BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan.	)))))	Case No. 16-1852-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	)))	Case No. 16-1853-EL-AAM

REPLY BRIEF
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I. INTRODUCTION

The Joint Stipulation and Recommendation ("Settlement") in this electric security plan ("ESP") proceeding has only confirmed what consumers have long known—that ESPs and settlements are bad for consumers and the State of Ohio. And while the typical ESP is bad, this one is even worse given that it has authorized a utility to charge customers above market prices to subsidize two old, uneconomic coal plants, which can no longer compete in the competitive marketplace. This is contrary to competition and the intent of S.B. 3.[1]

Just as bad, the Settlement was the product of a settlement process that gives the utility unfair bargaining power by virtue of its veto power over any PUCO

[1] See Ohio Senate Bill 3, as passed by the 123rd General Assembly, 1999.

modifications.[2] In order to protect consumers, the PUCO should eliminate ESPs and overhaul the settlement process in order to create a more just and reasonable process.

Through the Settlement, Ohio Power Company ("AEP") gives handouts to an elite few at customers' expense. Staff claims that it is a "very popular" agreement.[3] It should be no surprise that those receiving handouts believe it to be a popular agreement. After all, you don't bite the hand that feeds you. But being "very popular" is not the standard by which the Settlement must be judged. The Public Utilities Commission of Ohio ("PUCO") should, and no doubt will, focus on the governing law, consumers, and the public interest. The Settlement should be rejected on all counts.

If approved, AEP's 1.3 million customers will be required to fund tens of millions of dollars in projects most will not use or benefit from. Though proponents of the Settlement assert that it benefits both customers and the public interest, the assertion is unsupported by the record evidence. The Settlement's true cost is unknown, as it contains multiple proposals whose costs will only be identified later. The Settlement's purported benefits are unknown, as AEP seeks to charge customers for programs they have no plans to implement and thus will have no benefits. Put simply, AEP seeks to increase charges for electric service now and work out the details later. The Settlement increases costs to all, but only benefits a few. The electric security plan ("ESP") embodied in the Settlement is not more favorable in the aggregate to customers than a

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[2] See *In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company, for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Second Opinion and Order, Opinion of Commissioner Cheryl L. Roberto Concurring in Part and Dissenting in Part (Mar. 25, 2009) at 1-2 ("In the case of an ESP, the balance of power created by an electric distribution utility's authority to withdraw a Commission-modified and approved plan creates a dynamic that is impossible to ignore. I have no reservation that the parties are indeed capable and knowledgeable but, because of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission.").

[3] *See* Initial Post-Hearing Brief of Staff of the Public Utilities Commission of Ohio at 1.

market rate offer ("MRO"), so it fails the MRO v. ESP test. The Settlement should be rejected.

II. RECOMMENDATIONS

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

The PUCO reviews the Settlement, as a package, to determine if it benefits customers and the public interest.[4] Proponents of the Settlement have failed to prove that it, as a package, benefits *both* customers and the public interest. AEP wrongfully believes that the Office of the Ohio Consumers' Counsel ("OCC") is selectively challenging portions of the Settlement as having no benefits.[5] AEP asserts that the benefits are there. But the assertion lacks record support.

The PUCO cannot possibly analyze the costs and benefits of the Renewable Generation Rider ("RGR") or the PowerForward Rider because these Riders' are placeholders whose costs cannot be determined until some future time, and are unknown now. AEP ignores the numerous programs that benefit a few at the cost of *all* customers. The Smart City Rider ("SCR"), electric vehicle ("EV") charging stations, and microgrids may provide a benefit, but only for a select few. And it is funded by all AEP customers. The Settlement, as a package, should not be approved because it does not benefit both customers and the public interest.

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[4] *See In re Application of Columbus S. Power Co.,* Case No. 09-1089-EL-POR, Opinion and Order at 21(May 13, 2010).

[5] *See* Initial Post-Hearing Brief of Ohio Power Company at 3.

1. There is no showing of any benefits to customers associated with the Renewable Generation Rider and PowerForward Riders, and the Riders' cost to customers is unknown.

AEP and Staff witnesses testified that the real costs of both the RGR and PowerForward Riders are unknown. AEP witness William Allen admitted that there are no cost calculations for either the RGR or the PowerForward Riders.[6] Similarly, Staff witness Tamara S. Turkenton admitted that Staff did not quantify the cost of the PowerForward Rider.[7] So AEP, Staff, the PUCO, and Ohioans have no idea what the ultimate cost of the RGR and PowerForward Riders will be.

AEP witness Allen acknowledged that there are currently no programs to include in the PowerForward Rider.[8] Although the PUCO may come out with directives for PowerForward at some (unknown) future point in time, there is no timeline for when AEP expects the PUCO to issue orders regarding the PowerForward initiative.[9] And as Staff witness Krystina Schaefer conceded, there is not even a "vision document," or any formal directives, from the PUCO regarding PowerForward.[10] So AEP, Staff, the PUCO, and Ohioans have no idea what the PowerForward Rider is ultimately for.

But it gets worse for consumers. Consumers can be charged for poor business deals between AEP and third parties. Under the proposed RGR, AEP can sell renewable energy into the wholesale market or enter into special arrangements.[11] When AEP enters into a special arrangement, it can sell the renewable energy at any price. AEP witness

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[6] Hearing Transcript at Vol. I, p. 26:9-12; 29:8-12.

