**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| |  |  |  | | --- | --- | --- | | In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan. | )  )  )  )  ) | Case No. 23-23-EL-SSO |  |  |  |  | | --- | --- | --- | | In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority. | )  )  ) | Case No. 23-24-EL-AAM | |  |  |

**INITIAL BRIEF FOR CONSUMER PROTECTION**

**BY**

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# INTRODUCTION

The Joint Stipulation and Recommendation (“Settlement”),[[1]](#footnote-2) as a package, does not benefit consumers and the public interest. Further, it violates important regulatory principles and practices. To protect consumers from paying unwarranted charges that line the pockets of public utility shareholders, this Settlement should be rejected.

The Settlement over-charges and under serves the consumers of Ohio. This Settlement allows AEP too much profit – profits that are well beyond the average of similar utilities. It contains inefficient, ineffective, and under-funded programs which ultimately only benefit AEP’s shareholders. The Settlement should be rejected.

# II. STANDARD OF REVIEW

The Supreme Court of Ohio (“Court”) stated in *Duff v. Public Utilities Com.*[[2]](#footnote-3) that a settlement is merely a recommendation that is not legally binding on the PUCO. The PUCO “may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.”[[3]](#footnote-4)

The Court in *Office of Consumers’ Counsel v. Public Utilities Com.*[[4]](#footnote-5)considered whether a just and reasonable result was achieved with reference to criteria adopted by the PUCO in evaluating settlements:

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

As OCC shows below, AEP does not meet this test.

Additionally, the PUCO must ensure that the Settlement meets the provisions of the Ohio Revised Code governing ESPs. The standard for approval or modification of an ESP case is stated in R.C. 4928.143(C)(1), which reads in pertinent part:

[T]he commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

Further, R.C. 4905.22 requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable. Of course, AEP as the applicant bears the burden of proof.[[5]](#footnote-6)

# III. RECOMMENDATIONS

## A. The Settlement should be rejected because, as a package, it does not benefit consumers and the public interest.

### 1. The unreasonable Return on Equity proposed by AEP does not **benefit consumers or the public interest.**

The Settlement proposes an unreasonably excessive return on equity of 9.71%. As set forth below, 9.51% is a fair and reasonable return on equity, if not overly generous itself.

A Return on Equity (“ROE”) is the allowed rate of profit for a regulated company. In a competitive market, a company’s profit level is determined by a variety of factors. These factors include the state of the economy, the degree of competition a company faces, the ease of entry into its markets, the existence of substitute or complementary products/services, the company’s cost structure, the impact of technological changes, and the supply and demand for its products and/or services.[[6]](#footnote-7)

The judicial guidance for calculating an appropriate rate of return comes primarily from the decisions in the *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923) (“Bluefield”) and *FPC v. Hope Natural Gas Co*., 320 U.S. 591 (1944) (“Hope”). The *Bluefield* decision can be summarized as follows: “The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management to maintain and support its credit to enable the utility to raise necessary capital.”[[7]](#footnote-8)

The *Hope* decision can be summarized as follows:

The return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital. ***In addition, it is the end result that is important and not the methods used to arrive at the rates.***[[8]](#footnote-9)

For a regulated monopoly, such as a public utility, the regulator determines the level of profit available to the public utility. The United States Supreme Court established the guiding principles for determining an appropriate level of profitability for regulated public utilities in *Hope* and *Bluefield*. In those cases, the Court recognized that the fair rate of return on equity should be:

(1) comparable to returns investors expect to earn on other investments of similar risk;

(2) sufficient to assure confidence in the company’s financial integrity; and

(3) adequate to maintain and support the company’s credit and to attract capital.[[9]](#footnote-10)

Thus, the appropriate ROE for a regulated utility requires determining the market-based cost of equity. The market-based cost of equity for a regulated firm represents the return investors could expect from other investments, while assuming no more and no less risk. The purpose of all the economic models and formulas for calculating cost of capital or cost of equity for a regulated firm is to estimate, using market data for firms with similar risk, the rate of return on equity investors require for that risk class of firms.[[10]](#footnote-11)

There are many ways to measure the risk of an entity. But one of the most easily understood and used is bond ratings.[[11]](#footnote-12) Ratings agencies research the financial health of each bond issuer (including issuers of municipal bonds) and assign ratings to the bonds being offered.[[12]](#footnote-13) Each agency has a similar hierarchy to help investors assess that bond's credit quality compared to other bonds.[[13]](#footnote-14) The projected future financial health of an entity is key in the assessment of the entity’s ability to pay interest on its bonds. Therefore, bond ratings are a good measure of the risk of an entity.[[14]](#footnote-15)

As rated by S&P, Ohio Power has a bond rating of A-.[[15]](#footnote-16) The average bond rating of both regulated electric utilities[[16]](#footnote-17) and the industry’s parent companies[[17]](#footnote-18) is BBB+, one notch below Ohio Power’s S&P bond rating. This means that Ohio Power bonds are viewed as being a less risky investment than the average utility bonds.[[18]](#footnote-19)

OCC witness Buckley testified that, for at least the last twenty-five years the PUCO Staff has averaged the outcomes of the Discounted Cashflow method (“DCF”) and the Capital Asset Pricing Model (“CAPM”) to calculate a utility’s rate of return.[[19]](#footnote-20) When Buckley completed these calculations for this matter, the results were:[[20]](#footnote-21)

|  |  |
| --- | --- |
| DCF AVERAGE | 9.707% |
|  |  |
| CAPM RATE | 9.32% |
|  |  |
| DCF & CAPM AVERAGE | 9.514% |

OCC Witness Buckley used the following formula to calculate the CAPM cost of common equity estimate: CAPM = Risk-Free Rate + Beta \* (Equity Risk Premium). In making this calculation, Buckley used:[[21]](#footnote-22)

(1) The average of the yearly 10-year and 30-year bond rates over the last 30 years (5/1/1993-3/1/2023) for the risk-free rate, which was 4.12%.

(2) The average betas of the comparable companies provided by Value Line was 0.88.

(3) The New York University Stern College of Business’s Equity Risk Premium, which was 5.94.

This resulted in 9.35=4.12+(.88\*5.94).

Mr. Buckley used S&P’s Peer Comps (“Peer Comps”) tool to select the comparable companies he used in the DCF analysis.[[22]](#footnote-23) It scores and ranks companies based on their similarity to the base company (which in this case was American Electric Power, which issues the common equity for Ohio Power). Peer Comps detects the most relevant filters and scoring criteria. Those attributes are then used to calculate and display the top comparable results.[[23]](#footnote-24) Using this independent tool removes any selection bias from the rate of return process. Ultimately, Peer Comps selected the following companies:[[24]](#footnote-25)

|  |  |
| --- | --- |
| 1. Dominion Energy, Inc. (NYSE:D) | 3.88 |
| 2. Sempra Energy (NYSE:SRE) | 4.12 |
| 3. Xcel Energy Inc. (NASDAQGS:XEL) | 5.02 |
| 4. DTE Energy Company (NYSE:DTE) | 5.78 |
| 5. Public Service Enterprise Group Incorporated (NYSE:PEG) | 5.79 |
| 6. Duke Energy Corporation (NYSE:DUK) | 5.83 |

In calculating its DCF cost of common equity estimate for each company in the Peer Group, OCC Witness Buckley used:[[25]](#footnote-26)

1. The average stock price (determined by averaging the adjusted daily closing price for the period from April 13, 2022 to April 12, 2023);
2. The sum of the last four quarterly dividends; and
3. The estimates of the expected growth rate of earnings.

The DCF model assumes that earnings growth and dividends growth are the same. Mr. Buckley averaged earnings per share growth estimates from Yahoo Finance, Zacks, and Value Line to determine DCF growth estimates for each company in the Peer Group.[[26]](#footnote-27) The Value Line average incorporates both the explicit long-range earnings estimate shown in the boxed area of investor sheets and the implicit continuous growth rate calculated from the estimates of earnings per share. For his determination of DCF cost of equity, Buckley assumed dividends grew at a rate derived from financial analysts' growth estimates for the first five years (*i.e*., long-term growth rate).[[27]](#footnote-28) His DCF growth estimates were used for the first five years, as they are averages of estimates from various investor news services.[[28]](#footnote-29) From the twenty-fifth year on, the growth rate was assumed to equal the long-term growth rate in Gross National Product (GNP).[[29]](#footnote-30) For the sixth through twenty-fourth years, assumed dividend growth rates changed incrementally from the average growth used in the first five years towards the GNP rate in a linear fashion.[[30]](#footnote-31) The long-term growth rate in GNP was the average annual change in GNP from the U.S. Department of Commerce for 1929 through 2022.[[31]](#footnote-32) Based on long-term GNP growth, the respective Company DCF growth estimate and dividend, a stream of annual dividends was calculated.[[32]](#footnote-33) The dividend stream and the stock price were used for a non-constant growth DCF cost of equity estimate. The Peer Group’s non-constant DCF cost of equity estimates average 9.51 percent.[[33]](#footnote-34)

Using the above methods, Buckley calculated the resulting Rate of Return as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Rate of Return Summary | | | | |
| The Ohio Power Company | | | | |
| Capital Structure as 2022 end of Fiscal Year (Per S&P)[[34]](#footnote-35) | | | | |
|  |  |  |  |  |
|  | Amount | % of | % | Weighted |
|  | $ | Total | Cost | Cost % |
|  |  |  |  |  |
| Long Term Debt | $3,226,300 | 51.09% | 4.01% | 2.05% |
|  |  |  |  |  |
| Preferred Stock | $0 | 0.00% | 0.00% | 0.00% |
|  |  |  |  |  |
| Common Equity | $3,088,100 | 48.91% | 9.51% | 4.65% |
|  |  |  |  |  |
|  | \_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_ |
|  |  |  |  |  |
| Total Capital | $6,314,400 | 100.00% |  | 6.70% |

The Settlement proposes an excessive ROE of 9.71 percent.[[35]](#footnote-36) The national average return on equity granted to electric companies from March 31, 2022 to March 31, 2023 was 9.61 percent overall and 9.19 when distribution only utilities are averaged.[[36]](#footnote-37) As OCC Witness Buckley’s calculations and testimony demonstrate, the PUCO should set a rate of return of 6.7 percent and a resulting ROE of 9.51 percent.[[37]](#footnote-38)AEP’s risk profile does not warrant a higher rate of return than the national average.[[38]](#footnote-39)

AEP stated at the J.P Morgan Midwest Utilities Forum that in the immediate term they are going to focus on de-risking and simplifying the business.[[39]](#footnote-40) In addition, AEP has over the last 10 years come in at the high end of its earnings per share guidance (or even exceeded the guidance range).[[40]](#footnote-41) AEP is delivering consistent, strong financial performance. Ohio Power is producing returns that are significantly higher than the average returns earned by the other regulated companies under the AEP umbrella.[[41]](#footnote-42) Also, as discussed above, Ohio Power has an above average bond rating when compared to that of other regulated utilities and plans to recover a significant amount of capital investments using riders. Based upon the above facts, Buckley testified “Ohio Power will not have any trouble accessing capital markets.”[[42]](#footnote-43)

In short, the ROE included in the Settlement takes advantage of Ohio’s consumers by forcing them to pay exorbitant profits to their utility. Ohio Power has repeatedly out earned other utilities and presents a significantly lower risk profile than its competitors. Forcing Ohio consumers to fund even greater returns that primarily benefit the utility’s shareholders is unreasonable.

### 2. The proposed low-income programs do not benefit consumers and the public interest.

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.[[43]](#footnote-44) The funding for the program is paid for by consumers, not shareholders.[[44]](#footnote-45)

The High Efficiency Low-Income Program (“HELP”) is budgeted at $10 million annually ($40 million over four years).[[45]](#footnote-46) The school program is budgeted at $600,000 annually ($2.4 million over four years).[[46]](#footnote-47) Consumers will also pay for $400,000 annually ($1.6 million over four years) for the Neighbor-to-Neighbor program[[47]](#footnote-48) 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.[[48]](#footnote-49) The selected program administrator will be paid a 10% administration fee of total annual program costs incurred.[[49]](#footnote-50) The Settlement allows the PUCO Staff to evaluate and audit the program, but not at the expense of AEP.[[50]](#footnote-51)

Under the Settlement, consumers, including at-risk consumers, pay a charge on their utility bill to fund all of these low-income energy efficiency programs.[[51]](#footnote-52) But the Settlement lacks proper PUCO oversight over the competitive bidding process and lacks sufficient review by the PUCO Staff.[[52]](#footnote-53) The PUCO should reject the Settlement because these deficiencies in the low income energy efficiency programs do not benefit consumers and the public interest.[[53]](#footnote-54)

The Settlement proposes a competitive bidding process to find an administrator for its included low-income programs.[[54]](#footnote-55) 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, as OCC witness Shutrump testified, the competitive bid process should satisfy the following criteria:[[55]](#footnote-56)

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.
3. 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.

