BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration.	)	Case No. 09-1089-EL-POR
In the Matter of the Application of Ohio Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration.	)	Case No. 09-1090-EL-POR

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), coming now to consider the above-entitled matter, having appointed attorney examiners to conduct the hearing, having reviewed the exhibits introduced into evidence in this matter, and being otherwise fully advised, hereby issues its opinion and order in this case.

APPEARANCES:

Steven T. Nourse and Matthew J. Satterwhite, American Electric Power Service Corporation, One Riverside Plaza, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

McNees, Wallace and Nurick, LLC, by Lisa G. McAlister, Joseph Clark, and Samuel C. Randazzo, Fifth Third Center, Suite 1700, 21 East State Street, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

Janine L. Migden-Ostrander, the Office of the Ohio Consumers' Counsel, by Terry L. Etter and Christopher J. Allwein, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Columbus Southern Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

David C. Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

OPINION:

I. <u>HISTORY OF PROCEEDINGS</u>

On November 12, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) filed an application (application) in the above-captioned matter for approval of the Companies' energy efficiency and peak demand reduction (EE/PDR) program portfolio plans for 2010 through 2012, pursuant to Rule 4901:1-39-04, Ohio Administrative Code (O.A.C.). CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission. Along with the application, AEP-Ohio also filed a Stipulation and Recommendation (Stipulation), signed by the Office of the Ohio Consumers' Counsel (OCC), the Ohio Manufacturers' Association (OMA), the Ohio Environmental Council (OEC), Ohio Partners for Affordable Energy (OPAE), the Sierra Club of Ohio (Sierra), the Natural Resources Defense Council (NRDC), the Ohio Energy Group (OEG), the Ohio Poverty Law Center (OPLC), Ohio Hospital Association (OHA), and the Companies, addressing all of the issues raised in the application. AEP-Ohio also filed the direct testimony of Jon F. Williams (Cos. Ex. 1) and the direct testimony of David M. Roush (Cos. Ex. 2) in support of its application and the Stipulation (Joint Ex. 1) on November 12, 2009. By letter filed December 10, 2009, Ormet Primary Aluminum Corporation (Ormet) requested that it be included as a signatory party to the Stipulation.

IEU-Ohio filed objections and recommendations to AEP-Ohio's application on December 11, 2009, to which AEP-Ohio filed a response on December 23, 2009. IEU-Ohio filed a reply on December 30, 2009.

Motions to intervene were filed by Ormet, IEU-Ohio, OPAE, Sierra Club, OEG, OHA, OMA, OEC, OCC, and NRDC. By entry issued January 21, 2010, the above-listed motions to intervene were granted. The January 21, 2010 entry also admitted Clinton A. Vince, Douglas G. Bonner, Emma F. Hand, and David C. Rinebolt to practice *pro hac vice* before the Commission in this matter. Further, the January 21, 2010 entry directed that all motions to intervene and all intervenor testimony were due by February 11, 2010, and scheduled the evidentiary hearing to commence on February 25, 2010, at the offices of the Commission. On February 25, 2010, AEP-Ohio filed its proofs of publication (Cos. Ex. 3; Tr. at 6).

On January 15, 2010, EnerNOC, Inc. (EnerNOC) filed a motion to intervene in this proceeding. EnerNOC's request for intervention was granted from the bench during the hearing (Tr. at 12). In accordance with the procedural schedule, IEU-Ohio filed the direct testimony of Kevin M. Murray (IEU-Ohio Ex. 1) on February 11, 2010. The hearing was held, as scheduled, on February 25, 2010. Initial briefs were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC, OEC, Sierra, and NRDC, on March 10, 2010. Reply briefs were filed by AEP-Ohio and IEU-Ohio on March 19, 2010.

II. APPLICABLE LAW

Section 4928.66(A)(1), Revised Code, provides, in pertinent part:

> (a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025.
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> (b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

Further, in accordance with Section 4928.66, Revised Code, the Commission adopted rules in Chapter 4901:1-39, O.A.C., Energy Efficiency and Demand Reduction Benchmarks, which became effective December 10, 2009.

III. AEP-OHIO'S APPLICATION

In its brief, AEP-Ohio explains that the Commission established the energy efficiency and peak demand reduction (EE/PDR) riders in the Companies' electric security plan (ESP) cases, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (ESP case), and set the riders at zero.[1] In their application, the Companies request approval to commence recovery of deferred program costs incurred prior to the Commission's decision in the ESP cases. The initial EE/PDR rider rates were to commence with the first billing cycle in January 2010. AEP-Ohio also requests approval to recover, in the EE/PDR Riders, projected program costs through June 30, 2010, net lost distribution revenues, and shared savings. The EE/PDR rider rates are subject to an annual true-up and reconciliation.

AEP-Ohio emphasizes that as part of the Stipulation, the Companies have agreed to report to the collaborative, on a quarterly basis, program costs, EE/PDR impacts, progress on achievement of the goals, and incentives and administrative costs. AEP-Ohio also notes that pursuant to the Stipulation, the Companies agreed to file and request approval of their Renewal Energy Technology (RET) programs and that on November 30, 2009, AEP-Ohio initiated Case Nos. 09-1871-EL-ACP and 09-1872-EL-ACP, in accordance with the provisions of the Stipulation. The Companies describe the two proposed RET programs, an incentive-based renewable energy credit (REC) program and a REC purchase program. The REC would be applied to AEP-Ohio's alternative energy compliance requirements. AEP-Ohio requests that cost recovery occur through the fuel adjustment clause (FAC) approved in the Companies' ESP cases. AEP-Ohio witness Williams admits that, while the RET program has EE/PDR benefits, the program does not meet the requirements of the Total Resource Cost (TRC) test and is not cost effective as an energy efficiency resource. For this reason, the Signatory Parties to the Stipulation agreed that the RET programs should be part of a separate Commission filing; however, the Signatory Parties agreed that these programs are more appropriately REC-based alternative energy compliance programs, with recovery through the FAC. Further, the Stipulation provides for recovery of prudently incurred costs and REC incentive payments through the FAC[2] (Cos. Br. at 1-2; Cos. Ex. 1 at 27-28).

AEP-Ohio states that its witness, Jon Williams, presented testimony in support of the Companies' Action Plan, the Stipulation, and supporting documentation based on personal knowledge and expertise. Mr. Williams testified that a market potential study was conducted by Summit Blue for AEP-Ohio, and AEP-Ohio secured the services of Midwest Energy Efficiency Alliance (MEEA). Using the collaborative process and the results of the market potential study, a three-year EE/PDR Action Plan was developed. AEP-Ohio projects the expenditures for the EE/PDR Action Plan to be approximately $161.9 million in incremental cost for the years 2009 through 2011 (Cos. Ex. 1 at 7, 9-11). AEP-Ohio argues that Mr. Williams demonstrated how the Companies' EE/PDR Action Plan complies with Rule 4901:1-39-04, O.A.C. (Cos. Ex. 1 at 18-19). AEP-Ohio notes that, as of the time that the instant application was filed, the Commission had not finalized

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1 *In re AEP-Ohio ESP cases*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order at 41-47 (March 18, 2009); Entry on Rehearing at 27-28, 31 (July 23, 2009) (First ESP EOR); and Second Entry on Rehearing (November 4, 2009) (Second ESP EOR).