[7] *Id.* at 161:14-24.

[8] *Id.* at 54:4-5.

[9] *Id.* at 54:13-16.

[10] *Id.* at 80-81:18-19.

[11] *See* Joint Stipulation and Recommendation (Joint Ex. 1) filed December 14, 2015 at pp. 8-9, Section (D)(3).

Allen admitted that the selling price could be less than the revenue it would have received had the energy been sold into the wholesale market.[12] Under the rider, less revenue means greater costs to customers who must make up the difference between the cost of producing the energy and the revenue derived from the selling price. Because the revenue from the wholesale market would be used to offset the costs of projects under the RGR,[13] which costs are not capped, the special arrangement could cost consumers more money.

AEP, as the applicant, has the burden in this proceeding.[14] But it has failed to provide evidence that either the RGR or the PowerForward Rider benefits customers. It has completely failed to provide any record evidence of the Riders' costs. The actual costs of the Riders are unknown. The Riders should not be approved.

2. The Smart City Rider does not benefit customers or the public interest.

The SCR is a non-bypassable charge that all AEP distribution customers will pay.[15] It will be used to charge customers for EV charging stations and microgrids.[16] All AEP customers will pay even if they never charge an electric vehicle or use a microgrid.[17] Staff witness Schaefer admitted that there is no benefit to customers, as a whole, that pay for services others receive but do not use themselves.[18] The PUCO has previously held that customers should not have to pay charges when they are not actually

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[12] Hearing Transcript at Vol. I, p. 28:13-22.

[13] *See* Joint Stipulation and Recommendation at p. 7, Section (D)(1).

[14] R.C. 4923.143(C)(1).

[15] Hearing Transcript at Vol. I, p. 90:20-21.

[16] *See* Joint Stipulation and Recommendation at p. 12, Section (G)(1) and p. 15 Section (H)(1)(C).

[17] Hearing Transcript at Vol. I, p. 90:14-24. Further, travelers from anywhere outside AEP's service territory could use charging stations paid for by AEP's customers. *Id.* at 118:22-119:5.

[18] *Id.* at 89-90:15-3.

receiving the benefits.[19] Additionally, the SCR has nothing to do with the federal initiative. Projects paid for by customers through the SCR may or may not be within the geographic area to which the federal initiative applies.[20]

a. The Electric Vehicle component of the Smart City Rider does not benefit customers or the public interest.

i. The Electric Vehicle proposal is ill-defined and is ultimately about benefiting AEP and a few others at a million consumers' expense.

The SCR funds business rebates for EV charging stations.[21] The rebate is intended to reduce the cost of a vendor installing EV charging stations.[22] AEP witness Allen acknowledged that the rebate could potentially cover 100% of the EV charging station cost.[23] AEP cannot reliably determine that because, like other portions of the SCR, the costs of the charging stations are unknown.[24] AEP has not even created criteria to determine how it will choose those eligible for the EV charging stations.[25] If the PUCO does not reject this requested subsidy at consumer expense, AEP should be required to submit its choices for EV subsidies as proposals to the PUCO for the PUCO to approve or disapprove.

Even if the PUCO was to ignore AEP's poor planning, the charging stations that are covered by a 100% rebate would be a windfall to the selected location's

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[19] *In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-Out Service Tariff.* Case No. 14-1158-EL-ATA, Opinion and Order at 9-10 (April 27, 2016) (Holding that customers should not have to pay for advanced meter opt-out service if they are not actually receiving a reduction in costs resulting from the operational efficiencies created by AEP Ohio's gridSmart Program.)

[20] Hearing Transcript at Vol. I, pp. 30:1-17; 94:1-17.

[21] *Id.* at 95:14-15.

[22] *Id.* at 96:1-5.

[23] *Id.* at 35:1-3.

[24] *Id.* at 35:1-10.

[25] *Id.* at 38:19-22.

owner/operator. And this windfall will harm consumers, causing them to pay unjust and unreasonable rates and subsidies in violation of R.C. 4909.22, R.C. 4928.02(A), and R.C. 4928.02(H).

Further, the EV proposal is not necessarily required to benefit those it purports to – governmental/public agencies and low-income areas. For example, Staff witness Schaefer testified that a hospital in a low-income area could qualify for a hefty rebate and install a charging station for its employees, including (well compensated) doctors and nurses.[26] She also testified that a building containing a private employer that also leases offices to a governmental agency, like the PUCO, would qualify for a 100% rebate for an EV station.[27] Both the public sector and private sector employees could use the charging station.[28] A million consumers should not be made to pay a subsidy for electric vehicle charging--and for drivers of plug-in BMWs and Teslas among others--especially when this service instead ought to be subject to competitive markets.

After paying the unjust and unreasonable rates under the SCR, the lucky few customers that use the EV stations will be charged unregulated rates. According to AEP, the PUCO has no jurisdiction to establish prices that the owners of EV charging stations would collect from those using the stations.[29] Staff recognizes that charging stations can collect any price from EV customers.[30] So all AEP customers will be subsidizing EV stations that can then turn around and charge unregulated prices – benefiting from regulation, but having none of the associated responsibility.

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[26] *Id.* at 117:4-10.

[27] *Id.* at 121:4-6.

[28] *Id.* at 123:12-18.

[29] *Id.* at 40:17-20; *see also id.* at 42:20-23. This raises a question for the PUCO to consider: Does owning and operating a charging station render the owner/operator a public utility subject to PUCO regulation?

