

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Establish)	Case No. 12-3255-EL-RDR
Initial Storm Damage Recovery Rider)	
Rates.)	

**INITIAL POST-HEARING BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Respectfully submitted,

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. BACKGROUND AND SUMMARY	1
III. STANDARD OF REVIEW	6
IV. RECOMMENDATIONS	8
A. The Signatory Parties to the Settlement Do Not Represent Diverse Interests, as No Representative of Residential Customers Agreed to AEP Ohio's Proposed Charges.	8
B. The Settlement, as a Package, does not Benefit Customers or the Public Interest.....	9
C. The Stipulation Violates Ohio Law and the Regulatory Principle Established in the ESP 2 Order that AEP Ohio Can Collect Only Reasonable and Prudent Major Storm Costs from Customers Through the Rider.....	14
1. The \$54.8 million proposed for collection from customers (not including carrying costs) under the Stipulation does not represent reasonable and prudent costs associated with the storm restoration.	15
2. AEP Ohio has not shown that several costs it seeks to collect from customers were reasonable or prudent.	15
a. Storm Services, LLC.....	15
b. Overtime for exempt employees.....	24
c. Refunds	26
d. Advertising costs.....	27
e. Ball caps.....	28
3. The July 18, 2012 storm does not qualify as a major storm, and thus AEP Ohio should not charge customers for costs associated with that storm through the rider.	29
4. The carrying charges that AEP Ohio would collect from customers under the Stipulation would be unreasonable.....	31

5.	The cost allocator contained in the Stipulation is unreasonable.	38
D.	The PUCO Should Reduce the Amount AEP Ohio Will Collect from Customers Through the Storm Rider by the \$20 Million Identified in the Long Term Forecast Case, in Addition to the \$17.9 Million in Unreasonable and Imprudent Costs Identified by OCC in this Proceeding.....	39
V.	CONCLUSION.....	41

ATTACHMENTS

**BEFORE
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In the Matter of the Application of Ohio)
Power Company to Establish Initial) Case No. 12-3255-EL-RDR
Storm Damage Recovery Rider Rates.)

**INITIAL POST-HEARING BRIEF
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I. INTRODUCTION

Ohio Power Company (“AEP Ohio”) is seeking to collect, for expenses associated with its major storm repairs in 2012, approximately \$57.5 million from the same customers who suffered through extended outages, summer heat, spoiled food, substitute lodging expense and/or other risks because of the storms. The Office of the Ohio Consumers’ Counsel (“OCC”) recommends that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) limit AEP Ohio’s charges to no more than \$24.2 million, for the utility’s 1.4 million customers.

While its customers mind their family budgets, AEP Ohio hired highly expensive services for storm repair that were more than needed and added millions of dollars in imprudent and unreasonable costs to the final bill that AEP Ohio wants the PUCO to present to customers. The many reasons the PUCO should protect Ohio customers from AEP Ohio’s charges are explained in the following pages.

II. BACKGROUND AND SUMMARY

In approving AEP Ohio’s electric security plan, the PUCO approved standard service offer rates that include \$5 million in storm costs annually. The PUCO also

adopted a storm rider mechanism for AEP Ohio to collect incremental operation and maintenance (“O&M”) major storm costs above the \$5 million threshold. For purposes of the mechanism, a major storm would be determined by the methodology outlined in the IEEE Guide for Electric Power Distribution Reliability Indices, as set forth in Ohio Adm. Code 4901:1-10-10(B).¹

In order to collect storm costs through the mechanism, AEP Ohio must file an application. In the ESP 2 Order, the PUCO placed the burden of proof in storm rider cases squarely on AEP Ohio:

In the event AEP-Ohio incurs costs due to one or more unexpected, large scale storms, AEP-Ohio shall open a new docket and file a separate application by December 31 each year throughout the term of the modified ESP, if necessary. In the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating **all the costs were prudently incurred and reasonable.**²

The PUCO also adopted the procedure for processing AEP Ohio’s storm rider applications:

Staff and any interested parties may file comments on the application within 60 days after AEP-Ohio docketed an application. If any objections are not resolved by AEP-Ohio, an evidentiary hearing will be scheduled, and parties will have the opportunity to conduct discovery and present testimony before the Commission.³

The PUCO did not include a provision for AEP Ohio to collect carrying charges through the storm rider.

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) (“ESP 2 Order”) at 68, citing the testimony of AEP Ohio witness Kirkpatrick in that case at 20.

² Id. at 68-69 (emphasis added).

³ Id. at 69.

On December 22, 2013, AEP Ohio filed an application to collect from customers the incremental O&M costs associated with three storms that occurred in June and July of 2012.⁴ AEP Ohio initially sought to collect \$61.8 million in storm costs from customers,⁵ but later revised its storm cost amount to \$61 million.⁶ More than \$15 million – approximately 25% – of this amount was paid to one contractor, Storm Services LLC (“Storm Services”), that AEP Ohio had engaged for the first time.⁷

A Stipulation and Recommendation (“Stipulation”) docketed in this proceeding on December 6, 2013 would allow AEP Ohio to collect from customers approximately \$54.8 million, plus carrying charges, for a total of approximately \$57.5 million. Because the Stipulation would allow AEP Ohio to collect unreasonable and imprudently incurred costs from customers, many of whom suffered great expense from being without electricity for up to 12 days during the first of the three storms,⁸ OCC did not sign the Stipulation and opposes it.⁹

In order to approve a stipulation, the PUCO has established that the stipulation must meet three criteria.¹⁰ First, the stipulation must be the product of serious bargaining among capable, knowledgeable parties. Second, the stipulation must benefit customers and the public interest. Third, the stipulation must not violate any legal or regulatory

⁴ See AEP Ohio Ex. 1 at 4.

⁵ See *id.* at 15.

⁶ See AEP Ohio Ex. 1A at 1.

⁷ See Tr. Vol. II at 172.

⁸ See OCC Ex. 2A (Yankel Testimony) at 6.

⁹ The Stipulation was signed by AEP Ohio, the PUCO Staff, the Kroger Co. (“Kroger”), Industrial Energy Users-Ohio (“IEU”), Ohio Energy Group (“OEG”), Ohio Hospital Association (“OHA”) and the Ohio Manufacturers’ Association Energy Group (“OMAEG”).

¹⁰ *Consumers’ Counsel v. Pub. Util. Comm’n.* (1992), 64 Ohio St.3d 123, 126.

principle. The Stipulation in this proceeding does not meet these criteria for PUCO approval.

The signatory parties to the Stipulation do not represent diverse interests, as AEP Ohio alleges.¹¹ None of the signatory parties represents residential customers, the largest segment of AEP Ohio's customer base and the group with the most at stake in this proceeding. The absence of residential customer representation among the signatory parties is evident by the amount of unreasonable and imprudent costs that the Stipulation would require residential customers to pay.

In other words, a group of non-residential parties joined together with AEP Ohio to settle this case. Their solutions? – make 1.2 million residential consumers pay most of AEP Ohio's storm costs and forgo \$20 million that the Commission previously said could potentially be used to offset what customers would pay in this case.¹² It is with good reason that the PUCO's standard requires diverse interests, and that the PUCO should find here that the stipulators' settlement fails the standard.

Moreover, the Stipulation does not benefit customers or the public interest. Many of AEP Ohio's customers experienced considerable inconvenience and expense as a result of the storms that occurred in 2012 at issue in this proceeding. Some customers were without power for up to 12 days. They had to throw away hundreds of dollars in spoiled food and live away from their homes – some with the added expense of hotel rooms – for an extended time. Others were without air conditioning, or even electric fans, for days during an extremely hot stretch of summer. Very few, if any, of AEP

¹¹ See AEP Ohio Ex. 2 (Spitznogle Testimony) at 10.

¹² *In the Matter of the 2010 Long Term Forecast Report of the Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, Opinion and Order (January 9, 2013) at 28.

Ohio's customers were compensated for this expense and inconvenience. They receive no benefit – and are actually harmed by – paying for unreasonable and imprudent costs, plus carrying charges that are unjustified. And, to top it all, the stipulators would deny customers the benefit of the additional \$20 million¹³ offset that the Commission already said it would consider for this case.

Further, the Stipulation also violates legal and regulatory principles in Ohio law and the ESP 2 Order. As the record in this case shows, the Stipulation makes no claim as to the reasonableness and prudence of the costs associated with the \$54.8 million, plus \$3.2 million in carrying charges, AEP Ohio would be allowed to collect from customers through the rider. The Stipulation does not examine whether any specific costs were reasonable or prudent.¹⁴ It merely reduces the amount that AEP Ohio had requested to collect from customers through the rider by \$6.1 million and characterizes the remaining \$54.8 million as a reasonable “*level of costs*” for collection from customers.¹⁵

Nevertheless, OCC and other parties have identified unreasonable and/or imprudent storm costs that AEP Ohio is seeking to collect from customers. In fact, OCC has determined that \$17.9 million of the requested storm costs are unreasonable and/or were imprudently incurred by AEP Ohio.¹⁶ Thus, the Stipulation would allow AEP Ohio to collect more than \$11.9 million in major storm costs that were not prudently incurred or reasonable (plus \$3.2 million in unjustified carrying charges). Hence the Stipulation violates the standard for collection of major storm costs through the rider adopted in the

¹³ Id.

¹⁴ See Tr. Vol. II at 55.

¹⁵ Joint Ex. 1 at 3 (emphasis added).

