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
In the Matter of the Application of Ohio Power Company for Tariff Approval.	)))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

INITIAL POST-HEARING BRIEF OF OHIO POWER COMPANY IN SUPPORT OF THE JOINT STIPULATION AND RECOMMENDATION

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TABLE OF CONTENTS

BACKGROUND

On June 1, 2020, Ohio Power Company (AEP Ohio) submitted its application to increase its rates pursuant to R.C. 4909.18 (Application). Due to the closure of the Commission's offices from June 1, 2020, through June 5, 2020, the application for a rate increase was accepted for filing on June 8, 2020, and deemed timely. AEP Ohio filed direct testimony in support of its application on June 15, 2020. By Entry issued on November 23, 2020, as amended by Entries issued on December 1, 2020, January 14, 2021, January 27, 2021, and February 1, 2021, the procedural schedule was established in these cases such that a public hearing was held on February 8, 2021. Prehearing conferences were held on February 11, 2021, March 26, 2021, and May 10, 2021, via Webex. On March 4, 2021, the evidentiary hearing was called and the proceedings were continued to permit the parties to engage in further settlement negotiations.

On March 12, 2021, as amended on April 7, 2021, a Joint Stipulation and Recommendation (Stipulation) was filed by AEP Ohio and 13 other parties to the proceedings. The evidentiary hearing reconvened on May 12, 2021, and continued each business day through May 18, 2021, so that the Signatory Parties could present evidence in support of the Stipulation and the Opposing Parties could present evidence in opposition of the Stipulation. Initial Briefs are due June 14, 2021 and Reply Briefs are due July 6, 2021.

INTRODUCTION

Rule 4901-1-30 of the Ohio Administrative Code authorizes parties to Commission proceedings to enter into stipulations. Although stipulations are not binding on the Commission, their terms are accorded substantial weight. *See Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) ("*Consumers' Counsel*"), citing *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). That is especially true where, as here, the Stipulation is supported or unopposed by the majority of parties in a proceeding. *See In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 20 (May 13, 2010) ("*In re Columbus S. Power Co.*"). Although the Commission may place substantial weight on the terms of a stipulation, it must determine from the evidence what is just and reasonable. *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, 950 N.E.2d 164, ¶ 19.

In evaluating a contested settlement, the Commission applies a well-established three-part test:

(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?

In re Columbus S. Power Co. at 21 (citing numerous cases in support of this standard). The Ohio Supreme Court has repeatedly approved this three-part test. *See, e.g.*, *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel*, 64 Ohio St.3d at 126.

The Stipulation satisfies the three-part test for evaluation of contested settlements. First, there is direct evidence supporting that the Stipulation is the product of serious bargaining among capable, knowledgeable parties and none of the Opposing Parties disputes that conclusion. Second, the Stipulation reflects an overall package of terms and conditions that benefits ratepayers and the public interest, including provisions that:

- result in an overall decrease to the Company's proposed revenue requirement of $110.8 million, including a lower authorized rate of return
- result in significant reductions in the DIR and ESRR caps
- provide a reasonable result and implement mitigation rates to ensure gradualism for the general service tariffs
- provide a waiver of AFS fees to OHA members

- provide that the residential delayed payment fee will be delayed by one year
- result in a reasonable residential customer charge of $10 per month
- eliminate the PTBAR
- expand the BTCR pilot program
- establish new pilot programs to better understand how technologies such as renewable energy and electric vehicles affect the distribution system
- advance transparency through the shadow billing commitments

(AEP Ohio Ex. 6 at 17-18; Jt. Ex. 1 at Section III.) Finally, the Stipulation violates no important regulatory principle or practice.

The Opposing Parties ignore the benefits associated with the Stipulation and manufacture arguments attempting to show violations of important regulatory principles and policies where there are none. IGS and Direct argue that the continuation of zero placeholder rider rates for the Retail Reconciliation Rider (RRR) and SSO Credit Rider (SSOCR) violates important regulatory principles and practices. In particular, IGS/Direct witness Lacey claims that cost of service principles require unbundling in a very specific (and arbitrary) way that happens to advance IGS's and Direct's financial interests. But as Staff witness Craig Smith testified, Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there is an equal amount of CRES costs, and there is no reason to differentiate the two. (Tr. II at 366-367.)

