

**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	:	Case No. 16-1852-EL-SSO
to Section 4928.143, Revised Code, in the	:	
Form of an Electric Security Plan	:	

In the Matter of the Application of	:	
Ohio Power Company for Approval of	:	Case No. 16-1853-EL-AAM
Certain Accounting Authority	:	

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**REPLY BRIEF OF THE  
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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## I. Introduction

On August 25, 2017, Ohio Power Company (AEP), the Ohio Manufacturers' Association Energy Group (OMAEG), Staff of the Public Utilities Commission of Ohio (Staff), and thirteen additional Signatory Parties and three Non-Opposing Parties filed a Joint Stipulation and Recommendation<sup>1</sup> (Stipulation) with the Public Utilities Commission of Ohio (Commission). The parties to the Stipulation include a group of customers having diverse interests and substantial experience before the Commission. The Stipulation provides for economic development and job retention provisions that will assist manufacturers in remaining price competitive in a global market, resulting in the retention of facilities and jobs in Ohio, as well as the opportunity to reinvest in the state of Ohio.

The Commission reviews stipulations under a three-prong test, addressing whether a stipulation is the product of serious bargaining among capable and knowledgeable parties, whether the settlement, as a package, benefits ratepayers and the public interest, and whether the settlement package violates any important regulatory principle or practice.<sup>2</sup> Although not binding on the Commission, the terms of a stipulation are to be accorded substantial weight.<sup>3</sup>

Importantly, nearly all of the parties to the proceeding support the Stipulation and the Office of the Ohio Consumers' Counsel (OCC) is the only party who opposed it. In its post hearing brief, OCC argues that the Stipulation fails to meet the Commission's three-prong test.<sup>4</sup> OCC, however, fails to introduce any evidence that the Stipulation, as a package, fails to benefit customers or that it violates any important regulatory principal or practice. For all of the reasons

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<sup>1</sup> Joint Exhibit 1.

<sup>2</sup> *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*, Case No. 14-1693-EL-RDR, Opinion and Order at 48-49 (March 31, 2016).

<sup>3</sup> *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82, 2002-Ohio-1735, 765 N.E.2d 862.

<sup>4</sup> OCC Post Hearing Brief (November 29, 2017) (OCC Brief).

discussed herein, the Commission should reject OCC's arguments and adopt the Stipulation without modification.

## **II. Argument**

### **1. The Stipulation, as a Package, is the Product of Serious Bargaining Among Capable and Knowledgeable Parties, Benefits Ratepayers and the Public Interest, and Does Not Violate Any Important Regulatory Principle or Practice.**

Numerous parties engaged in negotiations giving rise to the Stipulation that is supported by a diverse set of customer groups. There is no dispute that the Stipulation is the product of serious bargaining among capable and knowledgeable parties.<sup>5</sup> Therefore, the first criterion of the three-prong test is satisfied.

Additionally, the Stipulation, as a package, benefits ratepayers and the public interest. Many provisions of the Stipulation, such as those specifically discussed further below, will benefit ratepayers and the public interest by encouraging customer load reduction, provide grid stability during emergency situations, and provide competitive enhancements. Accordingly, the Stipulation satisfies the second criterion of the three-prong test.

As Staff witness Tamara S. Turkenton testified, none of the individual provisions of the stipulation are inconsistent with or violate any important Commission principle or practice.<sup>6</sup> As such, the Stipulation satisfies the third criterion of the Commission's three-prong test.

Contrary to OCC's arguments, the test is not whether individual provisions of the settlement produce a benefit. Rather, the Commission must look at the settlement as a whole and determine whether the settlement, as a package, benefits ratepayers and the public interest. If the settlement package, as a whole, provides benefits to ratepayers and the public interest, it should be approved. Here, the settlement satisfies the Commission's three-prong test used in evaluating

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<sup>5</sup> Staff Exhibit 3 at 3 (Turkenton Testimony).

<sup>6</sup> Staff Exhibit 3 at 4 (Turkenton Testimony).

the reasonableness of a stipulation. As a package, the Stipulation is reasonable and should be approved without modification.

**2. The Interruptible Power Discretionary (IRP-D) Program Benefits Customers and is in the Public Interest.**

OCC concedes that the IRP-D program may provide benefits at times of peak usage and system stress.<sup>7</sup> However, OCC attempts to back pedal and argue that customers should only be able to participate in the PJM Demand Response program and objects to allowing customers to participate in both the PJM program and the IRP-D program. OCC also purports that this program is giving payments only to parties that signed or did not oppose the Stipulation.<sup>8</sup>

OCC's arguments are unsupported, and in some aspects, misleading and false. First, contrary to OCC's assertions, the IRP-D program is available to non-signatory parties. AEP witness William A. Allen testified that the New Industry IRP is available to new customers who are not necessarily signatory or non-opposing parties to the Stipulation.<sup>9</sup> Specifically, Mr. Allen explained that the program is "available to new customers to attract new customers to Ohio, to aid in economic development, and it provides up to 120 megawatts of IRP participation," available to eligible non-signatory parties.<sup>10</sup> Mr. Allen further explained that legacy IRP-D customers can participate in the program without being a signatory party.<sup>11</sup> During cross-examination, OCC witness Haugh conceded that the Stipulation does not preclude non-signatory parties from participating in the New Industry IRP program.<sup>12</sup> Therefore, OCC's assertion that

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<sup>7</sup> OCC Brief at 4.