2 See the discussion of the Stipulation in part IV of this Order at Section B.4.

protocols for the evaluation, measurement, and verification (EM&V) of EE/PDR measures (Cos. Ex. 1 at 20).[3] The Companies state that Summit Blue is an experienced EM&V contractor, which, along with MEEA, and input from collaborative participants, has prepared an evaluation process for the Companies' Action Plan (Cos. Ex. 1 at 20). Mr. Williams testified that although AEP-Ohio plans to hire an EM&V contractor to refine its process and provide validated data for compliance reporting, the Companies will work with the EM&V consultant selected by the Commission.[4]

According to AEP-Ohio witness Williams, the EE/PDR Action Plan includes a benefit-cost analysis for each program using the TRC test to evaluate cost-effectiveness (Cos. Ex. 1 at 16).

AEP-Ohio states that the Companies initiated implementation of their EE/PDR programs in May 2009, and six programs are currently in operation. For the majority of the portfolio programs, the Companies are contracting with select qualified third parties through a competitive bidding process to implement turn-key portfolio services. However, in the case of the Custom and Self-Direct Business Programs, AEP-Ohio may utilize internal resources to perform a portion of the necessary program promotion and implementation. As part of the Stipulation, the Companies explain that they have agreed to permit OPAE to administer its Low-Income Weatherization program without competitive bid. The Companies have investigated other low-income program costs to achieve savings in other states and concluded that OPAE can administer the program for a lower average cost than indicated in the Companies' research. AEP-Ohio also asserts that OPAE, through its member agencies, has the ability to provide synergies with other funding sources to reduce costs, and because, based on AEP-Ohio's research, planned costs to achieve savings in low-income programs are significantly lower than the actual costs, AEP-Ohio anticipates OPAE may also be able to offset lower achievement in one program with higher achievement in other contracted programs, such as the Efficient Products Program, which delivers higher savings. Over the course of the three-year portfolio plan period, AEP-Ohio will review the performance of selected contractors, determine best practices, and evaluate cost effectiveness. Included as a part of the Portfolio Action Plan are programs for each class of customers. The Companies have already initiated six portfolio programs and their general energy efficiency education campaign, including: (1) appliance recycling; (2) energy efficient lighting; (3) lighting incentives and custom project incentives; (4) a process whereby mercantile customers can commit their completed EE/PDR resources and entitle the mercantile customer to an incentive or exemption from the EE/PDR rider; and (5) and (6) two pilot programs

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3 *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order (October 15, 2009) (09-512).

4 By entry issued March 17, 2010, in 09-512, ECONorthwest was selected as the independent evaluator of EE/PDR programs.

through the Companies' Partnership with Ohio Fund for energy efficiency kits (Cos. Ex. 1 at 21-25).

Further, AEP-Ohio witness Williams testified that the forecasted 2009 summer peak demand for both CSP and OP are more than one percent below their respective three-year adjusted baseline levels due primarily to the economic downturn and related reductions in AEP-Ohio's commercial and industrial load. For this reason, AEP-Ohio asserts that programs to curtail load during the summer of 2009 would not have served the public interest and were unnecessary. Further, the Companies argue that a reduction in the forecasted 2009 budget for PDR in the AEP-Ohio EE/PDR Action Plan is appropriate. The Companies note that this issue is addressed in a pending application before the Commission[5] (Cos. Ex. 1 at 26). AEP-Ohio also excluded $13.2 million from its EE/PDR Action Plan expenditures based on the expectation that capacity associated with existing and future contracts under the Companies' Schedule IRP-D (Interruptible Power-Discretionary) would be counted as part of the Companies' PDR compliance benchmarks. If the Commission determines otherwise, AEP-Ohio will need to make additional expenditures to meet its cumulative compliance benchmarks in 2010 and 2011 (Cos. Ex. 1 at 26-27).

IEU-Ohio witness Murray recommends that the Commission revise AEP-Ohio's portfolio plan. Mr. Murray contends that the costs of AEP-Ohio's proposed energy efficiency plans are relatively high in comparison to other electric utilities' similar energy efficiency plans, in terms of the expected reduction in kilowatt hours (kWh). Mr. Murray testified that he initiated his evaluation with a "high level analysis and then performed a targeted analysis on a few aspects" of AEP-Ohio's portfolio plan (IEU-Ohio Ex. 1 at 4-5). Mr. Murray compared AEP-Ohio's portfolio plan to that of Appalachian Power Company (APCo)[6] and to those of several electric utilities in Pennsylvania, as such plans were submitted to their respective state regulatory utility commissions. Mr. Murray noted that the same consulting firm and lead consultant on the AEP-Ohio portfolio plan (Cos. Ex. 1, Ex. JFW-2, Vol. 1) prepared the APCo portfolio plan (IEU-Ohio Ex. 1 at 7-8). Mr. Murray recognized that there are some differences in the energy efficiency requirements imposed by each state and in the two compliance plans; however, he generally concluded that the compliance portfolio plans are substantially similar and the overviews are identical (IEU-Ohio Ex. 1 at 8). Based on his analysis, Mr. Murray noted that the APCo plan is for five years, and that APCo's demand side management (DSM) Action Plan projects incremental

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5 See *In the Matter of the Application of Columbus Southern Power Company for Approval of its Peak Demand Reduction Program Portfolio Plan and Request for Waiver and Request for Amendment of the 2009 Peak Demand Reduction Benchmark Pursuant to Section 4928.66(A)(2)(b), Revised Code,* and *In the Matter of the Application of Ohio Power Company for Approval of its Peak Demand Reduction Program Portfolio Plan and Request for Waiver and Request for Amendment of the 2009 Peak Demand Reduction Benchmark Pursuant to Section 4928.66(A)(2)(b), Revised Code,* respectively, Case Nos. 09-578-EL-EEC and 09-579-EL-EEC.

6 APCo is also a subsidiary of American Electric Power Corporation.

annual savings, as a percentage of total annual kWh sales, to reach 1.41 percent by 2013, with cumulative savings of 492.5 gigawatt-hours (GWh) or 492,500,000 kWh over this time period (2.8 percent cumulative). Mr. Murray compared these projects with the AEP-Ohio projects, which estimate an incremental annual savings as a percentage of total annual kWh sales, to reach 1.07 percent by 2011, with cumulative savings of 842.3 GWh or 842,300,000 kWh over the time period (1.65 percent cumulative) (IEU-Ohio Ex. 1 at 9; Cos. Ex. 1, JFW-2, Vol. 1, p. 10 of 163). Mr. Murray recognized that for the residential section, the APCo and AEP-Ohio DSM costs estimates were similar, at $0.014 per kWh for APCo and $0.015 per kWh for AEP-Ohio (IEU-Ohio Ex. 1 at 9). For the business sector, however, IEU-Ohio witness Murray calculated the overall lifetime cost of saved energy in 2009 dollars to be $0.007 per kWh for APCo and $0.014 per kWh for AEP-Ohio; AEP-Ohio's estimate is twice as much as APCo's figure (IEU-Ohio Ex. 1 at 9).

Mr. Murray also reviewed the cost of energy efficiency plans and the expected reduction in annual energy consumption for the Pennsylvania electric utilities, and compared it to AEP-Ohio estimates (IEU-Ohio Ex. 1, Ex. KMM-3). Based on Mr. Murray's analysis, the annual reduction in energy consumption by the Pennsylvania utilities through May 31, 2013, ranged from 3.1 percent to 4.07 percent, with TRC values ranging from 1.81 to 4.10, with an average TRC value of 2.64 (IEU-Ohio Ex. 1 at 12). Mr. Murray concluded that AEP-Ohio's plans, which have an annualized energy reduction of 842,300,000 kWh, a 1.65 percent reduction from its annual baseline, and a TRC value of 1.80, ultimately, on a relative basis, will cost more, but achieve less, than similar plans in Pennsylvania (IEU-Ohio Ex. 1 at 9).