Staff concluded that the Company's accounting and tracking systems were never designed to differentiate between SSO service versus CRES service and cannot track or identify those costs separately. (*Id.* at 370-372.) The Staff Report recommended leaving the RRR at zero in the Staff Report because it could not differentiate the SSO and CRES costs and does not want to put in an inaccurate figure. (*Id.* at 354.) In reality, the SSO unbundling issue is a rate design argument that, as is the norm for such disputes, involves a tremendous amount of discretion and policy considerations and ultimately is more of an "art than science." Contrary to IGS/Direct's position, mere continuation of zero placeholder rates for these riders, consistent with the Staff Report, does not violate any important regulatory principles or practices.

Similarly, other witnesses essentially ignore the three-part test and make the same arguments they made in the pre-settlement phase of the case. The opposing parties that advocate for a Commission decision that incorporates a DSM plan fail to establish their case under the three-part test and wrongly attempt to use this case as a vehicle to advocate DSM. NEP and Armada also seek specific results that line up with their financial interests but otherwise do not support a negative finding on the three-part test. Of course, merely repeating one's litigation position is not an appropriate basis for contesting a settlement. *Cf. Ohio Partners for Affordable Energy v. Pub. Util. Comm.'n (In re E. Ohio Gas Co.)*, 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32 (holding that "[t]he fact that [a] stipulation did not resolve all of [an intervenor]'s opposition arguments does not mean that the commission's approval of the stipulation was unlawful"). As further demonstrated in detail below, the Signatory Parties have demonstrated that the Stipulation passes the three-part test and the opposing intervenors failed to demonstrate otherwise.

ARGUMENT

I. The Stipulation satisfies the three-part test for evaluation of contested settlements

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties

The first prong of the three-part tests asks whether a settlement is "a product of serious bargaining among capable, knowledgeable parties." *In re Columbus S. Power Co.* at 21. The Stipulation here easily satisfies that standard. Indeed, the opponents did not submit any testimony contesting that the first prong is met. The Stipulation is the result of a lengthy negotiation involving experienced representatives of many stakeholder groups. The negotiating parties included a variety of diverse interests, including Staff; industrial and commercial customers, including hospitals; the Ohio Consumers' Counsel on behalf of all residential customers; competitive groups from the electric vehicle industry; and a renewable energy developer. (Jt. Ex. 1 at 22.) All negotiating parties were capable and knowledgeable and were represented by experienced counsel; nearly all parties are frequent participants in Commission proceedings. (Jt. Ex. 1 at 1-2, 22.)

AEP Ohio witness Moore testified as follows with respect to the first prong of the three-part test:

> The Stipulation was the product of meetings and negotiations involving experienced counsel as well as technical experts for some parties in this case. Both counsel and the technical experts are familiar with and regularly participate in regulatory matters before this Commission. There were numerous meetings in which the parties in this case had the opportunity to negotiate each provision of the Stipulation. All parties were invited to these meetings and no party was left out of the opportunity to negotiate. This Stipulation differs in several respects from the proposal submitted in the Application because it reflects an overall compromise involving a balance of competing positions from multiple parties and incorporates many of the recommendations offered by Staff and interveners.

(AEP Ohio Ex. 6 at 16.) Signatory Party OCC witness Willis testified that there was a lot of give and take in the settlement negotiations and that settlement discussions spanned several months, with three to four meetings per week at times. (Tr. II at 299.)

The Signatory Parties have demonstrated that the first prong of the test is satisfied, and no opposing party contests that the Stipulation meets the first prong. The Commission therefore, should find that this part of the test has been satisfied.

