

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates	:	Case No. 20-585-EL-AIR
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In the Matter of the Application of Ohio Power Company for Tariff Approval	:	Case No. 20-586-EL-ATA
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In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods	:	Case No. 20-587-EL-AAM
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**POST-HEARING BRIEF OF THE  
THE OHIO ENERGY GROUP**

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The Ohio Energy Group (“OEG”) submits this Post-Hearing Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in these proceedings. Those recommendations are set forth below.

**INTRODUCTION**

On March 12, 2021, Ohio Power Company (“AEP Ohio” or “Company”) submitted the Stipulation and Recommendation (“Stipulation”) that is now before the Commission for consideration.<sup>1</sup> The Stipulation resolves these proceedings in a manner that is supported by Commission Staff and the majority of parties in this case, including the Company, the Office of the Ohio Consumers’ Counsel, OEG, The Kroger Co., Ohio Hospital Association, Walmart Stores East, L.P. and Sam’s East, Inc., Industrial Energy Users-Ohio, Ohio Manufacturers’ Association Energy Group, One Energy, Clean Fuels Ohio, Charge Point, EVgo, and Ohio Cable Telecommunications Association.

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<sup>1</sup> AEP Ohio filed an updated version of the Stipulation addressing typographical errors and with a corrected Schedule C-1 on May 11, 2020 (Joint Exhibit 1).

The Stipulation not only enjoys widespread support among the parties, but it also satisfies the Commission's traditional standard for reviewing proposed settlements. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.<sup>2</sup> While not binding on the Commission, the terms of stipulations are accorded substantial weight.<sup>3</sup> The ultimate issue for the Commission's consideration is whether the agreement, which embodies significant time and effort by the Signatory Parties, is reasonable, and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (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?<sup>4</sup>

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.

As discussed below, the Stipulation satisfies this three-pronged test and the Commission should approve the Stipulation without modification.

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<sup>2</sup> Opinion and Order, Case No. 12-1230-EL-SSO (July 18, 2012) ("FirstEnergy ESP Order") at 24; Opinion and Order, Case No. 11-3549-EL-SSO (November 22, 2011) ("Duke ESP Order") at 41 (citing *e.g. Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989), *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985)).

<sup>3</sup> Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978)).

<sup>4</sup> Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, (68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel* at 126).

## **ARGUMENT**

### **I. The Stipulation Satisfies the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.**

#### **A. The Stipulation Is The Product Of Serious Bargaining Among Capable And Knowledgeable Parties.**

The parties supporting the Stipulation represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, residential customers, commercial customers, industrial customers, hospitals, renewable energy developers, and telecommunications companies. Those parties have extensive experience in Commission matters and were represented by competent counsel. Additionally, the parties had months to review and analyze AEP Ohio's proposals prior to the series of settlement discussions resulting in the Stipulation. Moreover, significant compromises were made on behalf of many of the parties in order to reach a reasonable settlement in these proceedings. The Stipulation therefore satisfies the first prong of the Commission's test.

#### **B. The Stipulation As A Package Benefits Customers And The Public Interest.**

In several major ways, the Stipulation is superior to AEP Ohio's litigation position in these proceedings. Rather than the approximately \$36 million rate increase proposed by AEP Ohio, approval of the Stipulation would result in a significant rate decrease.<sup>5</sup> The Stipulated outcome would also benefit customers by, *inter alia*, reducing the Distribution Investment Rider ("DIR") revenue caps from the levels proposed and placing reliability contingencies on the Company's recovery of increased DIR revenues,<sup>6</sup> terminating the Pilot Throughput Balancing Adjustment Rider ("PTBAR") and waiving a portion of the 2021 PTBAR reconciliation charge,<sup>7</sup> providing for

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<sup>5</sup> Joint Exhibit 1, Attachment A.

<sup>6</sup> Id. at 6-7.

<sup>7</sup> Id. at 10.

shadow billing to help residential customers better understand how to lower their electric bills,<sup>8</sup> establishing an Electric Vehicle billing pilot and a distributed generation tariff,<sup>9</sup> providing for recovery of all interruptible program costs through the Economic Development Rider (“EDR”),<sup>10</sup> mitigating rate impacts to customers resulting from rate zone consolidation,<sup>11</sup> continuing and expanding the Basic Transmission Cost Recovery (“BTCR”) pilot,<sup>12</sup> and withdrawing AEP Ohio’s request to recover Demand Side Management program costs in base rates.<sup>13</sup>