Mr. Murray noted that the Stipulation indicates that CSP customers will experience an increase in their total electric bills in the range of 0.4 percent to 3.4 percent, and OP customers will experience an increase in the range of 0.4 percent to 4.0 percent. IEU-Ohio emphasizes that in addition to the total electric bill increase proposed in this proceeding, AEP-Ohio customers have experienced other increases in their total electric bills since January 2010 (IEU-Ohio Ex. 1 at 14-15).

Further, Mr. Murray testified that AEP-Ohio improperly included and the Stipulation improperly endorses the recovery of shared savings and lost distribution revenue. IEU-Ohio contends that AEP-Ohio failed to justify its request for lost distribution revenues and to justify its request for recovery of shared savings and lost distribution revenue (IEU-Ohio Ex. 1 at 15-16). IEU-Ohio argues that it is inappropriate to adjust rates outside of a rate case because the Commission's ability to evaluate other variables that affect the calculation of an electric utility's overall revenue requirement is limited. Further, IEU-Ohio reasons that a mechanism to recover lost distribution revenue reduces the electric utility's overall risk and, therefore, there should be a downward adjustment to the electric utility's authorized rate of return, contemporaneous with the introduction of the lost revenue recovery mechanism. IEU-Ohio argues that while there are circumstances where it could be appropriate for the Commission to adjust rates outside of a rate case, such as a significant decrease in sales, that is not the case in this instance with AEP-Ohio (IEU-Ohio Ex. 1 at 15-17).

Mr. Murray initially contended that AEP-Ohio significantly overstated the estimate for lost distribution revenues in the event that commercial and industrial customers reduce their energy usage because AEP-Ohio recovers most of its distribution revenue requirements from larger commercial and industrial customers through monthly customer charges and demand charges with ratchets (IEU-Ohio Ex. 1 at 17-18). However, on cross-examination, Mr. Murray revised his testimony to acknowledge that AEP-Ohio had, in fact, excluded commercial and industrial customer charges from its calculation (Tr. at 65).

Using the testimony of AEP-Ohio witness Roush, Mr. Murray calculated the average variable distribution revenues for commercial and industrial customers of CSP to be $.0094735 per kWh, in comparison to his own calculation of $0.000744 per kWh. Thus, Mr. Murray concluded that the estimated energy savings of 45,184,000 per kWh yields lost revenues of $428,051 ($.0094735 x 45,184,000 kWh) for CSP. According to Mr. Murray, AEP-Ohio calculated OP's annual average distribution revenues of $.0070259 per kWh. Mr. Murray, however, calculated annual average distribution revenues for OP to be $0.0004496 per kWh. Thus, Mr. Murray concluded that the estimated energy savings of $437,245 ($.0070259 x 61,995,000 kWh) for OP (IEU-Ohio Ex. 1 at 17-18). Based on his analysis, Mr. Murray concluded that AEP-Ohio is proposing to spend significantly higher amounts on EE/PDR programs than other electric utilities that are implementing similar plans in other states, and asserted that AEP's proposed arrangement will achieve less in terms of efficiency gains and peak demand reductions. In conjunction with Mr. Murray's testimony, IEU-Ohio requested that the Commission modify AEP-Ohio's portfolio plan.

Further, Mr. Murray testified that the portfolio plan fails to include lower cost compliance options, such as utilizing the demand response program of the regional transmission operator, which, in this case, is PJM Interconnection LLC (PJM) to count toward AEP-Ohio's EE/PDR compliance requirements in the event that the customer agrees to commit is capabilities to AEP-Ohio (IEU-Ohio Ex. 1 at 19-21). Mr. Murray estimates that utilizing the PJM demand response program could reduce AEP-Ohio's portfolio plan costs by approximately $7 million (IEU-Ohio Ex. 1 at 21). IEU-Ohio, however, supports AEP-Ohio's self-directed options for mercantile customer commitments (IEU-Ohio Ex. 1 at 22).

On the other hand, AEP-Ohio claims that the testimony provided by Mr. Murray is not that of an expert in demand side management, contains numerous errors, and overlooks that AEP-Ohio's statutory compliance obligations will continue to grow each year and that compliance costs will increase.

IV. STIPULATION

As previously noted, along with the application, AEP-Ohio filed a Stipulation, which was entered into by OCEA, OHA, OMA, OPAE, OEG, and AEP-Ohio (collectively, Signatory Parties). In the pertinent parts of the Stipulation, the Signatory Parties agree:

A. 2009-2011 Program Portfolio Plan Approval, Administration and General Education

1. Program cost recovery should be granted in an expedited manner based on the three-year EE/PDR Action Plan filed in this case. The Signatory Parties submit that the EE/PDR Action Plan should be accepted and approved as supplemented and clarified by the terms of this Stipulation (the three-year EE/PDR Action Plan agreed to herein is referred to as the "Plan").

2. The Companies will offer transparent reporting of program costs, including EE/PDR impacts and progress toward goals, incentives and administrative costs, to the Collaborative on a quarterly basis.

3. Five million dollars of the $15 million in the General Education/Media/Training budget primarily targeted to general energy efficiency media advertising will be re-allocated to provide additional funding for cost-effective programs. Budget dollars currently allocated to training will not be re-allocated, absent Commission approval.

4. Based on the Signatory Parties' understanding of Section 4928.66, Revised Code, and the Commission's rules contained in Chapter 4901:1-39, O.A.C., the Signatory Parties believe that the contracted interruptible load associated with the Companies' existing tariff programs for interruptible service (IRP-D) will count toward the PDR benchmarks.[7] Accordingly, the Plan now reflects a reduction in funding for 2010 and 2011 of $13.2 million (approximately $8.2 million from OP and $5 million from CSP) based on that understanding. This helps reduce the Companies' EE/PDR compliance costs and the resulting impact on ratepayers. The Companies reserve the

[7] OCC believes that only new interruptible load subscribed after the signing of SB 221 and meeting the latest rules contained in Chapter 4901:1-39, O.A.C., should count towards compliance.

right to adjust the Plan by restoring such funding if the above-stated interpretation is not confirmed by the Commission.

5. At the time the Stipulation was filed, the Commission rules adopted in Case No. 08-888-EL-ORD were not yet effective. Nonetheless, the Signatory Parties agreed that, with the exception of the portfolio plan template requirement (that is not yet completed), the Plan complies with the Commission's newly adopted rules.[8]

B. Renewable Energy Technology Program Approval

1. The Renewable Energy Technology (RET) program filed in the original EE/PDR Action Plan should not be included in the EE/PDR cost recovery rider.

2. The Companies will file in November 2009 an incentive-based REC program for solar photovoltaic and small wind resources to encourage residential and nonresidential customers to install renewable energy resource facilities on the customer premises, subject to Commission approval of design and cost recovery. The Companies will discuss the key features of their RET proposed program with Commission Staff, OPAE, and the OCEA Parties prior to filing. The Signatory Parties reserve their right to oppose any aspect of the Companies' proposal if it does not reflect their positions.

3. The Companies will file in November 2009 a solar photovoltaic and small wind REC purchase program for residential and non-residential customers with existing renewable energy resource facilities effective for 2010-2011, subject to Commission approval of design and cost recovery and agree to discuss the key features of their proposed RET program with Commission Staff, OPAE, and the OCEA Parties prior to filing. The Signatory Parties reserve their right to oppose any aspect of the Companies' proposal if it does not reflect their positions.

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8 The rules adopted in *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD (Green Rules), at Chapter 4901:1-39, O.A.C., were effective December 10, 2009. However, the portfolio plan template requirements pending before the Commission in Case No. 09-714-EL-UNC have not yet been adopted.