B. The Stipulation as a package benefits ratepayers and the public interest

As further discussed in more detail below, the Stipulation reflects an overall package of terms and conditions that benefits ratepayers and the public interest, including provisions that:

- result in an overall decrease to the Company's proposed revenue requirement of $110.8, million including a lower authorized rate of return
- result in significant reductions in the DIR and ESRR caps
- provide a reasonable result and implement mitigation rates to ensure gradualism for the general service tariffs
- provide a waiver of AFS fees to OHA members
- provide that the residential delayed payment fee will be delayed by one year
- result in a reasonable residential customer charge of $10 per month
- eliminate the PTBAR
- expand the BTCR pilot program
- establish new pilot programs to better understand how technologies such as renewable energy and electric vehicles affect the distribution system
- advance transparency through the shadow billing commitments

(AEP Ohio Ex. 6 at 17-18; Jt. Ex. 1 at Section III.) Likewise, Staff witness Lipthratt and OCC witness Willis testified to similar benefits of the Stipulation package. (Staff Ex. 6 at 4-5; OCC Ex. 1 at 5-10.)

1. The Stipulation benefits ratepayers and the public interest by reducing the Company's requested revenue requirement, cost of capital, DIR spend and the ESRR spend by significant amounts

AEP Ohio witness Moore demonstrated that the Stipulation provides additional financial benefits and efficiencies as compared to a fully litigated case:

> The Stipulation resulted in an overall decrease to the Company's proposed revenue requirement of $110.8 million, as shown on stipulated Schedule A-1 which is included as Attachment A page one of three to the stipulation.

(AEP Ohio Ex. 6 at 17; Jt. Ex. 1 at 24 (Schedule A-1).) Likewise, Staff witness Lipthratt also testified that the Stipulation provided a benefit through a stipulated revenue increase of $955.1 million versus the $1,066 million requested in the Application. (Staff Ex. 6 at 5.) The typical bill comparison associated with the overall revenue requirement is shown in AEP Ohio Ex. 4A, which includes an approximately 2.5% decrease for a residential customer using 1,000 kWh per month.

AEP Ohio witness Moore also demonstrated how the Stipulation provides benefits and efficiencies relative to the Distribution Investment Rider (DIR) and Enhanced Service Reliability Rider (ESRR):

> In addition, the decrease in the level of spend for certain programs such as the DIR as well as the ESRR as compared to the proposed amounts results in a further reduction. As proposed, the DIR spending levels were approximately $440 million including the proration of 2024 through May. Per the Stipulation, these caps were reduced to approximately $315 million with the ability to increase by an additional $21 million if certain reliability metrics are met. The total vegetation management spend was also reduced by approximately $57 million as compared to the Application. Together, the total savings per the Stipulation represent a reduction between $182 million to $161 million.

(AEP Ohio Ex. 6 at 17.) The full set of rate impacts that incorporate the DIR and ESRR changes are reflected in AEP Ohio Ex. 6A (Revised Ex. AEM-S1), which shows significant benefits in each of the four years of mitigation rate transition period. Similarly, OCC witness Willis supported the benefits associated with the substantially lower DIR and ESRR caps reflected in the Stipulation. (OCC Ex. 1 at 7.)

Further, AEP Ohio witness McKenzie testified that the cost of capital provisions of the Stipulation are beneficial due to each of the following factors supported in his analyses:

- The 9.7% ROE specified in the Stipulation falls below the 9.85% midpoint of the 9.3% to 10.4% cost of equity range recommended in McKenzie's June 15, 2020 direct testimony.
- An ROE of 9.7% falls within the range of returns on common equity recently authorized for electric utilities by other state regulatory agencies.
- An ROE of 9.7% falls below the average authorized ROE reported for the firms in McKenzie's proxy group and the five electric utilities referenced in the Staff Report.
- The reasonableness of a 9.7% ROE is also supported by the significant increase in utility beta values, which documents the higher risks that common equity investors associate with electric utilities since the onset of the COVID-19 pandemic.
- The results of the comparable earnings approach, as applied to the firms in McKenzie's electric utility proxy group and in the Staff Report, supports the reasonableness of the 9.7% ROE adopted in the Stipulation.

