month—more than $50 per year.[[6]](#footnote-7) In contrast, a typical residential marketer customer would get a *credit* of $1.50 per month, or $18 per year.[[7]](#footnote-8) In other words, the Marketers effectively want each residential SSO customer to pay a $68 annual penalty for choosing the SSO.[[8]](#footnote-9) This contrasts with the Settlement, where both the Retail Reconciliation Rider and SSO Credit Rider would remain at zero, and there would be no penalty for customers who choose the SSO.[[9]](#footnote-10)

The PUCO should reject the Marketers’ proposal—just as it has each time that marketers have previously argued for the same unfair consumer treatment.

### 1. Marketers have made the same proposal before, and the PUCO has protected consumers by rejecting it each time.

This is not the first time that a marketer has proposed an artificial rate increase for SSO customers like the one being proposed by the Marketers here. And each time the argument has been raised in the past, the PUCO rejected it.

In Dayton Power and Light’s (“DP&L”) most recent base rate case, parties (including OCC, the PUCO Staff, and the utility), signed a settlement.[[10]](#footnote-11) IGS and the Retail Energy Supply Association (“RESA”) opposed the settlement on the same basis as the Marketers now oppose the current Settlement. They argued that the settlement should be rejected because it failed to adopt their “unbundling” recommendation to increase rates paid by SSO customers and decrease rates paid by marketers’ customers.[[11]](#footnote-12) The PUCO rejected the proposal and approved the DP&L settlement.[[12]](#footnote-13)

In Duke Energy’s most recent electric security plan (“ESP”) case, marketers IGS and RESA again proposed “unbundling” to increase SSO customer rates and decrease shopping customer rates.[[13]](#footnote-14) And again, the PUCO declined to adopt their proposal.[[14]](#footnote-15)

In an earlier case involving Duke Energy, IGS proposed “unbundling,” making the same argument that the utility was improperly charging consumers for SSO costs through its distribution rates.[[15]](#footnote-16) The PUCO declined to adopt IGS’s proposal.[[16]](#footnote-17)

In reading the Marketers’ initial briefs, one might think that this precedent does not exist—the Marketers mention none of it. Likewise, the Marketers’ witness admitted that in preparing his testimony, he did not review any of this precedent.[[17]](#footnote-18) But it does exist, and the PUCO should respect and follow it, as the Ohio Supreme Court has instructed it to do: “We have instructed the commission to ‘respect its own precedents in its decisions to assure the predictability which is essential in all areas of law, including administrative law.”[[18]](#footnote-19)

### 2. The PUCO should reject the Marketers’ arguments because they do not assess the Settlement as a package, which is required under the PUCO’s three-part test for settlements.

In determining whether a settlement benefits customers and the public interest, the PUCO considers the settlement “as a package.”[[19]](#footnote-20) Ignoring this standard, the Marketers ask the PUCO to disregard the settlement package and instead rule in their favor on a piecemeal basis. As the Marketers’ own witness admitted, his testimony addressed only “a very narrow part of the Stipulation.”[[20]](#footnote-21) The Marketers’ personal dislike for a “very narrow” part of a Settlement does not render the entire package deficient, *even if* the PUCO were to agree with the Marketers’ “unbundling” theory (which it should not, for the reasons described above and below). On that basis, the Marketers’ opposition to the Settlement fails because it does not comply with the PUCO’s three-part settlement test.

### 3. All consumers benefit from the SSO, so all consumers should pay for costs that AEP Ohio incurs (if any) to provide the SSO.

Under R.C. 4928.141, AEP Ohio “shall provide consumers ... a standard service offer.” When a customer that shops with a marketer is no longer able to receive service from that marketer (for example, if the marketer goes out of business), the customer reverts to the SSO to make certain that the customer continues to receive electricity.[[21]](#footnote-22) In other words, even consumers that do not *currently* take service under the SSO benefit from the SSO because the SSO stands ready and able to serve them at any time, if necessary. The Marketers’ own witness agreed, testifying that the SSO provides benefits to all consumers.[[22]](#footnote-23)

In an earlier case involving Duke Energy, IGS made arguments similar to the ones it makes now with respect to AEP Ohio, namely, that certain alleged SSO costs should be “unbundled” from distribution rates and paid only by SSO customers.[[23]](#footnote-24) The PUCO rejected IGS’s argument for several reasons. Among those reasons was that “all customers benefit from Duke’s ability to provide the SSO.”[[24]](#footnote-25)

Indeed, the Marketers’ witness agreed with the general proposition that when something benefits all consumers, all consumers should pay for it. According to the Marketers’ witness, all consumers benefit from the ability to shop, so all consumers should pay for any costs related to shopping.[[25]](#footnote-26) And as explained above, the Marketers’ witness also agreed that all consumers benefit from the SSO. So following his own logic, he must agree that all consumers should pay for distribution costs related to the SSO.

### 4. The Marketers’ testimony is vague and incomplete and thus cannot form an evidentiary basis for the PUCO to adopt the Marketers’ proposal.

As explained above, the Marketers propose charging SSO customers more than $64 million through the Retail Reconciliation Rider.[[26]](#footnote-27) Even if the PUCO agreed with the Marketers’ general proposition that some costs should be reallocated to SSO customers (which it shouldn’t, for the many reasons described herein), it should nonetheless reject the Marketers’ proposal because the testimony fails to adequately justify the $64 million calculation.

The Marketers’ witness provided the alleged calculation of the $64 million number in Appendix 1 to his testimony.[[27]](#footnote-28) According to this appendix, he arrived at the $64 million number by applying certain “Allocation Factors” to different AEP Ohio FERC accounts. The three Allocation Factors are “R,” “C”, and “A.”[[28]](#footnote-29) But nowhere in Appendix 1 or anywhere in the testimony did the witness even explain what “R,” “C,” and “A” mean. They are just letters with no explanation.