[30] *Id.* at 96:14:19.

Where this will lead, if approved, leaves little room for doubt. AEP itself will own charging stations and resell its own electricity unregulated, without the associated consumer protections.[31] Customers will be likely harmed and not benefitted by this settlement provision. Proponents claim that any cost of the EV program will be offset by the benefit of market research.[32] The Settlement allows AEP to conduct research and development of EV charging stations with consumers' money. This research will be shared on an "interim basis" with signatory parties.[33]

Nothing in the Settlement defines what exact information will be in the research. The Settlement does not prevent AEP from later withholding certain information that they deem to be a trade secret. The research that AEP does share will only be with signatory parties.[34] Again, where this will lead leaves little room for doubt. AEP will charge customers under the SCR to complete market research and later own EV charging stations if it finds them to be a good investment.[35] AEP is asking for customers to test run the potential of a new product, EV charging stations, while eliminating AEP's business risk. AEP's EV charging station competitors do not have the luxury of billing captive customers for their market research. The EV charging station deal is bad for both consumers and competitive markets.

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[31] *Id.* at 99-100:23-3.

[32] *See, e.g.,* AEP Brief at 22; Hearing Transcript at Vol. I, p. 104:11-12.

[33] Hearing Transcript at Vol. I, p. 105:17-21.

[34] *Id.* at 105:24-25.

[35] *Id.* at 99-100:17-3.

ii. Charging stations' lead proponent utterly failed to make the case for charging consumers for service most will not use.

The signatory parties' primary argument in support of the Settlement's EV proposal is that it will promote the development of markets for electric vehicles.[36] Yet, the signatory parties were so preoccupied with whether they could promote electric vehicle growth in central Ohio that they didn't stop to think about whether they should. The signatory parties failed to provide any persuasive evidence showing that the EV proposal is reasonable or that increasing electric vehicle charging stations in central Ohio will benefit customers and the public interest.

In fact, the Electric Vehicle Charging Association ("EVCA") admits in its Initial Brief that "one of the purposes of the pilot program is to **determine** the benefits and impacts to both [consumers] and increased EV adoption in central Ohio."[37] Thus, how the EV proposal will impact customers and the State of Ohio, or whether that impact will be positive, is not yet known. This should come as no surprise to EVCA, whose witness admitted on cross-examination that EVCA either did not know or did not conduct a study or analysis of the following:

- Whether the EV proposal is the most cost-effective way to accelerate expansion of electric vehicle charging stations and electric vehicle adoption;[38]
- Whether utility ownership of charging stations would be more effective in stimulating charging stations' development;[39]

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[36] AEP Ohio Initial Brief at 21; EVCA Initial Brief at 5; ELPC Initial Brief at 3.

[37] EVCA Initial Brief at 5 (emphasis added).

[38] Hearing Transcript at Vol. III, p. 311:11-15.

[39] *Id.* at 311:16-20.

- Whether a rebate program or a one-time investment by a utility customer would be more effective in stimulating charging station development in Ohio;[40]
- The long-term sustainability of charging stations or EVs in AEP Ohio's service territory;[41]
- The transportation patterns of EV users in AEP Ohio's service territory;[42]
- The existing network of charging stations in AEP Ohio's service territory;[43]
- How many charging stations are necessary to stimulate innovation, competition, and customer choice in the market for EV charging equipment;[44]
- How many charging stations are currently in the AEP Ohio service territory;[45]
- How AEP Ohio intends to allocate EV proposal costs among rate classes;[46]
- How the EV proposal will impact a typical residential customers' utility bill;[47]

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[40] *Id.* at 311:21-312:1.

[41] *Id.* at 312:2-5.

[42] *Id.* at 312:6-10.

[43] *Id.* at 312:11-15.

[44] *Id.* at 312:23-313:3.

[45] *Id.* at 310:10-15.

[46] *Id.* at 313:13-15.

[47] *Id.* at 313:19-25.

- Whether customers want charging stations;[48]
- What the economic impact would be on the State of Ohio;[49]
- How the EV proposal will impact electricity prices;[50]
- The reasonableness of the amount of charging stations in the proposal;[51]
- What the L2 charging stations rebate allocation amounts should be;[52]
- What the maximum percentage of coverage of L2 rebate allocation should be;[53]
- What the maximum L2 charging stations rebate should be;[54]
- How the DCFC rebates should be allocated among site hosts;[55]
- What the maximum percentage of coverage of DCFC rebates should be;[56]
- What the maximum amount of each DCFC rebate should be;[57]
- What the demographics of the AEP Ohio service territory are;[58]

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[48] *Id.* at 314:1-5.

[49] *Id.* at 314:16-19.

[50] *Id.* at 314:20-24.

[51] *Id.* at 323:19-324:4.

[52] *Id.* at 324:11-14.

[53] *Id.* at 328:2-6.

[54] *Id.* at 328:11-14.

[55] *Id.* at 328:22-25.

[56] *Id.* at 329:5-8.

[57] *Id.* at 329:13-16.

[58] *Id.* at 330:6-9.