- The capital structure referenced as the basis for computing the overall rate of return under the Stipulation is consistent with industry benchmarks and represents a reasonable mix of capital sources, particularly given the need to support AEP Ohio's credit standing as it undertakes significant capital investments in utility infrastructure.

(AEP Ohio Ex. 5 at 3.) Likewise, Staff witness Lipthratt testified that the Stipulation provided a benefit through a rate of return of 7.28% that is lower than the 7.9% requested in the Application. (Staff Ex. 6 at 5.) Similarly, OCC witness Willis recognized the benefits associated with the lower rate of return reflected in the Stipulation. (OCC Ex. 1 at 6.) No opposing witness challenged any of these points.

Thus, the cost of capital provisions of the Stipulation convey significant benefits as part of the package.

2. The Stipulation provides for new pilots that will allow future opportunities to see how certain technologies such as renewable energy and electric vehicles impact the distribution system

The Stipulation provides for new pilot tariff provisions associated with Plug-In Electric Vehicles (PEV), as well as a pilot Distributed Generation (DG) tariff. (Jt. Ex. 1 at Section III.E.16 ; AEP Ohio Ex. 6 at 10-11; AEP Ohio Ex. 4 at 5.) These pilot programs serve the public interest and benefit ratepayers because they allow the Company to gather data necessary to understand the impacts of new technologies on the Company's distribution system, incentivize public and residential EV charging stations to charge during off-peak times, and incentivize renewable resources to operate during peak times to help reduce the overall six coincident peaks (6 CP), respectively. (AEP Ohio Ex. 6 at 19.) As such, the inclusion of these pilot programs in the Stipulation supports a finding that the Stipulation reflects an overall package that benefits ratepayers and the public interest.

The Stipulation includes two pilot PEV tariff provisions; the first provides lower distribution rates for EV charging that occurs during off-peak hours for residential service. (*Id.* at 10.) The second pilot provision allows for new separately metered Level 2 or DCFC EV charging stations to be billed on non-demand metered rates. (*Id.*) Additionally, as part of the implementation of Schedule PEV under the Stipulation, the Company agreed to meet with interested parties at least once a year to discuss potential adjustments to the customer cap, rate design parameters and other related matters. (*Id.* at 11.) Finally, the Company agreed to commit $100,000 of shareholder funding to marketing and education efforts to support the PEV tariff provisions. (*Id.*)

Based on the record established in this proceeding, the pilot PEV provisions described above and included in the Stipulation benefit ratepayers and the public interest. Testifying in support of the Stipulation, Clean Fuels Ohio (CFO) witness Kelley highlighted that it is vital that utilities and utility regulators understand the tools most effective to manage the new load associated with greater EV penetration to avoid grid overload and costly upgrades, given the trends in the automobile manufacturing industry. (CFO Ex. 1 at 4.) The PEV pilot provisions enable exactly that. By limiting the PEV pilot to 500 customers, the Company will be able to collect data on the impacts of EV chargers on the Company's distribution system to better position itself to manage new load associated with greater EV penetration across the Company's service territory, thereby potentially helping avoid more costly system upgrades that would otherwise be necessary to meet the needs of greater EV charger deployment if the Company took a more retroactive approach. (AEP Ohio Ex. 6 at 10.)

The PEV pilot's non-demand rates will also provide rate design input for Level 2 and DCFC. In support of the non-demand PEV pilot rates, EVgo witness Rafalson explained why, in her opinion, the non-demand rates included in the pilot provision are in the public interest. (EVgo Ex. 1 at 4.) She explained that DCFC must disburse a significant amount of electricity to fully recharge a vehicle over a short period of time, typically less than an hour. (*Id.*) This, by its nature, represents a demand increase that would be captured and recovered through a demand charge even though the station itself may be used infrequently. (*Id.*) Thus, in her opinion, the non-demand metered rates included in the pilot provision benefit customers and the public interest because they offer appropriate rate design incentives to facilitate development of charging infrastructure, can help increase the efficiency of the grid, and, potentially, reduce peak load, thereby reducing costs to all customers. (*Id.*)