A low-income program management audit is necessary and different from the PUCO Staff’s review of energy efficiency programs under the mandates.[[56]](#footnote-57) 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.[[57]](#footnote-58) 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.[[58]](#footnote-59)

To protect consumers from being over-charged for ineffective, inefficient, or improperly managed programs, a mandatory PUCO audit of the program, including its policies and practices, is necessary. OCC witness Shutrump testified that the PUCO Staff’s audit should take place at the end of 2026 and the costs should be collected through the Energy Efficiency Rider and publicly docketed.[[59]](#footnote-60)

Program guidelines that could protect consumer funding include (but are not limited to):[[60]](#footnote-61)

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[[61]](#footnote-62) (entitled “Landlord Obligations”).

The management audit should consider whether the policies, practices, and organization of the low-income program are prudent.[[62]](#footnote-63) 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 and the program providers; (3) eligibility documentation for AEP program applicants; (4) spending of the AEP 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 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.[[63]](#footnote-64)

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.[[64]](#footnote-65)

The PUCO Staff audit of the rider should also be required, not as an option, with interested parties being permitted a reasonable opportunity to address the findings of the PUCO Staff. Parties should be able to request an evidentiary hearing based on the auditor’s findings.[[65]](#footnote-66) AEP should make available to the PUCO Staff and OCC, upon request, program expenditures per property and property addresses where weatherization services are performed.[[66]](#footnote-67)

Consumer funds are limited.[[67]](#footnote-68) AEP shareholders should completely fund the Neighbor-to-Neighbor program, which would decrease consumer funding by $1.6 million over four years.[[68]](#footnote-69) In approving 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 is paired with a customer bill assistance program, funded by Columbia with funds that will not be recovered from ratepayers.[[69]](#footnote-70)

But unlike the Settlement in Columbia, the AEP Settlement does not provide for such shared investment. The Settlement should be modified to require AEP to share in the costs of providing these low-income assistance programs.

### 3. Failing to separate SSO auctions by customer classes does not benefit consumers and the public interest.

OCC witness Wilson testified that holding separate SSO auctions for residential consumers, or perhaps residential and small commercial consumers, has the potential to significantly lead to more efficient and lower cost SSO auction outcomes for residential consumers.[[70]](#footnote-71) Wilson recommended that the PUCO require the Company to implement separate SSO auctions for residential customers, perhaps also including small commercial customers.[[71]](#footnote-72)

Consumer classes are different in two principal ways relevant to the cost to serve under an SSO obligation:[[72]](#footnote-73)

1. Different consumer groups have different load shapes throughout the hours of the day and on a seasonal basis; in general, more variable load shapes are more costly to serve; and
2. The consumer groups also differ in the propensity to switch into or out of SSO service when market prices change and render a switch attractive. Generally speaking, smaller consumers with less to save by switching are less likely to switch; large consumers with more at stake are more likely to be watching the market for opportunities to save on their electricity costs.

Holding separate auctions for different consumer classes would allow SSO suppliers to tailor their bids to the particular costs and risks presented by each class.[[73]](#footnote-74) When the costs and risks differ but the classes are included in the same auction, the lower-cost consumer classes subsidizes the service provided to the higher-cost consumer classes.[[74]](#footnote-75)

It is common in other states to hold separate auctions for either residential consumers, or residential together with small commercial.[[75]](#footnote-76) In particular, New Jersey, Maryland, the District of Columbia, and Illinois hold separate auctions for residential consumers together with small commercial consumers.[[76]](#footnote-77) In Pennsylvania, Delaware and Massachusetts the auctions are by consumer class, so residential consumers have a separate auction.[[77]](#footnote-78) These approaches to standard offer service in these states have been in place for many years.

The following paragraphs summarize early decisions to employ these approaches:

* + Massachusetts (2000), providing a six-month fixed price approach for residential and small commercial and industrial customers, and a variable price approach for medium and large commercial and industrial customers.[[78]](#footnote-79)
  + New Jersey (2002), approving two auctions for Basic Generation Service, one for larger commercial and industrial customers and one for all other small customers.[[79]](#footnote-80)
  + Maryland (2004), providing for Residential Standard Offer Service (“SOS”) and three types of non-residential SOS.[[80]](#footnote-81)
  + Delaware (2005), providing for a fixed price SOS for all but the largest customers and an hourly priced service for the largest customers.[[81]](#footnote-82)
  + Illinois (2006), adopting an approach with three-year contracts for serving residential and small commercial customers.[[82]](#footnote-83)
  + Pennsylvania (2007), recommending different procurement strategies for different customer classes, consistent with the level of energy knowledge, financial resources, and opportunity to shop associated with these groups.[[83]](#footnote-84)

Holding separate SSO auctions for residential, or perhaps residential and small commercial consumers, an approach many other states have adopted, is the best option for improving the efficiency of SSO auction outcomes, thereby benefiting consumers and the public interest.[[84]](#footnote-85) SSO suppliers are likely to find smaller consumers less likely to switch into and out of SSO service and, therefore, less risky to serve.[[85]](#footnote-86)

### 4. To ensure benefits to consumers and the public interest, the PUCO should provide guidance on how the proxy price will be set if the capacity pass-through mechanism is approved.

The Settlement proposes to use a capacity pass-through mechanism to address the concern that the applicable PJM capacity prices may not be known before an SSO auction, creating risk for bidders into the SSO auction.[[86]](#footnote-87) This is a concept that is also under discussion in a separate PUCO proceeding.[[87]](#footnote-88) As further explained below, if the capacity pass-through mechanism is approved, the PUCO should provide guidance on how the proxy price will be set.[[88]](#footnote-89)

The Settlement calls for the capacity pass-through mechanism to be used in the event “BRA clearing prices” for some of the planning years covered by any of the SSO auction products are not known before the SSO auction.[[89]](#footnote-90) While “BRA” is not defined in the Settlement, OCC witness Wilson testified that he understands this to mean the Base Residual Auctions held under PJM Interconnection, LLC’s Reliability Pricing Model capacity construct.[[90]](#footnote-91) This understanding is consistent with the Staff Proposal and Recommendation attached to the Entry in Case No. 23-781-EL-UNC, cited earlier in his testimony.[[91]](#footnote-92) The Settlement calls for the SSO auction manager, in consultation with the PUCO Staff, to establish a “proxy capacity price” based on “objective criteria” in advance of the auction. Once the actual applicable PJM capacity price is known, the SSO auction clearing price will be “trued up” based on the difference between the actual price and the proxy price.[[92]](#footnote-93)

The Settlement does not set forth any principles to guide how the proxy price is set.[[93]](#footnote-94) In addition, the mechanism and associated true-up are potentially confusing, especially to smaller residential and commercial consumers who are likely paying less attention to the details of the SSO auctions.[[94]](#footnote-95) The mechanism renders any “apples to apples” comparison or “price to compare” less meaningful at best, and potentially misleading at worst. And when a true-up occurs and changes the anticipated cost of SSO service, this could potentially leave some customers feeling cheated, especially if the SSO price is sharply increased.[[95]](#footnote-96)

If the capacity pass-through mechanism is approved, to ensure it benefits consumers and the public interest, the PUCO should provide guidance on how the proxy price will be set.[[96]](#footnote-97)

### 5. Excessively high Distribution Investment Rider (“DIR”) caps do not benefit consumers and the public interest.

The proposed Settlement establishes excessively high Distribution Investment Rider caps that do not benefit consumers and the public interest. The Distribution Investment Rider (“DIR”) was originally authorized in AEP’s ESP II as a single-issue ratemaking mechanism under R.C. 4928.143(B)(2)(h).[[97]](#footnote-98) The DIR has traditionally provided capital for programs that are intended to maintain or improve the reliability that AEP provides consumers.[[98]](#footnote-99) To help moderate the impact that the DIR could have on consumer bills, there have been limits (caps) on the DIR charges to consumers.[[99]](#footnote-100)

In the ESP IV, the base revenue caps were established at $57 million for 2021, $91 million for 2022, $116 million for 2023, and $51.25 million for January – May 2024 for a total of approximately $315 million.[[100]](#footnote-101) In addition, the ESP IV included incentive provisions for increasing the base DIR revenue cap dependent upon AEP meeting certain DIR performance-based trigger standards for 2021 through 2023.[[101]](#footnote-102) These trigger standards were based on improvements in the System Average Interruption Duration Index (“SAIDI”) metric for defined outage causes that were primarily influenced by investments made through the DIR.[[102]](#footnote-103)

In the proposed ESP V Settlement, the revenue caps are $122.75 million for June through December 2024, $226 million for 2025, $256 million for 2026, $286 million for 2027, and $131 million for January through May 2028 for a total of just over a billion dollars.[[103]](#footnote-104) For a residential consumer using 1,000 kWh per month, the current DIR charge is $4.72 per month. For the same usage under the proposed Settlement, the DIR charge in 2028 would be $11.78 per month[[104]](#footnote-105) - an approximate 150 percent increase.

Increases of this magnitude contradict regulatory principles and state policy supporting the availability to consumers of adequate, reliable, safe, efficient, and reasonably priced retail electric service.[[105]](#footnote-106) They create what is known as rate shock for consumers. Rate shock to consumers should be avoided. It is harmful to consumers and not in the public interest.[[106]](#footnote-107) The ESP V annual DIR revenue caps should be maintained at levels that are relatively close to the currently approved DIR revenue caps for 2021 through May 2024.[[107]](#footnote-108)

The proposed Settlement asserts that lowering the depreciation expense as proposed in the Settlement will enable additional capital investment through the DIR to maintain and improve reliability.[[108]](#footnote-109) But even so, the proposed revenue caps are unreasonably high. Indeed, AEP Ohio is statutorily required to provide adequate and reliable service regardless of the level of the DIR revenue caps authorized in this case.[[109]](#footnote-110) Thus, the caps should be maintained at the more affordable current level and should be linked to actual quantifiable improvements in their reliability.[[110]](#footnote-111) For June 2024 through December 2024, the more reasonable and affordable DIR revenue cap would be $80 million. For 2025 through 2027, the DIR revenue caps would be $160 million, $182 million, and $202 million. For January to May 2028, the DIR revenue cap would be set to $93 million.[[111]](#footnote-112)

Moreover, the proposed Settlement would unfairly enable AEP to collect from consumers the full amount of the DIR revenue cap regardless of whether any improvement is made in reliability or even if AEP fails to meet its minimum PUCO reliability standards.[[112]](#footnote-113) Under the Settlement, consumers will pay more for the DIR rider, with no assurances that the service reliability will be maintained or improved.

As OCC witness Williams explained in his direct testimony, AEP filed an application proposing to weaken the current minimum reliability standards that AEP must maintain.[[113]](#footnote-114) Currently, AEP is required by the PUCO to maintain a System Average Interruption Frequency Index (“SAIFI”) of 1.2 and a Customer Average Interruption Duration Index (“CAIDI”) of 148 minutes.[[114]](#footnote-115) But AEP Ohio has a pending application to modify the reliability standards to a SAIFI of 1.28 and CAIDI of 158.0 minutes.[[115]](#footnote-116) For perspective, this means that consumers can on average expect 8.5 percent more interruptions annually than currently experienced and each interruption lasting on average 10 minutes longer. And this could occur during the term of the ESP V despite the hundreds of millions of dollars that consumers are spending on the DIR.[[116]](#footnote-117) According to the AEP response to STIP-OCC-INT-02-008,[[117]](#footnote-118) AEP has not even performed quantifiable future projections of the SAIFI and CAIDI performance associated with the DIR as proposed in the Settlement. Increasing DIR spending without commensurate reliability benefits as proposed in the Settlement is not beneficial for consumers or in the public interest.

In approving an AES Ohio ESP, the PUCO prescribed certain improvements in the SAIDI reliability performance as a condition for AES Ohio to collect from consumers the full authorized DIR revenue caps authorized in that case.[[118]](#footnote-119) In approving a Duke Energy Ohio ESP, the PUCO prescribed certain improvements in the reliability performance as a condition for Duke Energy to be authorized to collect through the DCI rider the full value of the DCI revenue caps.[[119]](#footnote-120) More recently, the PUCO further prescribed additional improvements in the SAIDI performance that were linked to the Duke DCI revenue caps.[[120]](#footnote-121) AEP should be held to at least the same standards.

### 6. Allowing AEP to charge consumers $244 million over the term of ESP V for tree-trimming expenses that should be paid for through base rates does not benefit consumers or the public interest.