¹⁶ See OCC Ex. 2A (Yankel Testimony) at 13. Mr. Yankel identified \$17,772,965 in cost reductions plus \$129,549 in refunds AEP Ohio received from contractors.

ESP 2 Order, as well as the requirement under Ohio law that rates for utility service must be just and reasonable.¹⁷

Allowing AEP Ohio to pass these imprudent costs on to customers would signal to AEP Ohio, and to all other Ohio utilities, that paying the type of imprudent and exorbitant costs associated with the Storm Services contractor will be found to be acceptable in the future. The PUCO should reject the Stipulation, or modify it and reduce the amount AEP Ohio will collect from customers through the rider by \$17.9 million below its requested amount of \$61 million.

And consistent with the Commission's excellent suggestion in AEP Ohio's Long Term Forecast Case,¹⁸ the amount AEP Ohio is proposing to collect from customers through the storm rider should be reduced by an additional \$20 million. That is the amount AEP Ohio was formerly obligated to expend (but did not expend) on the Turning Point project or a similar project, for the benefit of customers.

III. STANDARD OF REVIEW

The standard of review for consideration of a stipulation has been discussed in a number of Commission cases and by the Ohio Supreme Court. The Ohio Supreme Court stated in *Duff*:

A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must

¹⁷ R.C. 4905.22.

¹⁸ *In the Matter of the 2010 Long Term Forecast Report of the Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, Opinion and Order (January 9, 2013) at 28.

determine what is *just and reasonable* from the evidence presented at the hearing.¹⁹

The Court in *Consumers' Counsel* 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? In this regard, the PUCO considers whether the signatory parties to the stipulation represent diverse interests.²⁰
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?²¹

The ultimate question to be answered is whether, in light of the record, the Stipulation is reasonable and complies with Ohio law. In this proceeding, the PUCO must ensure that the Stipulation complies with Ohio law that requires utilities to charge customers rates that are just and reasonable.²²

The Stipulation must also comply with the PUCO's Order that limits what customers pay to only those costs that were prudently incurred and reasonable.²³ The Supreme Court of Ohio has examined the burden of proof for a utility to show that its expenses to repair storm damage were prudently incurred and reasonable.²⁴ The Court emphasized that in order to reduce or disallow the collection of storm costs from

¹⁹ *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St.2d 367 (emphasis added).

²⁰ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, Opinion and Order (December 14, 2011) at 9.

²¹ *Consumers' Counsel*, note 10 supra.

²² R.C. 4905.22.

²³ ESP 2 Order at 69.

²⁴ *In Re Application of Duke Energy Ohio, Inc., to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, 131 Ohio St.3d 487, 2012-Ohio-1509, 967 N.E.2d 201, ¶ 8.

customers, “[t]he Commission did not have to find the negative: that the expenses were imprudent.”²⁵ Instead, *the utility* has to prove a positive point – that its expenses had been prudently incurred – in order to collect those costs from customers.²⁶ With regard to that appeal, the expert witness that OCC presented at the PUCO hearing (with testimony to disallow Duke’s proposed charges) is the same witness, Mr. Yankel, who OCC presented in this case.

As the evidence in this proceeding demonstrates, the Stipulation does not meet the PUCO’s criteria for approving stipulations. Further, OCC has identified \$17.9 million in unreasonable and imprudent costs associated with the storms in AEP Ohio’s Application. Hence, the Stipulation would allow AEP Ohio to collect at least \$11.8 million in unreasonable and imprudent costs. And the stipulators turned their backs on \$20 million that the Commission said could be considered in this case to offset storm costs for the benefit of customers. The PUCO should thus reject the Stipulation, and protect customers by not allowing AEP Ohio to collect more than \$24.2 million from customers.

IV. RECOMMENDATIONS

A. The Signatory Parties to the Settlement Do Not Represent Diverse Interests, as No Representative of Residential Customers Agreed to AEP Ohio’s Proposed Charges.

The settlement does not represent diverse interests.²⁷ The signatory parties to the Stipulation include AEP Ohio, the PUCO Staff and commercial and industrial customers. But the largest segment of AEP Ohio’s customer base – residential customers – is not represented among the signatory parties to the Stipulation.

²⁵ Id.

²⁶ Id.

²⁷ OCC Ex. 2A (Yankel Testimony) at 7.

OCC's witness testified that, contrary to the assertions of AEP Ohio's testimony, the Stipulation does not reflect diverse interests.²⁸ AEP Ohio's witness on the Stipulation initially claimed that the PUCO Staff represents residential customers.²⁹ But on cross-examination, Mr. Spitznogle conceded that the PUCO Staff does not advocate for any one party's interest but that "they represent many groups."³⁰ Having acknowledged that the PUCO Staff does not represent residential customers, Mr. Spitznogle then contended that the Ohio Hospital Association "represent[s] hospitals, hospitals are – their rooms are filled with residential customers."³¹ But he also admitted that OHA's members are hospitals, and not the patients in the hospitals.³²

Ohio has a statutory representative of residential customers. That is OCC. OCC, the representative of residential consumers, did not sign the Stipulation. A Stipulation that does not reflect the interests of residential customers (the largest segment of AEP Ohio's customer base) is not diverse, especially one where the non-residential stipulators agreed that residential customers in the main are to compensate the utility for costly expenditures.

B. The Settlement, as a Package, does not Benefit Customers or the Public Interest.

The Stipulation does not benefit customers or the public interest. In fact, the Stipulation would harm customers because the Stipulation would require them to pay for storm restoration costs that were not reasonable or prudent. And, in what is a major

²⁸ Id.

²⁹ AEP Ohio Ex. 2 (Spitznogle Testimony) at 10.

³⁰ Tr. Vol. II at 48.

³¹ Id. at 49.

³² Id.

failure for customer benefits and the public interest, the Stipulation fails to recommend using the \$20 million from the Turning Point issue as an offset to storm costs for the benefit of customers. That is a striking omission considering that the Commission already said in a prior ruling that it will consider using the money as an offset for the benefit of customers in this case.

AEP Ohio's witness claimed that the Stipulation benefits customers, alleging that it reduces carrying costs.³³ OCC's witness explained why that assertion is false. He testified that "[t]his proposal in the Stipulation for carrying costs is to the benefit of the Company, not the consumers."³⁴ Indeed, the Stipulation allows for AEP Ohio to collect carrying charges instead of protecting customers from carrying charges.

Claims that the Stipulation benefits customers by reducing the carrying charges they would pay are disingenuous. It was not known if the PUCO would allow AEP Ohio to collect any carrying charges at all, on any part of the \$61 million that AEP Ohio sought to collect from customers in this case. Hopefully for customers, the PUCO will deny AEP Ohio's request to collect carrying charges from customers.

AEP Ohio has developed a theory of customer benefit that seems founded not upon delivering actual benefits for customers. Rather, AEP Ohio wants the meaning of "benefit" to be based on the theory that AEP Ohio is *entitled* to collect the entire amount of costs incurred for storm restoration in 2012. This theory of entitlement is evident in AEP Ohio's claim that the settlement benefits Ohioans because it would allow AEP Ohio to collect less than the amount it requested in its Application.³⁵ This theory is faulty;

³³ See AEP Ohio Ex. 2 (Spitznogle Testimony) at 6-9.

³⁴ See OCC Ex. 2A (Yankel Testimony) at 12.

³⁵ See AEP Ohio Ex. 2 (Spitznogle Testimony) at 6-7.

AEP Ohio must *prove* that its storm costs were reasonable and prudent, which it has not done.

AEP Ohio also asks the PUCO to judge the settlement's benefits for Ohioans by comparing it to the signatories' pre-settlement positions. But this is an exceedingly narrow approach to showing customer benefit. OCC is not a signatory to the Stipulation, so AEP Ohio's approach does not consider OCC's position in determining the settlement's benefits. Thus, AEP Ohio's approach would have the PUCO ignore the position of the representative of the largest customer group in AEP Ohio's service territory. The PUCO should not accept AEP Ohio's approach for determining the benefits of the settlement.

Even before the Stipulation was negotiated, OCC had publicly identified reductions to AEP Ohio's storm costs that were considerably more than the amount the signatory parties ultimately settled for. In Comments filed on May 29, 2013, OCC specifically identified and quantified more than \$8 million in unreasonable charges that AEP Ohio sought to collect from customers through the rider.³⁶ OCC also stated in the same filing that it had identified additional unreasonable charges, including part of the \$15.1 million in charges from Storm Services that could not be quantified at the time.³⁷ Hence OCC's position was that the costs to be collected from customers through the rider should be reduced by considerably more than \$8 million. But even the quantifiable reduction in storm costs that OCC proposed in its Comments was considerably higher (by \$3.1 million) than the \$4.9 million the PUCO Staff ultimately proposed in its November 4, 2013 issues list filing.

³⁶ See OCC Ex. 2A (Yankel Testimony) at 10.

³⁷ See *id.*

In addition, OCC filed an issue list on November 4, 2013 that further identified several issues with AEP Ohio's as-filed Application. That filing included the issue of giving customers the benefit of \$20 million to offset the amount of any storm costs that the PUCO authorizes to be collected from customers through the rider. Subsequently, on December 30, 2013, OCC publicly filed direct testimony of its expert witnesses, which quantified unreasonable and imprudent charges that should be disallowed. The OCC testimony provided evidence to recommend a disallowance of \$17.9 million in unreasonable and imprudent costs in addition to the \$20 million offset to the amount authorized per the Commission's prior cases. Clearly, the Stipulation is not more beneficial than the public positions presented by all of the parties.