Likewise, nowhere in his testimony did he explain how he determined that the proper allocation factor for “R” should be 22.17%, that the proper allocation factor for “C” should be 38.18%, or that the proper allocation factor for “A” should be 100.00%, as represented on Lacey Appendix 1. There is no basis for the PUCO to determine whether these allocation factors are reasonable.

Likewise, the witness made no effort whatsoever to explain why he used a particular allocation factor for a particular FERC account. For example, on Appendix 1, the witness applied the R allocation factor to General Plant. Why did he do this? We have no idea. He did not explain in his testimony why General Plant should have an R allocation factor. He applied the C allocation factor to account 901, Supervision & Engineering.[[29]](#footnote-30) Why did he do this? We have no idea. He did not explain why Supervision & Engineering should have a C allocation factor. He applied the A allocation factor to accounts 911-916 Misc Selling Expense, which means that 100% of costs in these accounts are, in his opinion, attributable to the SSO. But he did not explain why he believes that 100% of costs in these accounts must be attributable to the SSO. Throughout Appendix 1, the witness applied his allocation factors more than 100 times to various line items but never explained why for any of them.

The PUCO cannot possibly accept this type of vague, unexplained testimony as evidence that more than $64 million should be charged to SSO consumers through the Retail Reconciliation Rider.

### 5. The PUCO should reject the unbundling proposal because it would shift $30 million in costs from nonresidential to residential consumers, thus making residential consumers’ rates unjust and unreasonable.

Under the Settlement, the signatory parties agreed to allocate 56.77% of the revenue requirement to residential consumers with the remaining 43.23% allocation to the various nonresidential classes.[[30]](#footnote-31) This was part of the larger bargain among signatory parties representing residential consumers (OCC), nonresidential consumers (Kroger, Ohio Hospital Association, Ohio Energy Group, Walmart, Industrial Energy Users-Ohio, Ohio Manufacturers’ Association), the PUCO Staff, the utility, and others.[[31]](#footnote-32)

The Marketers’ witness testified that he does not oppose this allocation:

Q. As a result of your proposal to allocation $64.4 million to SSO customers through the Retail Reconciliation Rider, are you proposing a change to that 56.77 percent number?

A. I am not.[[32]](#footnote-33)

But if the PUCO were to implement the Marketers’ proposal, that 56.77% allocation to residential consumers *would* change, because the Marketers’ proposal would shift approximately $31 million from nonresidential to residential consumers, as explained below.

The following table summarizes residential and nonresidential usage during the test year:[[33]](#footnote-34)



Under the Marketers’ proposal, SSO customers would pay a charge of $0.0042 per kWh. And shopping customers would receive a credit of $0.0015 per kWh. Thus, simple math can be used to calculate the impact on residential consumers, based on test year data:

* Charge to residential SSO customers = $0.0042 per kWh \* 9,179,730,000 kWh = $38,554,866.
* Credit to residential shopping customers = ($0.0015) per kWh \* 5,228,175,000 kWh = ($7,842,263)
* Total effect on residential consumers = $38,554,866 - $7,842,263 = **$30,712,603.**

Thus, under the Marketers’ proposal, not only would costs be shifted from shopping to SSO customers, but nearly $31 million would be shifted from nonresidential to residential consumers. The Marketers’ made no attempt whatsoever to justify such a substantial inter-class shift in costs. Indeed, their witness was seemingly unaware of this impact, having testified that he did not oppose the Settlement’s proposed class allocation of 56.77% to residential consumers. The PUCO should not upset the Settlement’s bargained-for cost allocation—at a substantial penalty to residential consumers—by adopting the Marketers’ flawed “unbundling” proposal.

### 6. The PUCO should protect consumers and reject the Marketers’ proposal because it claims that AEP Ohio incurs $64.4 million in costs related to the SSO and $0 in costs related to customer choice, which contradicts PUCO precedent.

The PUCO should reject the Marketers’ proposal outright for the various reasons described above. But even if it were to consider the proposal on the merits, it should be rejected because it violates clear PUCO precedent. In the past, when marketers have raised the issue of “unbundling” SSO costs from distribution rates, the PUCO has consistently said that if it is going to engage in such analysis, it must be looked at from both sides. That is, if there are SSO costs embedded in distribution rates, then there would also be shopping costs embedded in distribution rates, and both must be analyzed and determined before adjusting rates.

For example, in Duke’s most recent electric security plan case, the PUCO stated as follows: “As we have previously expressed, separating SSO-specific costs from distribution rates would likewise necessitate separating any costs related specifically to the customer choice program. Until both costs are determined and evaluated, the Commission cannot evaluate whether it is appropriate to reallocate costs.”[[34]](#footnote-35) The PUCO arrived at the same conclusion in DP&L’s rate case: “If we are to evaluate whether there are actual distribution costs solely related to providing SSO service, we should also evaluate whether there are actual distribution costs solely related to the customer choice program. Then, the Commission may determine whether it is necessary to reallocate costs between shopping and non-shopping customers....”[[35]](#footnote-36) (Notably, the PUCO did not rule that there are in fact any SSO costs included in distribution rates, only that *if* there are, then it would also be necessary to look at comparable costs related to shopping.)