If approved, the Settlement would allow AEP to charge consumers $244 million over the term of ESP V through the Enhanced Service Reliability Rider (“ESRR”), for tree-trimming expenses that should be paid for through base rates.[[121]](#footnote-122) As originally approved by the PUCO in the AEP ESP I, the purpose of the additional funding through the ESRR was to support AEP’s transition to a four-year cycle-based tree-trimming program.[[122]](#footnote-123) But four ESPs and fourteen years later, the ESRR continues to drive up consumer electric bills from between $28.00 - $30.00 annually over the term of the ESP V.[[123]](#footnote-124)

Spending levels for the ESRR were last established in the AEP distribution rate case at a level of $45 million annually.[[124]](#footnote-125) Importantly, the ESRR spending was intended to collect vegetation management expenses including those associated with a “danger tree” program that was intended to end in 2023.[[125]](#footnote-126) Yet the proposed Settlement now reflects in less than two years a 38 percent growth in the amount AEP can spend through the ESRR to between $60 and $62 million annually.[[126]](#footnote-127)

There is no reason for the dramatic growth of spending under the ESRR in the Settlement.[[127]](#footnote-128) Moreover, Settlement does not require AEP to file an updated vegetation management plan to reflect any additional tree-trimming responsibilities that it would be obligated to perform with the additional ESRR funding.[[128]](#footnote-129) The ESRR was not examined by the PUCO to determine if the continuance of the rider is cost effective.

According to the AEP response to STIP-OCC-INT-02-007,[[129]](#footnote-130) the Company has not projected the reliability impacts associated with the ESSR as proposed in the Settlement. Thus, the Settlement can result in consumers being charged unjust and unreasonable rates for the ESRR with no required reliability improvements.[[130]](#footnote-131)

The proposed Settlement also does not include any provisions that would require AEP to examine the impact of including all tree-trimming expenses in the test year for the distribution rate case that it is required to file by June 1, 2026.[[131]](#footnote-132) The PUCO should not approve the Settlement’s $244 million of “tree trimming expenses” without any demonstration of need or plan of action.

### 7. The proposed Settlement would essentially issue AEP a blank check to charge consumers under the gridSMART Rider, which would harm consumers and the public interest.

The proposed Settlement provides AEP near “carte blanche” with regard to charging consumers through its gridSmart Rider. The Settlement would permit AEP to collect from consumers costs associated with an Advanced Distribution Management System (“ADMS”) until such time as ADMS costs are reflected in base rates.[[132]](#footnote-133) The Settlement would permit AEP to collect costs associated with its Electric Transportation Plan (“ETP”) and potential “heat map” costs.[[133]](#footnote-134) The Settlement would also permit AEP to collect costs associated with a smart thermostat demand response program.[[134]](#footnote-135) The proposed Settlement would allow for all of these costs to be recouped by AEP through the gridSMART Rider.

The PUCO limited the amount that could be collected from consumers through the gridSMART Rider to no more than $223,113,318 in capital costs and $78,838,617 in associated O&M expenses.[[135]](#footnote-136) However, the proposed Settlement does not project what if any cost impact the ADMS, ETP, heat map, and Smart Thermostat Rebate Programs will have on those PUCO approved caps. In fact, according to the AEP response to STIP-OCC-INT-02-003,[[136]](#footnote-137) there are no specific dollar caps associated with the additional spending proposed in the Settlement. According to the AEP response to STIP-OCC-INT-02-004,[[137]](#footnote-138) there was no cost benefit analysis to support the programs under the proposed Settlement that will be collected from customers through the gridSMART rider. AEP has failed to provide any evidence that it would be beneficial for consumers or in the public interest for the ADMS, ETP, and Smart Thermostat Rebate Program to be collected from consumers through the gridSMART Rider.[[138]](#footnote-139)

### 8. The Settlement fails to consider affordability, especially to at-risk consumers, or the exorbitant number of AEP service disconnections, and therefore does not benefit consumers and the public interest.

OCC witness Tinkham testified that the Settlement does nothing to specifically address the affordability of consumers’ essential electric utility service or the unreasonably large number of AEP service disconnections that occurred in previous years.[[139]](#footnote-140) Also, the Settlement only provides annual disconnection data by zip code to the PUCO.[[140]](#footnote-141) And the Settlement does not adopt measures that could lower service disconnections.[[141]](#footnote-142) If the PUCO approves the Settlement, consumers’ electric utility service will become less affordable resulting in an increase in service disconnections.[[142]](#footnote-143)

OCC witness Tinkham testified that AEP’s 2022 to 2023 annual disconnection reports demonstrate that electric service is becoming less affordable for consumers. According to Mr. Tinkham, the total dollar amount of unpaid bills represented by such disconnections tripled from $21,162,801[[143]](#footnote-144) to $63,554,235.65,[[144]](#footnote-145) which results in an increase of $42,391,434.65. Also, the number of final notices increased from 2022 to 2023 from 1,673,835[[145]](#footnote-146) to 1,789,128[[146]](#footnote-147) respectively, representing an increase of 115,293 final notices sent to residential consumers. Finally, the total amount of unpaid balances on the final disconnection notices increased from the 2022 to the 2023 filing from $459,550,106[[147]](#footnote-148) to $542,345,458.50,[[148]](#footnote-149) an increase of $82,795,352.50. This data shows that service disconnections are increasing at an alarming rate for AEP’s consumers.

Second, AEP consumers would not benefit from a bill increase as proposed in the Settlement.[[149]](#footnote-150) The ESP bill increase would occur at a time when consumers are experiencing higher rates for all utility services, along with inflation.[[150]](#footnote-151) The cumulative effect of these increases means some consumers may have to choose between paying their electric bills and paying for basic needs such as groceries, gasoline, and rent.[[151]](#footnote-152) Since June 1, 2023, AEP’s standard offer increased by 4.355 cents from 6.622[[152]](#footnote-153) to 10.977 cents per kWh.[[153]](#footnote-154) That is approximately a 65% increase in generation costs.

Third, AEP conducted more service disconnections for non-payment than AES Ohio, Cleveland Electric Illuminating, Duke Energy Ohio, Ohio Edison, and Toledo Edison combined. From June 1, 2022, through May 31, 2023, AEP disconnected 155,398[[154]](#footnote-155) residential consumers. During that same time frame, all other electric distribution utilities (“EDU”) *combined* disconnected 125,481.[[155]](#footnote-156) Also, AEP disconnected a higher percentage of their residential consumers than any other EDU at 11.7%.[[156]](#footnote-157) AES Ohio and Toledo Edison had the second highest percentage of residential consumers disconnected at 5.4%.[[157]](#footnote-158) The PUCO should not approve the Settlement that will increase rates when AEP’s disconnection rates are significantly higher compared to other EDUs.[[158]](#footnote-159)

Fourth, AEP disconnected more consumers than were reconnected from June 1, 2022, through May 31, 2023.[[159]](#footnote-160) During that time frame, AEP disconnected 155,398,[[160]](#footnote-161) but only reconnected 136,578.[[161]](#footnote-162) That means that 18,820 of AEP residential consumers were never reconnected.

Fifth, 47.5% of AEP service disconnections in 2022 occurred in twenty zip codes.[[162]](#footnote-163) Table 1 below provides a list of the number of service disconnections in the top 20 zip codes in the AEP Ohio service territory obtained through discovery in OCC-INT-02-001.[[163]](#footnote-164) Even though this issue clearly disproportionately affects these zip codes, the Settlement does not address reducing service disconnection by zip code.[[164]](#footnote-165)

**Table 1**

|  |  |
| --- | --- |
| Zip Code[[165]](#footnote-166) | Service Disconnections[[166]](#footnote-167) |
| 43232 | 5989 |
| 43229 | 5585 |
| 43228 | 5014 |
| 43224 | 4766 |
| 43204 | 4440 |
| 43207 | 4253 |
| 43213 | 4130 |
| 43068 | 4109 |
| 43211 | 3766 |
| 43227 | 3375 |
| 43223 | 3225 |
| 43055 | 3000 |
| 43219 | 2886 |
| 43206 | 2520 |
| 43701 | 2377 |
| 43230 | 2305 |
| 43123 | 2062 |
| 44705 | 2060 |
| 45601 | 1876 |
| 43205 | 1791 |

By failing to address the huge and growing problem with AEP’s disconnections, the Settlement does not benefit consumers and the public interest.

### 9. Forcing all consumers, including Percentage of Income Payment Plan (“PIPP”) consumers, to fund AEP’s Neighbor-to-Neighbor program does not benefit consumers and the public interest.

As part of the Settlement, AEP would take $400,000 annually collected through the Energy Efficiency Rider to fund the Neighbor-to-Neighbor bill payment assistance program, which leverages consumer donations.[[167]](#footnote-168) Currently, the Neighbor-to-Neighbor program assists consumers who meet specific criteria. AEP consumers should not be tasked to fund the Neighbor-to-Neighbor program through a monthly charge through the Energy Efficiency Rider, which increases the electric bill for all consumers, including PIPP consumers.[[168]](#footnote-169)

As OCC witness Tinkham testified, in order to actually benefit consumers and public interest, the current Neighbor-to-Neighbor program funding should be increased to $1.5 million annually, and funded by shareholders and optional consumer donations, instead of charges to consumers.[[169]](#footnote-170) Also, a new $1 million-dollar annual bill payment assistance program should be established that is funded by shareholders to assist consumers in the top 20 zip codes with the highest disconnection rates. Both bill payment assistance programs would help reduce service disconnections through the AEP service territory and the top 20 zip codes with the highest number of disconnections.[[170]](#footnote-171)

### 10. By failing to require that the PIPP generation rate be no higher than the SSO rate the Settlement fails to benefit consumers and the public interest.

The Settlement does not protect at-risk consumers by failing to address major issues that exist with the PIPP Generation Auction and resulting PIPP charge.[[171]](#footnote-172) On an annual basis, a competitive auction is conducted to procure a generation rate that PIPP consumers pay for electric generation on a per kWh basis. This is the only way PIPP consumers can procure electricity.[[172]](#footnote-173) Also, competitive auctions are conducted to secure the non-PIPP SSO rate, which is the rate a non-PIPP consumer pays for electric generation if they do not select a third-party energy marketer.[[173]](#footnote-174)

R.C. 4928.542(B) specifically requires the winning bid or bids selected “(r)educe the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer.” However, AEP PIPP consumers have paid a higher generation rate compared to the SSO two out the last three years.[[174]](#footnote-175) In particular, PIPP consumers paid more than double the SSO rate from June 1, 2022, through May 31, 2023.[[175]](#footnote-176) During that time frame, PIPP generation consumers paid 15.367[[176]](#footnote-177) cents per kWh, while SSO consumers paid 6.6220 cents per kWh.[[177]](#footnote-178) At-risk PIPP consumers, the least able to afford higher electricity bills, were unlawfully burdened to pay more than double the amount an SSO consumer paid for electric generation from June 1, 2022, through May 31, 2023.[[178]](#footnote-179)

The USF rider is a funding mechanism for providing electric bill payment assistance through PIPP, the Electric Partnership Program (EPP), along with certain administrative fees. A higher PIPP generation rate is harmful to consumers (PIPP and Non-PIPP) as they will be responsible for paying a higher USF rate.[[179]](#footnote-180)

To protect at-risk PIPP consumers and the public interest, OCC witness Tinkham testified that the PUCO should require the PIPP generation rate to be at or below the SSO rate.[[180]](#footnote-181) If the PIPP generation auction results are a higher rate than the SSO, the PIPP generation rate should default to the SSO rate.[[181]](#footnote-182) Consumers would benefit by reducing the amount paid through the USF. Also, PIPP consumers would be guaranteed to not pay a generation rate higher than the SSO. That would benefit PIPP consumers by lowering their arrearages, which is the difference between the monthly PIPP amount and the actual bill.[[182]](#footnote-183)Without these changes the Settlement fails to benefit consumers and the public interest.

### 11. The Automaker Credit Rider, which AEP proposes to continue in ESP V, does not benefit consumers or the public interest.

Currently, the Automaker Credit Rider collects up to $500,000 annually from all consumers, including residential consumers.[[183]](#footnote-184) The Automaker Credit Rider is available to automakers utilizing and expanding automaker facilities.[[184]](#footnote-185) Residential consumers should not be responsible to subsidize the Automaker Credit Rider.[[185]](#footnote-186)

Approving the automaker credit, which is subsidized by all consumers, is contrary to the public interest.[[186]](#footnote-187) As OCC witness Tinkham testified, consumers are already facing higher electric bills due to the increase in the SSO, along with inflation, especially on basic necessities (groceries, gasoline, rent).[[187]](#footnote-188) Extra money collected from residential consumers through the Automaker Credit Rider takes more money out of the pockets of hardworking Ohioans who are trying to make ends meet.[[188]](#footnote-189) This does not benefit consumers or the public interest.