In addition to the benefits associated with gathering information through a limited pilot program, the PEV pilot incentivizes public and residential charging during off-peak hours. (AEP Ohio Ex. 6 at 19.) Because it encourages charging during off-peak hours and adding load to the system through participation in Schedule PEV, the residential rate design in Schedule PEV would not result in other residential customers paying more than they otherwise would without the pilot. (Tr. I at 93-94.) Thus, the pilot Schedule PEV benefits ratepayers and the public interest by incentivizing off-peak charging, which helps avoid increased costs to other residential customers who do not participate, while allowing the Company to analyze the impact of EV charging on the system for future consideration in subsequent filings.

Finally, the Stipulation provides for a pilot DG tariff, which will be limited to 50 MW. (AEP Ohio Ex. 4 at 5.) The purpose of this tariff is to encourage customers owning distributed generation to operate their system during the summer and winter peaks. (*Id.*) The pilot accomplishes its purpose through a demand charge based on the customer's six coincident peaks

(6 CP). (*Id.*) Therefore, the DG pilot provides the appropriate incentive to operate renewable resources to reduce the overall 6 CP to the distribution system. (AEP Ohio Ex. 6 at 19.)

Thus, the record is clear that the Company's proposed pilot programs, as provided for in the Stipulation, benefit customers and the public interest. Specifically, the pilots will allow the Company to determine how emerging technologies impact its distribution system, while incentivizing renewable resources to operate during periods to reduce the overall 6 CP to the distribution system and public and residential charging stations to charge during off-peak hours. These incentives directly benefit ratepayers by adding load, which further socializes the Company's costs of service, while ensuring those customers not participating in the pilot programs will avoid increased costs. Thus, the pilot provisions included in the Stipulation further support a finding that the Stipulation benefits customers and the public interest, as, based on the record, the pilots themselves are clearly in the public interest and benefit customers.

3. The Stipulation expands the BTCR pilot to further provide alignment in the transmission charges of customers participating to lower their contribution to the one coincident peak and to analyze how that participation lowers the overall transmission revenue requirement

The Stipulation also continues and expands the BTCR (Basic Transmission Cost Recovery) Pilot. (*See* Jt. Ex. 1 at 17.) The Commission originally approved the BTCR Pilot in 2017, as part of its order adopting the Global Settlement Stipulation that resolved the Company's 2011 electric security plan filing and several other pending applications. *See In the Matter of the Application of Columbus Southern Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO et al., Order on Global Settlement Stipulation at 32-35 (Feb. 23, 2017) ("Global Settlement Order"). Customers participating in the BTCR Pilot are charged a demand rate for transmission charges "based on the customer's demand during the single zonal transmission peak as defined by the PJM Open Access Transmission Tariff (*i.e.*, the customer's individual network service peak load (NSPL) tag) * * * ." *Id.* at 34. In other words, "[t]he BTCR pilot permits participants to have their basic transmission costs allocated on the basis of their 1 CP rather than a customer class allocation." *In the Matter of the Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, *et al.* ("*ESP IV*"), Opinion and Order at ¶ 141 (Apr. 25, 2018) ("*ESP IV* Order"). They are also charged an "energy rate [that is] equal to the BTCR energy rate that would otherwise apply to the customer absent the pilot program * * * ." Global Settlement Order at 35.

