

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio :
Power Company to Initiate Phase 2 of its : Case No. 13-1939-EL-RDR
gridSMART Project and to Establish the :
gridSMART Phase 2 Rider :

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**On behalf of the Staff of
The Public Utilities Commission of Ohio**

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TABLE OF CONTENTS

	Page
INTRODUCTION	2
DISCUSSION.....	2
A. OPAЕ does not oppose approval of the Stipulation.	3
B. OCC has not demonstrated that the Stipulation fails to satisfy the Commission’s three-part test.	6
1. The record demonstrates that the settlement process involved serious bargaining by knowledgeable, capable parties.	6
2. The record demonstrates that the Stipulation will benefit consumers and the public interest.	8
3. The record demonstrates that the Stipulation does not violate any important regulatory principle or practice.	10
CONCLUSION	12
PROOF OF SERVICE.....	14

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INTRODUCTION

Post-hearing briefs were filed by signatory parties Ohio Power Company (the Company or OPC), Interstate Gas Supply, Direct Energy, and the Commission Staff. In addition, a letter supporting the Stipulation was filed by the Environmental Defense Fund and the Ohio Environmental Council. Opposing briefs were filed by the Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE).

Staff believes that the record in this case favors approval of the Stipulation as submitted by the signatory parties, and urges the Commission to do so.

DISCUSSION

The ultimate issue for the Commission's consideration is whether the agreement is reasonable and should be adopted. Staff respectfully submits that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. OPAE does not oppose approval of the Stipulation.

OPAE does not ask that the Commission reject the Stipulation. Indeed, OPAE does not address any of the criteria considered by the Commission in determining whether a stipulation is reasonable. Instead, OPAE asks that the Commission modify certain provisions of the Stipulation. Staff believes that the Stipulation as a package should be approved, and urges the Commission to reject OPAE's suggested modifications.

OPAE requests that the Commission rescind the credit collection waiver granted in Case No. 13-1938-EL-WVR.¹ OPAE has failed to provide any cause for the Commission to consider this collateral attack. The argument that the waiver is "unlawful" is without merit, as the Commission has already determined that OPC's program provides reasonable notice and meets the requirements of R.C. 4933.122.² Although Company witness Scott Osterholt acknowledged that OPC was "disconnecting slightly more customers than [it] did prior to the credit disconnect waiver," he also stated that "there could be other reasons for that abnormality in data."³ Moreover, the waiver pilot is limited to Phase 1 of OPC's gridSMART program; no request for expansion of the pilot was made in the Stipulation.

OPAE also wants to "improve" the sharing of operational cost savings with customers. As the signatory parties have already demonstrated, the Stipulation provision

¹ *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Ohio Admin.Code 4901:1-18-06(A)(2)*, Case No. 13-1938-EL-WVR (Entry) (Mar. 18, 2015).

² *Id.* at ¶19.

³ Tr. I at 98.

that shares \$1.6 million annually with customers at the onset of the program represents a significant Company concession from the original application. In addition, the stipulated audit and credit adjustment provisions ensure that savings sharing will not be speculative but based on actual experience going forward. Contrary to OPAE's position, Staff submits that it is more "fair" to both consumers and the Company to base credits on actual cost and saving experience rather than solely on projections and forecasts.

OPAE's objections about pre-paid electric service are equally premature. All the Stipulation provides is that:

AEP Ohio agrees to work with the Staff and interested parties within the gridSMART Collaborative to identify any legal and regulatory barriers for an EDU or CRES pilot prepaid metering program that customers could opt-into. Any future opportunity to move forward with Prepaid Metering would address consumer protections.⁴

OPAE's request that the Commission eliminate a provision that parties discuss such a concept is preposterous. Whatever arguments it has are properly reserved for an application to implement such a pilot, should one ever be proposed.

The objections with respect to time of use (TOU) programs is equally premature. While OPAE suggests, for example, that only customers "who are willing and able to purchase certain equipment and appliances"⁵ could benefit from such services, Direct Energy witness Teresa Ringenbach testified that that would not necessarily be the case once CRES providers began to provide TOU services.⁶ The record does not support, and

⁴ Joint Ex. 1, Stipulation, Section IV.17. at 12.

⁵ OPAE Post-Hearing Brief at 11.

⁶ Tr. II at 269.

it is presumptuous for OPAE to argue, that it is “unrealistic” that many customers, including low-income customers, would be “unable to monitor or control their usage.”⁷ Because these are services that will likely be available to all customers, all customers should share the burden of paying for them.