- The long-term sustainability of charging stations in low-income areas;[59]
- If people in low-income areas want charging stations;[60]
- How many EV owners currently live in low-income geographic areas in the AEP Ohio service territory;[61]
- What the projected increase in EV ownership will be if the EV proposal is adopted;[62] and
- How many residential customers own an electric vehicle in Ohio or the AEP Ohio service territory?[63]

Thus EVCA, the main source of evidentiary support for the EV proposal, knows little if anything about the proposal and its potential impact on customers and the State of Ohio. Instead, the Settlement would have customers pay so that AEP can attempt to *determine* whether constructing charging stations will positively impact customers and the State of Ohio. This is not a strategic and cost-effective approach for consumers. And as EVCA witness Cherkaui acknowledged, if investments are not strategic and cost-effective, then the PUCO should not approve them.[64]

Further, the available evidence demonstrates that the EV proposal is not even the most effective way to develop the EV market in central Ohio. A Yale University's Center for Business and Environment study, which was relied on by EVCA witness Dr. Cherkaui, states that "the best way for policymakers to facilitate the growth of the market

[59] *Id.* at 330:10-14.

[60] *Id.* at 330:15-19.

[61] *Id.* at 331:5-9.

[62] *Id.* at 331:22-332:2.

[63] *Id.* at 332:3-12.

[64] *Id.* at 311:3-10.

is to grow electric vehicle purchases and allow the private sector to provide charging infrastructure."[65] The study goes on to conclude that "[t]he core message, then, is that governments looking to expand EV infrastructure should spend their policy dollars encouraging EV purchases rather than constructing charging stations. This type of policy intervention ensures that EVSE will be installed in areas that will receive relatively high traffic. It also ensures that EVSE will be used and maintained at an optimal level."[66] Thus, not only have the signatory parties' failed to support their proposal, but the evidence shows that alternative proposals that are not funded by utility customers are more reasonable and beneficial to customers and the public interest.

One of the few specific benefits that signatory parties claim *will* result from the EV proposal is that the charging infrastructure will collect reportable data and have demand response capabilities.[67] EVCA claims that this data can help to maintain reliability and affordability.[68] But on cross-examination EVCA witness Cherkaui admitted that the Settlement does not require AEP to implement any program or pricing structure in response to this data.[69] And EVCA admitted that it does not even know whether AEP has the ability to integrate charging station data into its distribution and grid planning decisions.[70] Further, EVCA was not aware of whether AEP even had reliability issues that needed remedying.[71] Thus, EVCA provided no evidence that the data is

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[65] *Id.* at 302:5-304:24.

[66] *Id.* at 304:13-24.

[67] EVCA Initial Brief at 4-5.

[68] EVCA Initial Brief at 4.

[69] Hearing Transcript at Vol. III, p. 332:17-21.

[70] *Id.* at 332:22-333:3.

[71] *Id.* at 333:4-334:6.

needed, can be effectively used, or that the benefits from the data will outweigh the costs of procuring it. Again, the signatory parties have put the cart before the horse.

Claims that the charging stations will benefit customers by providing demand response capabilities are also unsubstantiated. EVCA claims that the use of demand response capabilities during times of high demand may decrease stress to the grid and lead to benefits for customers.[72] Yet, EVCA witness Cherkaui admitted that he did not know when on-peak and off-peak-usage times for electricity in the AEP service territory were.[73] And as stated earlier, EVCA performed no studies or analysis on the transportation patterns of EV users in the AEP service territory.[74]

Without knowing how the EV's will be used and when the peak usage times for electricity are, there is no way to know if charging stations' peak usage times will permit the benefits of demand response to be realized. Thus, again, the signatory parties have provided little if any evidence that the EV proposal will actually benefit customers. Instead, the signatory parties are simply seeking to spend $10 million of other people's money (customers' money) to perform a study on electric vehicle charging stations in central Ohio. If AEP wishes to conduct such a study it should be paid for by shareholders, not consumers. Or by EV charging station owners.

The SCR generates more questions than answers. AEP has failed to show that there are any benefits to customers or the public interest. AEP has no evidence about the impact or cost of the EV program -- but seeks to charge customers for it anyway so it can ultimately benefit by having others prepay its entry into the EV charging station market.

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[72] EVCA Initial Brief at 5.

[73] Hearing Transcript at Vol. III, p. 334:7-13.

[74] *Id.* at 312:6-10.

What AEP *has* shown is that the program will benefit a few at the expense of customers and the public interest.

b. The microgrid component of the Smart City Rider does not benefit customers or the public interest.

Unfortunately for consumers, the windfall doesn't end with the EV charging stations. Under the SCR, microgrids are another example of customers paying for infrastructure that will directly benefit only a few owners/operators.

Staff witness Schaefer explained that microgrids are not part of an electric distribution utility.[75] But AEP will develop and build the microgrids. Under the Settlement, the site host will own the microgrid.[76] So the site host gets the benefit of regulation, but the microgrids will not necessarily benefit those captive customers paying for them.[77]

The microgrids will purportedly help system reliability, but there have been no formal assessments to support microgrids' impact on reliability.[78] Again, AEP has not identified what exactly it is assessing.[79] AEP cannot be expected to assess anything when they have no idea about the design or functionality of any microgrid.[80] It is absurd that AEP claims public benefits for a microgrid when the costs are unknown,[81] assessments to

[75] Hearing Transcript at Vol. I, p. 108:22-25.

[76] *Id.* at 110:4-9.

[77] Supplemental Testimony of Barbara R. Alexander (OCC Ex. 7) filed October 11, 2017 at 23:4-15.