For large energy-intensive users, the continuation and expansion of the BTCR pilot is particularly critical. That pilot better aligns participant’s transmission rates with cost causation, helping to maintain competitive electric rates for manufacturers in Ohio, and potentially reducing AEP Ohio’s total transmission investment.<sup>14</sup> While one party to this case (IGS) seeks to expand access to the pilot billing approach beyond the levels provided for in the Stipulation,<sup>15</sup> no party seeks to eliminate the pilot or opposes its underlying principles. Moreover, the rate impacts of expanding the pilot billing approach to all customers, as advocated by IGS, are still very much unknown and are absent from the record in this case.<sup>16</sup> Indeed, that approach could result in substantial adverse rate impacts to a portion of AEP Ohio customers, particularly its larger customers. The Commission should therefore reject IGS’ proposal and adopt the BTCR pilot approach outlined in the Stipulation, which is consistent with the gradual expansion of the BTCR pilot that the Commission has approved since the pilot’s inception in 2017.

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<sup>8</sup> Id. at 11.

<sup>9</sup> Id. at 12-14.

<sup>10</sup> Joint Exhibit 1 at 15.

<sup>11</sup> Id. at 16-17.

<sup>12</sup> Id. at 17-18.

<sup>13</sup> Id. at 18-19.

<sup>14</sup> Tr. Vol V (May 18, 2021) at 1026:2-13.

<sup>15</sup> IGS Ex. 1 (Direct Testimony of Joseph Haugen).

<sup>16</sup> Tr. Vol V (May 18, 2021) at 1023:24-1024:10.

Given the substantial benefits to customers and the public interest outlined above, the Stipulation satisfies the second prong of the Commission's test.

**C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.**

of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. Rather, the Stipulation advances important policies and principles, including ensuring the availability to consumers of adequate, reliable, safe, effective, nondiscriminatory, and reasonably priced retail electric service, ensuring the diversity of electricity supplies and supplies by encouraging the development of distributed generation facilities, ensuring retail electric service consumers protection against unreasonable sales practices, and facilitating the state's effectiveness in the global economy. The Stipulation therefore satisfies the third prong of the Commission's test.

**CONCLUSION**

**WHEREFORE**, for the foregoing reasons, the Commission should approve the Stipulation without modification.

Respectfully submitted,

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

June 14, 2021

**COUNSEL FOR THE OHIO ENERGY GROUP**

## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 14<sup>th</sup> day of June, 2021 to the following:

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

OHIO POWER COMPANY DBA AEP OHIO  
STEVEN T. NOURSE  
1 RIVERSIDE PLAZA 29TH FLOOR  
COLUMBUS OH 43215

\*MILLER, CHRISTOPHER L. MR.  
ICE MILLER LLP  
250 WEST STREET  
COLUMBUS OH 43215

\*GALLON, ERIC B. MR.  
PORTER WRIGHT MORRIS & ARTHUR LLP  
41 S. HIGH ST., SUITE 3000 HUNTINGTON CENTER  
COLUMBUS OH 43215

\*STINSON, DANE  
BRICKER & ECKLER  
100 SOUTH THIRD STREET  
COLUMBUS OH 43215

\*MCKENNEY, BRYCE A  
MCNEES WALLACE & NURICK  
21 EAST STATE STREET, 17TH FLOOR  
COLUMBUS OH 43215

MCDONNELL, MATTHEW C  
DICKINSON WRIGHT PLLC  
150 E GAY ST STE 2400  
COLUMBUS OH 43215

\*VORYS, WILLIAM V MR.  
DICKINSON WRIGHT PLLC  
150 EAST GAY STREET, SUITE 2400  
COLUMBUS OH 43215

\*BINGHAM, DEB J. MS.  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
65 EAST STATE STREET, 7TH FLOOR  
COLUMBUS OH 43215-4203

\*WHITFIELD, ANGELA MRS.  
CARPENTER LIPPS & LELAND LLP  
280 NORTH HIGH STREET, SUITE 1300  
COLUMBUS OH 43215

HEALEY, CHRISTOPHER  
65 E STATE STREET SUITE 700  
COLUMBUS OH 43215

\*NAEDER, KIMBERLY M MRS.  
AGO, 30 E. BROAD STREET  
COLUMBUS OH 43215

\*PETRUCCI, GRETCHEN L. MRS.  
VORYS, SATER, SEYMOUR AND PEASE  
52 EAST GAY STREET, P.O. BOX 1008  
COLUMBUS OH 43216-1008

\*ALLEN, BETHANY

IGS ENERGY

6100 EMERALD PARKWAY

DUBLIN OH 43016

MAINS, RACHEL N.