<sup>8</sup> OCC Brief at 5, citing Supplemental Testimony of Michael P. Haugh (OCC Ex. 8) at 7:12-13 (October 11, 2017) (Haugh Testimony).

<sup>9</sup> Tr. Vol. 1 at 57:11-16.

<sup>10</sup> Id.

<sup>11</sup> Tr. Vol. 1 at 57:22-25.

<sup>12</sup> Tr. Vol. IV at 523-524.

the IRP-D program only provides “payments” to parties that signed or agreed not to oppose the Stipulation is inaccurate.<sup>13</sup> Notably, IRP-D program participants do not receive “payments” from AEP. Rather, participants receive a credit in return for a commitment to interrupt a portion of their load if AEP declares an emergency or when PJM issues a curtailment order for the AEP zone. And, but for this curtailable load, other AEP customers are more likely to experience service interruptions during emergency situations.

Second, the state IRP-D program is distinct from the wholesale PJM Demand Response program. Under the IRP-D program, an interruption notice can be the result of either a local emergency called by AEP or an event called by PJM.<sup>14</sup> Further, AEP can require interruption with as little as 30 minutes notice.<sup>15</sup> Participants in the PJM Demand Response program can require up to 120 minutes notice.<sup>16</sup> The load subject to interruption is also calculated differently.<sup>17</sup> Because the IRP-D program and the PJM Demand Response program are materially different, parties should not be precluded from participating in both programs.

Lastly, the Commission has previously determined that the IRP-D program benefits customers and is in the public interest.<sup>18</sup> As the Commission explained, the program promotes economic development, and therefore, customers will benefit from the retention of manufacturing jobs and enhanced system reliability by removing load from the system during

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<sup>13</sup> OCC Brief at 5.

<sup>14</sup> Tr. Vol. 1 at 505:15-20.

<sup>15</sup> Id. at 505:25 – 506:3.

<sup>16</sup> Id. at 506:4-9.

<sup>17</sup> Id. at 506:10-23.

<sup>18</sup> See *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, et al.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order at 40 (February 25, 2015) (“the IRP-D offers numerous benefits, including the promotion of economic development and the retention of manufacturing jobs, and furthers state policy, which we recognized in the ESP 2 Case.”).

peak periods.<sup>19</sup> The continuation and expansion of the IRP-D program through the Stipulation furthers those benefits. Accordingly, because the IRP-D program benefits customers and is in the public interest, the Commission should approve the Stipulation without modification.

**3. The Basic Transmission Cost Rider (BTCR) Pilot Program Benefits Customers and is in the Public Interest.**

It is undisputed that the purpose of the BTCR pilot program is to lower the overall demand at peak times in order to reduce AEP's total transmission costs from PJM.<sup>20</sup> Notwithstanding this admission, OCC challenges the program arguing that non-participating customers are harmed and that the program's effectiveness is reduced because participating customers can jump back and forth in and out of the program.<sup>21</sup> However, OCC ignores the fact that non-participating customers also benefit from lower system costs and the possible reduction in needed transmission upgrades.

Further, the Commission has already approved early implementation of the BTCR pilot program. The BTCR pilot program was proposed as part of a global settlement stipulation resolving several cases pending before the Commission.<sup>22</sup> The Commission approved that stipulation, which authorized AEP to accelerate the implementation of the BTCR pilot program.<sup>23</sup> In approving the global settlement stipulation, the Commission found that it, as a package, benefited ratepayers and the public interest meeting the second criterion of the three-

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<sup>19</sup> Id.

<sup>20</sup> OCC Ex. 8 at 8-9.

<sup>21</sup> OCC Ex. 8 at 6.

<sup>22</sup> *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company, et al.*, Case Nos. 09-872-EL-FAC, et al., Joint Stipulation and Recommendation at 16-19 (December 21, 2016).

<sup>23</sup> *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company, et al.*, Case Nos. 09-872-EL-FAC, et al., Order on Global Settlement Stipulation at ¶ 119 (February 23, 2017).

prong test.<sup>24</sup> Similarly, the continuation and expansion of the BTCR pilot program as outlined in the Stipulation also benefits ratepayers and the public interest.

OCC's assertion that schools will offer no additional value to reducing the load of the system is also unsupported. In the last nine years, AEP's zonal peak has occurred during the winter four times.<sup>25</sup> Because AEP's zonal peak also occurs in the winter, schools will not necessarily already have a lower load during the one coincident peak. Therefore, schools will also be required to reduce their load in order to benefit under the BTCR pilot program. OCC's concerns that customers can "game the system" are also unfounded and unsupported by the record. The Commission, therefore, should approve the Stipulation without modification.

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<sup>24</sup> Id.

<sup>25</sup> Tr. Vol. IV at 503:15 – 504:14.

### **III. Conclusion**

As demonstrated by the record and as discussed herein, the economic development and job retention provisions contained in the Stipulation attract new customers to Ohio and incentivize eligible parties to retain jobs, remain competitive, and hedge against increasing costs of goods and services. As such, the IRP-D and BTCR pilot program provisions included in the Stipulation benefit ratepayers, are in the public interest, and are in accord with regulatory principles and practices, as well as Commission precedent. Accordingly, OMAEG respectfully requests that the Commission approve the Stipulation without modification.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 21, 2017.

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