[78] Hearing Transcript at Vol. I, p. 111:1-4.

[79] Supplemental Testimony of Barbara R. Alexander (OCC Ex. 7) filed October 11, 2017 at 21:6-7.

[80] *Id.* at 19:16-18.

[81] *Id.* at 23: 7-12.

consumers and actual impacts on reliability are unknown,[82] and AEP has no experience in design, construction, or operation of microgrids.[83]

The microgrid component of the SCR, like the charging station component, will benefit only a few at the expense of millions of customers. This windfall will harm consumers, causing them to pay unjust and unreasonable rates and subsidies in violation of R.C. 4909.22, R.C. 4928.02(A), and R.C. 4928.02(H).

3. The Supplier Consolidated Billing Pilot will not benefit consumers or the public interest.

Under the Supplier Consolidated Billing ("SCB") pilot, a competitive retail electric service provider ("CRES" or "marketer") would furnish customers with a single bill for all the components of their electric service.[84] Customers will be charged on a non-bypassable basis for the costs of the SCB pilot.[85] RESA asserts that the SCB will benefit consumers because some customers want a bundled all-in-price for electric service, not a separate price for each service. But RESA admitted that it had done no formal studies or analysis to support this assertion.[86] RESA also stated that the SCB benefits customers because they are demanding value-added products and services with their electric commodity.[87] But again, RESA witness White admitted that RESA had done no formal studies or analysis to support this statement.[88] In fact, RESA witness White admitted that RESA has not formally studied or analyzed whether customers want

[82] Hearing Transcript at Vol. I, p. 111:1-4.

[83] Supplemental Testimony of Barbara R. Alexander (OCC Ex. 7) filed October 11, 2017 at pp. 24:14-25:1.

[84] Hearing Transcript at Vol. III, p. 425:1-5.

[85] Joint Stipulation and Recommendation at 31-32.

[86] *See* OCC Ex. 7.

[87] Hearing Transcript at Vol. III, p. 428:21-25.

[88] See OCC Ex. 6.

an SCB pilot,[89] whether customers are willing to pay for an SCB pilot,[90] nor whether an SCB pilot would benefit the competitive market in Ohio.[91] Therefore, only one conclusion can be reached—the SCB does not benefit customers.

AEP appears to argue in its Initial Brief that all customers benefit from enhancements to the retail choice program — even the customers who are not shopping for generation service— because all customers have the option to shop.[92] This reasoning is illogical. If a customer is not shopping and does not plan to shop then it will not be able to use SCB.[93] Therefore, the customer would not be able to avail itself of any purported benefits of SCB.

Finally, AEP states that OCC should be estopped from challenging the SCB because OCC was a signatory party to the Global Settlement in Case Nos. 10-2929-EL-UNC, et al. This claim is meritless. The Global Settlement states that nothing in the settlement may be used as precedent in any future proceeding or against any signatory party.[94] Further, the proposal in this Settlement is different than the proposal in the Global Settlement.[95] Thus, OCC has the right to oppose this Settlement.

4. The Enroll From Your Wallet program will not benefit customers or the public interest.

Currently, for a customer to enroll with a Marketer the customer must provide their unique Service Delivery Identifier ("SDI") number, which can be found on their

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[89] Hearing Transcript at Vol. III, p. 433:5-19.

[90] *Id.* at 434:2-10.

[91] *Id.* at 434:11-19.

[92] AEP Ohio Initial Brief at 43.

[93] Hearing Transcript at Vol. III, p. 425:1-426:14.

[94] *In the Matter of the Commission Review of the Capacity Charges of Ohio Southern Power Co. and Columbus Southern Power Co.,* Case Nos. 10-2929-EL-UNC, et al., Joint Stipulation and Recommendation at 22-23 (December 21, 2016) ("Global Settlement").

[95] See Settlement, Case No. 16-1852-EL-SSO.

utility bill.[96] The Enroll From My Wallet ("EFMW") Program would allow customers to enroll with a CRES without requiring the customer to have their SDI available.[97] Instead, the customer could enroll with the Marketer by providing other personally identifiable information.[98] Several of the signatory parties to the Settlement argue that the EFMW program will benefit customers and therefore should be approved.[99] They are wrong.

RESA and AEP both claim that the EFMW should be approved because it will be more efficient for customers.[100] RESA and AEP claim that the current customer enrollment procedures (i.e., requiring a customer to have its SDI) are too inefficient and can result in an unsatisfactory experience for customers.[101] But RESA witness White admitted that RESA has not conducted any studies or analysis to support these claims. RESA did not study or analyze how often the current customer enrollment procedures result in an unsatisfactory consumer experience for customers;[102] how many customers have ultimately not purchased a CRES product because the customer did not have their SDI available;[103] whether customers want an EFMW program;[104] or how many more customers RESA expects would enroll with a CRES if the EFMW were approved.[105]

Also, RESA has not studied or analyzed whether the EFMW would benefit Ohio's competitive electricity market[106] or negatively impact a residential customer's

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[96] AEP Ohio Initial Brief at 32.

[97] AEP Ohio Initial Brief at 33.

[98] AEP Ohio Initial Brief at 33.

[99] AEP Ohio Initial Brief at 32-34; RESA Initial Brief at 8-9.

[100] AEP Ohio Initial Brief at 33; RESA Initial Brief at 8.

[101] RESA Initial Brief at 8; AEP Ohio Initial Brief at 32-34.