BRICKER & ECKLER LLP

100 SOUTH THIRD STREET

COLUMBUS OH 43215

\*O'DONNELL, TERRENCE

DICKINSON WRIGHT PLLC

150 EAST GAY STREET

COLUMBUS OH 43215

\*ORAHOD, TERESA

BRICKER & ECKLER LLP

100 SOUTH THIRD STREET

\*PIRIK, CHRISTINE M.T.

DICKINSON WRIGHT, PLLC

150 E. GAY STREET SUITE 2400

COLUMBUS OH 43215

\*DOVE, ROBERT MR.

KEGLER BROWN HILL RITTER CO LPA

65 E. STATE STREET SUITE 1800

COLUMBUS OH 43215-4295

\*LEPPLA, MIRANDA R MS.

THE OHIO ENVIRONMENTAL COUNCIL

1145 CHESAPEAKE AVENUE SUITE I

COLUMBUS OH 43212

BORCHERS, DYLAN F

BRICKER & ECKLER LLP

100 S THIRD STREET

COLUMBUS OH 43215

\*TAVENOR, CHRIS

THE OHIO ENVIRONMENTAL COUNCIL

1145 CHEASAPEAKE AVENUE, SUITE I

COLUMBUS OH 43212

\*DOUGHERTY, TRENT A MR.

OHIO ENVIRONMENTAL COUNCIL

1145 CHESAPEAKE AVE SUITE I

COLUMBUS OH 43212

\*WOYT, ELIA O MR.

VORYS, SATER, SEYMOUR AND PEASE LLP

106 SOUTH MAIN STREET, SUITE 1100

AKRON OH 44308

DONADIO, THOMAS V

CARPENTER LIPPS & LELAND LLP

280 NORTH HIGH STREET SUITE 1300

\*BLEND, CHRISTEN M. MS.

AMERICAN ELECTRIC POWER SERVICE CORPORATION

1 RIVERSIDE PLAZA 29TH FLOOR

COLUMBUS OH 43215

\*SCOTT, TONNETTA Y MRS.

OHIO ATTORNEY GENERAL

180 EAST BROAD STREET

COLUMBUS OH 43215

\*CAHILL, VALERIE A MS.

WHITT-STURTEVANT

88 E. BROAD ST. #1590

COLUMBUS OH 43215

\*GRUNDMANN, CARRIE H

SPILMAN THOMAS & BATTLE PLLC

110 OAKWOOD DRIVE, SUITE 500

\*BOJKO, KIMBERLY W. MRS.  
CARPENTER LIPPS & LELAND LLP  
280 NORTH HIGH STREET 280 PLAZA SUITE 1300  
COLUMBUS OH 43215