## B. The proposed Settlement violates important regulatory principles and practice.

### 1. The proposed Interruptible Service Credit reduction schedule allows AEP to continue charging unreasonably high rates to Ohio consumers within violation of the regulatory principle that consumers should not be charged unjust and unreasonable rates.

The Settlement proposes that under the Legacy Customers Interruptible Power Rider (“IRP-L”) the two existing Legacy Customers for 7 up to 200 MW of interruptible capacity will continue through the end of the ESP term.[[189]](#footnote-190) AEP proposes a reduction in the $/kW credit associated with the IRP-L over the ESP term. The proposal is to gradually step down the credit from $9 per kW to $4 per kW or a reduction of a $1 per kW per year effective June 1st each year starting June 1, 2025, through the ESP V term. [[190]](#footnote-191) If at any time the IRP-L credit drops below the IRP-E credit, the IRP-L credit will be equal to the IRP-E credit.[[191]](#footnote-192) The current IRP-L demand credit of $9/Kw month will be reduced to $8/Kw month on the effective date of the new ESP then to $7/Kw month in the second year of the ESP, and $6/Kw month in the third and fourth years of the ESP. There will be an IRP-L minimum demand credit of 70% of the PJM Base Residual Auction price during the entire ESP term.[[192]](#footnote-193)

As OCC witness Fortney testified, the phase-down in the Settlement does not go far enough nor fast enough, and OCC recommends the credits be reduced by $1.25 per year such that the Year 1 credit is $7.75, the year 2 credit is $6.50, the year 3 credit is $5.25, and the year 4 credit is $4.00.[[193]](#footnote-194) The Market Clearing Price for capacity in the AEP zone, as established by PJM in its Base Residual Auction, plus the unquantifiable benefits of reliability and economic benefits that the interruptible credits provide is $4.00 KW Month.[[194]](#footnote-195) The “price” for interruptible service should reflect the market price for a very comparable product (capacity in the AEP zone) as closely as possible, for consumer benefit.[[195]](#footnote-196)

The interruptible credits in the Settlement are simply too high.[[196]](#footnote-197) This is confirmed by the fact that they are substantially higher than a very comparable product (capacity in the AEP zone).[[197]](#footnote-198) Such high credits, paid for by consumers, do not benefit consumers and the public interest.[[198]](#footnote-199)

Further, a regulatory principle and practice of regulation is that rates should, to the extent possible, reflect costs.[[199]](#footnote-200) Regarding interruptible credits, the PUCO should use the Market Clearing Price for capacity in the AEP zone as established by the PJM Base Residual Auction when establishing the interruptible service credit.[[200]](#footnote-201) Additionally, charging consumers such a large amount for interruptible service above and beyond a comparable, market-based price does not result in just and reasonable rates to consumers in violation of Ohio law.[[201]](#footnote-202) Accordingly, the interruptible service credit violates important regulatory principles and practices.[[202]](#footnote-203)

### 2. The proposed Settlement’s demand response program violates Ohio law and numerous regulatory principles and practices.

Under the Settlement, consumers will be charged $5 million annually through the gridSMART rider to fund a demand response program that includes smart thermostats.[[203]](#footnote-204) 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.[[204]](#footnote-205) This portion of the Settlement violates numerous regulatory principles and practices, as OCC witness Shutrump testified.[[205]](#footnote-206) First the Settlement violates R.C. 4928.02(H) because the solution described above may in fact force SSO consumers pay for smart thermostats that will be used to help electric marketers market and sell their product.[[206]](#footnote-207) This directly violates R.C. 4928.02 (H) which 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.

Next, the Settlement violates R.C. 4928.02(D) by forcing consumers to fund smart thermostats which are readily available in the competitive market with numerous choices in retailers, brand, and price.[[207]](#footnote-208) R.C. 4928.02 (D) states 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.

As Shutrump testified, consumers can purchase smart thermostats at Lowes, Home Depot, Menards, Amazon, Walmart, local hardware stores, Best Buy, Office Depot, etc. and, in the market, consumers can choose various brands such as Amazon, Honeywell, Google Nest, Emerson, Bosch and Ecobee.[[208]](#footnote-209) 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.[[209]](#footnote-210) Forcing consumers to fund and obtain smart thermostats through the process described in the Settlement directly contradicts the aims of R.C. 4928.02(D).[[210]](#footnote-211)

Finally, the Settlement violates 4928.02(G),[[211]](#footnote-212) 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.[[212]](#footnote-213) The PUCO stated it is the policy of the state to promote the availability of unbundled and comparable goods and services that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs, and provide consumers effective choices over the selection of those supplies and suppliers.[[213]](#footnote-214) The PUCO punctuated it’s comments in that matter by stating “[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.”[[214]](#footnote-215)

Similarly, on its own motion in a recent Duke electric case,[[215]](#footnote-216) the PUCO struck Duke’s shared savings provision contained in the utility’s June 2020 request for a new energy efficiency portfolio. The PUCO explained its actions which it escribed to 4929.02(A)(4), stating that recovery of such shared savings would be against the objectives of the 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.[[216]](#footnote-217) Emphasizing the down-stream effects of resolving these issues now, the PUCO stated “[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.[[217]](#footnote-218) The PUCO reinforced this position, while approving the settlement in AEP’s recent rate case, stating “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.”[[218]](#footnote-219)

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.[[219]](#footnote-220) 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.[[220]](#footnote-221)

### 3. The proposed Settlement violates important regulatory principles and practice by continuing AEP’s Alternative Energy Rider which has been frozen by the PUCO until a review by PUCO Staff is completed.

The Settlement does not specifically address every issue and term raised within AEP’s Application to Establish a Standard Service Offer, rather, the signatories have requested “the Commission adopt the Application in this case as modified by” the Settlement.[[221]](#footnote-222) Therefore, although not mentioned in the Settlement, the application in this case proposes to continue AEP’s Alternative Energy Rider (“Rider AER”).[[222]](#footnote-223) In its recent Application of the Alternative Energy Rider & Auction Cost Recovery Rider Case (No. 20-1745),[[223]](#footnote-224) AEP 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[[224]](#footnote-225) until the PUCO Staff can evaluate AEP’s proposal. This issue should be addressed before Rider AER is allowed to continue.[[225]](#footnote-226)

### 4. The proposed Settlement violates important regulatory principles and practice by authorizing AEP to collect costs of a new Customer Information System (“CIS”) from consumers through its next distribution case or a future rider.

Under the proposed Settlement, AEP would be authorized to collect from consumers a return on and of its prudently incurred capital investment and its incremental operation and maintenance expenses associated with the installation of a new Customer Information System (“CIS”) through its next distribution rate case.[[226]](#footnote-227) The proposed Settlement would also authorize AEP to defer for later collection from consumers incremental O&M expense and capital carrying charges on any CIS plant in service prior to the date certain in the next distribution rate case.[[227]](#footnote-228) Further, the proposed Settlement would permit AEP to collect the deferred expenses from consumers in either base distribution rates or a future rider, subject to a demonstration of certain functionality requirements that are identified in the proposed Settlement.[[228]](#footnote-229)

The standard of review for all costs that will be collected from consumers related to the new CIS (rate bas) should be a determination that the plant as of a date certain is used and useful in providing electric distribution service to consumers.[[229]](#footnote-230) A demonstration that the new CIS may meet some limited functionality requirements such as those outlined in the proposed Settlement falls short of proving the plant is used and useful in providing service to consumers.[[230]](#footnote-231) Likewise, the prudency of CIS plant expenditures that will ultimately be paid for by consumers in distribution rates should be determined as prescribed in Ohio law (R.C. 4909.15).[[231]](#footnote-232) Failing to require AEP to prove the investment is used and useful violates important regulatory principles and practice.[[232]](#footnote-233)

### 5. The Automaker Credit Rider violates regulatory principles by failing to comply with the requirements of R.C. 4905.31.

In addition to harming consumers, Automaker Credit Rider also violates regulatory principles.[[233]](#footnote-234) R.C. 4928.143(B)(2)(i) allows for implementation of new economic development programs. But the economic development program AEP seeks to implement through this rider already exists. Therefore, the Automaker Credit Rider should only be considered if it qualifies as a special arrangement under R.C. 4905.31.

R.C. 4905.31 provides a way for large industrial and commercial consumers (like automakers) to seek favorable electric service rates, terms and conditions from a utility by filing an application with the PUCO. If automakers need a reduction in their electric bills, they have the opportunity to apply for a special arrangement under R.C. 4905.31. However, as OCC witness Tinkham explained, the Automaker Credit Rider as included in the Settlement violates regulatory principles.[[234]](#footnote-235) If automakers want a reasonable arrangement, they should go through the process outlined in R.C. 4905.31, which places the burden of proof on the customer that seeks to have other consumers subsidize their discount. Automakers should not be permitted to bypass the requirements of R.C. 4905.31 through the Automaker Credit Rider.[[235]](#footnote-236)

### 6. The Settlement violates regulatory principles and practices by failing to address AEP’s excessive disconnection of consumer services.

The disconnection of essential electric service jeopardizes the health and safety of consumers, especially during the Summer and Winter months.[[236]](#footnote-237) Electric service is critical for households to maintain lighting, heating that requires electricity, hot water heating, cooling (air conditioners and fans), medical devices, refrigeration of perishable food and medicine, and electric cooking appliances.

Even if a consumer is able to pay the electric bill, they could experience other health and safety needs due to a lack of funds.[[237]](#footnote-238) OCC Witness Tinkham further described this issue in his testimony, stating that over half of all low-income households engage in some coping strategies to reduce costs such as: (1) leaving the air conditioner off in the summer, allowing heat to reach uncomfortable and potentially unsafe temperatures, (2) forgoing food or medicine to pay their energy bills, (3) strategically paying down one bill rather than another, known as “bill balancing,” or (4) seeking payday loans which ultimately put them in deeper debt.[[238]](#footnote-239) As Tinkham testified, the most common coping strategies are also the most risky and most of the effected households need to engage in multiple strategies at once.[[239]](#footnote-240) Tinkham further testified to the significant medical and health problems which these low income consumers were likely to face as a result of coping strategies such as going without food or medical treatment for a day or more, not filling necessary prescriptions, or becoming ill due to the lack of heat in their homes.[[240]](#footnote-241) Forcing consumers to endure additional health and safety concerns, in order for AEP to collect additional profits, violates important regulatory principles and practice.

OCC witness Tinkham explained how the Settlement violates important regulatory policies and practices. R.C. 4928.02(A) and (L), sets forth the state’s policy concerning reasonably priced retail electric service and the protection of at-risk populations. R.C. 4928.02(A) and (L) state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service; and

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

The Settlement does not protect at-risk consumers, which goes against regulatory policy and principles.[[241]](#footnote-242)

To protect all consumers consistent with state policy, the PUCO should require a reduction in service disconnections by 15%.[[242]](#footnote-243) Within that 15%, the PUCO should require a 15% reduction in service disconnection within the top 20 zip codes with the highest number of disconnections.[[243]](#footnote-244) Based upon 2022 data, that would reduce service disconnections by 21,910 in AEP’s service territory, of which, a 10,429 reduction would need to occur in the top 20 zip codes.[[244]](#footnote-245) If AEP does not meet these service disconnection requirements mentioned above on an annual basis, AEP would be mandated to contribute $100,000 from shareholders towards bill assistance payment programs.[[245]](#footnote-246)

Mr. Tinkham also explained that for transparency, the disconnection data should be made public, not just provided to the PUCO.[[246]](#footnote-247) The disconnection data should be provided on a quarterly basis, not annually.[[247]](#footnote-248) For the OCC, disconnection data by zip code would allow its Outreach and Education Specialists to focus education efforts on zip codes to promote utility assistance programs and ways to reduce electric consumption.[[248]](#footnote-249) The information would also be helpful to social service organizations and energy assistance providers/community action agencies to identify zip codes with the greatest need for electric bill assistance.[[249]](#footnote-250)

Finally, the PUCO should require a quarterly collaborative meeting between AEP, PUCO, OCC, and other interested parties to explore and implement ways AEP can reduce service disconnections.[[250]](#footnote-251)

### 7. The proposed charges for the whole house service residential plug-in electric-vehicle (“PEV”) tariff and the separately metered electric vehicle TOD tariff do not meet cost-causation, incentive, rate-stability, and other regulatory principles, and therefore violate important regulatory principles and practice.

The Settlement proposes that the on-peak period for whole house service residential electric vehicle charging be set between 1:00 PM and 11:00 PM during the summer.[[251]](#footnote-252) It proposes that the on-peak period be set between 6:00 AM and 10:00 AM and again between 4:00 PM and 10:00 PM during the winter.[[252]](#footnote-253) In addition, the Settlement proposes that the off-peak rate be set at 60% of Schedule RS rate and that the on-peak rate be adjusted and designed to be revenue neutral.