[102] Hearing Transcript at Vol. III, p. 423:1-6.

[103] *Id.* at 419:1-10.

[104] *Id.* at 423:7-24.

[105] *Id.* at 419:1-10.

[106] *Id.* at 423:25-424:10.

utility bill.[107] Thus, RESA's claim that the EFMW would benefit customers or the public interest is uncorroborated. In reality, this is more about marketers making money from consumers and less about consumers saving money from marketers. It is another tactic by marketers to make it easier for them (marketers) to obtain customers, and hence, make more money. Shopping is already quite robust in AEP's service territory, without a need at this point for such mechanisms to jump-start shopping.

The Settlement will only make it easier for a customer to purchase a product that he or she may not fully understand. RESA witness White admitted that nonshopping customers could have many questions about shopping because it is a new experience for them.[108] He also admitted that a customer's bill has important data on it that could be helpful to a customer who is thinking about switching.[109] Yet, the purpose of the EFMW is to allow a customer to purchase a product without their bill.[110] As OCC witness Haugh explained, the information on a customer's utility bill (e.g., the price to compare, usage data, etc.) should be consulted before a customer makes a decision to purchase a product from a Marketer.[111] Without the information, a customer could easily enroll in a program without having a full picture of their current situation.[112] Thus, the EFMW would actually have a negative impact on customers.

5. The CIR will not benefit customers or the public interest.

The so-called Competition Incentive Rider ("CIR") will allegedly mitigate a subsidy to SSO customers that occurs when AEP collects some costs that RESA believes

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[107] *Id.* at 424:11-17.

[108] *Id.* at 412:20-413:17.

[109] *Id.* at 412:20-414:16.

[110] AEP Ohio Initial Brief at 32-34: Tr. Vol. III at 416:20-417:1.

[111] Supplemental Testimony of Michael Haugh at 13.

[112] Supplemental Testimony of Michael Haugh at 14.

support the standard service offer through distribution rates that all customers pay. The reality is that the rider will result in consumers saving less money under the standard service offer while marketers can make more profit by increasing their prices when the CIR raises the standard offer price. So what is going on here is that marketers want to increase their profits and one way of doing so is to reduce their costs by claiming those costs are not caused by their customers (shoppers). The CIR supposedly will mitigate this alleged subsidy by allocating a portion of distribution costs related to SSO supply to the SSO (which increases the price of the SSO) and then refunding those charges back to all distribution customers. While the Settlement proposes a CIR of $0.00105 per kWh, RESA claims that a charge of $0.0046 per kWh for the CIR would be appropriate and should be approved. RESA is wrong.

RESA's method for calculating the CIR is flawed. RESA calculated its proposed CIR charge by analyzing certain accounts from AEP's last base rate case.[113] RESA determined that these specific account expenses should be included in the CIR charge because the costs were related to SSO supply. For example, RESA included AEP's meter reading expenses in its calculation. This is unreasonable because, as RESA admitted on cross-examination, AEP reads both shopping and non-shopping customers' meters.[114] And AEP does not break out the costs expended for reading shopping customers' meters and non-shopping customers' meters. Thus, as OCC witness Haugh states, some of the meter reading costs are also related to choice.[115] Because the costs are not specifically broken out into shopping customer meter reading and non-shopping customer meter reading, there is no way to know with any reasonable certainty to determine what portion

[113] Hearing Transcript at Vol. III, p. 440:10-13.

[114] *Id.* at 442:8-20.

[115] Supplemental Testimony of Michael Haugh at 17.

of the costs are for SSO customers and what portion are for shopping customers. In fact, it is possible that non-shopping customers are subsidizing shopping customers, meaning the CIR should be a credit instead of a charge. Thus, RESA's proposed CIR charge is not reasonable.

OCC witness Haugh argued in his supplemental testimony that the CIR charge is an artificial addition to the SSO price.[116] AEP states in its Initial Brief that this position is incorrect.[117] AEP is wrong. As RESA witness White admitted, the CIR adds a charge to the SSO price that was not determined through the SSO auction.[118] Thus, it is "artificial" in the sense that it was not the product of a competitive auction. It destroys the competitive nature of the SSO auction and artificially increases the SSO price. The SSO price is the result of a competitive auction and it should be offered to customers unaltered. And therefore the SSO would not be "reasonably priced," in violation of R.C. 4928.02(A).

Further, AEP argues that the CIR does not have to be just and reasonable.[119] Instead, AEP contends that the ESP only has to be more favorable in the aggregate than an MRO.[120] AEP is wrong. When evaluating a settlement, the PUCO "must determine from the evidence what is just and reasonable."[121] The PUCO also evaluates each and every proposal in its Orders outside of the ESP v. MRO analysis. It is certainly not the

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[116] Direct Testimony of Michael Haugh at 15, 18.

[117] AEP Ohio Initial Brief at 39.

[118] Hearing Transcript at Vol. III, pp. 436:10-436:25. (RESA witness Mr. White admitting that a CIR charge is not part of the SSO price. It is a separate charge that would be added to the SSO price).

[119] AEP Ohio Initial Brief at 39.

[120] AEP Ohio Initial Brief at 39.

[121] See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992); *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46 (2011).

PUCO's only concern that the terms of the ESP are more favorable in the aggregate than an MRO.