4. The Companies' RET programs will be REC-based and the Signatory Parties agree that prudently incurred RET program costs should be recovered through the Companies' fuel adjustment clauses. At least six months before the Companies file for a new standard service offer, a working group of interested Signatory Parties and Commission Staff will be formed to discuss whether the costs of renewable energy should be recovered in the fuel adjustment charge or in a separate bypassable surcharge.

C. 2009 Peak Demand Reduction Benchmark Amendment

1. The Companies have filed to adjust the 2009 peak demand reduction benchmark requirements to zero. The cost to implement a demand reduction program in 2009 has been reduced to zero accordingly in the Plan. This position does not affect 2010 peak demand reduction requirements. The justification for this position is filed in Case Nos. 09-578-EL-EEC and 09-579-EL-EEC. The Companies reserve the right to restore such funding if their application is not granted.

2. Based on the totality of the circumstances of this settlement, the Signatory Parties will not oppose the Companies' waiver request for 2009 and OCC will withdraw its opposition filed in Case Nos. 09-578-EL-EEC and 09-579-EL-EEC; however, this withdrawal of opposition should not be considered as support for the waiver. The Companies agree that the PDR benchmark is cumulative in 2010 and beyond and the Companies will catch up and make up the difference resulting from the 2009 waiver in 2010 (absent any future waivers).

D. Approval of Shared Savings for Measurable Programs

1. A shared savings mechanism that provides an after-tax net benefit of 15 percent to the Companies and 85 percent to Customers for measurable EE/PDR programs, based on the Utility Cost Test (UCT)[9] and subject to the incentive caps in Section E below, will be implemented. OCEA's Parties' agreement to accept the UCT in this context is based on the totality of the circumstances and the package as a whole and

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9 Net benefits are calculated at the Portfolio level for all measurable programs within the Portfolio using the UCT.

should not be construed as an unqualified endorsement of the mechanism in the future or in any other case.

2. Signatory Parties will support the use of the TRC test to qualify the portfolio for cost recovery.

3. That each electric utility respectively will only be eligible for an incentive (i.e., lesser of shared savings or program investment cost cap) if it exceeds the benchmarks of Sections 4928.66(A)(1)(a) and (A)(1)(b), Revised Code, for a particular calendar year. The Companies would remain eligible to receive an incentive if the Commission amends the compliance requirement for that year under Section 4928.66(A)(2)(b), Revised Code, and the Companies meet or exceed the amended requirement. If the Commission amends the compliance requirement for a particular year, AEP-Ohio agrees that, in the following year, its compliance will be the cumulative energy savings benchmark for that year plus the energy savings not attained towards the benchmark in the earlier year. These restrictions are collectively referred to as "compliance" for purposes of triggering incentive eligibility, such that AEP-Ohio will only be eligible for an incentive payment if it exceeds the cumulative energy savings benchmark for that year and the energy savings not attained in the earlier year.[10]

4. The Companies will receive the lesser of the 15 percent after-tax UCT-based shared savings calculation or a graduated percentage cap on program costs for measurable EE/PDR programs, as reflected in the table included below as part of section E.

5. For electric utility incentive purposes, total annual savings will be used in the shared savings calculation and total annual program costs will be used to calculate the program cost caps.

E. Incentive Qualifications and Cap Provisions

1. The Companies will not receive any shared savings for the Self Direct program.

[10] The Stipulation provides that "Due to the fact that AEP-Ohio is embarking in good faith to meet its benchmarks and that its energy efficiency programs are in start-up mode, OCC is agreeing to this provision, however, this agreement should not be construed as supporting this concept in the future."

2. Each of the Companies may only count savings for compliance or incentives one time, but reserves the option of either counting any portion of over-compliance in the year of compliance (receiving the associated incentive at that time) or banking any portion for use in connection with a subsequent year (reserving the associated incentive in connection with that future year).

3. The 15 percent electric utility shared savings incentive will be capped per level of over-compliance based on the table below:

Performance Incentives = Lesser of Shared Savings or Program Investment Cap Percentage

Benchmark EE Target % Achievement for Overcompliance	Shared Savings	Program Investment Cost Cap % for Measurable Programs
Greater than 100%[11] to 106%	15%	6%
Greater than 106% to 115%	15%	12%
Greater than 115%	15%	17%

F. Approval of Net Lost Distribution Revenues

1. Net lost distribution revenues will be approved, but will exclude all distribution revenue associated with customer charges, pass-through riders and riders, that are trued-up to actual costs. The Companies will be permitted to collect net lost distribution revenues on an annual basis.

2. Three vintage years of net lost distribution revenue recovery will exist or recovery will occur until rates are approved and effective in each Company's next respective distribution base rate case, whichever comes first. If one or both of the Companies files a distribution revenue decoupling application and it is approved by the Commission, then Section F, Approval of Net Lost Distribution Revenue, will no longer apply as of the time that such approved decoupling mechanism becomes effective.

11 As described above, the Companies would remain eligible to receive an incentive if the Commission reduces the compliance requirement below 100 percent for a particular year under Section 4928.66(A)(2)(b), Revised Code, and the Companies meet or exceed the amended requirement.

3. If a distribution base rate filing is made and approved during the term of the Plan, a new three-year vintage period will apply to new programs or measures not captured by the test period (or post-test year adjustments) used in such distribution base rate case.

G. Approval of Initial EE/PDR Rider Rates and Operation of the Rider

1. CSP's initial EE/PDR Rider and OP's initial EE/PDR rider rates should be established as reflected in Attachment A to the Stipulation, effective on the first billing cycle of January 2010. If the initial EE/PDR rider rates are not approved to be effective on the first billing cycle of January 2010, then the revenues that would have been collected in the first six months of 2010 based on the initial EE/PDR rider rates (i.e., through the last billing cycle of June 2010) will be collected in such shorter time available before the last billing cycle of June 2010.

2. The Companies' EE/PDR riders should be trued-up annually to actual program costs, net lost distribution revenues, and shared savings. The net lost distribution revenues will be calculated based on a half-year convention.

3. The annual true-up of the Companies' EE/PDR Riders will be effective in the first billing cycle of July of 2010 and 2011. The timing of the true-up is recommended to follow the annual March 15 compliance filing in support of program achievement and Commission compliance approval each year.

4. Distribution lost revenues and shared savings calculations will be based on the same data as approved by the Commission in the Companies' annual compliance filings.

5. The Companies will not collect carrying charges in connection with operation of the EE/PDR rider.

H. Rate Design and Cost Allocation Methodology

1. Program dollars may only be shifted within the residential class and among non-residential classes, but not across the residential and non-residential classes, unless otherwise approved by the Commission. Cost recovery will be based on the class for which the program is available.

2. Distribution revenue by tariff will be used to allocate program costs, net lost distribution revenue, and shared savings. The amount of nonresidential program funding available to GS 4/IRP tariff customers is limited to the proportion of non-residential distribution revenue provided by GS 4/IRP. For example, if GS 4/IRP provides ten percent of the non-residential distribution revenue, then GS 4/IRP will not receive more than ten percent of the non-residential program funding. However, program funding to GS 4/IRP may exceed this limit if the Companies reasonably determine that an increase is necessary to meet the EE/PDR benchmarks. The Companies may limit program funding to individual GS 4/IRP customers, or any other non-residential customers, to ensure that a disproportionately large share of total program funding is not concentrated among a few customers. Methods could include a program percentage cap or declining incentive tiers for large projects or any other reasonable mechanism as determined by the Companies. This methodology does not impact residential customer allocations covered in paragraph H.1. The rate impacts using this methodology are contained in Attachment A to this Stipulation.