The collection of carrying charges AEP Ohio's customers would pay under the Stipulation also is not a benefit. As further discussed in Section IV.C.4., *infra*, this so-called "benefit" is based on three invalid assumptions: (1) the PUCO would have allowed AEP Ohio to collect the entire \$61 million of storm costs it seeks in this case; (2) the PUCO would grant AEP Ohio's motion to collect carrying costs from customers; and (3) the PUCO would have approved calculation of any carrying charges on the entire \$61 million at AEP Ohio's Weighted Average Cost of Capital ("WACC"). In addition, as also discussed in Section IV.C.4., the Stipulation allows the carrying charges to be calculated beginning April 1, 2013 – a starting date based on AEP Ohio's unreasonable presumption regarding the length of time it would take for the PUCO to process the Application.

It is absurd to claim that customers benefit by paying carrying charges.³⁸ Any characterizing of the carrying charges as being “reduced” is misleading. Allowing AEP Ohio to collect *any* carrying charges benefits only AEP Ohio. Customers are, in fact, harmed by paying the carrying charges included in the Stipulation.

The Stipulation also does not benefit customers “by having had their power restored as expediently as possible for a reasonable fixed charge,” as AEP Ohio claims.³⁹ Customers’ power was not restored because of the Stipulation; that occurred more than a year before the Stipulation was signed. Many AEP Ohio customers incurred considerable expense – such as for temporary lodging and to replace spoiled food – from being without power for days or even weeks.⁴⁰

To judge the benefit from the Stipulation, the PUCO should compare the amount AEP Ohio would collect from customers through the Stipulation to the amount of AEP Ohio’s storm costs that were reasonable and prudent. A storm rider charge to customers that is not based on an examination of the reasonableness and prudence of AEP Ohio’s storm costs – and that includes unreasonable carrying charges – cannot be deemed “reasonable.”

The Stipulation does not benefit customers, and thus does not meet the PUCO’s criteria for approving stipulations. The PUCO should reject the Stipulation.

³⁸ See AEP Ohio Ex. 2 (Spitznogle Testimony) at 7-8.

³⁹ Id. at 8-9 (footnote omitted).

⁴⁰ See OCC Ex. 2A (Yankel Testimony) at 6.

C. The Stipulation Violates Ohio Law and the Regulatory Principle Established in the ESP 2 Order that AEP Ohio Can Collect Only Reasonable and Prudent Major Storm Costs from Customers Through the Rider.

R.C. 4905.22 requires the PUCO to ensure that utility service in Ohio is adequate, just and reasonable, and that all charges for utility service are just and reasonable:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

In addition, in the ESP 2 Order, the PUCO stated that “[i]n the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating all the costs were prudently incurred and reasonable.”⁴¹ But the Stipulation allows AEP Ohio to collect more than the reasonable and prudent costs associated with major storm restoration, and thus violates not only the ESP 2 Order but also R.C. 4905.22.

Contrary to AEP Ohio’s assertion,⁴² the Stipulation does not further the State policy set forth in R.C. 4928.02(A). The Stipulation does not “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.” Rather, the Stipulation unreasonably increases the cost of electric service to customers. The PUCO should reject the Stipulation, or amend it by removing the costs OCC has shown to be unreasonable and/or imprudent.

⁴¹ ESP 2 Order at 68-69.

⁴² AEP Ohio Ex. 2 (Spitznogle Testimony) at 10-11

1. The \$54.8 million proposed for collection from customers (not including carrying costs) under the Stipulation does not represent reasonable and prudent costs associated with the storm restoration.

The Stipulation reduces the amount AEP Ohio sought in its revised Application by \$6.1 million, but does not assign the reduction to any particular costs that AEP Ohio incurred as a result of the three storms. The Stipulation does not determine the reasonableness or prudence of any of the costs AEP Ohio identified for collection from customers. The Stipulation also does not state that it addresses any costs identified by any party to this proceeding.

Thus, the Stipulation in no way demonstrates that AEP Ohio actually incurred \$54.8 million in reasonable and prudent costs from the storms. To the contrary, as OCC's witness Yankel demonstrated, the amount of reasonable and prudent costs incurred by AEP Ohio as a result of the three storms was much less than the amount AEP Ohio would be allowed to collect from customers under the Stipulation.

The ESP 2 Order places the burden of proof on AEP Ohio to show that the costs it will collect through the storm rider are reasonable and prudent. But the Stipulation does not purport that any of the costs that AEP Ohio would collect are reasonable or prudent. The Stipulation does not meet the standard established by the PUCO for AEP Ohio to collect major storm costs from customers through the rider.

2. AEP Ohio has not shown that several costs it seeks to collect from customers were reasonable or prudent.

a. Storm Services, LLC

In its revised Application, AEP Ohio sought to collect \$61 million in costs associated with the three storms from customers. Approximately 25% of the total costs

incurred by AEP Ohio for the three storms – \$15.1 million⁴³ – were paid to one company, Storm Services, for just the June 29 storm.⁴⁴ Thus, the non-Storm Services portion of AEP Ohio’s costs for the storms totaled approximately \$45.9 million. By comparison, AEP Ohio’s costs associated with the remnants of Hurricane Ike in 2008 (a comparable storm⁴⁵ in which AEP Ohio did not use Storm Services) were approximately \$42 million.⁴⁶

AEP Ohio contracted with Storm Services to provide lodging and other services for out-of-state field personnel working on storm restoration after the June 29 storm.⁴⁷ Storm Services is geared toward assisting in situations, such as hurricanes, where *no* lodging or restaurants are available.⁴⁸

Storm Services was selected by American Electric Power Service Corporation (“AEPSC”) as the preferred vendor for its eastern companies.⁴⁹ No utility in Ohio had used Storm Services or any similar firm prior to AEP Ohio’s contracting with them for the June 29 storm.⁵⁰

⁴³ See OCC Ex. 2A (Yankel Testimony) at 16.

⁴⁴ See Tr. Vol. II at 169-170.

⁴⁵ In Ohio, the remnants of Hurricane Ike brought wind gusts of 55 mph to 75 mph for approximately six hours. See OCC Ex. 39 at page 2 of 10. Approximately 650,000 AEP Ohio customers were without power at the height of the storm. See Tr. Vol. III at 331. The June 29 storm in Ohio brought wind gusts of 59 mph to 84 mph (see *id.* at 268-269) for approximately four hours. See AEP Ohio Ex. 1 at Exhibit A, which shows the storms entering Ohio at about 3:00 p.m. on June 29, 2012 and leaving at about 7:00 p.m. that day. Approximately 720,000 AEP Ohio customers were without power at the height of the outage (see AEP Ohio Ex. 1 at 7), although that number was quickly lowered to about 660,000 (see Tr. Vol. III at 330-331).

⁴⁶ See Tr. Vol. III at 333.

⁴⁷ See OCC Ex. 2A (Yankel Testimony) at 22-23.

⁴⁸ See *id.* at 16.

⁴⁹ See Tr. Vol. IV at 586-588.

⁵⁰ See OCC Ex. 2 (Yankel Testimony) at 16, citing AEP Ohio’s responses to OCC INT-127 and OCC INT-128. In the past, AEP Ohio has used a variety of other companies for catering and other logistics associated with storm restoration. See Tr. Vol. II at 172.

Storm Services' facilities were set up in 14 of the "staging areas" around AEP Ohio's service territory. A few of the Storm Services facilities were in operation for eleven days during the restoration period for the June 29 storm and one (Belmont) never operated. The majority of them operated for eight days or less.⁵¹ Storm Services was contracted to provide lodging for approximately half of AEP Ohio's non-local field workers.⁵² But the occupation rate at Storm Services facilities after the June 29 storm was only about 27% of the capacity.⁵³

The Storm Services staging areas, called "tent cities" by AEP Ohio witness Dias,⁵⁴ included bunk trailers that are designed to sleep 36 persons each (although they actually accommodated no more than 24 people⁵⁵), shower trailers that provide 8-12 showers each, cooking and eating tents with tables and chairs, and portable toilets (no running water).⁵⁶ In addition, Storm Services provided ancillary equipment such as pickups, forklifts, generators, light towers, trash cans and dumpsters, as well as waste water containers.⁵⁷ AEP Ohio's decision to contract with and use Storm Services regarding the June 29 storm was not reasonable or prudent for many reasons.

First, AEP Ohio's decision to contract with Storm Services was made without adequate analysis of whether it was appropriate to hire Storm Services, adequate effort to procure other lodging and services, or adequate review and consideration of alternatives.

⁵¹ See OCC Ex. 2A (Yankel Testimony) at 34, Table 3.

⁵² See *id.*, Exhibit AJY-3.

⁵³ See OCC Ex. 2A (Yankel Testimony), Exhibit AJY-3 at 1, which showed 35,905 total field worker days (number of field workers times the number of days each worked) and 9,720 guest nights at Storm Services facilities (number of field workers staying at the facilities times the number of days each facility operated).

⁵⁴ See Tr. Vol. II at 195.

⁵⁵ See OCC Ex. 2 (Yankel Testimony) at 34-35, citing AEP Ohio's response to OCC Interrogatory 58a.

⁵⁶ See *id.* at 16.