Finally, OPAE asks that the Commission “find that the \$20 million [Volt/VAR Optimization] investment will not satisfy AEP Ohio’s obligation resulting from the SEET cases.”⁸ To the contrary, Staff submits that the treatment of the \$20 million SEET investment in this Stipulation *does* satisfy the Company’s obligation. OPAE’s (and OCC’s) claims that this sum was somehow supposed to be returned to customers are without merit. Rather, the Commission directed that “the *benefits* of the \$20 million investment flow through to the Company’s ratepayers.”⁹ This is precisely what the VVO investment is intended to do. Staff submits that the record demonstrates that the benefits from VVO technology will flow through to ratepayers, and that that agreed-upon treatment in the Stipulation is reasonable, justified, and consistent with the Commission’s directives for this sum.

⁷ OPAE Post-Hearing Brief at 11.

⁸ OPAE Post-Hearing Brief at 13.

⁹ OCC Post-Hearing Brief at 9.

B. OCC has not demonstrated that the Stipulation fails to satisfy the Commission’s three-part test.

1. The record demonstrates that the settlement process involved serious bargaining by knowledgeable, capable parties.

OCC seeks to expand the Commission’s test to require diversity among the signatory parties. As repeatedly asserted by the Commission, and endorsed by the Court, the first prong of the Commission test of stipulation reasonableness is whether the settlement is “a product of serious bargaining among capable, knowledgeable parties.” That the Commission *considers* the diversity of the signatory parties does not imply or require that consensus result, or that certain specific interests agree. To do so would effectively and impermissibly give a single interest group veto power over an otherwise reasonable negotiation process. It is simply not true, as OCC suggests, that a “settlement that ignores the interests of residential customers . . . cannot be found to represent a variety of diverse interests.”¹⁰

Nor is it reasonable for OCC to argue that the present Stipulation “ignores” residential customer interests. As set forth in the various signatory party briefs, there are numerous benefits of the settlement as a package, significantly benefitting residential customers. The fact that OCC and OPAE did not sign the Stipulation is not fatal to a finding of reasonableness.¹¹

¹⁰ OCC Post-Hearing Brief at 6.

¹¹ *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider* (“OPC PPA”), Case No. 14-1693-EL-RDR (Opinion and Order) (Mar. 31, 2016) at 52 (citations omitted).

The criticism that the negotiations cannot be considered “serious” since the Stipulation recognizes and incorporates provisions from the PPA settlement¹² is equally without merit. The Stipulation here was filed with the Commission after the Commission had already approved the PPA settlement.¹³ While the parties certainly could have deviated from the terms of the PPA settlement, it certainly does not demonstrate any lack of “seriousness” that the signatory parties conformed this Stipulation to the terms of an agreement already considered and approved by the Commission.

As Staff demonstrated in its Post-Hearing Brief, the Stipulation was the product of serious bargaining among capable, knowledgeable parties because of the diverse interests represented, and the compromises made by each side. All of the parties in this case have long histories of active participation in Commission proceedings. All of the parties were represented by experienced counsel with years of regulatory experience. Extensive discussion and negotiation went into this Stipulation. All of the parties were invited to attend multiple meetings to discuss settlement proposals, and were offered an opportunity to discuss the terms to be included in the Stipulation. Serious bargaining did occur among the parties in this case, despite the lack of unanimity, as evidenced by the numerous and significant compromises made by the signatory parties.

¹² *OPC PPA* (Joint Stipulation and Recommendation) (Dec. 14, 2015).

¹³ *OPC PPA* (Opinion and Order) (Mar. 31, 2016).

2. The record demonstrates that the Stipulation will benefit consumers and the public interest.

As with the first prong of the Commission’s three-part test, OCC similarly attempts to expand the test to requiring “a balancing of rewards and risks between AEP Ohio and its customers.”¹⁴ While the test itself requires no such balancing, Staff respectfully submits that the Stipulation more than adequately benefits consumers to justify the costs to be recovered.

In the first instance, OCC’s argument is focused on contrasting “front-loaded” expenses with financial savings. But “consumer benefits and the public interest” does not mandate financial balancing, nor does the Commission apply a cost-effectiveness test in evaluating gridSMART proposals.

Ohio Power Company’s gridSMART program was established as part of the Company’s first Electric Security Plan (ESP).¹⁵ On appeal, Industrial End Users-Ohio challenged the original gridSMART proposal on the same grounds raised by OCC here – that it did not satisfy supposed cost-effectiveness requirements. Significantly, and relevant to OCC’s arguments here, the Ohio Supreme Court rejected that argument.

IEU argues that the commission approved AEP’s “gridSMART” proposal “without any showing that [it] satisfied the cost-effectiveness requirements of R.C. 4928.02(D).” The provision cited by IEU states that “it is the policy of the state” to “[e]ncourage innovation and market access for cost-effective supply- and demand-side retail

¹⁴ OCC Post-Hearing Brief at 10.

¹⁵ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets* (“ESP I”), Case Nos. 08-917-EL-SSO, *et al.* (Opinion and Order) (Mar. 18, 2009) at 34.

electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure.” IEU has not demonstrated legal error.