3. The costs associated with the Plan should be recovered through the EE/PDR Rider by spreading the three-year portfolio plan costs over 2010 and 2011 (24 months). The initial rider only includes the first year of net distribution lost revenues and first year shared savings based on assumed compliance of greater than 100 percent, but less than or equal to 106 percent; distribution lost revenue and shared savings for subsequent years would be reconciled and reflected in the annual update filings.

I. Mercantile customer commitment of previously installed EE/PDR resources

1. Customer savings from previously installed EE/PDR resources approved by the Commission for being committed to the Companies are not counted in net benefits to determine shared savings.

2. No net lost distribution revenue is recoverable from previously installed EE/PDR resources approved by the Commission for being committed to the Companies.

3. To support the Companies' Self Direct Program as designed in the Plan to commit previously installed EE/PDR resources. "Option 1" provides mercantile customers the opportunity to receive a reduced incentive payment that is equivalent to an advance payment of a portion of the customer's EE/PDR Rider cost obligation due to the requirement that the customer continues to pay the EE/PDR Rider cost for the length of time that the customer would otherwise be exempt from the EE/PDR Rider. "Option 1" is for customers who have completed some EE/PDR projects but want to use the advanced payment to help support new EE/PDR investments. Option 1 also requires participating customers to continue paying the rider in support of further EE/PDR program efforts by the Companies. "Option 2" provides mercantile customers the opportunity to be exempt from the EE/PDR Rider if their committed energy savings equal the Companies' mandated benchmark requirement percentages of energy savings based on the customer's 2006-2008 average annual energy usage baseline. Residential customers will not contribute to the cost of the Self-Direct Program.

4. Individual OCEA Parties reserve their right to oppose individual Self Direct Program applications.

5. If a mercantile customer unilaterally files [an application] with the Commission to commit resources to AEP-Ohio, the Signatory Parties reserve any rights to take whatever position they deem appropriate in response to that filing and the outcome will be subject to Commission decision.

J. Miscellaneous Terms and Commitments

1. The Companies will develop a time schedule to discuss detailed program economics, if any, on a joint delivery program with Columbia Gas of Ohio in 2010 and report back within the second quarter of 2010 to the Collaborative.

2. Accept the Companies' avoided costs calculations with the understanding that such calculations used for future years will use a date certain construct.

3. In approving the Stipulation, the Commission is granting the Companies all necessary and appropriate accounting authority

to implement the Stipulation and administer the EE/PDR Rider as described above in Section G, including but not limited to accounting authority to record a regulatory asset for any under-recovery or a regulatory liability for any over-recovery of EE/PDR program costs, shared savings and net lost distribution revenues. This shall be trued up annually as set forth in Section G.2.

4. The Plan is designed to meet or exceed the Companies' respective EE/PDR benchmarks for 2009, as reflected in Attachment B. The Signatory Parties agree that those calculations are appropriate and should be adopted as an initial benchmark report under adopted Rule 4901:1-39-05(A), O.A.C., and ultimately for compliance purposes for 2009. The baselines reflected above are not normalized but do reflect the economic development adjustments approved by the Commission in the Companies' ESP cases.

5. The Companies agree to reserve from the Plan's pilot program fund $250,000 per year in 2010 and 2011 for energy efficiency audits available for the non-residential customer class and from that amount will reserve $50,000 per year in 2010 and 2011 for an OHA-administered hospital specific energy efficiency audit program to be developed by the Companies with OHA input. In addition, the Companies shall provide $30,000 per year for 2009, 2010, and 2011 to the OHA to be used to assist hospitals served by the Companies to identify qualifying energy efficiency projects and also to assist hospitals in applying for financial incentives under the Companies' EE/PDR programs. All funding is recoverable through the EE/PDR Rider. To the extent OHA is able to assist the Companies in educating its members on the Companies' programs and gain participation of OHA's members, it is expected that this funding will offset the Companies' promotional costs.

6. AEP-Ohio shall work with the OMA to communicate energy efficiency programs to manufacturers in the Companies' service territories. To assist in the development of comprehensive communication tools and strategies to promote AEP Ohio's EE/PDR programs with its members and assist in their participation, AEP-Ohio shall provide the OMA $100,000 per 12-month period beginning on Commission approval of this Stipulation. Any time period with the life of this filing not

12 months shall be prorated to reflect that time period's share of a 12-month $100,000 contribution. To the extent OMA is able to assist the Companies in educating its members on the Companies' programs and gain participation of OMA's members, it is expected that this funding will offset the Companies' promotional costs.

7. The Companies agree that OPAE will be the designated contractor for the Low Income Program described in Section 6.1.3 of the EE/PDR Action Plan, revised as follows: The cumulative total energy savings shall equal or exceed 26,044,500 kWh; the cumulative total demand reduction shall equal or exceed 3,141 net kW; and Participation will be all cost-effective electric measures, including those listed in the Action Plan, in a projected 17,363 residences. The Benefit-Cost Test Ratio under the TRC is estimated to be 0.75. OPAE will make its best efforts to achieve a TRC that exceeds 1.0. OPAE shall be permitted to spend up to $16,110,000 for the programs and shall receive an administrative fee of three percent of direct costs. The program shall operate from January 1, 2010 through December 31, 2011. The Companies agree that OPAE will administer an additional $1 million from shareholder funds (Partnership with Ohio) for nonenergy efficiency repairs to enable electric energy efficiency measure installations and shall be permitted to expend no more than three percent of direct expenditures for administrative costs.

K. Procedural Matters

1. Except for enforcement purposes, neither the Stipulation nor the information and data contained within or attached thereto shall be cited as precedent in any future proceeding for or against any Signatory Party, or the Commission itself, if the Commission approves the Stipulation. Nor shall the acceptance of any provision as part of the settlement agreement be cited by any Signatory Party or the Commission in any forum so as to imply or state that any Signatory Party agrees with any specific provision of the settlement. More specifically, no specific element or item contained in or supporting the Stipulation shall be construed or applied to attribute the results set forth in the Stipulation as the results that any Signatory Party might support or seek, but for the Stipulation in these proceedings or in any other proceeding. The Stipulation

contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken for the purposes of resolving contested issues through litigation. The Signatory Parties believe that the Stipulation, taken as a whole, represents a reasonable compromise of varying interests.

2. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation.[12]

3. The testimony of the Companies' witnesses Williams and Roush are being filed in support of the Companies' Application and the Signatory Parties' Stipulation. The Signatory Parties hereby stipulate to the admission of the testimony into the record in this proceeding. To the extent that any non-Signatory Party opposes adoption of the Stipulation, the Signatory Parties reserve the right to file rebuttal testimony in further support of the Stipulation.

4. The Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification.[13] If the Commission rejects or modifies all or any part of the Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, then within thirty days of the Commission's Entry on Rehearing, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission. Upon the filing of such notice, the Stipulation shall immediately become null and void. No Signatory Party shall file a notice of termination and withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement is reached, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies

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12 OPAE and OPLC will neither support nor oppose Sections D and E of the Stipulation.

13 Any Signatory Party has the right, in its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

the intent of the Stipulation are unsuccessful, the Commission will convene an evidentiary hearing to afford the Signatory Parties the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if the Stipulation had never been executed. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, some, or all, of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing, if necessary.

5. Unless a Signatory Party exercises its right to terminate its Signatory Party status or withdraw as described above, each Signatory Party agrees to and will support the reasonableness of the Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation.[14] The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

V. DISCUSSION OF THE STIPULATION

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although it is not binding on the Commission, the terms of such agreements are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Commission proceedings. See, e.g., *Ohio-American Water Co.*, Case No. 99-1038-WW-AIR, Order (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Order (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Order (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Order (November 26, 1985). The ultimate issue for our consideration is whether the agreement,

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14 OPAE and OPLC will support the reasonableness of the Stipulation in any future litigation with the exception of Sections D and E, which they will neither oppose nor support.

which is the product of considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 *(citing Consumers' Counsel, supra,* at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (Id.)