⁵⁷ See *id.*

Electric utilities in Ohio have provided adequate lodging to non-local field workers who come to Ohio to assist in restoration efforts after a serious storm.⁵⁸ This may take some effort on the part of the utility to procure motel, college dormitory or other lodging, but it has always been accomplished. In fact, AEP Ohio obtained housing for about half of its out-of-state workforce assisting after the June 29 storm in the well-established manner of providing motel rooms.

The evidence in this case shows that AEP Ohio made only a cursory review of the availability of lodging for non-local field workers before hiring Storm Services. As discussed by OCC witness Yankel, AEP Ohio made the decision to hire Storm Services less than four hours after the June 29 storm hit.⁵⁹ This was well before AEP Ohio personnel could ascertain whether there would be a shortage of hotel and motel space.⁶⁰

In fact, AEP Ohio had found that motel rooms were unavailable in only one area of the state – eastern Ohio,⁶¹ the area in which Storm Services sleeping facilities were deployed but never used.⁶² Motels and other facilities were available in other parts of AEP Ohio's service territory, but AEP Ohio chose to contract with Storm Services instead. The primary reason AEP Ohio used Storm Services was for AEP Ohio's convenience,⁶³ not because other lodging was not available.

⁵⁸ See *id.*

⁵⁹ *Id.* at 25.

⁶⁰ See *id.* at 25-30.

⁶¹ *Id.* at 27-28.

⁶² See *id.* at 28.

⁶³ See AEP Ohio (Dias Testimony) at 11.

Storm Services has been used primarily in the southeastern United States in the aftermath of hurricanes.⁶⁴ Storm Services' facilities may be necessary where a hurricane has caused destruction on a massive scale, not only to the electrical distribution system, but also to commercial buildings, including hotels and restaurants.⁶⁵ Where lodging or food establishments have been heavily damaged or destroyed over a vast area, it may be necessary for utilities to bring in self-contained sleeping and eating facilities for field personnel. This was not the case in Ohio after the June 29 storm, as evident from the number of field personnel who obtained lodging at motels and meals at restaurants during even the first few days after the storm.

Second, there was little effort on AEP Ohio's part to control costs associated with the Storm Services sites. AEP Ohio's supervision of Storm Services' operations was inadequate at best. Although some AEP Ohio personnel were at each staging site, their purpose was to act as a liaison with Storm Services, not to oversee or account for the expenditures Storm Services made.⁶⁶ AEP Ohio's accounting of Storm Services' activities was made after the fact, and even then the accounting was primarily to double-check receipts with the bills Storm Services submitted for some expenditures. AEP Ohio's post-storm restoration accounting did not scrutinize whether Storm Services' charges were reasonable or prudent. For the most part, AEP Ohio merely paid the charges that Storm Services invoiced, without question.

⁶⁴ See OCC Ex. 2A (Yankel Testimony) at 17.

⁶⁵ See OCC Ex. 13.

⁶⁶ See Tr. Vol. IV at 659.

The evidence in the case confirms this. As an example, AEP Ohio ordered three bunk trailers for the Belmont staging area, but the trailers were never used.⁶⁷ Customers received no benefit from these unused bunk trailers and should not have to pay for them, particularly in addition to hotel rooms. During the entire course of the restoration effort, AEP Ohio had no idea how many bunks were used.⁶⁸

Further, as explained by Mr. Yankel's Exhibit AJY-3, page 1, far more out-of-state workers stayed in motel rooms as those who stayed in the Storm Service facilities for at least the first half of the restoration effort. Thus, AEP Ohio paid for motel rooms that were used by out-of-state workers, while also paying for Storm Services facilities that largely went unused.

Third, Storm Services' charges for facilities and services were exorbitant, especially when compared to lodging and meals that other field workers obtained during the restoration effort. The cost of a motel room includes such things as sheets, pillows, blankets, towels, washcloths, toilet, sink and shower.⁶⁹ Daily cleaning of the room is also included, as is laundering of the linens. That was not the case with Storm Services' facilities.⁷⁰

Storm Services charges separately for bunk trailers, shower facilities and portable toilets.⁷¹ These facilities have additional charges for mobilization, demobilization, freight and mileage.⁷² More charges are added to shower facilities – for the fresh water

⁶⁷ See OCC Ex. 2 (Yankel Testimony) at 28.

⁶⁸ See id. at 35.

⁶⁹ See id. at 40-42.

⁷⁰ See id. at 41.

⁷¹ See id. at 40-41.

⁷² See id. See also Tr. Vol. IV at 636, 646, 657-658.

pressure system (which has its own mobilization, demobilization, freight and mileage charges), the water disposal system, the sink and clean-up.⁷³ Storm Services also charges separately for towels, washcloths and linens.⁷⁴

On top of all these charges, Storm Services adds an administration fee.⁷⁵ OCC witness Yankel has determined that the entire cost per person, per night to stay in a Storm Services facility is \$1,554. This cost is drastically more than AEP Ohio's hotel allowance for some of its contractors.⁷⁶ Also, as Mr. Yankel noted, there is less privacy for workers in the sleeping trailers, designed to sleep 24-36 individuals, than in a motel room.⁷⁷ The trailers are certainly likely to be more crowded and noisy than a motel room, and the trailers are far less convenient than motel rooms for using the shower and toilet facilities because workers would have to go outside to use those facilities.⁷⁸

Similarly, Storm Services had separate charges for various aspects of the food served at the staging sites. Storm Services charged for food preparation, but that was in addition to the actual cost of the food.⁷⁹ In contrast, preparation costs are already included with food bought at a restaurant or from a caterer. Further, Storm Services charged separately for the tents where the food was served, the tables and chairs where workers could eat the meals, and the handwashing stations workers could use

⁷³ See OCC Ex. 2 (Yankel Testimony) at 41. See also Tr. Vol. IV at 645.

⁷⁴ See OCC Ex. 2 (Yankel Testimony) at 42. See also Tr. Vol. IV at 639.

⁷⁵ See OCC Ex. 2 (Yankel Testimony) at 43.

⁷⁶ Compare id. at 44, line 7 and id. at 45, line 7.

⁷⁷ See id. at 16-17.

⁷⁸ See id. at 40.

⁷⁹ See id. at 43. See also Tr. Vol. IV at 618.

afterwards.⁸⁰ These amenities are all part of the price of restaurant meals. And Storm Services added its administration fee to the meal service,⁸¹ making the difference between Storm Services meals and restaurant meals even greater.

Storm Services' charges to its customers are known to have been disputed in at least one other project. After a massive tornado swept through Tuscaloosa, Alabama in April 2011, the City of Tuscaloosa contracted with Storm Services to provide food facilities to feed city employees who were working long hours in response to the storm.⁸² Storm Services contracted to provide the service at \$15 per meal.⁸³ The contract did not include an itemized price list; it referred to a price list Storm Services had given to Mississippi Power, a previous Storm Services customer.⁸⁴

But Storm Services added its separate charges for mobilization of the caterer (\$6,000), demobilization of the caterer (\$6,000), the dining tent (\$49,000) and the catering tent (\$16,800).⁸⁵ Storm Services billed the City \$21,000 for meals at \$15 each, but also added 7,000 box lunches (\$105,000) and \$240,926 for food, drinks and snacks.⁸⁶ The total bill submitted to the City for 1,000 meals, three times a day over a seven-day period (21,000 meals) was \$926,360.30⁸⁷ This amounted to \$44.77 per meal – nearly

⁸⁰ See OCC Ex. 2 (Yankel Testimony) at 16, 42-43. See also Tr. Vol. IV at 639.

⁸¹ See OCC Ex. 2 (Yankel Testimony) at 43.

⁸² See OCC Ex. 41 at 1. OCC Exhibit 41 is also attached to this brief and contains two news stories: "City disputes nearly \$1 million food charge following tornado," Tuscaloosa News, June 23, 2011, <http://www.tuscaloosaneews.com/article/20110623/news/110629874>; and "Tuscaloosa accepts settlement with contractor that charged city nearly \$1M for post-tornado food services," blog.al.com, May 7, 2013, http://blog.al.com/tuscaloosa/2013/05/tuscaloosa_accepts_settlement.html.

⁸³ See OCC Ex. 41 at 1.

⁸⁴ See *id.*

⁸⁵ See *id.* at 1-2.

⁸⁶ See *id.* at 2.

⁸⁷ See *id.* at 1.

three times the \$15 per meal stated in the price list provided to the City.⁸⁸ The City disputed Storm Services' bill and, after negotiations, last year paid less than half of the original charges billed.⁸⁹

AEP Ohio made exorbitant payments to Storm Services even though many of the Storm Services "tent cities" were in areas where non-local field workers were sleeping in motel rooms and eating at restaurants. Three staging sites were in the greater Columbus area for nine days – the Franklin County Fairgrounds, Polaris and Berwick.⁹⁰ At the same time, AEP Ohio had procured 440 hotel rooms (single and double occupancy) for non-local field workers in the Columbus area.⁹¹ Similarly, contractors submitted charges for motels and restaurants in Zanesville, Athens, Portsmouth and Lima at the same time Storm Services sites were operating in those areas.⁹²

When compared to motels and restaurants, AEP Ohio grossly overpaid for the food and facilities provided by Storm Services. Customers should not have to pay for AEP Ohio's exorbitant payments to Storm Services. The PUCO should reduce the amount that AEP Ohio can collect from customers for its unreasonable and imprudent use of Storm Services.

⁸⁸ See id.