Considering this precedent, the Marketers’ witness was required to examine not only what he believed to be SSO costs embedded in distribution rates but also any shopping costs that he believed to be embedded in distribution rates. But he did not do that. Instead, he performed a one-sided analysis of only those costs he believed to be attributable to the SSO. He ignored PUCO precedent (because, as discussed above, he did not read it) and declined to perform the second half of the analysis, determining the amount of distribution costs that might be attributable to shopping. The PUCO simply cannot accept his testimony that there are $64.4 million distribution costs related to the SSO but not a single penny of distribution costs related to shopping with marketers.

## B. The PUCO should reject the Marketers’ criticisms of the shadow billing components of the Settlement because shadow billing benefits consumers and the public interest.

The Settlement provides that AEP Ohio will perform “shadow billing” calculations for residential consumers and share that information with OCC and the PUCO Staff.[[36]](#footnote-37) Shadow billing data compares what consumers paid to marketers with what they would have paid under the SSO, thus giving insight into whether consumers are saving or losing money, in the aggregate, as a result of shopping with marketers.[[37]](#footnote-38) The Settlement also says that OCC and AEP Ohio will work together to develop a proposal to display computations on shopping customers’ bills reflecting potential consumer savings or losses compared to the SSO.[[38]](#footnote-39)

The Marketers oppose these provisions.[[39]](#footnote-40) It is not hard to understand why marketers do not like this information being made public. If the data showed that consumers saved money by shopping, then marketers would welcome the data and tout it as a good reason to shop. But the PUCO should reject the Marketers’ arguments that the shadow billing provisions should be removed from the Settlement.

First, with respect to the provision requiring OCC and AEP Ohio to work together on a proposal, there can be no prejudice to the Marketers because the Settlement requires only that OCC and AEP Ohio “develop a proposal,” and that proposal will be subject to further PUCO review in another proceeding. If AEP Ohio and OCC ultimately agree on such a proposal, the Marketers can address it in that proceeding.

Second, with respect to the aggregate shadow billing data, the PUCO should conclude that this information provides benefits to consumers. The PUCO has already recognized the value of using the SSO price as a “price to compare” in evaluating marketer offers. The price to compare appears on every consumer’s bill, as required by PUCO rules.[[40]](#footnote-41) And it also appears on the PUCO’s own “apples to apples” website[[41]](#footnote-42) so that consumers can compare marketer offers to the SSO price. Thus, the PUCO has already recognized that there is value in comparing what consumers pay to marketers to what consumers could otherwise pay under the SSO.

As to IGS’s claims that aggregate shadow billing is “inaccurate and misleading,” the PUCO should reject these claims.[[42]](#footnote-43) IGS provides no support for the claim that the information will be “inaccurate.” To the contrary, AEP Ohio has committed to provide the information to OCC and the PUCO Staff based on objective calculations, subject to the terms identified on Attachment D to the Settlement.[[43]](#footnote-44) Further, IGS’s claim that the information is “misleading” suggests that OCC and the PUCO Staff are incapable of understanding the data. The Settlement provides only that the information will be provided to OCC and the PUCO Staff. OCC and the PUCO Staff are sophisticated entities with longstanding expertise in the utilities industry, and they are more than capable of understanding what the shadow billing information means without being “misled.”

Finally, the shadow billing provisions are just one part of a larger settlement package. Even if the PUCO were to conclude that the shadow billing provisions are less than perfect, it would not change the fact that the Settlement, as a package, clearly benefits consumers and the public interest, and there would be no basis to reject the shadow billing provisions in isolation from the larger package.

## C. The PUCO should protect consumers and reject the Environmental Parties’ claims that AEP Ohio must implement and charge consumers for a Demand Side Management plan as part of this rate case.

The Environmental Parties’ opposition to the Settlement is narrowly focused on AEP Ohio’s decision to withdraw the Demand Side Management (“DSM”) plan it voluntarily proposed in the initial application.[[44]](#footnote-45) According to the Environmental Parties, failure to include the DSM plan in the Settlement violates regulatory principles. It does not. To the contrary, given the end of energy efficiency mandates in Ohio, the PUCO cannot now require AEP Ohio to implement and charge consumers for the DSM plan it previously proposed but chose to withdraw as a settlement compromise.

The Environmental Parties also claim that the Settlement was not the product of serious bargaining because they were allegedly “ignored” and excluded from settlement discussions regarding DSM.[[45]](#footnote-46) Nothing could be farther from the truth, and there is no evidence to support Environmental Parties’ specious claim. The Settlement should be approved without modification.

### AEP Ohio’s withdrawal of its DSM plan (without prejudice) does not violate regulatory principles or practices. The PUCO cannot lawfully mandate a DSM plan that AEP Ohio chose to withdraw.

AEP Ohio’s initial application voluntarily proposed a DSM plan that would charge consumers over $40 million through base distribution rates.[[46]](#footnote-47) In the Staff Report, the PUCO Staff recommended removal of the DSM plan because its framework places “unnecessary risk” on consumers in light of the “current legislative uncertainty” regarding Am. Sub. H.B. 6 (“H.B. 6”).[[47]](#footnote-48) Following extensive settlement negotiations with the parties (including the Environmental Parties), AEP Ohio agreed to withdraw its voluntarily proposed DSM plan from this rate case without prejudice to achieve an overall settlement package benefitting consumers and the public interest.[[48]](#footnote-49)

The Environmental Parties claim that AEP Ohio’s withdrawal of the DSM plan violates regulatory principles. They urge the PUCO to reject the Settlement entirely or modify the Settlement to require AEP Ohio to implement and charge consumers for DSM.[[49]](#footnote-50) And the Environmental Parties claim the PUCO should require AEP Ohio to establish a DSM plan *even larger* than what it initially proposed.[[50]](#footnote-51) The PUCO should do none of these things.