Because it is a pilot program, the BTCR Pilot must limit customer participation in the program. As the Commission has noted, "[t]he nature of any pilot program is to keep the number of participants manageable in order to make a determination regarding the efficacy of the program." *ESP IV* Order at ¶ 146. However, the program has expanded over time. Under the original 2017 Global Settlement Order, up to 19 customers could participate in the BTCR Pilot: five OMAEG members, three Direct Energy public school customers, four lEU members, five OEG members, and two IGS customers. Global Settlement Order at 32. In a 2018 order, the Commission approved a stipulation that provided five more "participation slots" each for OMAEG, OEG, and IEU members, for a total of 34 participation slots. *ESP IV* Order at ¶ 96. The approved stipulation also imposed a MW cap on the pilot program, starting at 400 MW in 2018 and increasing to 500 MW in 2019 and 2020 (plus an additional 20MWs for schools each year). *Id.* at ¶ 98. The Stipulation filed in this case will continue that gradual expansion. The total participation allotments for OEG, IEU, and OMAEG will be increased to 15 slots each. (*See* Jt. Ex. 1 at 17.) And the BTCR Pilot participation cap will be increased to 800 MW for

2022, 900 MW for 2023, and 1,000 MW for 2024, excluding New Load (*e.g.*, new customer accounts, and new incremental load above normal fluctuations in customer demand). (*Id.*)

The Commission has previously held that "the BTCR pilot complies with the second prong of the test used by the Commission to evaluate stipulations[,]" because of the benefits the pilot provides. *ESP IV* Order at ¶ 147. The Commission explained:

> The purpose of the BTCR pilot is to lower the overall demand at peak times and, in so doing, to reduce AEP Ohio's total transmission costs incurred from PJM and possibly to avoid the need for transmission system upgrades. Participating customers have the opportunity to reduce their consumption and their bill and, to the extent that the BTCR pilot reduces AEP Ohio's overall transmission costs and the need for transmission upgrades, all customers receive the benefit.

(Internal citations omitted). *Id.* Further, intervenors opposing the stipulation concede that the BTCR Pilot benefits ratepayers and the public interest. IGS witness Joseph Haugen admitted, under questioning, that "the BTCR pilot program * * * does provide benefits to those customers that [participate] in the program" and "is a better [transmission] cost method allocation policy than not having it at all." (Tr. V at 1016-1017.) Mr. Haugen opined that the expansion of the BTCR Pilot could reduce investments in transmission area-wide. (*Id.* at 1030.) He also acknowledged that, if the expansion of the BTCR Pilot reduces investments in transmission area-wide, it could reduce costs for Ohio consumers "by reducing the peak demand for transmission as a whole." (*Id.* at 1030.)

The expansion of the BTCR Pilot will further the alignment of participating customers' transmission charges with PJM costs, allowing them to lower their contribution to the one coincident peak (1 CP), and allowing the Company "to analyze how that participation lowers the overall transmission revenue requirement." (AEP Ohio Ex. 6 at 18.) For all of these reasons, the BTCR Pilot continues to benefit ratepayers and the public interest, and supports a finding that the Stipulation as a whole does the same.

4. The Stipulation implemented a reasonable revenue allocation and rate mitigation provisions to ensure reasonable rate impacts for all customer classes

Section III.F.1 of the Stipulation provides that the overall revenue requirement approved in this case will be allocated 56.77% to the residential class, 3.38% to the non-demand metered general service class, 26.52% to the secondary demand metered general service class, 9.73% to the primary demand metered general service class, 0.75% to the sub/transmission general service class, and 2.85% to the lighting class. (Jt. Ex. 1 at 16; AEP Ohio Ex. 4 at 6.) The Stipulation also contains several provisions intended to mitigate potential bill impacts for certain customer classes associated with the combination of the CSP and OP rate zones. (Jt. Ex. 1 at 16-17 (III.F.2-3), 18 (III.F.6-7).) Specifically, the Stipulation provides for a stepped implementation of General Service primary voltage demand rates and non-demand metered energy rates over four years; retains separate General Service schedules for demand metered and non-demand metered customers; and modifies the sub/transmission General Service schedules to include a varying, demand-based customer charge, which minimizes potential bill impacts for smaller high voltage customers, particularly in the Ohio Power rate zone. (*Id.*; AEP Ohio Ex. 4 at 6-7.)