⁸⁹ See id. at 3.

⁹⁰ See OCC Ex. 2 (Yankel Testimony) at 34, Table 3.

⁹¹ See id. at 21.

⁹² See OCC Exs. 8, 9 and 12.

Before contracting with Storm Services, AEP Ohio did not perform a study of the cost effectiveness of using Storm Services.⁹³ AEP Ohio also did not perform a cost/benefit analysis afterwards.⁹⁴

OCC witness Yankel has calculated the amount of imprudent costs that AEP Ohio incurred from using Storm Services. As stated above, Mr. Yankel calculates a minimum of \$1,554 per worker per night in unreasonable costs associated with AEP Ohio's use of Storm Services after the June 29 storm.⁹⁵ Mr. Yankel also assumes that as the maximum of 9,720 person-night rooms provided by Storm Services could have been satisfied by using hotel rooms, with 50% of them being double occupancy and 50% being single occupancy.⁹⁶ He recommends that the PUCO disallow a minimum of \$14,453,032 in AEP Ohio's requested collection from customers.⁹⁷ The PUCO should reduce the amount that AEP Ohio requested in its Application by \$14,453,032.

b. Overtime for exempt employees

In its revised Application, AEP Ohio claimed that it incurred \$5,373,379 in incremental O&M overtime labor costs.⁹⁸ Therefore, AEP Ohio must prove that the \$5,373,379 in overtime expense it seeks to collect from customers through the rider is incremental to (or exceeds) its overtime pay.

⁹³ OCC Ex. 2 (Yankel Testimony) at 23-24. AEPSC only compared Storm Services' prices with the prices of similar types of companies. See Tr. Vol. II at 178-179.

⁹⁴ See Tr. Vol. IV at 736.

⁹⁵ OCC Ex. 2 (Yankel Testimony) at 44.

⁹⁶ Id.

⁹⁷ See id. at 13.

⁹⁸ See AEP Ohio Ex. 1A, Attachment 3 (Revised Exhibit D). AEP Ohio is claiming \$4,788,993 for the June 29 storm, \$143,529 for the July 18 storm and \$440,857 for the July 26 storm.

A portion of the incremental O&M claimed by AEP Ohio for labor expenses was for discretionary overtime AEP Ohio paid to some of its exempt and/or salaried employees who participated in the storm restoration effort.⁹⁹ Any extra payment to exempt and/or salaried employees because of the storms is an inappropriate charge to collect from customers.¹⁰⁰

Traditionally, exempt and/or salaried employees are paid a base amount that is not directly tied to hours worked. An hourly rate can be calculated and then attached to an exempt and/or salaried employee, but this does not mean that the paycheck for a salaried employee will be tied to the hours worked. Most individuals who are paid based upon a salaried rate typically work more than a 40-hour week without receiving additional compensation.¹⁰¹

The PUCO has not allowed utilities to charge their customers for the supplemental compensation paid to exempt and/or salaried employees involved in storm restoration efforts, if the utility does not ordinarily pay overtime to its exempt and/or salaried employees.¹⁰² AEP Ohio does not normally pay overtime to its exempt and/or salaried employees. But AEP Ohio does have a policy to pay, *at its discretion*, exempt and/or salaried employees some level of overtime rate for storm restoration work.¹⁰³

There is nothing wrong with AEP Ohio paying its employees based upon such a

⁹⁹ See AEP Ohio Ex. 3 (Dias Testimony) at 6.

¹⁰⁰ *In re Duke Energy Ohio, Inc.* (2012), 131 Ohio St. 3d 487, 489-490; 2012 Ohio 1509; 967 N.E.2d 201.

¹⁰¹ See OCC Ex. 2A (Yankel Testimony) at 47.

¹⁰² See *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of Its Distribution Reliability Rider*, Case No. 09-1946-EL-RDR, Opinion and Order (January 11, 2011) at 13.

¹⁰³ See AEP Ohio Ex. 3 (Dias Testimony) at 5.

discretionary policy; however it is inappropriate under PUCO precedent to ask utility customers to pay for those discretionary costs.

OCC witness Yankel calculated the disallowance for overtime associated with AEP Ohio's exempt salaried workers during the storm restoration effort. The overtime amount for exempt salaried workers was \$2,288,199 in actual labor costs.¹⁰⁴ In addition, there is a total of \$275,925 in fringe benefits associated with this overtime compensation, which should be added to the actual labor costs.¹⁰⁵ AEP Ohio did not challenge these calculations. Thus, the appropriate disallowance to be made in this case for overtime pay to exempt and/or salaried employees is \$2,564,124. In addition to the other reductions identified by OCC, the amount AEP Ohio sought to collect from customers through the Application should be reduced by an additional \$2,564,124. The PUCO Staff had previously (publicly) sought a similar adjustment.¹⁰⁶

c. Refunds

Two refund checks were issued to AEP Ohio as a result of overpayments it made for incorrect storm invoices submitted by Storm Services, LLC and Pike Electric, LLC. The two refund checks total \$129,549.

So that customers will only pay for the reasonable and prudent storm expenses actually incurred by AEP Ohio, the amount of storm costs AEP Ohio is requesting to collect from customers in this case should be reduced by the amount of both refund

¹⁰⁴ See OCC Ex. 2A (Yankel Testimony) at 48.

¹⁰⁵ The fringe benefits portion of the salaried labor is calculated by dividing the salaried employees' cost (\$2,288,199) by AEP Ohio's total OT labor cost (\$6,542,312), which yields the value of 0.349754, then multiplying 0.221885 by the total AEP Ohio fringe benefit cost (\$788,912), which equals \$275,925. See *id.*

¹⁰⁶ See *id.* at 13. The PUCO Staff's adjustment was a little more than half OCC's adjustment.

checks (\$129,549). Although the Stipulation mentions two refund checks, as a separate reduction, it must also be included in the OCC's proposed adjustment for completeness.

d. Advertising costs

AEP Ohio included a total of \$367,914 in newspaper advertising costs in the incremental O&M storm costs it seeks to collect from customers in this proceeding.¹⁰⁷ But the type of advertising run by AEP Ohio is the kind of advertising that utility customers have not had to pay for. The PUCO should disallow \$367,914 from collection through the rider.

The newspaper ads were run in various cities around the country as part of AEP Ohio's "Thank You" advertising campaign.¹⁰⁸ The PUCO has long held (since a 1980 decision of the Supreme Court of Ohio) that costs related to this type of advertising primarily benefit shareholders as opposed to utility customers.¹⁰⁹ Because these costs do not provide a direct and primary benefit to customers, the expense should be deducted from the storm expenditures Ohio Power requests to collect from customers in this proceeding.

In addition, much of the advertising costs AEP Ohio charged to storm expense in this case were for advertisements that ran in newspapers in Louisiana, Michigan and North Carolina.¹¹⁰ Ohio customers should not have to pay for institutional ads that run outside the state.

¹⁰⁷ See *id.* at 49, citing AEP Ohio's response to Staff DR 20-001, Attachment 1 and 2.

¹⁰⁸ *Id.*

¹⁰⁹ See *City of Cleveland v. Public Util. Comm'n.* (1980), 63 Ohio St. 2d 62; 406 N.E.2d 1370; 1980 Ohio LEXIS 773.

¹¹⁰ OCC Ex. 2 (Yankel Testimony) at 50.

The cost of both advertisements (\$367,914) should be removed from the amount to be collected through the rider. The Stipulation does not specifically remove the amount for the advertisements. The PUCO Staff had previously (publicly) sought a similar adjustment. Thus, the PUCO should reduce the \$61 million AEP Ohio sought to collect from customers through its Application by \$367,914 – in addition to the other reductions identified by OCC.

e. Ball caps

In its Application, AEP Ohio included \$38,096 of institutional merchandise advertising cost in the total incremental storm expenses that it is requesting customers pay in this case. This cost was for the purchase of ball caps with the AEP Ohio logo embroidered on them. These caps were purchased and given to outside contractors who participated in storm restoration activities upon completion of all storm repair work.

Because the caps were given to storm workers at the end of the storm restoration period, this advertising is institutional in its message and is intended to enhance AEP Ohio's image. In filings made before signing the Stipulation, the PUCO Staff recommended exclusion of the costs related to the ball caps. The total dollar amount the PUCO Staff recommended excluding for embroidered hats is \$35,687.¹¹¹ OCC agrees with the exclusion of \$35,687 for ball caps, but also recommends the exclusion of an additional \$2,409 for sales tax on the ball caps, for a total exclusion of \$38,096. The PUCO should reduce the \$61 million AEP Ohio sought to collect through its Application by an additional \$38,096.

¹¹¹ Id.

3. The July 18, 2012 storm does not qualify as a major storm, and thus AEP Ohio should not charge customers for costs associated with that storm through the rider.