As a threshold matter, H.B. 6 has ended PUCO-mandated energy efficiency and DSM programs. The PUCO confirmed this in its Entry in Case No. 20-1013-EL-POR when it found that:

Although there may be an important role for the [electric distribution utilities] to play to enable cost-effective EE and DSM programs, the Commission believes that, in light of HB 6, the future for EE programs in this state will be best served by reliance on market-based approaches such as those available through PJM and competitive retail electric service providers. The policy of this state directs the Commission to encourage *innovation and market access* for cost-effective supply- and demand-side retail electric service including DSM programs. R.C. 4928.02(D). (Emphasis original).[[51]](#footnote-52)

Accordingly, consistent with Ohio law and the PUCO’s own precedent, the PUCO cannot now lawfully modify the Settlement to force consumers to pay for the DSM plan AEP Ohio initially proposed.

Environmental Parties argue that H.B. 6 “does not place restrictions on *voluntary* energy efficiency programs such as AEP Ohio’s originally proposed DSM Plan.”[[52]](#footnote-53) But that is beside the point. While AEP Ohio voluntarily proposed a DSM plan in its initial application, AEP Ohio also voluntarily withdrew the DSM plan from this case as a settlement compromise. The Environmental Parties’ argument that the PUCO should modify the Settlement to include the DSM plan is nothing more than a demand that the PUCO mandate a utility-run DSM plan paid for by consumers.

Environmental Parties also argue that exclusion of the DSM plan from the Settlement violates the regulatory principles set forth in R.C. 4928.02(A) and (D).[[53]](#footnote-54) Environmental Parties are wrong. First, R.C. 4928.02(A) states that the policy of Ohio is to ensure, among other things, “reasonably priced” electric service. Forcing consumers to pay millions through their electric distribution rates for a DSM plan that is no longer mandated by Ohio law is not reasonable. Second, as noted above, the PUCO has already recognized that the state policy codified in R.C. 4928.02(D) will be “best served by reliance on market-based approaches such as those available through PJM and competitive retail electric service providers.”[[54]](#footnote-55) The Settlement should be approved without modification.

The Environmental Parties also claim that exclusion of the DSM Plan violates R.C. 4905.70, which requires the PUCO to “initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption . . .”[[55]](#footnote-56) The PUCO should reject this argument as well. R.C. 4905.70 does not expressly grant the PUCO authority to mandate DSM plans that impose additional charges on consumers.

Moreover, with the end of energy efficiency mandates in Ohio, any future AEP Ohio DSM plan should be implemented in accordance with uniform standards established for and applicable to all six electric distribution utilities in Ohio. In Case No. 16-574-EL-POR, *et al.*, the PUCO found:

With the termination of the energy efficiency mandates, the Commission believes that it is appropriate to solicit the views of stakeholders on whether cost-effective energy efficiency programs are an appropriate tool to manage electric generation costs in this state and this region. Therefore, we will be holding a series of workshops in order to allow interested stakeholders the opportunity to present their views on the nature and scope of energy efficiency programs going forward and particularly how such programs fit into a competitive retail electric service market. A format and schedule for these workshops will be announced in the near future.[[56]](#footnote-57)

ELPC witness Neme testified in support of modifying the Settlement to include a DSM plan as part of this rate case. However, Mr. Neme conceded during the evidentiary hearing that there would be value to having consistent energy efficiency regulatory standards applicable to all electric distribution utilities in Ohio.[[57]](#footnote-58) In addition, ELPC witness Neme and OEC witness Baatz testified that the Settlement does not preclude AEP Ohio from voluntarily proposing a DSM plan as a part of the upcoming energy efficiency workshops or in any future proceeding.[[58]](#footnote-59)

AEP Ohio’s decision to withdraw its DSM plan from the Settlement in this proceeding does not violate regulatory principles as Environmental Parties contend. To the contrary, as explained in OCC’s Initial Brief, the Settlement is consistent with R.C. 4909.15 that charges to consumers be just and reasonable.[[59]](#footnote-60) The Settlement should be approved without modification.

### 2. The Settlement is the product of serious bargaining, and the Environmental Parties presented no evidence to the contrary.

The PUCO should reject the Environmental Parties’ claims that the Settlement was not the product of serious bargaining.[[60]](#footnote-61) There is no evidence even remotely suggesting that the Environmental Parties were “excluded” from settlement negotiations or that their positions were “ignored.”[[61]](#footnote-62) And no witness for the Environmental Parties testified regarding prong one of the PUCO’s three-part settlement test.

On the other hand, witnesses for the PUCO Staff, OCC, and AEP Ohio all testified that the Settlement was the product of serious bargaining among capable, knowledgeable, and diverse parties.[[62]](#footnote-63) The evidence shows that parties spent significant time engaged in extensive settlement negotiations for nearly three months.[[63]](#footnote-64) Parties were represented by capable and knowledgeable counsel and technical professionals.[[64]](#footnote-65) All parties, including the Environmental Parties, were invited to the settlement negotiations and had the opportunity to negotiate and advocate their positions.[[65]](#footnote-66) There is no evidence to the contrary. And like the other parties in this case, the Environmental Parties were represented by competent and experienced counsel fully capable of advocating the Environmental Parties’ positions during settlement negotiations.

The Environmental Parties assert that the Attorney Examiners “blocked all opportunities” to discuss the bargaining process during the evidentiary hearing.[[66]](#footnote-67) That is false. While the Attorney Examiners properly sustained objections to ELPC’s cross-examination of AEP Ohio witness Moore regarding irrelevant matters and privileged settlement negotiations,[[67]](#footnote-68) that is no reason to reject the Settlement or modify it to mandate DSM.