NEP, through its Armada-employee witness Eric Rehberg (who adopted expert rate design testimony prepared by Susanne Buckley), opines that the proposed General Service rate schedule and mitigation measures described above are insufficient because they allegedly "do not account for gradual rate increases for low-load factor customers." (NEP Ex. 34 at 8.) Mr. Rehberg is not qualified to offer this opinion, which is flawed in any event, and the Commission should give no weight to his testimony for NEP. Although holding himself out in NEP Ex. 34 as an expert in rate impact and rate design issues, Mr. Rehberg conceded at hearing that he has no formal training in ratemaking or cost of service analysis, has never prepared a cost of service analysis, and has not testified as an expert witness regarding cost-of-service, class cost allocation, or customer rate impacts. (Tr. IV at 658-659.) Neither Mr. Rehberg's biography posted on Armada's website nor his LinkedIn profile mentions any experience in these areas. (*Id.* at 665-666, 668-669; Kroger Ex. 1, 2.) Mr. Rehberg holds a Bachelor of Science in electrical and computer engineering, not in accounting, economics, or mathematics, and he has no post-graduate degrees. (Tr. IV at 657.) Indicative of his lack of qualifications to offer testimony on rate design issues, Mr. Rehberg could not even answer basic questions at hearing regarding whether distribution costs are fixed or volumetric in nature. (*Id.* at 729.)

In addition to his lack of qualifications to opine regarding the reasonableness of the Stipulation's General Service rate design provisions, Mr. Rehberg troublingly also did not actually validate the analysis by Ms. Buckley that he purportedly adopted. Mr. Rehberg did not assist Ms. Buckley in any way in conducting her analysis. (*Id.* at 670.) In fact, he did not become aware of Ms. Buckley's analysis until late April 2021. (*Id.* at 673.) Mr. Rehberg does not even know whether his analysis modified any of the assumptions Ms. Buckley made when he attempted to reproduce her analysis, because he did not have access to her workpapers. (*Id.* at 673-674.)

Regardless of whether it is characterized as an analysis that Mr. Rehberg adopted or one that Mr. Rehberg performed himself, the analysis that Mr. Rehberg's NEP testimony sponsors also is not reliable. Mr. Rehberg testified that the analysis considered only four master-metered NEP accounts, selected and provided to Mr. Rehberg by NEP. (*Id.* at 743-745.) Mr. Rehberg did not analyze any of the submetered accounts behind the four master-metered NEP accounts. (*Id.* at 760-761.) He did not know what submetered loads – whether residential, restaurants, pool houses, or otherwise – were represented within the four master-meter accounts he was given.

(*Id.* at 761, 763.) He did not know whether the submetered accounts behind the master-metered NEP accounts would be low-load factor customers. (*Id.* at 793.) He also conceded that he did not know to what extent or in what direction the submetered accounts behind the master-metered NEP accounts varied month to month. (*Id.* at 841.) Mr. Rehberg did not consider any other types of low-load factor customers, including single shift manufacturers, churches, schools, small medical, or commercial offices. (*Id.* at 745, 747.) Moreover, although Mr. Rehberg testified that the analysis his NEP testimony supports excluded generation costs, transmission costs, and non-consumption-based distribution costs, Mr. Rehberg conceded that he included customer charges, and that such charges are not consumption-based. (*Id.* at 837-838). He further could not identify a single AEP Ohio rider that the analysis excluded (*id.* at 839), leaving the parties and the Commission to guess as to what costs actually are reflected in the low-load factor customer analysis.

The use of only four accounts, all of which represent the same type of customer, which Mr. Rehberg did not select or independently analyze, which did not consider any other low-load factor customer-type's usage, and which is based on unknown costs (or at best, costs that are inconsistent with Mr. Rehberg's description of them) does not constitute an analysis that is "based on reliable scientific, technical, or other specialized information" as Ohio R. Evid. 702(C) requires for expert witness testimony. Specifically, due to the foregoing deficiencies, the analysis that Mr. Rehberg's NEP testimony supports failed to be conducted in a way that is objectively verifiable, reliably implemented, or conducted in a way that will yield an accurate result. Ohio R. Evid. 702(C)(1)-(3). Accordingly, the Commission should give no weight to Mr. Rehberg's criticism regarding the Stipulation's impact on low-load factor customers.