In the ESP 2 proceeding, AEP Ohio proposed that \$5 million in storm-related O&M costs be embedded in its rates.¹¹² As explained by AEP Ohio witness Kirkpatrick in that proceeding, incremental expenses incurred due to major storm events would be deferred for collection through the storm rider.¹¹³ Mr. Kirkpatrick also stated that, for purposes of the rider, a major storm would be determined by the methodology outlined in the IEEE Guide for Electric Power Distribution Reliability Indices, as set forth in Ohio Adm. Code 4901:1-10-10(B).¹¹⁴

The definition of “major event” for purposes of Ohio Adm. Code 4901:1-10-10 is stated in Ohio Adm. Code 4901:1-10-01(Q):

“Major event” encompasses any calendar day when an electric utility’s system average interruption duration index (SAIDI) exceeds the major event day threshold using the methodology outlined in section 4.5 of standard 1366-2003 adopted by the institute of electric and electronics engineers (IEEE) in “IEEE Guide for Electric Power Distribution Reliability Indices.” The threshold will be calculated by determining the SAIDI associated with adding 2.5 standard deviations to the average of the natural logarithms of the electric utility’s daily SAIDI performance during the most recent five-year period. The computation for a major event requires the exclusion of transmission outages. For purposes of this definition, the SAIDI shall be determined in accordance with paragraph (C)(3)(e)(iii) of rule 4901:1-10-11 of the Administrative Code.

¹¹² See ESP 2 Order at 68.

¹¹³ See *id.*, citing the testimony of Mr. Kirkpatrick in that proceeding at 20.

¹¹⁴ *Id.*

AEP Ohio recognized this definition in its Application.¹¹⁵ AEP Ohio stated that its Major Event Day threshold (excluding transmission) for the state of Ohio is 8,775,323 customer-minutes interrupted (“CMI”).¹¹⁶

In response to a PUCO Staff data request, AEP Ohio reported that the July 18, 2012 storm had 10,451,291 CMI.¹¹⁷ The CMI reported was on a total company basis, which included both the CSP and OPC rate zones.¹¹⁸ In its response to PUCO Staff DR-9-001, AEP Ohio also stated: “The 2012 outage data used in these calculations will be included in the Ohio ESSS Rule 10 filing in March 2013, and it is not expected to change.”¹¹⁹

For the July 18, 2012 storm, however, AEP Ohio’s ESSS Rule 10 annual report shows no major event outage for the CSP rate zone¹²⁰ and 8,136,533 CMI for the OPC rate zone.¹²¹ Thus, the total CMI for the July 18 storm was 8,136,533 (0 + 8,136,533). The CMI figure shown in AEP Ohio’s ESSS Rule 10 filing is less than the Major Event Day Threshold for AEP Ohio of 8,775,323 CMI. Based on the information provided to the PUCO in AEP Ohio’s ESSS Rule 10 annual reports, AEP Ohio has not shown that the July 18, 2012 storm meets the PUCO’s definition of a “major event.” AEP Ohio, which has the burden of proof in this proceeding, presented no evidence to show that these calculations are incorrect.

¹¹⁵ AEP Ohio Ex. 1 at 4.

¹¹⁶ Id. at 5.

¹¹⁷ OCC Ex. 1 (Williams Testimony), Exhibit JDW-2 (AEP Ohio response to PUCO Staff DR-9-001).

¹¹⁸ See Tr. Vol. IV at 566.

¹¹⁹ OCC Ex. 1 (Williams Testimony), Exhibit JDW-2 (AEP Ohio response to PUCO Staff DR-9-001).

¹²⁰ See id., Exhibit JDW-3.

¹²¹ See id., Exhibit JDW-4.

The July 18, 2012 storm was not a “major event” for AEP Ohio under the PUCO’s rules, and thus AEP Ohio should not be allowed to collect costs associated with the July 18 storm from customers through the rider. In a November 4, 2013 filing in this case, the PUCO Staff stated that AEP Ohio’s costs associated with the July 18 storm totaled \$365,203.¹²² The PUCO Staff had previously (publicly) sought a similar adjustment. In addition to the other reductions identified by OCC, the PUCO should reduce the amount AEP Ohio may charge customers through the rider by \$365,203.

4. The carrying charges that AEP Ohio would collect from customers under the Stipulation would be unreasonable.

In addition to \$54.8 million, the Stipulation would allow AEP Ohio to collect carrying charges from customers on the \$54.8 million. The carrying charges would be calculated from April 1, 2013 until AEP Ohio begins collection of storm restoration costs through the storm rider, and would be calculated using AEP Ohio’s cost of long-term debt.¹²³ AEP Ohio contends that this is a benefit of \$5.8 million for customers “due to reductions in both the period of time over which the Company will accrue carrying charges and the rate at which they will be accrued.”¹²⁴ AEP Ohio is wrong, however.

The so-called “benefit” to customers is based on the faulty premise that the PUCO would have merely rubber-stamped AEP Ohio’s request for \$8.6 million in carrying charges found in the testimony of AEP Ohio witness Dias.¹²⁵ The ESP 2 Order did not authorize AEP Ohio to collect carrying charges on storm costs through the rider.¹²⁶ AEP

¹²² See OCC Ex. 2 (Yankel Testimony) at 50.

¹²³ See Joint Ex. 1 (Stipulation) at 4.

¹²⁴ AEP Ohio Ex. 2 (Spitznogle Testimony) at 7-8.

¹²⁵ AEP Ohio Ex. 3 (Dias Testimony), Exhibit SJD-2, page 2 of 2.

¹²⁶ See ESP 2 Order at 68-69

Ohio filed its motion to record a carrying cost on the 2012 storm costs, subject to the amount determined for collection in this proceeding, in August 2013 (a year after the storms) and the PUCO has not ruled on the motion. Thus, AEP Ohio is not entitled to collect carrying charges from customers.

The “benefit” to customers from the carrying charge provision of the Stipulation is illusory. It is founded on three unsound assumptions: (1) the PUCO would have allowed AEP Ohio to collect the entire \$61 million of storm costs it seeks in this case; (2) the PUCO would grant AEP Ohio’s motion to record carrying costs; and (3) the PUCO would have approved calculation of carrying charges on the entire \$61 million at AEP Ohio’s WACC. None of these assumptions is valid.

First, there is no guarantee that the PUCO would have authorized AEP Ohio to collect all of the \$61 million it seeks in this proceeding from customers. Under the standard adopted in the ESP 2 Order, AEP Ohio may collect from customers only those costs it demonstrates to be reasonable and prudent. The Supreme Court of Ohio has examined the burden of proof for a utility to show that its expenses to repair storm damage were prudently incurred and reasonable.¹²⁷ The Court emphasized that in order to reduce or disallow the collection of storm costs from customers, “[t]he Commission did not have to find the negative: that the expenses were imprudent.”¹²⁸ Instead, *the utility* has to prove a positive point – that its expenses had been prudently incurred – in order to collect those costs from customers.¹²⁹ Accordingly, if the evidence is “inconclusive or questionable,” the PUCO should reduce or disallow the collection of

¹²⁷ *In Re Application of Duke Energy Ohio, Inc., to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, 131 Ohio St.3d 487, 2012-Ohio-1509, 967 N.E.2d 201, ¶ 8.

¹²⁸ *Id.*

¹²⁹ *Id.*

those costs from the utility's customers.¹³⁰ AEP Ohio has not demonstrated that the expenses were reasonable and prudently incurred.

Before the Stipulation was signed, the PUCO Staff identified \$4.9 million in costs that were not reasonable or prudent,¹³¹ and OCC identified more than \$8 million in such costs, with additional unquantified reductions.¹³² Thus, even before the Stipulation was signed, there was considerable doubt that AEP Ohio would collect the entire amount. And now that OCC has quantified the storm costs that were not reasonable or prudent at \$17.9 million,¹³³ AEP Ohio's collection of the full \$61 million from customers would have been even less likely. There is no reason to believe, as AEP Ohio does, that it would have been allowed to collect carrying charges on the entire \$61 million sought in the Application, or even any of the \$61 million.

Second, there is no guarantee that the PUCO will grant AEP Ohio's motion to record carrying costs. In fact, allowing AEP Ohio to collect any carrying charges from customers would be unreasonable. AEP Ohio did not seek authority to collect carrying charges on storm costs in its ESP 2 case.¹³⁴ And as OCC argued in its Memorandum Contra AEP Ohio's motion to record carrying charges, no authority should be granted now.¹³⁵

Third, the notion that AEP Ohio should be authorized to collect carrying charges from customers – as put forth first in AEP Ohio's motion and then in the Stipulation – is

¹³⁰ Id.

¹³¹ See AEP Ohio Ex. 2 (Spitznogle Testimony) at 7.

¹³² See OCC Comments (May 29, 2013).

¹³³ See OCC Ex. 2A (Yankel Testimony) at 13.

¹³⁴ See ESP 2 Order at 68.

¹³⁵ OCC Memorandum Contra (September 6, 2013) at 4-10.

founded on the mistaken belief that there was delay in this proceeding.¹³⁶ AEP Ohio did not seek carrying charges in its Application commencing this proceeding.¹³⁷ Instead, AEP Ohio stated that it would only seek carrying charges if collection of storm costs under the rider did not begin by April 1, 2013¹³⁸ – the same date provided in the Stipulation for the carrying charge calculation to begin.

This date is based on AEP Ohio's unreasonable assumption that this proceeding would have been completed in time for AEP Ohio to begin collecting storm costs through the rider by April 1, 2013. AEP Ohio filed the Application on December 22, 2012. Under the process for storm rider applications established in the ESP 2 proceeding, after AEP Ohio files a storm rider application interested parties have 60 days to file comments on the application.¹³⁹ Thus, the original deadline for filing comments on the application was February 20, 2013 – only 39 days before AEP Ohio expected to begin collecting costs from customers through the rider.