The Settlement proposes[[253]](#footnote-254) that the on-peak period for the separately metered electric vehicle time of day tariff be set as proposed above for the whole house service residential electric vehicle tariff. The Settlement also proposes applying a 40% credit to the consumer’s bill for all off-peak electric vehicle kWh usage that is measured at the separate meter and applying a 70% credit for a super off-peak period that is set between 12:00 AM and 4:00 AM year-round.[[254]](#footnote-255)

Both of the aforementioned charges define off-peak and on-peak periods and set lower prices during the off-peak periods. However, OCC witness Sioshansi testified that Settlement has several shortcomings *vis-à-vis* the charge proposal in the Settlement.[[255]](#footnote-256)

According to OCC witness Sioshansi, regulators typically aim to set prices in a manner that achieves one or more desirable goals.[[256]](#footnote-257) One common example is the regulatory principle of cost causation—the price that is levied against a consumer for utility service should reflect the cost of providing service to that consumer.[[257]](#footnote-258) Regulators may have other goals, such as rate or cost stability (*i*.*e*., reducing price volatility before and after a rate-setting decision). In addition, with respect to electric vehicle charging, there may be an additional important rate-design goal of providing strong incentives for electric vehicle owners to shift their electric vehicle-charging demands (to the extent possible) to time periods with relatively abundant electricity supply or relatively low cost of serving electricity demand.

However, the proposed rates in the Settlement have no basis in any rate-design philosophy or goal.[[258]](#footnote-259)

First, OCC witness Sioshansi explained that there is no evidence provided that the price levels (*e.g*., setting an off-peak rate at 60% of Schedule RS rate and other proposed prices) provide a sufficient incentive for electric vehicle owners to shift their electric vehicle-charging demands to off-peak periods.[[259]](#footnote-260) Second, the settlement appears to have no discussion of the potential for so-called rebound peaks, whereby electric vehicles with automated charging controls simultaneously begin charging once the off-peak period starts.[[260]](#footnote-261)

Moreover, there is no evidence that the Settlement is consistent with the principles of cost causation.[[261]](#footnote-262) Depending upon how they are used and charged, electric vehicles have the potential to impose ancillary costs on the electricity system that other consumers (who don’t drive electric vehicles) would be forced to bear.[[262]](#footnote-263) OCC witness Sioshansi explained that prices should be set in a manner to have consumers bear the costs that they impose upon the system.[[263]](#footnote-264) Nothing in the Settlement protects consumers who do not charge electric vehicles from the costs caused by those who do.

Thus, the Settlement violates the cost-causation regulatory principle. [[264]](#footnote-265) OCC witness Sioshansi recommended that, at a minimum, the PUCO should request and scrutinize information regarding the design of the aforementioned rates and modify them accordingly.[[265]](#footnote-266) For instance, AEP and the signatories could provide empirical studies or other data to demonstrate that the proposed rates meet cost-causation, incentive, rate-stability, and other regulatory principles that are important to the design of tariffs involving electric vehicle charging.[[266]](#footnote-267) Without such substantiation, the rates that are proposed in the settlement violate the PUCO’s third prong and should not be approved.[[267]](#footnote-268)

### 8. The Settlement proposes Contribution in Aid of Construction (“CIAC”) provisions for consumer installations of electric vehicle chargers which violate important regulatory principles and practices.

The Settlement makes two proposals[[268]](#footnote-269) with respect to CIAC. First, during the PUCO’s next review of O.A.C. 4901:1-9, AEP will propose and support that electric utilities be responsible for eighty percent of the cost of line extensions for publicly available electric vehicle charging stations and that the consumer (*e*.*g*., that owns or installs the charging station located) be responsible for the remaining twenty percent, provided that AEP is ensured full cost recovery of the eighty percent.[[269]](#footnote-270) Second, if the PUCO approves increased financial incentives to offset CIAC costs during the term of the electric security plan (“ESP”), AEP will invest at least $2 million but no more than $4 million for CIAC costs for customer installations of electric vehicle-charging stations in approved locations.[[270]](#footnote-271) The Settlement proposes recovery of these costs from all consumers through the Distribution Infrastructure Rider (“DIR”).[[271]](#footnote-272)

First, paragraph 15 of the Settlement commits AEP’s electricity consumers to bear 80% of CIAC costs that are associated with deploying electric vehicle-charging stations socializing costs of up to $4 million to AEP’s electricity consumers.[[272]](#footnote-273) As Sioshansi testified,[[273]](#footnote-274) this situation would create a perverse cross subsidy to electric vehicle owners, the primary beneficiaries of electric vehicle-charging stations, who tend to be higher-income compared to the average electricity consumer.[[274]](#footnote-275) Under the Settlement, up to $4 million in CIAC costs will be borne by and socialized to all of AEP’s electricity consumers, including those lower-income consumers who are unlikely to receive any benefit from this additional expense.[[275]](#footnote-276) The result would be a $4 million wealth transfer subsidized by all AEP consumers, with the benefits accruing predominantly to higher-income individuals, in violation of regulatory principles.[[276]](#footnote-277)

To avoid this perverse cross subsidy, the proposal surrounding the treatment of CIAC costs in paragraph 15 of the settlement should be denied.[[277]](#footnote-278) Instead, in compliance with the principle of cost causation, the cost of electric vehicle-charging infrastructure and associated CIAC costs should be borne by the beneficiaries of the infrastructure, who are the electric vehicle owners themselves.[[278]](#footnote-279)

In addition, OCC witness Sioshansi testified that the CIAC proposals are not germane to the issues that are at stake in this ESP, and are premature.[[279]](#footnote-280) Paragraph 14 of the Settlement clearly states AEP’s agreement to act in a future unrelated matter, in exchange for the PUCO’s acceptance of the proposed Settlement in this matter. Moreover, paragraph 14 seems to dictate options available to signatory parties of the Settlement, with respect to another wholly separate matter pending with the PUCO. There is no reason to believe the PUCO’s decision regarding this ESP would preclude AEP, or any party to this case, from taking any position with respect to either O.A.C. 4901:1-9 or PUCO case number 22-1025-AU-COI.[[280]](#footnote-281) As such, this portion of the Settlement contains terms and conditions which are not germane to the issues that are being considered in this ESP case, and OCC opposes inclusion of this portion of paragraph 14 in the Settlement.[[281]](#footnote-282)

Finally, Paragraph 15 of the Settlement[[282]](#footnote-283) commits AEP to pre-specified spending and investment levels on CIAC costs for consumer installation of electric vehicle-charging stations before the PUCO has made any determination regarding the regulatory treatment of CIAC costs. Depending upon how the PUCO modifies O.A.C. 4901:1-9, and the PUCO’s decision in case number 22-1025-AU-COI, the spending levels stated in the Settlement may be completely inappropriate.[[283]](#footnote-284) In addition, locking-in AEP Ohio’s future spending levels on CIAC in this Settlement may act to tie the hands of the PUCO with respect to O.A.C. 4901:1-9 or case number 22-1025-AU-COI, because the PUCO would be aware their decisions initiate up to $4 million of consumer subsidized CIAC expenditures by AEP.[[284]](#footnote-285) As such, it is premature for these spending levels to be set in this Settlement.[[285]](#footnote-286)

## C. The Settlement Fails the “MRO vs ESP” test.

In addition to violating the PUCO’s three-part test for considering settlements, the Settlement here fails to satisfy the “MRO vs. ESP” test and should be rejected. The comparison the PUCO must make between the results of a utility’s ESP and the results that would be expected under a Market Rate Offer (“MRO”) is the “statutory test,”[[286]](#footnote-287) sometimes also referred to as the “MRO vs. ESP test.” Under Section 4928.143(C)(1) of the Ohio Revised Code, the PUCO cannot approve, or modify and approve, an ESP unless it finds that the ESP “including its pricing and all other terms and conditions, including any deferrals and future recovery of deferrals, is more favorable in the

aggregate [to customers] as compared to the expected results that would otherwise apply under section 4923138448.142 of the Revised Code.”

In conducting the statutory test, the PUCO has generally evaluated three parts - comparing the results of these elements under the proposed ESP to the results expected under an MRO:

1. The SSO price of generation to consumers;
2. Other quantifiable provisions; and
3. Other qualitative provisions.[[287]](#footnote-288)

The utility bears the burden of proving the ESP is more favorable in the aggregate to customers than a market rate option.[[288]](#footnote-289) The ESP embodied in the Settlement fails the statutory test.

Because of the current auction procedures for generation, the Standard Service Offer (SSO) generation rates have become 100% market-based rates.[[289]](#footnote-290) As a result, there should be no difference between market-based generation rates under an MRO or an ESP.[[290]](#footnote-291)

OCC witness Buckley testified that there are a number of new riders and increases to existing riders under the ESP that add over $1.1 billion in costs to customers with little to no value to customers.[[291]](#footnote-292) These riders would not be included in an MRO because an MRO merely sets the standard offer price.[[292]](#footnote-293) There are no other provisions under an MRO that allow AEP to include charges to customers for numerous and varied riders.[[293]](#footnote-294) With these riders consumers would pay $1.1 billion more in costs under the ESP than under an MRO.[[294]](#footnote-295) Further, AEP's purported qualitative arguments are unpersuasive. And the asserted qualitative benefits for customers cannot begin to offset in any meaningful way the quantitative cost of the ESP, let alone the more than $1.1 billion cost of this ESP.[[295]](#footnote-296)

### 1. AEP’s proposed ESP fails the statutory test based on analysis of purported quantitative benefits.

AEP does not provide any concrete quantitative benefits regarding its proposed Energy Efficiency portfolio.[[296]](#footnote-297) It relies on general assertions that the “streamlined recovery mechanism” will allow the company to “invest in advanced technology.”[[297]](#footnote-298) If anything, these attributes are more appropriately characterized as non-quantifiable benefits or qualitative benefits.

In contrast, there are specific costs associated with AEP’s proposed Energy Efficiency portfolio (with EE Rider) including a plan meant to help consumers save energy while also managing system demand at peak. As discussed in AEP witness Billing’s testimony,[[298]](#footnote-299) AEP predicts an annual benefit to consumers of $144.7 million. AEP said it would invest roughly $2.2 billion in reliability-related projects over the term of the plan.[[299]](#footnote-300) In addition AEP’s consumers will also be charged a return on these investments. So, the purported quantitative benefits of the ESP are dwarfed by the costs.[[300]](#footnote-301) Hence, the PUCO should not find quantitative (or qualitative) benefits to the Company’s Energy Efficiency portfolio.[[301]](#footnote-302)

The Enhanced Service Reliability Rider (“ESSR”) is a charge to recover tree trimming expenditures throughout the service territory.[[302]](#footnote-303) AEP has failed to demonstrate any significant reductions in outages caused by trees resulting from the ESSR. Spending levels for the ESRR were last established in the AEP distribution rate case at a level of $45 million annually.[[303]](#footnote-304) The proposed Settlement now reflects in less than two years a 38 percent growth in the amount AEP can spend through the ESRR to between $60 and $62 million annually.[[304]](#footnote-305) The proposed Settlement does not require AEP to file an updated vegetation management plan to reflect any additional tree-trimming responsibilities that it would be obligated to perform with the additional ESSR funding.[[305]](#footnote-306) According to AEP’s response to STIP-OCC-INT-02-007,[[306]](#footnote-307) AEP has not projected the reliability impacts associated with the ESSR as proposed in the Settlement. Thus, the Settlement could easily result in consumers being charged unjust and unreasonable rates for the ESRR with no required reliability improvements.[[307]](#footnote-308) AEP has clearly failed to provide any evidence the proposed ESP is more favorable in the aggregate to consumers than a market rate option with regard to the ESSR.

According to the proposed Settlement, the DIR will have a total cost of just over a $1 billion.[[308]](#footnote-309) The DIR provides little to no value to the reliability of AEP’s distribution system.[[309]](#footnote-310) For a residential consumer using 1,000 kWh per month, the current DIR charge is $4.72 per month. For the same usage under the proposed Settlement, the DIR charge in 2028 would be $11.78 per month[[310]](#footnote-311) - an approximate 150 percent increase. Even worse, the proposed Settlement would enable AEP Ohio to collect from consumers the full amount of the DIR revenue cap regardless of whether any improvement is made in reliability or even if the Company fails to meet its minimum PUCO reliability standards.[[311]](#footnote-312) And in fact, while the proposed Settlement results in consumers paying more for the DIR rider, there are no assurances that the standards of electric reliability that consumers receive today are even going to be maintained.[[312]](#footnote-313) Increasing DIR spending without commensurate reliability benefits as proposed in the Settlement is not beneficial for consumers in any way, and certainly is not more favorable than an MRO which could eliminate such wasteful spending.[[313]](#footnote-314)

### 2. AEP’s proposed ESP fails the statutory test based on analysis of purported qualitative benefits.

AEP has asserted that its proposed ESP would provide qualitative benefits to consumers.[[314]](#footnote-315) AEP witness Mayhan testified that there are qualitative benefits under the Company’s application.[[315]](#footnote-316) He stated:

The ESP also has several non-quantifiable benefits as compared to an MRO: economic development, increasing employment opportunities and ensuring equitable access to critical services such as online education and access to telehealth with the addition of the Rural Access Rider; supporting electric transportation opportunities; and improving speed to market for tariff offerings, settlement tools for customers participating in Choice, enhanced communication capability to proactively alert specific customers of energy consumption tips during severe weather conditions and upcoming outages and increased protection of customer data through the replacement of the CIS. This combination of quantifiable benefits and the non-quantifiable benefits clearly demonstrate that the provisions of the Company’s proposed ESP are more favorable in the aggregate than what would be expected under an MRO.