As explained further below, IEU-Ohio argues that the Stipulation fails to meet the criteria for approving a stipulation because it does not benefit ratepayers, is not in the public interest, and violates important regulatory principles.

A. <u>Is the settlement a product of serious bargaining among capable, knowledgeable parties?</u>

AEP-Ohio argues that in the Stipulation the Signatory Parties agree, and IEU-Ohio's testimony does not contest, that the Stipulation is the product of lengthy negotiations between capable and knowledgeable parties. The portfolio plan program was developed by way of a collaborative process which AEP-Ohio states commenced in October 2008. Further, the Companies assert that all members of the collaborative, including IEU-Ohio, were invited to provide input and openly negotiate the Stipulation with other stakeholders. AEP-Ohio notes that the collaborative included interested stakeholders that represented residential, commercial and industrial consumer advocates, state regulatory agencies, environmentalists, the healthcare industry, education, and low-income consumer advocates. Accordingly, AEP-Ohio contends that the Stipulation meets the first criterion of the test (Jt. Ex. 1 at 1; Cos. Ex. 1 at 8-9; Cos. Br. at 5; Cos. Reply Br. at 2).

In their joint brief filed on March 10, 2010, OCC, OEC, Sierra, and NRDC support the reasonableness of the Stipulation and state that the Signatory Parties have extensive experience and expertise in energy efficiency programs. Further, OCC, OEC, Sierra, and NRDC note that the Stipulation was not entered into lightly and the AEP-Ohio Portfolio

Plan was developed by way of a collaborative process where all the signatories were afforded an opportunity to advocate their positions in negotiations. They claim that the Stipulation is the result of a determined effort to provide an EE/PDR program that will benefit consumers and AEP-Ohio. For these reasons, OCC, OEC, Sierra, and NRDC argue that the Stipulation meets the first criterion. (OCC, OEC, Sierra, and NRDC Br. at 2-5).

The Commission finds that the Stipulation involved serious bargaining by knowledgeable, capable parties. First, we note that most of the Signatory Parties have actively participated in previous Commission proceedings and are familiar with the process. Next, we recognize that through the collaborative process, numerous representatives of interested stakeholders were afforded an opportunity to negotiate the components of AEP-Ohio's portfolio plan. Finally, we notice that IEU-Ohio, the one opponent to the Stipulation, does not take issue with this factor of the reasonableness test for consideration of the Stipulation.

B. <u>Does the settlement, as a package, benefit ratepayers and the public interest?</u>

1. <u>Consideration of Rate Increases</u>

IEU-Ohio contends that AEP-Ohio has not met its burden to prove that AEP-Ohio's Portfolio Plan benefits ratepayers and is in the public interest because it will result in a rate increase to customers. More specifically, IEU-Ohio argues that, although the total bill increase customers will experience as a result of the Portfolio Plan ranges from .4 percent to 3.4 percent for CSP customers and .4 percent to 4.0 percent for OP customers, the Commission can not view this increase in isolation but must consider other recent rate increases approved by the Commission.

AEP-Ohio argues that the Commission reviewed and approved, as part of the Companies' ESP cases, the rate increases that IEU-Ohio takes issue with as well as the EE/PDR Rider. The Companies state that the cost of statutory compliance programs should not be offset by other increases previously approved by the Commission (Cos. Br. 11-12).

The Commission notes that we have recently rejected similar arguments by IEU-Ohio wherein IEU-Ohio claims that, because approval of the Stipulation will result in a rate increase for customers, a Commission order approving the Stipulation is unreasonable or unlawful, does not benefit ratepayers, and/or is not in the public interest.[15] We find this argument to be without merit. The Commission evaluates the benefits of the Stipulation to ratepayers on a variety of factors, not just rates. Particularly in this case, we will consider whether AEP-Ohio's Action Plan sufficiently encourages energy efficiency,

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[15] See *In re Columbus Southern Power Co. and Ohio Power Co.*, Case Nos. 09-872-EL-FAC, et al., Entry on Rehearing at 6-7 (March 24, 2010).

such that it is likely to achieve a reduction in energy consumption and an associated public benefit.

2. Cost/Benefit Analysis

IEU-Ohio also argues that, based on Mr. Murray's comparison of AEP-Ohio's Action Plan to similar energy efficiency plans proposed by other electric utilities in other states, that AEP-Ohio's Portfolio Plan has relatively high costs to benefits (IEU-Ohio Ex. 1 at 4, 12-14; Tr. 116-117). Based on Mr. Murray's conclusion that the AEP-Ohio's Portfolio Plan had relatively high costs in comparison to benefits, IEU-Ohio conducted a more targeted analysis of the Portfolio Plan. In IEU-Ohio's view, AEP-Ohio's Portfolio Plan is unlawful because it does not include lower cost options to achieve compliance with peak demand reduction requirements.

According to Mr. Murray, AEP-Ohio could achieve peak demand reduction compliance by leveraging its customers' participation in the demand response programs offered by PJM Interconnection LLC (PJM) and reduce the cost of the Portfolio Plan by approximately $7.0 million (IEU-Ohio Ex. 1 at 21; Tr. 87). IEU-Ohio asserts that ignoring lower cost options that reduce the overall cost of the Portfolio Plan does not benefit ratepayers, is not in the public interest, and is contrary to the state's policies set forth in Section 4928.02(A), Revised Code, which, among other things, seeks to ensure consumers the availability of reasonably priced electric service. For these reasons, IEU-Ohio posits that the Stipulation should not be approved by the Commission. Alternatively, IEU-Ohio requests that the Commission direct AEP-Ohio to modify its Portfolio Plan to permit customer-sited demand response capabilities to qualify as capacity resources in PJM's market, which will be counted as part of AEP-Ohio's portfolio obligation, provided the customer commits its capabilities to AEP-Ohio.

The Companies note that, as Mr. Murray admits, he is not a demand side management (DSM) expert and that he was only conceptually familiar with the four stages of energy efficiency, and DSM concepts and definitions (Tr. 71-73, 79, 96). AEP-Ohio emphasizes that Mr. Murray did not have direct or personal knowledge of the documents attached to his testimony in support of his comparison to other energy efficiency programs (Tr. 67-69). The Companies argue that based on Mr. Murray's lack of understanding about DSM, and his lack of knowledge of the documents or data relied on for his claims regarding AEP-Ohio's Plan, the Commission should not afford exhibits KMM-1, KMM-2, or KMM-3 attached to his testimony, or any statements made in reference to such exhibits, any evidentiary weight (Cos. Br. at 8).

Further, AEP-Ohio states that Mr. Murray used theTRC test to perform his comparison of energy efficiency plans but overlooked that a component of the TRC test is the utilities' avoided costs. Each utility's avoided cost is unique to the particular utility. AEP-Ohio reasons that, because each utility's avoided cost is different, Mr. Murray's comparison of AEP-Ohio's energy efficiency plan components to that of other utilities based on TRC values, without the avoided cost information, is of no value to the Commission's evaluation of the plan (Tr. at 97, 100; Cos Br. at 9). Furthermore, the Companies note that Mr. Murray did not compare the components of each program or the consumption profiles of the markets involved (Tr. at 75). Finally, AEP-Ohio emphasizes that there are mathematical errors in Mr. Murray's Exhibit KMM-3, including comparing the cumulative savings over a four year period for certain of the other utility plans evaluated in comparison to one year of savings for the AEP-Ohio Plan and the computation of lifetime costs saved for Appalachian Power Company (APCo) to that of AEP-Ohio. On cross-examination, Mr. Murray admits that these errors affect his analysis (Tr. at 104).