But there is more to the process than just comments. Under the ESP 2 Order, after comments are filed AEP Ohio must attempt to resolve objections to the application raised in the comments.¹⁴⁰ Unless the PUCO Staff, all interested parties and the PUCO were willing to rubber-stamp AEP Ohio's application, it was unrealistic for AEP Ohio to expect to begin collecting costs from customers through the storm rider in just 39 days after comments were filed.

¹³⁶ See AEP Ohio Ex. 3 (Dias Testimony) at 22.

¹³⁷ See AEP Ohio Ex. 1 (Application) at 16.

¹³⁸ Id.

¹³⁹ ESP 2 Order at 69.

¹⁴⁰ Id.

This is especially true because of the magnitude of this proceeding. This case involves costs associated with three storms, including one storm that involved nearly two weeks of restoration time. There was voluminous data associated with discovery responses for the June 29 storm, which caused the PUCO Staff to seek additional time to file comments.¹⁴¹

AEP Ohio's unreasonable expectation to begin collecting costs from customers through the storm rider on April 1, 2013 is rooted in AEP Ohio's mistaken view that it is entitled to collect all costs associated with the storms identified in the Application. But the PUCO, in the ESP 2 Order, stated that AEP Ohio could collect only those costs that it demonstrates were "prudently incurred and reasonable."¹⁴² That fact seems to have eluded AEP Ohio; the reasonable and prudent standard is not referenced in the Application, or in any of the testimony of AEP Ohio's witnesses, or in the Stipulation. AEP Ohio has conveniently ignored the fact that it can only collect those storm costs that it has *proven* to be reasonable and prudent.

While AEP Ohio may have clung to the irrational notion that interested parties and the PUCO would merely acquiesce to the Application and allow collection of storm costs to begin in such a short time after the Application was filed, that is no reason for the PUCO to concede that AEP Ohio would have begun collecting storm costs in April 2013. As AEP Ohio witness Dias recognized, the process for major storm cost proceedings established in the ESP 2 Order did not put any deadlines on the PUCO for examining AEP Ohio's storm cost applications.¹⁴³ The PUCO should not buy in to the notion that

¹⁴¹ See PUCO Staff's Initial Comments and Recommendations (February 14, 2013) at 4.

¹⁴² ESP 2 Order at 69.

¹⁴³ See Tr. Vol. III at 345.

AEP Ohio is entitled to carrying charges on its storm costs simply because a proceeding does not go as quickly as it would like. The PUCO should thus reject the carrying charge provision of the Stipulation.

Even the signatory parties to the Stipulation are not all in support of allowing AEP Ohio to collect carrying charges on storm costs. Four of the six signatory parties backed away from supporting the carrying charge provision by inserting the following language in the Stipulation:

The Industrial Energy Users-Ohio, Ohio Energy Group, The Kroger Co. and OMA Energy Group support the Stipulation with the following exception: they do not support or oppose the inclusion in Section IV.B of a provision authorizing a carrying charge at the long-term cost of debt to begin on April 1, 2013 through the start of collection of the O&M costs of \$54,871,799 identified in Section IV.A.¹⁴⁴

Thus, only three of the seven signatory parties – AEP Ohio, the PUCO Staff and OHA – explicitly agreed that AEP Ohio should be allowed to collect carrying charges on the storm costs. This is underwhelming support for the Stipulation, and certainly not a reason to assume that the PUCO would have approved carrying charges on the storm costs at issue in this proceeding. And, referring back to OCC’s analysis of the first prong of the PUCO’s settlement review standard (requiring diverse interests among stipulators), there is an even greater failure to achieve diverse interests on the issue of customers’ payment of carrying charges.

Third, even if the PUCO had approved the carrying charges AEP Ohio sought in its motion, there is no guarantee that the PUCO would have authorized AEP Ohio to calculate carrying charges at its WACC. OCC opposed using the WACC to calculate

¹⁴⁴ Joint Ex. 1 (Stipulation) at 4, n. 2.

carrying charges on the storm costs,¹⁴⁵ and even among the signatory parties there was considerable opposition to use of the WACC for calculating carrying charges in this case. As Mr. Spitznogle noted, the PUCO Staff filed a memorandum contra AEP Ohio's motion to record carrying charges that, while supporting carrying charges, opposed the calculation of carrying charges at the WACC rate.¹⁴⁶ In the memorandum contra referenced by Mr. Spitznogle, the PUCO Staff stated that:

[T]he carrying charges should be calculated using the most recently approved cost of long-term debt. WACC is typically used to determine carrying charges when a request includes capital expenditures. This case, however, includes only O&M expenses, for which carrying charges calculated by using the long-term debt rate is more appropriate.¹⁴⁷

For similar reasons, Kroger also opposed using the WACC to calculate carrying charges on the storm costs.¹⁴⁸ OMA Energy Group also raised the issue of whether AEP Ohio should be allowed to collect carrying charges from customers on storm costs.¹⁴⁹

Thus, the so-called \$5.8 million "benefit" to customers from allowing AEP Ohio to collect carrying charges on the storm costs as proposed in the Stipulation is erroneous. There is no benefit to customers in paying carrying charges on the \$54 million that AEP Ohio would realize through the Stipulation.

The carrying charges that less than half of the signatory parties agreed to in the Stipulation are not a benefit to customers. The carrying charges also violate the

¹⁴⁵ See OCC Ex. 2 (Yankel Testimony) at 12.

¹⁴⁶ AEP Ohio Ex. 2 (Spitznogle Testimony) at 8.

¹⁴⁷ Memorandum in Response to the Ohio Power Company's Motion to Record a Carrying Cost Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (September 6, 2013) at 2.

¹⁴⁸ The Kroger Co.'s Memorandum In Opposition to the Ohio Power Company's Motion to Record a Carrying Cost on the 2012 Storm Rider Recovery Costs Subject to the Amount Determined at the Outcome of the Proceeding (August 30, 2013); Kroger Initial Comments (May 29, 2013) at 2-3.

¹⁴⁹ Non-Binding List of Issues for Cross-Examination Submitted by The OMA Energy Group (November 4, 2013) at [2].

regulatory principle – stated both in statute and the ESP 2 Order – that the rates customers pay for electric service should be reasonable and prudent. The PUCO should reject the Stipulation.

5. The cost allocator contained in the Stipulation is unreasonable.

In the Stipulation, AEP Ohio has proposed to allocate the storm-related costs on the simple basis of distribution revenue. Although clearly simplistic in nature, this allocation basis does nothing to reflect the cost causation on the system. The allocation suits the non-residential stipulators who signed the settlement, as the allocation is a way to have residential consumers pay relatively more of AEP Ohio’s costs.

First, using distribution “Revenue” to allocate storm costs means that part of the basis for spreading these costs will be based upon the customer charge.¹⁵⁰ Generally speaking, the amount of a customer charge covers costs for meter reading, billing, mailing, collections, etc.¹⁵¹ These functions are completely inappropriate as a basis for allocating storm costs.¹⁵²

Second, using distribution “Revenue” to allocate storm costs causes the highest percentage of the revenue responsibility being paid by the smaller-use customers, such as the residential class.¹⁵³ However, AEP Ohio places the lowest priority for restoring electric service on the residential class and the smaller use customers.¹⁵⁴ Because residential customers receive secondary service, they are near the bottom of the

¹⁵⁰ See OCC Ex. 2 (Yankel Testimony) at 52.

¹⁵¹ See *id.*

¹⁵² See *id.*

¹⁵³ See *id.*

¹⁵⁴ See *id.*

restoration hierarchy, and they should not pay the highest percentage of storm restoration costs.

Third, what customers desire most from service restoration is “energy.”¹⁵⁵ Service restoration does not do anything for customer-related costs. Likewise, demand-related costs (peak usage) will be incurred sometime during the month, but not necessarily with service restoration. Energy is the one commodity that all customers are hoping to get out of storm restoration.

A simple “Energy” allocator should be used when allocating costs associated with the storm rider. This is just as simplistic as a “Revenue” allocator, but it is far more reflective of cost causation and customer expectations. This would result in approximately 43%¹⁵⁶ of the storm costs being recovered from the residential class. The PUCO should amend the Stipulation and adopt an Energy allocator as OCC recommends.

D. The PUCO Should Reduce the Amount AEP Ohio Will Collect from Customers Through the Storm Rider by the \$20 Million Identified in the Long Term Forecast Case, in Addition to the \$17.9 Million in Unreasonable and Imprudent Costs Identified by OCC in this Proceeding.

In addition to the \$17.9 million OCC has identified as unreasonable and/or imprudent costs in this case, the PUCO should reduce the amount AEP Ohio will collect through the rider by an additional \$20 million. In its Opinion and Order in the AEP Ohio Long Term Forecast Case, the PUCO suggested that the \$20 million – which AEP Ohio is obligated to expend for customers’ benefit – could be used to offset storm costs.¹⁵⁷

¹⁵⁵ See id. at 53.

¹⁵⁶ See id. at 54.

¹⁵⁷ *In the Matter of the 2010 Long Term Forecast Report of the Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, Opinion and Order (January 9, 2013) at 28.