Further, OCC witness Willis and PUCO Staff witness Lipthratt testified that the Settlement was the product of serious bargaining.[[68]](#footnote-69) But the Environmental Parties did not even bother to cross-examine these witnesses at the hearing. And again, the Environmental Parties could have presented their own witness testimony regarding prong one of the PUCO’s three-part test, but they did not.

In sum, the Environmental Parties had the exact same opportunity as every other party in this case to participate in settlement negotiations. The Environmental Parties also had the opportunity to present evidence regarding the settlement process through their own witness testimony. The Environmental Parties had the opportunity to cross-examine OCC witness Willis and PUCO Staff witness Lipthratt regarding the settlement process. The PUCO should not now deny Ohio consumers the benefits from the Settlement because the Environmental Parties did not use these opportunities to prosecute their case. The PUCO should reject the Environmental Parties’ claims that the Settlement was not a product of serious bargaining.

### 3. The Environmental Parties present no evidence to dispute the Settlement’s benefits to consumers and the public interest. The PUCO should approve the Settlement without modification.

There is ample evidence to demonstrate that all the provisions in the Settlement, as a package, benefit consumers and the public interest.[[69]](#footnote-70) The Environmental Parties, however, only oppose AEP Ohio’s decision to withdraw its initial voluntarily proposed DSM plan.[[70]](#footnote-71) But that does not warrant rejection of the whole Settlement. The PUCO recently found that its consideration of a settlement “requires merely a determination that the settlement as a whole, rather than each individual term, is beneficial to ratepayers and the public.”[[71]](#footnote-72)

In addition, as explained above, the PUCO has stated its intention to hold workshops for all interested stakeholders to explore the scope of energy efficiency programs in Ohio.[[72]](#footnote-73) While the Environmental Parties’ testimony may be relevant to these future workshops, it should be given little weight in this rate case where the PUCO is determining whether the Settlement as a package benefits consumers and the public interest.

In this respect, it is important to note that the testimony presented by the Environmental Parties primarily focuses on utility-run energy efficiency programs generally, rather than the specific DSM plan AEP Ohio initially proposed. OEC witness Baatz’s analysis in support of utility-run energy efficiency programs is based on forecasted data from *all six* Ohio electric distribution utilities.[[73]](#footnote-74) OEC witness Baatz further testified that he did not analyze the costs of AEP Ohio’s DSM proposal.[[74]](#footnote-75) ELPC witness Neme testified that AEP Ohio should implement a DSM plan with a budget of $60 to $65 million,[[75]](#footnote-76) which significantly exceeds what AEP Ohio initially proposed in this case. But Mr. Neme conceded on cross-examination that he did not develop or evaluate the cost effectiveness of a specific energy efficiency plan of that magnitude.[[76]](#footnote-77) Therefore, the testimony of Mr. Baatz and Mr. Neme have little, if any, relevance to this rate case or whether the Settlement satisfies the PUCO’s three-part test.

The Environmental Parties fail to demonstrate that consumers should be charged for the DSM plan AEP Ohio initially proposed in this rate case, much less a DSM program that costs *twice* as much. The PUCO should reject the Environmental Parties’ arguments and approve the Settlement without modification.

## D. The PUCO should reject Armada’s proposal to require AEP Ohio to charge consumers for Armada’s water heater pilot program.

Armada argues that the PUCO should reject the Settlement unless Armada’s proposed pilot program is included. The pilot program would use controllers with built-in revenue grade meters to control water heater load to provide grid reliability benefits.[[77]](#footnote-78) Armada claims that without the pilot program, the Settlement would violate the second prong of the PUCO’s three-prong test *i.e.,* it would not be reasonable or in the public interest for the PUCO to approve the Settlement without this pilot program.[[78]](#footnote-79) Armada’s argument is without merit and should be rejected.

Armada’s view of the PUCO’s three-prong test is misguided. The test is not whether a particular pilot program exists with benefits that exceed costs, as Armada suggests. If this were the test, then all kinds of vendors could challenge a settlement by proving that the benefits of their pet projects exceed the costs and, if so, the PUCO would be compelled to accept them all. Instead, the second prong of the PUCO’s test is whether the Settlement *as a package* benefits customers and is in the public interest.[[79]](#footnote-80)

When evaluating the second prong in the context of a rate case settlement, the PUCO considers whether the Settlement, as a package, strikes a fair balance between the revenue requirement for the utility versus the rate impacts on consumers.[[80]](#footnote-81) Armada presented evidence that its proposal would cost $7.74 million, below the cost of battery storage.[[81]](#footnote-82) But Armada presented no evidence on how AEP Ohio’s revenue requirement would need to be increased to recover this cost and the corresponding rate impacts on consumers. So Armada’s argument must fail because it presented no evidence on whether the Settlement *as a package* benefits consumers and is in the public interest.