AEP-Ohio argues that IEU-Ohio's claims regarding lower cost options is inaccurate and based on a misperception of the Commission's rules. AEP-Ohio witness Williams testified that AEP-Ohio plans to offer a "PJM-equivalent" demand response program. The Companies assert that Rule 4901:1-39-05(E)(2), O.A.C., does not automatically result in commitment of customer-sited resources toward the electric utility's compliance efforts or that, if AEP-Ohio customers participate in PJM's wholesale demand response program, the customer's resource pursuant to PJM is considered a capacity resource for AEP-Ohio (Tr. at 38-40, 45-46, 54-55).

The Commission finds that IEU-Ohio's analysis of AEP-Ohio's Action Plan and its comparison to the energy efficiency programs of other electric utilities was inadequate and not sufficiently detailed to convince the Commission that the costs of the AEP-Ohio's programs are excessive for the benefits. Our review of the record leads us to believe that the energy efficiency programs in AEP-Ohio's Plan are on par with those of the electric utilities referenced in this proceeding, and are consistent with the Commission's rules in Chapter 4901:1-39, O.A.C. We recognize that AEP-Ohio has proposed, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, which are currently pending before the Commission, to offer its own demand response programs.

3. Lost distribution revenue recovery

Next, IEU-Ohio contends that AEP-Ohio has failed to demonstrate that the recovery of lost distribution revenue is necessary to allow CSP or OP the opportunity to recover its cost of providing distribution service and a fair and reasonable rate of return, as provided in the Stipulation. AEP-Ohio witness Rousch, in IEU-Ohio's opinion, merely explained how lost distribution revenue is calculated (Joint Ex. 1 at 9; AEP-Ohio Ex. 2 at 5). IEU-Ohio argues that no evidence was presented to demonstrate that recovery of lost distribution revenue is appropriate or necessary. Furthermore, IEU-Ohio contends that even assuming that AEP-Ohio had demonstrated that recovery of the lost distribution revenue was reasonable, AEP-Ohio's calculation of the lost distribution revenue is incorrect. IEU-Ohio argues that AEP-Ohio overstates the potential lost distribution revenue because its calculation is based on the assumption that AEP-Ohio will experience lost distribution revenue if commercial and industrial customers reduce energy usage. IEU-Ohio contends that this overlooks the fact that commercial and industrial customer distribution energy charges are based on fixed monthly customer charges, demand charges subject to ratchets, and variable distribution charges based on energy consumption (IEU-Ohio Ex. 1 at 18). IEU-Ohio contends that most base distribution revenues are collected via the monthly customer charges and demand charges (IEU-Ohio Ex. 1 at 18). IEU-Ohio asserts that AEP-Ohio witness Roush simply divided the total annual base distribution revenue by billed energy, excluding customer charges and pass-through riders, to derive an average distribution revenue which significantly overstates the variable distribution charges that AEP-Ohio collects from commercial and industrial customers (IEU-Ohio Ex. 1 at 17- 18). Thus, IEU-Ohio asserts that the Commission should not approve the Stipulation, but if the Commission elects to adopt the Stipulation, the Commission should direct AEP-Ohio to eliminate the lost distribution revenue from the EE/PDR Rider (IEU-Ohio Ex. 1 at 17- 18).

AEP-Ohio responds that Section 4928.66(D), Revised Code, allows for the recovery of revenue that otherwise may be foregone by the electric utility as a result of or in connection with the implementation of energy efficiency or energy conservation programs. With the adoption of Rule 4901:1-39-07(A), O.A.C., AEP-Ohio contends that the Commission unequivocally endorsed the electric utility's recovery of appropriate lost distribution revenue and shared savings. IEU-Ohio witness Murray admitted that AEP-Ohio would receive less revenue when commercial/industrial customers on certain rate schedules reduce their peak demand and corrected his testimony accordingly (Tr. at 64-65, 90-92). AEP-Ohio argues that the annual EE/PDR review will include a reconciliation of actual net distribution lost revenue as reflected on the Companies' books based on actual measure installations and a reconciliation of shared savings based upon annual kWh savings through actual measure installations accomplished in the calendar year relative to the benchmark and the graduated incentive scale included in the Stipulation (Cos. Ex. 2 at 7).

OCC, OEC, Sierra, and NRDC state that the Stipulation benefits consumers and the public interest by directing more money to customer incentives, facilitating the transparent review of the program's administrative costs, and providing shared savings based on new programs. Recognizing the Companies' existing interruptible service load as counting toward the PDR benchmarks reduces AEP-Ohio's compliance cost for PDR programs. OCC, OEC, Sierra, and NRDC offer that the Stipulation also specifically excludes certain aspects of the portfolio program from customer rates, as the original Action Plan will not be included in the EE/PDR Rider, the cost to implement a demand reduction program in 2009 will be zero, and AEP-Ohio will not collect carrying charges in connection with the EE/PDR Rider. As OCC, OEC, Sierra, and NRDC state, the Stipulation also supports energy efficiency audits for hospitals and energy efficiency programs for manufacturers.

Thus, OCC, OEC, Sierra, and NRDC assert that the Stipulation meets the second criterion. (OCC, OEC, Sierra, and NRDC Br. at 5-6).

With regard to the recovery of lost distribution revenue, the Commission agrees with AEP-Ohio that Section 4928.66, Revised Code, authorizes the Commission to approve a revenue decoupling mechanism which provides for the recovery of revenue that may otherwise be foregone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs. AEP-Ohio is also correct that in adopting Rule 4901:1-39-07(A), O.A.C., the Commission established an opportunity for an electric distribution utility to include, in its portfolio filing, a proposal for such a revenue decoupling mechanism. The need for a revenue decoupling mechanism arises from traditional rate designs that recover fixed distribution costs through volumetric charges. These designs leave utilities at risk of not collecting enough revenue to cover their fixed distribution costs when sales fall, and may provide an opportunity for utilities to collect revenue in excess of expenses if sales increase. The Commission believes that it is important to break or weaken the link between sales volume and the recovery of fixed distribution costs. Further, we recognize that all of the Signatory Parties, which represent a broad base of interests, entered into the Stipulation accepting the distribution-based lost revenue calculation. As with any stipulation, it is reasonable, for the Commission to assume that the Signatory Parties herein negotiated provisions of the Stipulation in exchange for AEP-Ohio's recovery of lost distribution revenue.

However, in this instance, the Commission agrees with IEU-Ohio that the record fails to establish what revenue is necessary to provide AEP-Ohio with the opportunity to recover its costs and to earn a fair and reasonable return. Without this information, the Commission cannot determine whether the Signatory Parties' proposal included in Section F of the Stipulation is reasonable. Given that CSP's last distribution rate case occurred in 1991 and OP's last distribution rate case occurred in 1994, AEP-Ohio's actual costs of service are unknown at this time. Therefore, at this time, the Commission will temporarily grant AEP-Ohio lost revenue recovery through January 1, 2011. During this time, AEP-Ohio is encouraged to propose a mechanism to answer the Commission's concern regarding quantification of fixed costs, as well as a mechanism to achieve revenue decoupling, which may include, but is not limited to, the method proposed in this filing: lost distribution revenue recovery, a decoupling rider, or any other method which reduces or eliminates the link between sales volume and recovery of fixed distribution costs. If AEP-Ohio proposes a reasonable mechanism, the Commission will consider a request to extend the recovery period while the mechanism is considered.

With this modification, the Commission is convinced that the Stipulation, as a package, benefits ratepayers and the public interest. We note that pursuant to the Stipulation, program costs and shared savings will be reviewed and reconciled.