Finally, while the CIR should not be approved, if the PUCO decides that a CIR is necessary it should be determined through a base rate case, not through an ESP settlement. As RESA witness White admitted, a distribution base rate case will allow for an in-depth review and analysis of AEP's revenues and expenses, which will produce a more accurate CIR charge.[122] Therefore, any CIR charge should not be approved anywhere but certainly should not be approved here outside of a traditional rate case. If customers are going to be subjected to this, or any, charge it should be the most accurate charge possible. In any event, the charge is an unreasonable rate and violates R.C. 4928.02(A) and R.C. 4905.22, among other statutes.

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

The EFMW program violates the regulatory principles in O.A.C. 4901:1-21-03 and O.A.C. 4901:1-21-05. The SCR is not appropriate in an ESP case. If AEP wants to charge consumers through the SCR to pursue the programs thereunder, those programs' costs should be part of a distribution base rate case.

1. The Enroll From Your Wallet Program does nothing to protect customers from unfair, misleading, deceptive, or unconscionable practices of Marketer solicitors.

O.A.C. 4901:1-21-03(A)(1) establishes that Marketers are not permitted to engage in unfair, misleading, deceptive, or unconscionable practices when soliciting new customers. The PUCO enacted O.A.C. 4901:1-21-05 requiring that certain information be made available to consumers so that they can "make intelligent cost comparisons." AEP witness Allen testified that EFMW would allow customers to sign up anywhere,

[122] Hearing Transcript at Vol. III, pp. 437:23-440:9.

including at a kiosk at a mall.[123] The PUCO should be very skeptical of a program under which customers can immediately switch. Certain information that can only be found on a bill should be consulted before a customer switches.[124] Such information allows the customer to have actual knowledge of their prices to compare with the marketers offer.

Under EFMW the customer would not need, or have, a copy of their bill when switching to a CRES provider. This could lead to unfair, misleading, deceptive, and unconscionable practices. Because the customer might not be able to make any serious, informed cost comparison in a busy, noisy location, that distracts the customer making them unable to appreciate a binding electric contract. The EFMW program directly violates regulatory principle of protecting customers as stated in O.A.C. 4901:1-21-03 and O.A.C. 4901:1-21-05.

2. The Smart City Rider does not belong in an ESP.

Staff witness Turkenton testified that the SCR is a distribution rider to charge customers for costs that could be part of a distribution rate case.[125] Even though AEP could seek to collect costs associated with the programs under the SCR in a distribution rate case, it has chosen to use the ESP mechanism to charge customers for the SCR. This allows AEP to evade the consumer protections in distribution rate cases, such as prudence review and ensuring that investments are used and useful for providing electric service. In light of Staff witness Turkenton's recognition, and the consumer protections involved in a distribution rate case, the PUCO should not authorize the SCR in an ESP.

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[123] Hearing Transcript at Vol. I, p. 59:1-4.

[124] *Id.* at 58:13-25.

[125] *Id.* at 160:4-12.

C. The ESP embodied in the Settlement fails the ESP versus MRO test.

Under R.C. 4928.143(C)(1), AEP, as the applicant, bears the burden to prove that the ESP is more favorable in the aggregate than a MRO.[126] AEP fails to meet that burden. Further, proponents of the Settlement claim that it contains numerous quantitative and qualitative benefits. But those purported benefits are not supported by the record.

AEP witness Allen's testimony, itself, shows that AEP cannot prove that the ESP embodied by the Settlement is more favorable in the aggregate than an MRO. The Supreme Court of Ohio has held that R.C.4923.143(C)(1) instructs the PUCO to consider pricing and all other terms and conditions in evaluating if an ESP is more favorable in the aggregate than an expected MRO.[127] AEP witness Allen admits that the calculations he offers to prove there is a benefit do not include any of the riders that are set at zero.[128] As previously explained, the RGR, the SCR, and the PowerForward Rider are established under this ESP but set at zero. Staff witness Turkenton admitted that some or all of these riders may be authorized by the PUCO to collect costs from consumers during the ESP.[129] The PUCO cannot possibly lawfully analyze the ESP embodied by the Settlement under the ESP v. MRO test when programs' costs are unknown. Especially since these riders would not be part of an MRO process, and thus would increase the cost differential between the MRO and ESP.

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[126] R.C. 4928.143(C)(1).

[127] *In re Ohio Edison Co.,* 146 Ohio St.3d at 226.

[128] Hearing Transcript at Vol. I, p. 55:16-18.

[129] *Id.* at 162:10-163:4.

1. AEP has not shown, and cannot show, that the ESP benefits consumers.

AEP asserts that the ESP embodied by the Settlement offers an array of quantitative benefits compared to an MRO.[130] Its assertion rests on a flimsy reed. It can do no better than point to purported quantitative benefits from continuing riders without having to file a base rate case and the illusionary adjustment to the weighted average cost of capital ("WACC").

AEP says that there are quantitative benefits associated with continuing the Residential Distribution Credit Rider, the Neighbor-to-Neighbor program, and the DIR mechanism in the ESP case without the complexity of a base rate case.[131] But AEP contradicts its testimony. AEP witness Allen testified that AEP "fully intends" to file a rate case by June 1, 2020.[132] So the parties will incur the complexity of a base rate case anyway.[133] There is no benefit to including the riders in this ESP.