In addition to this fatal flaw, other concerns exist with Armada’s proposed pilot, including:

* Wasteful duplication – the pilot would install water heaters with built-in revenue grade meters to control water heater load. AEP Ohio already has an existing program that controls water heater load.[[82]](#footnote-83) The existing tariff is part of AEP Ohio’s gridSMART program and provides for AEP Ohio to install a smart thermostat and a water heater controller for participating consumers.[[83]](#footnote-84) Armada failed to provide any analysis of the costs and benefits of its proposed pilot versus the costs and benefits of AEP Ohio’s existing water heater control program.
* No-bid contract violates good utility practice – the proposal calls for AEP Ohio to award a contract to Armada Power for $7.74 million with no competitive bidding, even though Armada has competitors who offer similar technology.[[84]](#footnote-85) Without competitive bidding, the PUCO might apply a presumption of reasonableness if AEP Ohio had agreed to Armada’s no-bid proposal following a contract negotiation.[[85]](#footnote-86) But the PUCO should not apply any presumption of reasonableness when the no-bid proposal is offered by a vendor and a utility has not agreed to the proposal following a negotiation where the utility acts in consumers’ best interest.
* Lack of regulatory certainty – Armada’s pilot would provide generation, transmission and distribution benefits but it is unclear how these benefits would be measured and applied to rates.[[86]](#footnote-87) It is reasonable for AEP Ohio to refrain from implementing this pilot program until greater regulatory certainty exists.
* Program cost – Armada’s witness acknowledged that AEP Ohio would need to incur several areas of additional costs that were not included in his estimate of the project cost, such as installation cost, marketing and customer education cost and additional labor cost for AEP Ohio to manage call events for the 20,000 water heater control units.[[87]](#footnote-88)
* Cybersecurity risk – cybersecurity is an overriding concern for energy companies, as highlighted by the recent ransomware attack that disrupted the Colonial Pipeline’s fuel supplies throughout the southeast United States.[[88]](#footnote-89) Armada’s proposal calls for installing 20,000 controller devices, considered part of the “Internet-of-things” on customer property behind AEP Ohio’s meters, which would give hackers an opportunity to hack into AEP Ohio’s distribution grid.[[89]](#footnote-90) AEP Ohio has not tested these devices on its distribution grid.[[90]](#footnote-91) The National Institute of Standards and Technology (“NIST”) recently issued a technical bulletin relating to this issue,[[91]](#footnote-92) which Armada’s witness had not reviewed.[[92]](#footnote-93) Under these circumstances, it would be reasonable for AEP Ohio to demur on the pilot program until it has had additional opportunity to test Armada’s devices and evaluate the cybersecurity risk, in light of the new NIST guidance.

Based on the foregoing, Armada Power failed to prove that it would be unreasonable or not in the public’s best interest for the PUCO to approve the Settlement without Armada Power’s proposed pilot. The PUCO should therefore reject Armada Power’s arguments.

## E. The PUCO should not adopt Walmart’s view that all distribution costs are “fixed” and that distribution costs cannot be charged to consumers through volumetric rates.

In its initial brief, Walmart opposes National Energy Partners’ (“NEP”) proposed pilot program.[[93]](#footnote-94) Although OCC agrees with Walmart that the PUCO should not modify the Settlement to adopt NEP’s proposal, Walmart’s reasoning is flawed. According to Walmart, all distribution costs are “fixed costs,” and all distribution costs “should be recovered through fixed bill components.”[[94]](#footnote-95) Walmart’s claims are unfounded, and they are inconsistent with the Settlement. Under the Settlement, for example, residential (and other) consumers will continue to pay a portion of their distribution charges through a volumetric (kWh-based) charge.[[95]](#footnote-96) And as OCC witness Willis explained, lower fixed charges are good for consumers because they allow consumers to lower their bills by lowering their usage.[[96]](#footnote-97) Retaining a volumetric component of distribution bills benefits consumers and does not violate any regulatory principles.

# III. CONCLUSION

The overwhelming evidence demonstrates that the Settlement satisfies the PUCO’s three-prong test for evaluating settlements. The PUCO should reject the proposals discussed above, which would unreasonably increase charges to consumers. As a package, the Settlement provides significant benefits to AEP Ohio’s consumers and does not violate regulatory principles or practices. The Settlement is just and reasonable and the PUCO should approve it without modification.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Post-Hearing Reply Brief was served on the persons stated below via electronic transmission, this 6th day of July 2021.