\*MOLTER, ZEE  
180 EAST BROAD ST  
COLUMBUS OH 43215

\*BETTERTON, EVAN F MR.  
IGS ENERGY  
6100 EMERALD PARKWAY  
DUBLIN OH 43016

\*CHILCOTE, HEATHER A  
PUBLIC UTILITIES COMMISSION OF OHIO  
180 EAST BROAD STREET  
COLUMBUS OH 43215

HOGAN, CHRISTOPHER J.  
ZIEGER, TIGGES & LITTLE LLP  
41 SOUTH HIGH STREET 3500 HUNTINGTON CENTER  
COLUMBUS OH 43215

DARR, FRANK P.  
6800 LINBROOK BLVD.  
COLUMBUS OH 43235

MCKENNA, LILLY  
KEYES & FOX LLP  
580 CALIFORNIA ST 12TH FL  
SAN FRANCISCO CA 94104

LITTLE, JR., MARION H.  
ZIEGER, TIGGES & LITTLE LLP  
41 SOUTH HIGH STREET 3500 HUNTINGTON CENTER  
COLUMBUS OH 43215

\*FLEISHER, MADELINE MS.  
DICKINSON WRIGHT PLLC  
150 E. GAY STREET SUITE 2400  
COLUMBUS OH 43215

WINSTON-SALEM NC 27103

LAZER, REBECCA LEGAL ASSISTANT  
ENVIRONMENTAL LAW & POLICY CENTER  
35 E WACKER DR STE 1600  
CHICAGO IL 60601

\*SPENCER, KEN MR.  
ARMSTRONG & OKEY, INC.  
222 EAST TOWN STREET, 2ND FLOOR  
COLUMBUS OH 43215

\*GREENE, TRACY J MRS.  
OHIO CONSUMERS' COUNSEL  
65 EAST STATE ST. 7TH FLOOR  
COLUMBUS OH 43215

\*FISCHER, MARY E MS.  
PUBLIC UTILITIES COMMISSION OF OHIO  
180 E. BROAD ST.  
COLUMBUS OH 43215

\*ZALOGA, ALICIA A MS.  
KEYES & FOX, LLP  
1155 KILDAIRE FARM ROAD, STE. 202-203  
CARY NC 27511

AKHBARI, ELYSE H  
100 SOUTH THIRD STREET  
COLUMBUS OH 43215-4291

\*PRITCHARD, MATTHEW R. MR.  
MCNEES WALLACE & NURICK  
21 EAST STATE STREET 17TH FLOOR  
COLUMBUS OH 43215

\*KELTER, ROBERT MR.  
ENVIRONMENTAL LAW & POLICY CENTER  
35 EAST WACKER DRIVE, SUITE 1600  
CHICAGO IL 60601



\*SETTINERI, MICHAEL J. MR.  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 EAST GAY STREET PO BOX 1008  
COLUMBUS OH 43215  
\*FYKES, LUCAS A MR.  
WHITT STURTEVANT LLP  
88 E. BROAD STREET SUITE 1590  
COLUMBUS OH 43215

\*KING, KELLI C.  
PUCO  
180 E. BROAD ST.  
COLUMBUS OH 43215

WILLIAMSON, DERRICK PRICE  
SPILMAN THOMAS & BATTLE PLLC  
1100 BENT CREEK BLVD STE 101  
MECHANICSBURG PA 17050

WALMART INC DIR  
STEVE W CHRISS  
2608 SE J ST  
BENTONVILLE AR 72716

WALMART STORES EAST LP  
DERRICK PRICE WILLIAMSON  
SPILMAN THOMAS & BATTLE, PLLC  
1100 BENT CREEK BLVD. STE101  
MECHANICSBURG PA 17050

ARMADA POWER LLC  
DREW ROMIG  
230 WEST ST SUITE 150  
COLUMBUS OH 43215

OHIO CABLE TELECOMMUNICATIONS ASSOC.  
DAVID KOREN, EXEC. DIRECT  
3274 KIRKHAM ROAD  
UPPER ARLINGTON OH 43221

LITTLE, JR., MARION H.  
ZIEGER, TIGGES & LITTLE LLP  
41 SOUTH HIGH STREET 3500 HUNTINGTON CENTE  
COLUMBUS OH 43215

\*FINNIGAN, JOHN MR.  
OHIO CONSUMERS' COUNSEL  
65 EAST STATE ST. 7TH FLOOR  
COLUMBUS OH 43215  
\*COX, CAROLINE MS.  
ENVIRONMENTAL LAW & POLICY CENTER  
35 E WACKER DR STE 1600 STE 1600  
CHICAGO IL 60601

\*NOURSE, STEVEN T MR.  
AMERICAN ELECTRIC POWER SERVICE CORPORATI  
1 RIVERSIDE PLAZA, 29TH FLOOR  
COLUMBUS OH 43215

\*WOLFFRAM, TANNER  
AMERICAN ELECTRIC POWER COMPANY  
1 RIVERSIDE PLAZA  
COLUMBUS OH 43215

SCHLEINGER, JACOB  
KEYES & FOX LLP  
1580 LINCOLN STREET SUITE 880  
DENVER CO 80203

GLOVER, REBEKAH J.  
MCNEES WALLACE & NURICK LLC  
21 E. STATE STREET 17TH FLOOR  
COLUMBUS OH 43215

OLIKER, JOSEPH E  
IGS ENERGY  
6100 EMERALD PARKWAY  
DUBLIN OH 43016

\*NUGENT, MICHAEL A MR.

ONE ENERGY ENTERPRISES LLC  
KATIE JOHNSON TREADWAY  
12385 TOWNSHIP ROAD 215  
FINDLAY OH 45840

ZECO SYSTEMS INC, DBA GREENLOTS DIR OF POLICE  
JOSHUA J COHEN  
1200 G ST NW, STE 800  
WASHINGTON DC 20005

IGS ENERGY  
6100 EMERALD PARKWAY  
DUBLIN OH 43016

\*PARRAM, DEVIN D MR.  
BRICKER AND ECKLER LLC  
100 SOUTH THIRD STREET  
COLUMBUS OH 43215

O'DONNELL, TERRENCE ATTY  
DICKINSON WRIGHT PLLC  
150 E GAY ST 24TH FL

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