But the Settlement differs from AEP’s application, notably by removing some of the benefits AEP initially proposed.[[316]](#footnote-317) For example, the Rural Access Rider has been eliminated.[[317]](#footnote-318) Other qualitative benefits mentioned by Mr. Mayhan should not be subsidized by utility consumers, especially without any review to determine if the costs are prudent and the goals of the program are being met (or could not be better met by the competitive market).[[318]](#footnote-319) Thus, the PUCO should not accept AEP’s promises of so-called “qualitative benefits” at face value.

Indeed, OCC witness Buckley testified that AEP has made prior predictions of proposed benefits that did not materialize to the degree promised.[[319]](#footnote-320) Previously, Staff witness Tamara S. Turkenton and Ohio Power witness William Allen both stated that the Stipulation in 16-1852-EL-SSO would provide many qualitative benefits.[[320]](#footnote-321) These purported qualitative benefits included provisions for economic development, enhancements to the retail competitive market, and renewable energy options, as well as the promotion of measures related to the Smart City and Power Forward initiatives.[[321]](#footnote-322) However, as Buckley testified, residential consumers have not seen large improvements since the last ESP in 2016.[[322]](#footnote-323) Too many PIPP consumers are struggling to pay their electric bills. Further, consumers have not seen noticeable improvements in reliability performance statistics as shown below.[[323]](#footnote-324)

**AEP Ohio Reliability Performance Compared with Its Standards (2013-2022)[[324]](#footnote-325)**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Year | 2013[[325]](#footnote-326) | 2014[[326]](#footnote-327) | 2015[[327]](#footnote-328) | 2016[[328]](#footnote-329) | 2017[[329]](#footnote-330) | 2018[[330]](#footnote-331) | 2019[[331]](#footnote-332) | 2020[[332]](#footnote-333) | 2021[[333]](#footnote-334) | 2022[[334]](#footnote-335) |
| CAIDI Standard (Minutes) | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 149.00 | 148.00 | 148.00 | 148.00 | 148.00 |
| CAIDI Performance After Exclusion | 140.97 | 146.61 | 139.03 | 143.45 | 146.02 | **150.32\*** | 140.98 | 129.93 | 132.13 | 144.81 |
| CAIDI Performance Before Exclusion | 246.03 | 159.09 | 171.97 | 146.96 | 173.60 | 162.35 | 188.86 | 178.15 | 169.30 | 342.91 |
| SAIFI Standard | 1.2 | 1.20 | 1.20 | 1.20 | 1.20 | 1.19 | 1.18 | 1.18 | 1.18 | 1.18 |
| SAIFI Performance After Exclusion | 1.03 | 1.13 | 1.13 | 1.08 | 1.15 | **1.30\*** | **1.20\*** | 1.11 | 1.17 | 1.10 |
| SAIFI Performance Before Exclusion | 1.40 | 1.34 | 1.39 | 1.29 | 1.47 | 1.57 | 1.63 | 1.43 | 1.36 | 1.74 |

There is substantial risk being shifted away from AEP and on to residential consumers through riders.[[335]](#footnote-336) Under the traditional regulatory compact, base rate cases are filed to collect capital investments.[[336]](#footnote-337) Such cases involve more consumer protections than an ESP, as they involve a detailed, thorough, “open the books” analysis of a utility’s investments, and tests such as the “used and useful” standard must be met.[[337]](#footnote-338)

The PUCO does not always permit riders to collect incremental costs when requested.[[338]](#footnote-339) An example of the PUCO not allowing costs to be collected through a rider (instead requiring a base rate case) is case 18-1875-EL-GRD.[[339]](#footnote-340) In that case, the PUCO ordered DP&L to recover its prudently incurred capital investment in the new customer information system (“CIS”) and its incremental operation and maintenance expenses associated with the new CIS through base distribution rates and not through a rider.[[340]](#footnote-341) Rider costs are not offset by savings received by consumers.[[341]](#footnote-342) The rate case model allows for increases in costs in one area to be offset by a decrease in a different area. For example, a new CIS system should produce efficiencies, and those efficiencies should be shared with consumers who have paid for the CIS system after the base rate case is completed. When using riders, on the other hand, costs will be collected from consumers when they are incurred, and often related savings will only be shared with consumers when the Company decides to file a base rate case.[[342]](#footnote-343)

AEP had opportunities in its previous ESP (16-1952-EL-SSO), to create meaningful measures to quantify the benefits of an SSO and have not done so.[[343]](#footnote-344) Due to this lack of hard data, there is little to no evidence that benefits are occurring at all.[[344]](#footnote-345) If, for some reason, the PUCO approves the ESP despite the proposed ESP being less favorable in the aggregate than an MRO, the PUCO should at order a return on its riders to reflect the decreased risk and expedited collection period. Such a step is necessary to protect consumers from being repeatedly abused by Ohio Power.[[345]](#footnote-346)

The ESP embodied in the Settlement fails the statutory test.

# IV. CONCLUSION

Public utilities such as AEP are charged with fulfilling a vital public purpose. They provide consumers with an essential service. For doing so, they get various benefits from regulation. But such regulation must be balanced. Here it is not.

The Settlement, if approved, will increase the cost of consumers’ electric service without providing consumers meaningful additional services, increasing reliability, or safety benefits. As a package, the Settlement will not benefit customers and it is not in the public interest. It violates important regulatory principles and practices. The ESP embodied in the Settlement fails the MRO v. ESP test.

The Settlement should be rejected to protect consumers.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Initial Brief for Consumer Protection was served via electronic transmission upon the parties this 1st day of December 2023.