*/s/ Angela D. O’Brien*

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Counsel of Record

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1. Joint Ex. 1 (Settlement). [↑](#footnote-ref-2)
2. OCC Initial Brief at 6-10. [↑](#footnote-ref-3)
3. Opposing parties’ proposals addressed in this Reply Brief include those of the Environmental Law and Policy Center (“ELPC”), Ohio Environmental Council (“OEC”), and Natural Resources Defense Council (“NRDC”) (collectively “Environmental Parties”); Interstate Gas Supply (“IGS”) and Direct Energy Business, LLC and Direct Energy Services, LLC (“Direct”) (collectively “Marketers”); and Armada Power, LLC (“Armada”). [↑](#footnote-ref-4)
4. *See* IGS Initial Brief at 10-30; Direct Initial Brief at 11-13. [↑](#footnote-ref-5)
5. IGS Ex. 2 (Lacey Direct) at 14:1 (“I calculate a full allocation of costs to SSO service to be $64,377,767...”). [↑](#footnote-ref-6)
6. Assuming typical usage of 1,000 kWh per month and the Marketers’ proposed rate of $0.0042 per kWh for SSO customers. *See* Tr. Vol. V at 1058:23 – 1059:1 (Marketer witness Lacey testifying that under their proposal, SSO customers would pay $0.0042 per kWh). [↑](#footnote-ref-7)
7. *See* Tr. Vol. V at 1059:2-5 (Marketer witness Lacey testifying that under their proposal, customers of marketers, sometimes called “shopping” customers, would get a credit of $0.0015 per kWh). [↑](#footnote-ref-8)
8. The different between a $50 charge and an $18 credit. [↑](#footnote-ref-9)
9. Joint Ex. 1 (Settlement) at 9 (“The Retail Reconciliation Rider and SSO Credit Rider will remain at zero based on the Staff Report’s recommendation.”). [↑](#footnote-ref-10)
10. *In re Application of the Dayton Power & Light Co. for an Increase in its Elec. Dist. Rates*, Case No. 15-1830-EL-AIR, Opinion & Order ¶ 12 (Sept. 26, 2018) (the “DP&L Rate Case Order”). [↑](#footnote-ref-11)
11. DP&L Rate Case Order ¶¶ 17-22. [↑](#footnote-ref-12)
12. DP&L Rate Case Order ¶¶ 28-31. [↑](#footnote-ref-13)
13. *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Opinion & Order (Dec. 19, 2018). [↑](#footnote-ref-14)
14. *Id.* ¶ 231. *See also* *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Second Entry on Rehearing ¶¶ 30-32 (July 27, 2019) (denying the same argument on rehearing). [↑](#footnote-ref-15)
15. *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 14-841-EL-SSO, Opinion & Order at 86 (Apr. 2, 2015). [↑](#footnote-ref-16)
16. *Id.* [↑](#footnote-ref-17)
17. Tr. Vol. V at 1044:13 – 1045:12 (Marketer witness Lacey admitted that he did not review any of the PUCO’s rulings previously rejecting similar “unbundling” proposals made by marketers). [↑](#footnote-ref-18)
18. *In re Ohio Power Co.*, 2015-Ohio-2056, ¶ 16 (quoting *Cleveland Elec. Illuminating Co. v. PUCO*, 42 Ohio St. 2d 403 (1975)). [↑](#footnote-ref-19)
19. *Consumers’ Counsel v. PUCO*, 64 Ohio St. 3d 123, 126 (1992). [↑](#footnote-ref-20)
20. Tr. Vol. V at 1046:4-8 (Lacey cross examination). [↑](#footnote-ref-21)
21. Tr. Vol. V at 1087:7-11 (Lacey Cross Examination) (“Q. [I]f a CRES fails to supply generation service to a shopping customer, that would result in customers defaulting to the utility’s SSO, correct? A. That is correct.”). [↑](#footnote-ref-22)
22. Tr. Vol. V. at 1088:9-16 (Lacey Cross Examination) (“Q. And you would agree that the SSO benefits all customers, SSO and shopping customers alike? A. ... [T]here is some benefit to the market, to SSO, to everybody, yes.”). [↑](#footnote-ref-23)
23. *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Second Entry on Rehearing ¶¶ 30-32 (July 27, 2019). [↑](#footnote-ref-24)
24. *Id.* ¶ 32. [↑](#footnote-ref-25)
25. IGS Ex. 2 (Lacey Direct) at 43 (“the clear answer is to charge all customers for the costs of the choice program, for all customers benefit from the choice program”). [↑](#footnote-ref-26)
26. IGS Ex. 2 (Lacey Direct) at 14:1 (“I calculate a full allocation of costs to SSO service to be $64,377,767...”). [↑](#footnote-ref-27)
27. IGS Ex. 2 (Lacey Direct), Lacey Appendix 1. [↑](#footnote-ref-28)
28. *Id.* [↑](#footnote-ref-29)
29. *Id.* at 2. [↑](#footnote-ref-30)
30. Joint Ex. 1 (Settlement) at 16. [↑](#footnote-ref-31)
31. *Id.* at 22 (signature page of Settlement). [↑](#footnote-ref-32)
32. Tr. Vol. V at 1048:10-15. [↑](#footnote-ref-33)
33. December 2019 residential usage for shopping and SSO customers is found in OCC Ex. 12. December 2019 nonresidential usage for shopping and SSO customers is found in OCC Ex. 13. January through November 2020 residential usage for shopping and SSO customers is found in OCC Ex. 14. January through November 2020 nonresidential usage for shopping and SSO customers is found in OCC Ex. 15. The “total” row is simply the sum of the rows above. These exhibits are screen shots of the PUCO’s Customer Choice website, which the Marketers’ witness relied upon for his analysis. *See* Tr. Vol. V at 1063:2-10 (Lacey Cross Examination). [↑](#footnote-ref-34)
34. *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Opinion & Order ¶ 231 (Dec. 19, 2018). [↑](#footnote-ref-35)