C. Does the settlement package violate any important regulatory principle or practice?

OCC, OEC, Sierra, and NRDC advocate that the Stipulation does not violate any important regulatory principle or practice. They note that the purpose of the Stipulation is to assist AEP-Ohio in meeting the EE/PDR benchmarks, while preserving the other Signatory Parties' right to challenge AEP-Ohio's incentive-based renewal energy credit program for solar photovoltaic and small wind resources, as well as its solar photovoltaic and small wind REC purchase program, and to oppose individual Self Direct program applications. Further, OCC, OEC, Sierra, and NRDC explain that the Stipulation includes a true-up mechanism for the EE/PDR Rider and a cap on shared savings, which provide stability for the funding and costs of the Portfolio Plan. As such, OCC, OEC, Sierra, and NRDC assert that the Stipulation meets the third criterion for the Commission's adoption of a stipulation agreement. Thus, they urge the Commission to approve the Stipulation without modification. (OCC, OEC, Sierra and NRDC Br. at 6-7).

In previous mercantile rider exemption cases considered by the Commission,[16] we found that it would be both equitable and reasonable to accept a mercantile customer's application for rider exemption using the benchmark comparison method to determine whether a rider exemption is appropriate when, in reliance upon the prior version of Rule 4901:1-19-08, O. A. C., the customer and the electric utility reached agreement on the application between June 17, 2009[17] and December 10, 2009.[18] However, mercantile customer rider exemption requests arising from agreements subsequent to the December 10, 2009 effective date of the rules shall not rely upon the benchmark comparison method. Thus, the segment of the Stipulation described herein in Section IV.I.3 of this Order, is clarified to reflect that a calculation that utilizes Option 2, the benchmark comparison method, is only available for applications for mercantile customer rider exemption for agreements entered into between June 17, 2009 and December 10, 2009. Further, we direct

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16 See FN 1 in February 11, 2009 Entries in Case Nos. 09-595-EL-EEC, 09-1100-EL-EEC, 09-1101-EL-EEC, 09-1102-EL-EEC, 09-1200-EL-EEC, 09-1201-EL-EEC, 09-1400-EL-EEC, 09-1500-EL-EEC.

17 On June 17, 2009, in adopting Rule 4901:1-19-08(B)(1) and (2), O.A.C., the Commission required a mercantile customer to submit information sufficient for the Commission to compare the reductions achieved by the customer to the electric utility's benchmark in order to qualify for a rider exemption. See, Green Rules, Entry (June 17, 2009).

18 On October 15, 2009, the Commission reversed its prior position and rejected the benchmark comparison method, stating:

> We have deleted from the rule, requirements for mercantile customer baseline energy use and peak demand because we do not anticipate basing exemptions on whether a particular mercantile customer has or has not achieved a percentage of energy savings equivalent to the electric utility's annual benchmark.

See Green Rules, Entry at 14 (October 15, 2009).

Staff to track volumes, and report quarterly to the Commission, percentages of nonresidential sales for customers that have been granted exemptions from the EE/PDR Riders.

Upon review of the Stipulation, its various provisions and the regulatory principles and practices implicated by the agreement, the Commission finds that the Stipulation as modified herein, does not violate any important regulatory principle or practice. Thus, the modified Stipulation meets the third criterion for considering the reasonableness of a stipulation.

VI. CONCLUSION

After reviewing the Stipulation, the Commission finds that the Stipulation and AEP-Ohio's energy efficiency Portfolio Plan adequately address the Companies' EE/PDR compliance requirements. We further find that the process used to develop the Companies' Portfolio Plan and to negotiate the Stipulation involved serious bargaining by knowledgeable, capable parties. After considering the Stipulation, in its entirety, the aspects of the Stipulation opposed by IEU-Ohio and the basis for their arguments as set forth in the record, the Commission concludes that the Stipulation, as a package, benefits ratepayers and the public interest. IEU-Ohio's analysis of AEP-Ohio's Action Plan and their comparison to the energy efficiency programs of other electric utilities was inadequate and not sufficiently detailed to convince the Commission that the issues raised justify modifying or rejecting the Stipulation, as IEU-Ohio recommends, except with regard to the recovery of lost distribution revenue. We are further convinced that the Stipulation, as a package, benefits ratepayers and the public interest, noting the broad base of support for the Stipulation, as evidenced by the Signatory Parties. We note that pursuant to the Stipulation, program costs and shared savings will be reviewed annually and reconciled. Finally, we note that, while the adoption of energy efficiency programs may result in a minimal rate increase, the programs offered may likewise result in energy efficiency savings for participating residential, commercial, and industrial customers and may ultimately avoid the need to construct additional generation facilities. For these reasons, we conclude that the Stipulation, in its entirety, benefits ratepayers and the public interest. We also find the Stipulation is in the public interest, as it offers energy efficiency programs for each class of AEP-Ohio customers, without the necessity of engaging in extensive and costly litigation. Lastly, the Stipulation does not violate any important regulatory principle or practice. Accordingly, the Stipulation should be approved as modified herein.

Accordingly, the Commission finds that the Companies should file their respective EE/PDR Rider rate tariffs consistent with this order, to be effective on a bills rendered basis, on a date not earlier than both the commencement of the Companies' June 2010 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon Commission approval. In light of the timing of the effective date of the EE/PDR Riders, the Commission finds that the first true-up should be filed to be effective July 2011. The EE/PDR Rider shall end with the last billing cycle of December 2011 with a final true-up in the first quarter of 2012.

FINDINGS OF FACT and CONCLUSIONS OF LAW:

(1) CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) On November 12, 2009, CSP and OP filed applications for approval of their respective portfolio plans to comply with EE/PDR requirements in Senate Bill 221. Contemporaneously, AEP-Ohio filed a Stipulation entered into by AEP-Ohio, OCC, OMA, OEC, OPAE, Sierra, NRDC, OEG, OPLC, OHA, and Ormet, addressing all of the issues raised in the application.

(3) IEU-Ohio filed objections and recommendations to AEP-Ohio's application on December 11, 2009. AEP-Ohio filed a response on December 23, 2009. IEU-Ohio filed a reply on December 30, 2009.

(4) Motions to intervene were filed by Ormet, IEU-Ohio, OPAE, Sierra Club, OEG, OHA, OMA, OEC, OCC, NRDC, and EnerNOC. All requests for intervention were granted.

(5) An evidentiary hearing was held on February 25, 2010.

(6) Initial briefs were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC, OEC, Sierra, and NRDC, on March 10, 2010. Reply briefs were filed by AEP-Ohio and IEU-Ohio on March 19, 2010.

(7) The Stipulation, as a package, meets the Commission's criteria for reasonableness and is approved, as modified herein.

ORDER:

It is, therefore,

ORDERED, That the Companies' application for approval of their respective portfolio programs, pursuant to the Stipulation filed in conjunction with the application, be adopted, as modified herein. It is, further, ORDERED, That the Companies file their EE/PDR Rider tariffs consistent with this opinion and order, to be effective on a bills rendered basis, on a date not earlier than both the commencement of the Companies' June 2010 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon final review and approval by the Commission. It is, further,

ORDERED, That CSP and OP are authorized to file in final form four complete, printed copies of its tariffs consistent with this opinion and order. The Companies shall file one copy in this case docket and one copy in each Company's TRF docket (or may make such filing electronically, as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to Staff. It is, further,

ORDERED, That the Companies notify all affected customers of the changes to the tariff via bill message or bill insert within 45 days of the effective date of the tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further, ORDERED, That a copy of this opinion and order be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GNS/RLH/vrm

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Reneé J. Jenkins
Secretary