*/s/ William Michael*

William Michael

Assistant Consumers’ Counsel

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1. Case No. 23-23-EL-SSO, et al., Joint Stipulation and Recommendation (Sept. 6, 2023). [↑](#footnote-ref-2)
2. *Duff v. Public Utilities Com.,* 56 Ohio St.2d 367, 384 N.E.2d 264 (1978); *see also* O.A.C. §4901-1-30(E). [↑](#footnote-ref-3)
3. *Id.,* 56 Ohio St.2d at 379. [↑](#footnote-ref-4)
4. *Office of Consumers’ Counsel v. Public Utilities Com.,* 64 Ohio St.3d 123, 126 (1992). [↑](#footnote-ref-5)
5. *See, e.g.,* R.C. §4928.143(C)(1). [↑](#footnote-ref-6)
6. OCC Ex. 8 (Testimony Recommending Modification of the Stipulation of Joseph P. Buckley on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Buckley Testimony”) at 5:14-6:20. [↑](#footnote-ref-7)
7. *Id*. at 4:17-5:12. [↑](#footnote-ref-8)
8. *Id.* (emphasis added). [↑](#footnote-ref-9)
9. *See, e.g., FPC v. Hope Natural Gas Co*., 320 U.S. 591, 603 (1944). [↑](#footnote-ref-10)
10. Buckley Testimony, at 5:14-6:20, citing *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates,* Case No. 21-887-EL-AIR, et al., Direct Testimony of J. Randall Woolridge, Ph.D. on Behalf of Office of the Ohio Consumers’ Counsel (Sept. 2, 2022). [↑](#footnote-ref-11)
11. *Id*. at 6:22-7:6. [↑](#footnote-ref-12)
12. *Id*. [↑](#footnote-ref-13)
13. *Id*. [↑](#footnote-ref-14)
14. *Id*. [↑](#footnote-ref-15)
15. *Id*. at 7:8-9. [↑](#footnote-ref-16)
16. *Id*. at 7:11-17. [↑](#footnote-ref-17)
17. *Id*. [↑](#footnote-ref-18)
18. *Id*. [↑](#footnote-ref-19)
19. *Id.* at 7:19-8:2. [↑](#footnote-ref-20)
20. *Id.* at 9:3-5. [↑](#footnote-ref-21)
21. *Id.* at 9:6-21. [↑](#footnote-ref-22)
22. *Id.* at 8:4-12. [↑](#footnote-ref-23)
23. *Id*. [↑](#footnote-ref-24)
24. *Id*. at 8:14-9:2. [↑](#footnote-ref-25)
25. *Id.* at 9:6-11:6. [↑](#footnote-ref-26)
26. *Id*. [↑](#footnote-ref-27)
27. *Id*. [↑](#footnote-ref-28)
28. *Id*. [↑](#footnote-ref-29)
29. *Id*. [↑](#footnote-ref-30)
30. *Id*. [↑](#footnote-ref-31)
31. *Id*. [↑](#footnote-ref-32)
32. *Id*. [↑](#footnote-ref-33)
33. *Id*. [↑](#footnote-ref-34)
34. *Id*. at 11:8-12:6 (“the most recent information available from S&P [was used] to update the capital structure and long-term debt cost. If the cost of equity is updated, then the entire rate of return should be updated as well.”) [↑](#footnote-ref-35)
35. *Id*. at 3:18-4:7. [↑](#footnote-ref-36)
36. *Id*. at 12:8-13. [↑](#footnote-ref-37)
37. *Id.* at 11:10. [↑](#footnote-ref-38)
38. *Id*. at 12:15-13:3. [↑](#footnote-ref-39)
39. *Id*. [↑](#footnote-ref-40)
40. *Id*. [↑](#footnote-ref-41)
41. *Id*. [↑](#footnote-ref-42)
42. *Id*. at 13:5-9. [↑](#footnote-ref-43)
43. Settlement at ¶ 38. [↑](#footnote-ref-44)
44. Settlement at ¶¶ 37-39. [↑](#footnote-ref-45)
45. *Id.* at¶ 38. [↑](#footnote-ref-46)
46. *Id.* [↑](#footnote-ref-47)
47. *Id.* at ¶¶ 37-38*, see also* <https://www.dollarenergy.org/need-help/ohio/neighbor-to-neighbor-program/>. [↑](#footnote-ref-48)
48. *Id.* at ¶ 38. [↑](#footnote-ref-49)
49. *Id.* at ¶ 39. [↑](#footnote-ref-50)
50. *Id.* [↑](#footnote-ref-51)
51. Settlement at ¶¶ 37-39. [↑](#footnote-ref-52)
52. OCC Ex. 5 (Testimony Recommending Modification of the Stipulation of Colleen Shutrump on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Shutrump Testimony”) at 6:1-7:6. [↑](#footnote-ref-53)
53. *Id.* [↑](#footnote-ref-54)
54. Settlement at ¶ 38. [↑](#footnote-ref-55)
55. Shutrump Testimony at 6:1-7:6. [↑](#footnote-ref-56)
56. *Id.* at 7:8-8:2. [↑](#footnote-ref-57)
57. *Id.* [↑](#footnote-ref-58)
58. *Id.* [↑](#footnote-ref-59)
59. *Id.* at 8:4-9:17. [↑](#footnote-ref-60)
60. *Id.* at 7:8-8:2. [↑](#footnote-ref-61)
61. *Id. (“*Examples of landlord requirements include structural repairs to protect the health and safety of tenants.”) [↑](#footnote-ref-62)
62. *Id.* at 8:4-9:17. [↑](#footnote-ref-63)
63. *Id.* [↑](#footnote-ref-64)
64. *Id.* [↑](#footnote-ref-65)
65. *Id.* [↑](#footnote-ref-66)
66. *Id.* [↑](#footnote-ref-67)
67. *Id.* at 9:19-10:9. [↑](#footnote-ref-68)
68. *Id., citing* Settlement at p. 25 Figure 1 (“Neighbor to Neighbor programs is funded at $400,000 annually, or $1.6 million over four years.”) [↑](#footnote-ref-69)
69. Shutrump Testimony at 9:19-10:9 (“WarmChoice is Columbia’s low-income weatherization program.”) [↑](#footnote-ref-70)
70. OCC Ex. 2 (Testimony Recommending Modification of the Stipulation of James F. Wilson on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Wilson Testimony”) at 2:14-3:20. [↑](#footnote-ref-71)
71. *Id.* [↑](#footnote-ref-72)
72. *Id.* at 5:16-6:11. [↑](#footnote-ref-73)
73. *Id.* [↑](#footnote-ref-74)
74. *Id*. [↑](#footnote-ref-75)
75. *Id.* at 6:13-8:3. [↑](#footnote-ref-76)
76. *Id.* [↑](#footnote-ref-77)
77. *Id.* [↑](#footnote-ref-78)
78. *Id.* (citing Massachusetts Public Utilities Commission, Opinion and Order, *Re Pricing & Procurement of Default Service,* Docket No. 99-60 (June 30, 2000), at 4). [↑](#footnote-ref-79)
79. *Id.* (citing New Jersey Board of Public Utilities Decision and Order, *In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act*, Docket Nos. EX011110754 and EO02070384 (Dec. 11, 2001), at 3). [↑](#footnote-ref-80)
80. *Id.* (citing Maryland Public Service Commission Order No. 78400, *In the Matter of the Commission’s Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*, Case No. 8098 (April 29, 2003), at 3). [↑](#footnote-ref-81)
81. *Id.* (citing Delaware Public Service Commission Order No. 6746, *In the Matter of the Provision of Standard Offer Supply to Retail Consumers in the Service Territory of Delmarva Power & Light Company after May 1, 2006,* Docket No. 04-391 (Oct. 11, 2005), at 4). [↑](#footnote-ref-82)
82. *Id.* (citing Illinois Commerce Commission, Order, Central Illinois Light Company d/b/a AmerenCILCO, Docket No. 05-1650 (Jan. 24, 2006), at 129). [↑](#footnote-ref-83)
83. *Id.* (citing Pennsylvania Public Utility Commission Final Policy Statement, Default Service and Retail Electric Markets, Docket No. M-00072009 (May 10, 2007), at 6). [↑](#footnote-ref-84)
84. *Id.* at 8:5-12. [↑](#footnote-ref-85)
85. *Id*. [↑](#footnote-ref-86)
86. *Id*. at 8:16-9:14. [↑](#footnote-ref-87)
87. *In the Matter of the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Entry (July 26, 2023) and Attachment A, Staff Proposal and Recommendation. [↑](#footnote-ref-88)
88. Wilson Testimony at 4:13-16. [↑](#footnote-ref-89)
89. *Id*. at 9:1-14. [↑](#footnote-ref-90)
90. *Id*. [↑](#footnote-ref-91)
91. Wilson Testimony at 9:3-8. [↑](#footnote-ref-92)
92. *Id*. [↑](#footnote-ref-93)
93. *Id.* at 9:16-18. [↑](#footnote-ref-94)
94. *Id.* at 9:20-10:4. [↑](#footnote-ref-95)
95. *Id*. [↑](#footnote-ref-96)
96. *Id*. at 10:6-13. [↑](#footnote-ref-97)
97. OCC Ex. 4 (Testimony Recommending Modification of the Stipulation of James D. Williams on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Williams Testimony”) at 7:20-9:4. [↑](#footnote-ref-98)
98. *Id*. [↑](#footnote-ref-99)
99. *Id*. [↑](#footnote-ref-100)
100. *Id*. [↑](#footnote-ref-101)
101. *Id*. [↑](#footnote-ref-102)
102. *Id*. [↑](#footnote-ref-103)
103. *Id*. [↑](#footnote-ref-104)
104. *Id*., *see also* AEP Ohio online bill calculation Spreadsheet [CSPRate09012023.xlsx (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.aepohio.com%2Flib%2Fdocs%2Fratesandtariffs%2FOhio%2FCSPRate09012023.xlsx&wdOrigin=BROWSELINK). [↑](#footnote-ref-105)
105. *See* R.C. 4928.02(A). [↑](#footnote-ref-106)
106. Williams Testimony at 7:20-9:4. [↑](#footnote-ref-107)
107. Williams Testimony at 9:6-14. [↑](#footnote-ref-108)
108. Proposed Settlement at 19. [↑](#footnote-ref-109)
109. R.C. 4905.22 and 4928.11. [↑](#footnote-ref-110)
110. Williams Testimony at 9:6-10:5. [↑](#footnote-ref-111)
111. *Id.* at 9:6-10:5. [↑](#footnote-ref-112)
112. *Id.* at 10:7-11:11. [↑](#footnote-ref-113)
113. *See* Direct Testimony of James Williams (June 9, 2023) at 26. [↑](#footnote-ref-114)
114. *Id*. at 25. [↑](#footnote-ref-115)
115. *Id.* at 26 (as modified at Tr. 369:15-370:4). [↑](#footnote-ref-116)
116. Williams Testimony at 10:7-11:11. [↑](#footnote-ref-117)
117. *Id*. at Attachment JDW-01. [↑](#footnote-ref-118)
118. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan,* Case No. 22-900-EL-SSO, et al., Opinion and Order (Aug. 9, 2023) at 26. [↑](#footnote-ref-119)
119. *In the Matter of the Duke Energy Ohio, Inc. for Authority to Establish a Standards Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service,* Case No. 17-1263-EL-SSO,Opinion and Order (Dec. 19, 2018) at 39. [↑](#footnote-ref-120)
120. *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates,* Case No. 21-887-EL-AIR, et al. (Dec. 14, 2022) at 21. [↑](#footnote-ref-121)
121. Williams Testimony at 12:7-13:7. [↑](#footnote-ref-122)
122. *In the Matter of the Application of Ohio Power Company for Approval of Its Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case 08-918-EL-SSO, Opinion and Order (March 18, 2009) at 33. [↑](#footnote-ref-123)
123. *See* Direct Testimony of AEP Ohio witness Jaime Mayhan (Sept. 11, 2023) at 20. [↑](#footnote-ref-124)
124. *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Opinion and Order (November 17, 2021) at 23. [↑](#footnote-ref-125)
125. Williams Testimony at 12:7-13:7. [↑](#footnote-ref-126)
126. *Id*. [↑](#footnote-ref-127)
127. *Id.* at 13:9-13. [↑](#footnote-ref-128)
128. *Id.* at 13:15-21. [↑](#footnote-ref-129)
129. Williams Testimony at Attachment JDW-02. [↑](#footnote-ref-130)
130. Williams Testimony at 13:23-14:8. [↑](#footnote-ref-131)
131. *Id.* at 14:10-16. [↑](#footnote-ref-132)
132. Proposed Settlement at 20. [↑](#footnote-ref-133)
133. *Id.* at 21. [↑](#footnote-ref-134)
134. *Id.* [↑](#footnote-ref-135)
135. *In the Matter of the Application of Ohio Power Company to Initiate Phase 3 of Its GridSmart Project,* Case No. 19-1475-EL-RDR, Opinion and Order (Dec. 1, 2021) at 6. [↑](#footnote-ref-136)
136. Williams Testimony at Attachment JDW-03. [↑](#footnote-ref-137)
137. *Id.* at Attachment JDW-04. [↑](#footnote-ref-138)
138. *Id.* at 16:12-17. [↑](#footnote-ref-139)
139. OCC Ex. 1 (Testimony Recommending Modification of the Stipulation of Andrew R. Tinkham on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Tinkham Testimony”) at 6:10-9:2. [↑](#footnote-ref-140)
140. *Id*. [↑](#footnote-ref-141)
141. *Id*. [↑](#footnote-ref-142)
142. *Id*. [↑](#footnote-ref-143)
143. *Id.* at 6:10-9:2; Attachment ART-1 pp. 3-6. [↑](#footnote-ref-144)
144. *Id.* at 6:10-9:2; Attachment ART-2 pp. 3-6*.* [↑](#footnote-ref-145)
145. *Id.* at 6:10-9:2; Attachment ART-1 pp. 3-6. [↑](#footnote-ref-146)
146. *Id.* at 6:10-9:2; Attachment ART-2 pp. 3-6*.* [↑](#footnote-ref-147)
147. *Id.* at 6:10-9:2; Attachment ART-1 pp. 3-6. [↑](#footnote-ref-148)
148. *Id.* at 6:10-9:2; Attachment ART-2 pp. 3-6*.* [↑](#footnote-ref-149)
149. *Id.* at 6:10-9:2. [↑](#footnote-ref-150)
150. *Id.* [↑](#footnote-ref-151)
151. *Id.* [↑](#footnote-ref-152)
152. *Id.; See* 22-486-EL-RDR. [↑](#footnote-ref-153)
153. *Id.*; *See* 23-482-EL-RDR. [↑](#footnote-ref-154)
154. *Id.* at 6:10-9:2; Attachment ART-2 (23-532-GE-UNC, Annual Report of Service Disconnections for Non-Payment of Ohio Power Company). [↑](#footnote-ref-155)
155. *Id.* at6:10-9:2; Attachments ART-3, ART-4, and ART-5 (23-532-GE-UNC, Annual Report of Service Disconnections for Nonpayment of AES Ohio, Cleveland Electric Illuminating, Duke Energy, Ohio Edison, and Toledo Edison). [↑](#footnote-ref-156)
156. *Id.* [↑](#footnote-ref-157)
157. *Id.* [↑](#footnote-ref-158)
158. *Id.* at6:10-9:2. [↑](#footnote-ref-159)
159. *Id.* at6:10-9:2; Attachment ART-2. [↑](#footnote-ref-160)
160. *Id.* [↑](#footnote-ref-161)