35. *In re Application of the Dayton Power & Light Co. for an Increase in its Elec. Dist. Rates*, Case No. 15-1830-EL-AIR, Opinion & Order ¶ 28 (Sept. 26, 2018) [↑](#footnote-ref-36)
36. Joint Ex. 1 (Settlement) at 11. [↑](#footnote-ref-37)
37. Joint Ex. 1 (Settlement), Attachment D. [↑](#footnote-ref-38)
38. Joint Ex. 1 (Settlement) at 11. [↑](#footnote-ref-39)
39. IGS Initial Brief at 37-40; Direct Initial Brief at 9-11. [↑](#footnote-ref-40)
40. OAC 4901:1-10-22(B)(24), OAC 4901:1-33(C)(18). [↑](#footnote-ref-41)
41. <http://www.energychoice.ohio.gov/ApplestoApples.aspx> [↑](#footnote-ref-42)
42. IGS Initial Brief at 38. [↑](#footnote-ref-43)
43. Joint Ex. 1 (Settlement), Attachment D (explaining the various methodologies for what is included or excluded in the aggregate shadow billing calculations). [↑](#footnote-ref-44)
44. Env. Parties Initial Brief at 20. [↑](#footnote-ref-45)
45. Env. Parties Initial Brief at 7. [↑](#footnote-ref-46)
46. Staff Ex. 1 (Staff Report) at 20. [↑](#footnote-ref-47)
47. *Id.* at 21. [↑](#footnote-ref-48)
48. Joint Ex. 1 at 18. [↑](#footnote-ref-49)
49. Env. Parties Initial Brief at 18-19. [↑](#footnote-ref-50)
50. *Id.* [↑](#footnote-ref-51)
51. *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 20-1013-EL-POR, Entry (June 17, 2020) (“Duke Entry”) at ¶9. [↑](#footnote-ref-52)
52. Env. Parties Initial Brief at 8 (emphasis added). [↑](#footnote-ref-53)
53. Env. Parties Initial Brief at 7-8. [↑](#footnote-ref-54)
54. Duke Entry, at ¶9. [↑](#footnote-ref-55)
55. Env. Parties Initial Brief at 8. [↑](#footnote-ref-56)
56. *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2020*, Case No. 16-574-EL-POR, *et al.*, Finding and Order (Feb. 24, 2021) at ¶13; Tr. Vol. III, 514-515. [↑](#footnote-ref-57)
57. Tr. Vol. III, 612-613. [↑](#footnote-ref-58)
58. Tr. Vol. III, 512:18-23, 592:2-10, 595:6-12. [↑](#footnote-ref-59)
59. OCC Initial Brief at 10-11. [↑](#footnote-ref-60)
60. Env. Parties Initial Brief at 5-7. [↑](#footnote-ref-61)
61. Env. Parties Initial Brief at 7. [↑](#footnote-ref-62)
62. *See e.g.* OCC Initial Brief at 4-5; OCC Ex. 1 (Willis Direct) at 5; PUCO Staff Ex. 6 (Lipthratt Settlement Testimony) at 3; AEP Ohio Ex. 6 (Moore Direct) at 16. [↑](#footnote-ref-63)
63. OCC Ex. 1 (Willis Direct) at 5. [↑](#footnote-ref-64)
64. OCC Ex. 1 (Willis Direct) at 5; PUCO Staff Ex. 6 (Lipthratt Settlement Testimony) at 3; AEP Ohio Ex. 6 (Moore Direct) at 16. [↑](#footnote-ref-65)
65. AEP Ohio Ex. 6 (Moore Direct) at 16. [↑](#footnote-ref-66)
66. Env. Parties Initial Brief at 6. [↑](#footnote-ref-67)
67. Tr. Vol. II, at 248-250. [↑](#footnote-ref-68)
68. OCC Initial Brief at 4-5. [↑](#footnote-ref-69)
69. OCC Initial Brief at 6-10. [↑](#footnote-ref-70)
70. Env. Parties Initial Brief at 15-16; *see also* ELPC Ex. 1 (Neme) at 7; OEC Ex. 1 (Baatz) at 3. [↑](#footnote-ref-71)
71. *In the Matter 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 (June 16, 2021) at ¶50(citing *Office of Consumers’ Counsel v Pub. Util. Comm.*, 64 Ohio St.3d 123 (1992)). [↑](#footnote-ref-72)
72. *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2020*, Case No. 16-574-EL-POR, *et al.*, Finding and Order (Feb. 24, 2021) at ¶13 [↑](#footnote-ref-73)
73. *See e.g.* OEC Ex. 3 at 12; Tr. Vol. III at 517:6-19 (Baatz Cross) [↑](#footnote-ref-74)
74. Tr. Vol. III at 517-518 (Baatz Cross). [↑](#footnote-ref-75)
75. ELPC Ex. 1 (Neme) at 8-9. [↑](#footnote-ref-76)
76. Tr. Vol. III at 604-605 (Neme Cross). [↑](#footnote-ref-77)
77. Armada Initial Brief at 1 (June 14, 2021). [↑](#footnote-ref-78)
78. *Id.* at 2. [↑](#footnote-ref-79)
79. *Consumers' Counsel v. Pub. Util. Comm*., 64 Ohio St. 3d 123, 126 (1992). [↑](#footnote-ref-80)
80. *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, Opinion and Order at 9 (Dec. 14, 2011). [↑](#footnote-ref-81)
81. Initial Post-Hearing Brief of Armada Power, LLC at 8 (June 14, 2021). [↑](#footnote-ref-82)
82. AEP Ohio Tariff, Original Sheet No. 316 – Rider DLC (Experimental Direct Load Control Rider) (Issued Dec. 22, 2011). [↑](#footnote-ref-83)
83. *Id.* [↑](#footnote-ref-84)
84. Tr. IV at 710:10-16. [↑](#footnote-ref-85)
85. *Cf. Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.,* 113 Ohio St.3d 180, 2007-Ohio-1386, ¶ 58. [↑](#footnote-ref-86)
86. Tr. IV at 713:6-714:11. [↑](#footnote-ref-87)
87. Tr. IV at 717:24-721:13. [↑](#footnote-ref-88)
88. C. Eaton & D. Volz, *Colonial Pipeline CEO tells why he paid hackers a $4.4 million ransom,* The Wall Street Journal (May 19, 2021). [↑](#footnote-ref-89)
89. Tr. IV at 701:13-702:8 & 704:12-706:8. [↑](#footnote-ref-90)
90. Tr. IV at 696:18-697:2. [↑](#footnote-ref-91)
91. National Institute of Standards and Technology, *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 4.0* (Feb. 2021). [↑](#footnote-ref-92)
92. Tr. IV at 694:8-12. [↑](#footnote-ref-93)
93. *See* Walmart Initial Brief at 6. [↑](#footnote-ref-94)
94. *Id.* [↑](#footnote-ref-95)
95. Joint Exhibit 1 at 9; Schedule RS (showing a $10 fixed monthly charge plus a charge of 2.63125 cents per kWh for residential distribution service). [↑](#footnote-ref-96)
96. OCC Ex. 1 (Willis Direct) at 8. [↑](#footnote-ref-97)