To begin with, and contrary to IEU’s assumption, R.C. 4928.02(D) does not impose strict “cost-effectiveness requirements” on any given program—indeed, by its terms, it does not require anything. It simply expresses state policy. As we have held, such policy statements are “guideline[s] for the commission to weigh” in evaluating utility proposals to further state policy goals, and it has been “left * * * to the commission to determine how best to carry [them] out.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 39–40. The commission plainly weighed this policy consideration in reviewing the programs. That alone is grounds to reject IEU’s argument.

In any event, the commission acted in step with the policy of R.C. 4928.02(D). By approving the initiation of the smart-grid program, the commission “[e]ncourage[d] innovation and market access” for “supply- and demand-side retail electric services,” specifically including “implementation of advanced metering infrastructure.” R.C. 4928.02(D). As to cost-effectiveness, the commission imposed several requirements to ensure prudent spending: “separate accounting for gridSMART, an opportunity to approve and update the plan each year, assurance that expenditures are made before cost recovery occurs, and an opportunity to audit expenditures . . . ”¹⁶

Moreover, as demonstrated by Ohio Power Company in its Post-Hearing Brief, customers can also expect to benefit by eliminating estimated bills, improving customer service, reducing outages and interruptions, increasing energy efficiency, and providing important environmental and safety benefits.¹⁷

¹⁶ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶¶ 61-63.

¹⁷ Ohio Power Company Initial Post-Hearing Brief at 10-17.

Staff and the signatory parties are committed to ensuring that cost savings are quantified and offset to the costs of the project. The Stipulation provides for a cost offset upon implementation of the rider, and for a sharing of benefits once the project has sufficient operational experience to allow for a meaningful audit.¹⁸

OCC's characterization of the process for reviewing the operational cost savings credit as "uncertain" and "discretionary" is disingenuous. As the signatory parties attested throughout the hearing, and as Staff stated in its Post-Hearing Brief, an operational savings audit *will* occur. The Commission should clarify this in its order, as well as that a consultant be retained to conduct the audit, to specifically address these specious concerns.

As Staff noted in its Post-Hearing brief, the Commission has consistently endorsed "steps . . . taken by the electric utilities to explore and implement technologies, such as AMI, that will potentially provide long-term benefits to customers and the electric utility."¹⁹ There are many benefits that come with the present Stipulation, and it should be approved.

3. The record demonstrates that the Stipulation does not violate any important regulatory principle or practice.

The Stipulation does not, as OCC argues, violate any Commission orders. It does recommend that the Commission approve compromises that differ from what the Commission has previously ordered, specifically with respect to the Volt/VAR

¹⁸ Joint Ex. 1, Stipulation, Section IV.6. at 10.

¹⁹ *ESP I* (Opinion and Order) (March 18, 2009) at 37.

Optimization (“VVO”) proposal. The Commission has acknowledged that VVO “supports the overall electric system reliability and . . . enhances or is necessary for grid smart technology to operate properly and efficiently.”²⁰ Staff respectfully submits that the departures recommended here are justified when the agreement is viewed as a whole.

Nor does the Stipulation violate any state policy. Initially, as noted above, the Ohio Supreme Court has recognized that such policy statements are merely guidelines for the Commission to weigh in evaluating proposals.²¹ Moreover, as Staff noted in its Post-Hearing brief, the Stipulation advances state policies in a number of ways.

Finally, the Company has already thoroughly addressed OCC’s concerns about cost allocation and rate design in its Post-Hearing Brief,²² and Staff incorporates those arguments by reference. As the Company noted there, the rates are neither discriminatory nor violate principles of cost causation, and were, indeed, designed at the direction of the Commission itself.²³

The Stipulation does not violate any important regulatory principle or practice. As Staff noted in its Post-Hearing Brief, both Company witness Moore and Staff witness

²⁰ *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 (“ESP II”), Case No. 11-346-EL-SSO, et al.* (Opinion and Order) (August 8, 2012) at 62.

²¹ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 62.

²² Ohio Power Company Initial Post-Hearing Brief at 25-28.

²³ *In the Matter of the Application of Columbus Southern Power Company to Update its gridSMART Rider*, Case No. 10-164-EL-RDR (Finding and Order) (Aug. 11, 2010).at 14,

Schweitzer testified that, based on their years of experience, the Stipulation was consistent with all important and relevant regulatory principles and practices.²⁴

The third prong of the test is easily met.

CONCLUSION

Neither OPAE nor OCC has demonstrated that the Stipulation fails any portion of the Commission's three-part test for reasonableness. In fact, the Stipulation meets all prongs of the test. It is the product of serious bargaining among knowledgeable, capable parties; it benefits consumers and the public interest; and it does not violate any important regulatory principle or practice. Therefore, the Commission should approve the Stipulation in this case.

Respectfully submitted,

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²⁴ Company Ex. 3, Direct Testimony of Andrea E. Moore, at 8; Staff Ex. 1, Direct Testimony of James W. Schweitzer, at 3.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 16th day of September, 2016.

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