161. *Id.*  [↑](#footnote-ref-162)
162. *Id.* at6:10-9:2; Attachment ART-6. [↑](#footnote-ref-163)
163. *Id.* [↑](#footnote-ref-164)
164. *Id.* at6:10-9:2. [↑](#footnote-ref-165)
165. *Id.* at6:10-9:2; Attachment ART-6. [↑](#footnote-ref-166)
166. *Id.* [↑](#footnote-ref-167)
167. Tinkham Testimony at 13:8-14. [↑](#footnote-ref-168)
168. Tinkham Testimony at 3:16-2. [↑](#footnote-ref-169)
169. *Id.* at 14:1-12. [↑](#footnote-ref-170)
170. *Id.* at 13:16-14:12. [↑](#footnote-ref-171)
171. *Id.* at 14:14-17. [↑](#footnote-ref-172)
172. *Id.* at 14:19-25. [↑](#footnote-ref-173)
173. *Id.* [↑](#footnote-ref-174)
174. *Id.* at 15:1-10. [↑](#footnote-ref-175)
175. *Id.* [↑](#footnote-ref-176)
176. *Id.*, citing 89-6007-EL-TRF, Revised Tariffs Sheets, PUCO No. 21 (May 27, 2022). [↑](#footnote-ref-177)
177. *Id.* at 15:1-10. [↑](#footnote-ref-178)
178. *Id.* [↑](#footnote-ref-179)
179. *Id.* at 15:12-18. [↑](#footnote-ref-180)
180. *Id.* at 16:1-12. [↑](#footnote-ref-181)
181. *Id.* at 16:1-12. [↑](#footnote-ref-182)
182. *Id.* [↑](#footnote-ref-183)
183. *Id.* at 16:14-19. [↑](#footnote-ref-184)
184. *Id.*, citing Ohio Power Tariff, Original Sheet No. 472-1, <https://www.aepohio.com/lib/docs/ratesandtariffs/Ohio/September2023AEPOhioTariffBook.pdf>. [↑](#footnote-ref-185)
185. Tinkham Testimony at 16:21-24. [↑](#footnote-ref-186)
186. *Id.* at 16:14-17:8. [↑](#footnote-ref-187)
187. *Id.* [↑](#footnote-ref-188)
188. *Id.* [↑](#footnote-ref-189)
189. OCC Ex. 3 (Testimony Recommending Modification of the Stipulation of Robert B. Fortney on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Fortney Testimony”) at 4:1-11. [↑](#footnote-ref-190)
190. *Id*. [↑](#footnote-ref-191)
191. *Id.* (citing Case No. 23-23-EL-SSO, et al., Testimony of Jaime L. Mayhan (Jan. 6, 2023) at 19). [↑](#footnote-ref-192)
192. *Id.* at 3:14-22. [↑](#footnote-ref-193)
193. *Id.* at 4:15-21. [↑](#footnote-ref-194)
194. *Id.* at 4:23-5:4; *See generally,* Case No. 16-1852-EL-SSO, Opinion and Order (April 25, 2018) at 57, 58 (the PUCO has previously found that the IRP programs have reliability and economic benefits). [↑](#footnote-ref-195)
195. *Id.* [↑](#footnote-ref-196)
196. *Id.* at 5:15-6:8. [↑](#footnote-ref-197)
197. *Id.* [↑](#footnote-ref-198)
198. *Id.* [↑](#footnote-ref-199)
199. *Id.* [↑](#footnote-ref-200)
200. *Id.* [↑](#footnote-ref-201)
201. *Id.,* citing R.C. 4905.22. [↑](#footnote-ref-202)
202. Fortney Testimony at 5:15-6:8. [↑](#footnote-ref-203)
203. Settlement at 21, ¶ 34. [↑](#footnote-ref-204)
204. *Id.* [↑](#footnote-ref-205)
205. Shutrump Testimony at 11:1-14:18. [↑](#footnote-ref-206)
206. *Id.* [↑](#footnote-ref-207)
207. *Id.* [↑](#footnote-ref-208)
208. *Id.* [↑](#footnote-ref-209)
209. *Id.* [↑](#footnote-ref-210)
210. *Id.* [↑](#footnote-ref-211)
211. *Id.* [↑](#footnote-ref-212)
212. *Id.* (citing Case No. 21-637-GA-AIR, et al., Opinion & Order (Jan. 26, 2023) at 19). [↑](#footnote-ref-213)
213. *Id.* [↑](#footnote-ref-214)
214. *Id*. [↑](#footnote-ref-215)
215. *Id.* (citing Case No. 20-1013-EL-POR, et al., Entry (June 17, 2020) at 2). [↑](#footnote-ref-216)
216. *Id.* [↑](#footnote-ref-217)
217. *Id.* (citing Case No. 20-1013-EL-POR, et al., Entry (June 17, 2020) at 3). [↑](#footnote-ref-218)
218. *Id*. (citing *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates,* Case No. 20-585-EL-AIR, Opinion & Order (Nov. 17, 2021) at 47-48). [↑](#footnote-ref-219)
219. Shutrump Testimony at 11:1-14:10. [↑](#footnote-ref-220)
220. *Id.* [↑](#footnote-ref-221)
221. Case No. 23-23-EL-SSO, et al. Joint Stipulation and Recommendation (Sept. 6, 2023) at 1-3 ¶¶ I, II, and III(A). [↑](#footnote-ref-222)
222. *Id.;* Shutrump Testimonyat 14:20-15:3. [↑](#footnote-ref-223)
223. Shutrump Testimony at 14:20-15:3 (citing *In the Matter of the Application of the Alternative Energy Rider & Auction Cost Recovery Rider for Ohio Power Company,* Case No. 20-1745-EL-RDR, Application (Nov. 25, 2020)). [↑](#footnote-ref-224)
224. Shutrump Testimony at 14:20-15:3(citing *In the Matter of the Alternative Energy Rider and Auction Cost Recovery Rider for Ohio Power Company,* Case No. 15-1052-EL-RDR, Entry (Dec. 22, 2020)). [↑](#footnote-ref-225)
225. *Id.* [↑](#footnote-ref-226)
226. Case No. 23-23-EL-SSO, et al. Joint Stipulation and Recommendation (Sept. 6, 2023) at 6. [↑](#footnote-ref-227)
227. *Id.* [↑](#footnote-ref-228)
228. *Id.* [↑](#footnote-ref-229)
229. R.C. 4909.15. [↑](#footnote-ref-230)
230. Williams Testimony at 17:4-18:9. [↑](#footnote-ref-231)
231. *Id*. [↑](#footnote-ref-232)
232. *Id*. [↑](#footnote-ref-233)
233. Tinkham Testimony at 17:10-13. [↑](#footnote-ref-234)
234. Tinkham Testimony at 19:24-31. [↑](#footnote-ref-235)
235. Tinkham Testimony at 17:10-19:31. [↑](#footnote-ref-236)
236. Tinkham Testimony at 9:4-11:10. [↑](#footnote-ref-237)
237. *Id.* at 9:4-11:10. [↑](#footnote-ref-238)
238. *Id.* [↑](#footnote-ref-239)
239. *Id.* [↑](#footnote-ref-240)
240. *Id.* [↑](#footnote-ref-241)
241. *Id.* at 11:12-27. [↑](#footnote-ref-242)
242. *Id.* at 12:1-13:6. [↑](#footnote-ref-243)
243. *Id.* [↑](#footnote-ref-244)
244. *Id.* [↑](#footnote-ref-245)
245. *Id.* [↑](#footnote-ref-246)
246. *Id.*  [↑](#footnote-ref-247)
247. *Id.*  [↑](#footnote-ref-248)
248. *Id.* [↑](#footnote-ref-249)
249. *Id.* [↑](#footnote-ref-250)
250. *Id.* [↑](#footnote-ref-251)
251. Joint Stipulation and Recommendation at 12–13. [↑](#footnote-ref-252)
252. *Id.* [↑](#footnote-ref-253)
253. *Id*. at 13. [↑](#footnote-ref-254)
254. *Id.* [↑](#footnote-ref-255)
255. *Id.* at 5:9-6:9. [↑](#footnote-ref-256)
256. OCC Ex. 6 (Testimony Recommending Modification of the Stipulation of Ramteen Sioshansi on Behalf of the Office of the Ohio Consumers’ Counsel) (Sept. 20, 2023) (“Sioshansi Testimony”) at 4:15-5:7. [↑](#footnote-ref-257)
257. *Id.* at 4:15-5:7. [↑](#footnote-ref-258)
258. *Id.* at 4:15-19. [↑](#footnote-ref-259)
259. *Id.* [↑](#footnote-ref-260)
260. *Id.* [↑](#footnote-ref-261)
261. *Id.* [↑](#footnote-ref-262)
262. *Id.* [↑](#footnote-ref-263)
263. *Id.* [↑](#footnote-ref-264)
264. *Id.* at 6:11-7:2. [↑](#footnote-ref-265)
265. *Id.* [↑](#footnote-ref-266)
266. *Id.* [↑](#footnote-ref-267)
267. *Id.* [↑](#footnote-ref-268)
268. Joint Stipulation and Recommendation (Sept. 6, 2023) at 14–15. [↑](#footnote-ref-269)
269. *Id.* at ¶ 14. [↑](#footnote-ref-270)
270. *Id.* at ¶¶ 14-15. [↑](#footnote-ref-271)
271. *Id.* at ¶ 15. [↑](#footnote-ref-272)
272. *Id.* at 10:13-11:12. [↑](#footnote-ref-273)
273. *Id.* [↑](#footnote-ref-274)
274. *Id.* [↑](#footnote-ref-275)
275. *Id.* [↑](#footnote-ref-276)
276. *Id.* [↑](#footnote-ref-277)
277. *Id.* [↑](#footnote-ref-278)
278. *Id.* [↑](#footnote-ref-279)
279. Sioshansi Testimony at 8:1-6. [↑](#footnote-ref-280)
280. Sioshansi Testimony at 8:8-9:10. [↑](#footnote-ref-281)
281. *Id.* at 8:8-9:10. [↑](#footnote-ref-282)
282. Joint Stipulation and Recommendation (Sept. 6, 2023) at¶ 15. [↑](#footnote-ref-283)
283. Sioshansi Testimony at 9:12-10:11. [↑](#footnote-ref-284)
284. *Id.* [↑](#footnote-ref-285)
285. *Id.*  [↑](#footnote-ref-286)
286. Duke Energy Ohio, Case No. 11-3549-EL-SSO, et al., Opinion and Order at 46 (Nov. 22, 2011); Columbus Southern Power and Ohio Power, Case No. 11-346-EL-SSO, et al., Opinion and Order at 73 (Aug. 8, 2012); and Dayton Power & Light, Case No. 12-426-EL-SSO, et al., Opinion and Order at 48- 52 (Sept. 3, 2013). [↑](#footnote-ref-287)
287. AEP Ohio ESP, Case No. 11-346-EL-SSO et al., Opinion and Order at 73 (Aug. 8, 2012) and Entry on Rehearing at 13-14 (Jan. 30, 2013) and Dayton Power & Light, Case No. 12-426-EL-SSO, et al., Opinion and Order at 48-52 (Sept. 3, 2013). [↑](#footnote-ref-288)
288. R.C. 4928.143. [↑](#footnote-ref-289)
289. Buckley Testimony at 14:7-13. [↑](#footnote-ref-290)
290. *Id.* [↑](#footnote-ref-291)
291. *Id.* at 13:19-14:5. [↑](#footnote-ref-292)
292. R.C. 4928.142. [↑](#footnote-ref-293)
293. *Id.* [↑](#footnote-ref-294)
294. Buckley Testimony at 13:19-14:5. [↑](#footnote-ref-295)
295. *Id.* [↑](#footnote-ref-296)
296. *Id.* at 14:15-16:18. [↑](#footnote-ref-297)
297. *Id.* [↑](#footnote-ref-298)
298. Case No. 23-23-EL-SSO, et al., Direct Testimony and Exhibits of Brian F. Billings (Jan. 6, 2023) at 4. [↑](#footnote-ref-299)
299. Buckley Testimony at 14:1-5. [↑](#footnote-ref-300)
300. *Id.* [↑](#footnote-ref-301)
301. *Id.* at 19:12-20. [↑](#footnote-ref-302)
302. Williams Testimony at 12:7-13:7. [↑](#footnote-ref-303)
303. *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Opinion and Order (Nov. 17, 2021) at 23. [↑](#footnote-ref-304)
304. Williams Testimony at 12:7-13:7. [↑](#footnote-ref-305)
305. *Id.* at 13:15-21. [↑](#footnote-ref-306)
306. *Id.* at Attachment JDW-02. [↑](#footnote-ref-307)
307. *Id.* at 13:23-14:8. [↑](#footnote-ref-308)
308. *Id.* at 7:20-9:4. [↑](#footnote-ref-309)
309. *Id.* at 10:7-11:11. [↑](#footnote-ref-310)
310. *Id.* at 7:20-9:4; *See* AEP Ohio online bill calculation Spreadsheet [CSPRate09012023.xlsx (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.aepohio.com%2Flib%2Fdocs%2Fratesandtariffs%2FOhio%2FCSPRate09012023.xlsx&wdOrigin=BROWSELINK). [↑](#footnote-ref-311)
311. *Id.* at 10:7-11:11. [↑](#footnote-ref-312)
312. *Id.* [↑](#footnote-ref-313)
313. *Id.* [↑](#footnote-ref-314)
314. Buckley Testimony at 14:5-15:15. [↑](#footnote-ref-315)
315. Case No. 23-23-EL-SSO, et al., Direct Testimony and Exhibits of Jaime L. Mayhan (Jan. 6, 2023) at 28-29. [↑](#footnote-ref-316)
316. Buckley Testimony at 14:5-15:15. [↑](#footnote-ref-317)
317. *Id.* [↑](#footnote-ref-318)
318. *Id.* [↑](#footnote-ref-319)
319. *Id.* [↑](#footnote-ref-320)
320. *Id.* at 15:17-16:8. [↑](#footnote-ref-321)
321. *Id.* [↑](#footnote-ref-322)
322. *Id.* [↑](#footnote-ref-323)
323. *Id.* at 16:1-8. [↑](#footnote-ref-324)
324. *Id.* at 17. [↑](#footnote-ref-325)
325. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 14-517-EL-ESS (March 31, 2014). [↑](#footnote-ref-326)
326. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 15-627-EL-ESS (March 30, 2015). [↑](#footnote-ref-327)
327. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 16-550-EL-ESS (March 31, 2016). [↑](#footnote-ref-328)
328. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 17-890-EL-ESS (March 31, 2017). [↑](#footnote-ref-329)
329. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 18-992-EL-ESS (March 29, 2018). [↑](#footnote-ref-330)
330. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 19-992-EL-ESS (March 29, 2019). [↑](#footnote-ref-331)
331. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 20-992-EL-ESS (March 31, 2020). [↑](#footnote-ref-332)
332. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 21-992-EL-ESS (March 31, 2021). [↑](#footnote-ref-333)
333. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 22-992-EL-ESS (March 30, 2022). [↑](#footnote-ref-334)
334. *In the Matter of the Annual Report of Pursuant to Rule 10 of the Electric Service and Safety Standards, Ohio Administrative Code 4901:1-10-10*, Case No. 23-992-EL-ESS (March 30, 2023). [↑](#footnote-ref-335)
335. *Id.* at 18:1-9. [↑](#footnote-ref-336)
336. *Id.* [↑](#footnote-ref-337)
337. *Id.;* R.C. 4909.15. [↑](#footnote-ref-338)
338. Buckley Testimony at 18:11-19. [↑](#footnote-ref-339)
339. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid, et al.,* Case No. 18-1875-EL-GRD, Opinion and Order (June 2, 2021) at 34. [↑](#footnote-ref-340)
340. *Id.*; Buckley Testimony at 18:11-19. [↑](#footnote-ref-341)
341. Buckley Testimony 18:21-19:4. [↑](#footnote-ref-342)
342. *Id.* [↑](#footnote-ref-343)
343. *Id*. at 19:12-20. [↑](#footnote-ref-344)
344. *Id*. [↑](#footnote-ref-345)
345. *Id*. at 19:6-20. [↑](#footnote-ref-346)