The only other benefit AEP claims is its agreement to update the WACC only if it will be favorable to consumers.[134] AEP makes this claim with no evidence to support it. AEP witness Allen testified that AEP is not currently engaging in new long-term debt financing or refinancing.[135] AEP does not have any projections of what the new interest rate will be or the terms of the new debt instrument.[136] The current debt financing is coming due in 2018,[137] but AEP does not even have estimates on one-time costs such as

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[130] AEP at 53.

[131] *Id.* at 53-54.

[132] Hearing Transcript at Vol. I, p. 51:18-19.

[133] *Id.* at 52:15-22.

[134] AEP at 53.

[135] Hearing Transcript at Vol. I, p. 24:9-16.

[136] *Id.* at 25:5-23.

[137] *Id.* at 24:11-16.

attorney's fees or investment adviser fees.[138] AEP witness Allen even acknowledged that the debt refinancing may not occur at all.[139] AEP wants to rely on a "benefit" that they admit may not even materialize. This is not a reasonable approach to calculating the difference between the MRO and the ESP.

AEP also makes unsupported claims about qualitative benefits. It asserts that its commitment to file a base distribution rate case provides customers with increased certainty.[140] The Settlement, however, contains an "if" clause that would allow the company to not file a base distribution rate case.[141] AEP witness Allen testified that this clause explains what would happen, and protects other parties, if AEP does not file a base distribution rate case.[142] So the purported benefit of filing a distribution rate case is no benefit at all.

AEP falsely claims that rate stability and certainty associated with the RGR is a qualitative benefit.[143] It is absurd to believe that there is any stability or certainty created by a rider set at zero. This is particularly true where, as there, the rider's costs are unknown.[144] Setting the RGR, with its unknown costs, at zero has the opposite effect – it creates uncertainty and instability.

The SCR, and its purported qualitative benefits, suffers from the same problems as the RGR. AEP asserts that the SCR will promote EV market development and

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[138] *Id.* at 25-26:24-3.

[139] *Id.* at 52:2-5.

[140] AEP Brief at 55.

[141] Hearing Transcript at Vol. I, p. 51:8-10.

[142] *Id.* at. 51:18-21.

[143] AEP Brief at 55.

[144] *See* Joint Stipulation and Recommendation at p. 7-9, Section (D): *see also* Hearing Transcript at Vol. I, p. 26:9-12; 29:8-12.

research even though the program's true cost is unknown.[145] And as previously discussed, AEP has failed to formulate any real program structure or implementation plan. The little that is known about the program is that it will benefit a select few at great cost to all consumers.

2. According to Staff, the ESP v. MRO test is a wash, so the ESP embodied by the Settlement should be rejected.

Under R.C. 4928.143(C)(1), AEP must show that the ESP embodied in the Settlement is *more* favorable than an MRO. Staff itself testified that many of the "big ticket items" – the SCR, PowerForward Rider, DIR – are "washes" under the test because they are available under an ESP *and* an MRO plus distribution base rate case.[146] Such a comparison should be rejected. R.C. 4928.143(C)(1) does not call for a comparison of an ESP and an MRO plus distribution base rate case. It calls for a comparison between an ESP and the expected results under an MRO – alone. And an MRO is nothing more than the "standard service offer price for retail electric generation service that is delivered to the utility under a market rate offer." R.C. 4928.142(A).

But of course Staff and AEP have claim they found a way around the statute so that the ESP wins out. The way they have done so is to argue that the ESP add-ons could be considered in a distribution rate case.[147] Such mental gymnastics should be rejected, the law should be followed, and the ESP embodied by the Settlement rejected.

But Staff and AEP must be hoisted by their own petard. If the PUCO does make the comparison between an ESP and an MRO plus a distribution base rate case, the ESP embodied by the Settlement still fails the test. All the big ticket items are a "wash,"

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[145] AEP Brief at 56.

[146] Hearing Transcript at Vol. I, pp. 158:19-163:4.

[147] *See id.*; *see also* R.C. 4928.142 (does not authorize various riders).

according to Staff.[148] What tips the balance in favor of the ESP embodied by the Settlement, according to Staff, is the Residential Distribution Credit Rider and the Neighbor-to-Neighbor program.[149] *But Staff admitted that both programs are available under a MRO plus a base rate distribution case.*[150] Thus, following Staff's logic, the ESP v. MRO test is a "wash" in its entirety. The ESP embodied by the Settlement and the expected results of a MRO plus a distribution base rate case are equal. Under R.C. 4928.143(C)(1) the ESP embodied by the Settlement must be rejected, because it is not *more* favorable in the aggregate.

III. CONCLUSION

Under its own test, the PUCO reviews a settlement as a package. The programs in this Settlement do not benefit customers or the public interest. The Settlement contains numerous programs about which there are no details – including how much the programs will cost customers. Instead, the Settlement gives generous handouts to signatory parties at the expense of AEP's customers, who end up paying in whole or part for those handouts. As a result (and not surprisingly), AEP fails to meet its burden of proof that these programs benefit anyone other than the signatory parties. The Settlement also requires the PUCO to forego its regulatory oversight that would otherwise occur in a distribution case, where all expenses and revenues are examined. The settlement fails the MRO vs. ESP test established by the General Assembly. The Settlement should not be approved.

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[148] Hearing Transcript at Vol. I, pp. 158:19-163:4.

[149] *See id.* at 163:5-13.

[150] *See id.* at 163:14-164:7.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Brief has been served via electronic transmission upon the following parties of record this 21st day of December 2017.

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