Under the obligation, which emanates from another case, AEP was to expend the \$20 million by the end of 2013.¹⁵⁸ The PUCO “direct[ed] AEP-Ohio to ensure that the benefits of the \$20 million investment flow through to the Company’s ratepayers.”¹⁵⁹ The PUCO stated that, “if AEP-Ohio is unable to make the \$20 million investment in the Turning Point or similar project by the end of the year, the Company should submit a proposal for another appropriate use for the \$20 million investment, *such as applying the amount to offset major storm damage costs that are deferred under the Company’s recently approved storm damage recovery mechanism.*”¹⁶⁰ More recently, on December 18, 2013, the PUCO reaffirmed that it will address the \$20 million 2009 SEET issue in this case and in AEP Ohio’s 2013 gridSMART case.¹⁶¹

It is appropriate that the \$20 million should be used to offset a portion of the major storm damage costs that AEP Ohio seeks to collect from its customers in this proceeding.¹⁶² The end of 2013 has passed (2014 is nearly one-quarter over), and AEP Ohio has not yet spent the \$20 million for the benefit of its customers. Using the \$20 million to offset the remaining storm costs, after removing the \$17.9 million recommended by OCC, is reasonable “because it will ensure that customers will benefit from the \$20 million, consistent with the PUCO’s expectations.”¹⁶³ It also is reasonable because customers will benefit *now* from the \$20 million, which furthers the PUCO’s

¹⁵⁸ The PUCO’s original intention was for customers to benefit from the \$20 million dollars even earlier, by the end of 2012. See *id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*, citing ESP 2 Order at 68-69 (emphasis added).

¹⁶¹ Case No. 11-4571-EL-UNC, Entry on Rehearing (December 18, 2013) at 6-7.

¹⁶² See OCC Ex. 2A (Yankel Testimony) at 55.

¹⁶³ *Id.*

intention in the Long Term Forecast Order.¹⁶⁴ The PUCO Staff expressed a similar position in Comments filed in AEP Ohio's gridSMART Phase 2 proceeding. There, the PUCO Staff stated that it would prefer to see the funds "used in a manner that does not create an additional burden on ratepayers [such as offsetting deferred costs]."¹⁶⁵

The \$20 million reduction should be in addition to the \$17.9 million in reductions for unreasonable and imprudent costs OCC has identified in this proceeding. The two reductions are unrelated to each other.¹⁶⁶ The \$17.9 million reduction to AEP Ohio's 2012 major storm expense reflects that "a large portion of the costs incurred by AEP Ohio were either imprudent or unreasonable."¹⁶⁷ On the other hand, the additional \$20 million reduction is an adjustment from a previous case that must be applied to the benefit of AEP Ohio's customers.¹⁶⁸

The PUCO suggested that the \$20 million reduction should apply in this case. The PUCO should reduce the \$61 million that AEP Ohio sought to collect from customers in its Application by the \$17.9 million in unreasonable and imprudent costs OCC has identified in this proceeding **and** by the additional \$20 million the PUCO identified in the Long Term Forecast case.

V. CONCLUSION

Many of AEP Ohio's customers experienced considerable inconvenience and expense as a result of the storms that occurred in 2012 at issue in this proceeding. Some

¹⁶⁴ Id. at 55-56.

¹⁶⁵ *In the Matter of the Application of Ohio Power Company to Initiate Phase 2 of Its gridSMART Project and to Establish the gridSMART Phase 2 Rider*, Case No. 13-1939-EL-RDR, PUCO Staff Comments (November 1, 2013) at 8.

¹⁶⁶ OCC Ex. 2A (Yankel Testimony) at 56.

¹⁶⁷ Id.

¹⁶⁸ Id.

customers were without power for up to 12 days. They had to throw away hundreds of dollars in spoiled food and live away from their homes – some with the added expense of hotel rooms – for an extended time. Others were without air conditioning, or even electric fans, for days during an extremely hot stretch of summer. Very few, if any, of AEP Ohio’s customers were compensated for this expense and inconvenience.

The PUCO should not add to the expense these customers have already suffered by approving a settlement that gives AEP Ohio more than the reasonable and prudent costs it incurred from the storms. The Stipulation in this case would allow AEP Ohio to collect \$54.8 million from customers without demonstrating that this amount represents AEP Ohio’s reasonable and prudent costs associated with the storms. To add insult to injury, the Stipulation would also allow AEP Ohio to collect \$2.3 million in carrying charges from customers. The Stipulation violates Ohio law and regulatory principles, and is contrary to the interests of customers and the public interest. To protect customers, the PUCO should reject the Stipulation.

Instead, the PUCO should reduce the \$61 million AEP Ohio sought in its revised Application by the \$17.9 million in unreasonable and imprudent costs OCC identified. In addition, the PUCO should reduce the amount to be collected through the rider by the \$20 million that AEP Ohio was previously obligated to use to benefit customers, as the PUCO suggested in the Long Term Forecast Case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Post-Hearing Brief* by the Office of the Ohio Consumers' Counsel has been served upon those persons listed below via electronic mail this 3rd day of March 2014.

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City disputes nearly \$1 million food charge following tornado

A contractor charged nearly \$45 per meal for city employees working after tornado

*By Jason Morton
Staff Writer*

Published: Thursday, June 23, 2011 at 3:30 a.m.

TUSCALOOSA | The city of Tuscaloosa is disputing a bill of \$940,260.30 submitted by a contractor who provided food for city employees after the April 27 tornado.

City leaders had made a quick decision to hire private contractor Storm Services LLC to feed city employees who were working around the clock in response to the storm.

The bill is for the 1,000 meals the contractor served, three times a day for seven days, at a rate of about \$44.77 a meal.

Storm Services co-owner Tommy Hopkins was surprised that the city is contesting the amount, and said he'd yet to receive an official letter from City Hall requesting an itemized list of the charges.

Hopkins said he was pressed by city officials to set up what he described as a "restaurant" to be able to serve 1,000 people at any point during a 24-hour day.

"We didn't push (the city of) Tuscaloosa to do anything," Hopkins said. "They had the contract, they signed it. The city of Tuscaloosa hired us to go to work and do a job, and we did it to the best of our ability."

Councilman Lee Garrison, chairman of the council's Finance Committee, questioned the almost \$1 million cost.

City Attorney Tim Nunnally said the initial correspondence between the city and Storm Services provided no associated costs with the service, aside from a fee of \$15 per meal.

"We got the bill and were shocked at the amount," Nunnally said.

The contract that Storm Services offered to City Hall listed a number of services the company would provide, but there was no itemized price list for each option.

Rather, the contract refers city officials to Mississippi Power, a previous Storm Services customer, for a detailed list of prices that would be representative of the prices Storm Services would charge Tuscaloosa. Storm Services said that was because the emergency conditions in Tuscaloosa did not allow the company to submit a formal bid.



Officials meet inside the Incident Command Center at City Hall to plan tornado recovery, May 5, 2011. The city is disputing a bill of \$940,260.30 submitted by a contractor who provided food for city employees after the April 27 tornado. City leaders had made a quick decision to hire private contractor Storm Services LLC to feed city employees who were working around the clock in response to the storm.

DCC Ex41

City attorneys said that after Mayor Walt Maddox signed the contract with Storm Services on May 1, the company set up the next day in the parking lot of McFarland Plaza adjacent to Red Lobster.

According to the bill, those set-up costs included \$49,000 for a dining tent — a pole tent with sidewalls, billable at \$7,000 a day — and \$16,800 for a catering tent.

The meals were billed at \$15 each for a total of \$21,000, but an additional 7,000 boxed lunches were also added to the invoice for an extra \$105,000.

A total of \$12,000 — \$6,000 each — was for the “mobilization” and “demobilization” of a caterer, and \$240,926 was billed for food, drinks and snacks.

This was the first list of charges the city had seen for these services, officials said.

Nunnally said city attorneys had identified about \$556,000 in “legitimate” costs, which he believes is the total the city should pay Storm Services.

However, the city will pay for whatever Hopkins and Storm Services can fully itemize, in part to qualify for reimbursement from the Federal Emergency Management Agency.

Nunnally referenced the Uniform Commercial Code which, among other things, provides protections from price gouging, but declined to say directly that he believed the city was a victim of price gouging.

However, he believes the disaster did provide an opportunity for the city to be exploited.

“The situation we were in was used to our disadvantage,” Nunnally said.

That's a claim that Hopkins denies.

“We didn't charge Tuscaloosa any more than we do any other customer,” Hopkins said.

Reach Jason Morton at jason.morton@tuscaloosaneews.com or 205-722-0200.

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Tuscaloosa accepts settlement with contractor that charged city nearly \$1M for post-tornado food services

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on May 07, 2013 at 10:13 PM, updated May 07, 2013 at 10:14 PM

TUSCALOOSA, Alabama -- The city of Tuscaloosa has agreed to a settlement with a contractor that originally billed the city more than \$940,000 for providing food to emergency workers following the April 27, 2011 tornado.

The Tuscaloosa City Council on Tuesday night agreed to pay Storm Services LLC \$105,000 in addition to a payment of \$315,000 made to the company in August 2011.

The total of \$420,000 is more than \$520,000 under the **\$940,260 the contractor billed the city** for providing up to 1,000 meals to workers three times a day for seven days beginning May 2, 2011.

City Attorney Tim Nunnally said the city asked Storm Services, which had been working for utility companies in the area, to provide services including dining and washing facilities to city employees and workers in the aftermath of the storm.

The city agreed to pay \$15 per meal plus costs, which would be based on the pricing of services provided by the contractor to Mississippi Power, Nunnally said.

The invoice the city received in May 2011 from the contractor came out to a rate of about \$44.77 a meal.

City officials disputed the costs after receiving the bill, but paid an initial \$315,000 to cover the \$15 per meal rate, Nunnally said. The resolution passed by the City Council accepts a settlement that adds \$105,000 to that payment.

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