Unlike Mr. Rehberg, Company witness Roush is qualified to provide expert testimony regarding rate design and cost allocation issues. (*See* AEP Ohio Ex. 4 at 2.) Mr. Roush is the Managing Director of AEP's Regulated Pricing and Analysis group, with a Bachelor of Science in mathematics, a Master of Business Administration, and over 30 years' experience in rate design and cost of service analysis. (*Id.*) And also unlike Mr. Rehberg, Mr. Roush performed a reliable analysis of the Stipulation's rate impacts on all customers, using a well-accepted and clearly defined format for doing so. (AEP Ohio Ex. 4A; Tr. I at 82 (Mr. Roush explaining that the format of the information presented in the "Proposed Bill" column of Exhibit DMR-S2 is "clearly defined" in Ohio Adm. Code 4901-7-01's filing requirements and used consistently both in Ohio and other jurisdictions).)

Based on his expert qualifications and reliable analysis, Mr. Roush demonstrated that the agreed-upon revenue requirement allocation and rate mitigation measures set forth in section III.F of the Stipulation and summarized above provide a reasonable transition to the combined rate zones for all classes. (AEP Ohio Ex. 4 at 6.) Tellingly, other parties that represent low-load factor customer interests, including OMAEG and IEU Ohio, agree. NEP and Armada witness Rehberg himself confirmed at hearing that his testimony does not oppose any of the substantive provisions of the Stipulation. (Tr. IV at 812-814.) And, as OCC witness Willis testified, the agreed upon reduction in the revenue requirement allocation to residential customers (from 58.86% in the Company's Application to 56.77% in the Stipulation) will "save residential consumers approximately $20 million per year in avoided base distribution charges, and approximately another $10 million in avoided Enhanced Service Reliability Rider and Distribution Investment Rider charges per year." (OCC Ex. 1 at 6.)

Accordingly, based upon the substantial record developed in this proceeding, it is clear that the revenue allocation and rate mitigation provisions agreed upon in the Stipulation ensure reasonable rate impacts for all customer classes.

5. The Stipulation's elimination of the PTBAR and expansion of Alternative Feed Service to hospitals benefits customers

The Stipulation also terminates the Pilot Throughput Balancing Adjustment Rider (PTBAR) as of the date new rates become effective in this case, subject to final reconciliation, with the Company agreeing to "waive any reconciliation charge for 2021 that exceeds $12 million for the period from February to the date of effective rates in this case * * * ." (Jt. Ex. 1 at 10.) OCC witness Willis testified that "residential customers have paid around $20 million per year" under the PTBAR. (OCC Ex. 1 at 8.) Eliminating the PTBAR will decrease residential customers' bills (*see* Tr. I at 87), which helps to offset changes in the residential customer charge and produces "reasonable results for all residential customers." (AEP Ohio Ex. 6 at 18.)

Additionally, the Stipulation waives all Alternate Feed Service (AFS) fees for members of the Ohio Hospital Association (OHA) until the Company's next base distribution rate case application, except for those OHA members for which "additional investment is needed on the alternate feed circuit serving the hospital due to an increase in load of the hospital or other activity caused by the hospital * * * ." (Jt. Ex. 1 at 15.) As explained in the proposed tariff sheets attached to the Stipulation, "Standard Alternate Feed Service (AFS) is a premium service providing a redundant distribution service through a redundant distribution line and distribution station transformer, with automatic or manual switchover and recovery, which provides increased reliability for distribution service." (Jt. Ex. 1, Attachment C, Original Sheet No. 474-1.) Under Schedule AFS, the Company charges customers "for the cost incurred by the Company to conduct a system impact study for each site reviewed," as well as "a nonrefundable amount for the equipment and installation costs for all dedicated and/or local facilities provided by the Company required to furnish either a new or upgraded AFS" and an additional per kW charge ($2.50/kW for hospitals) "for each kW of contract capacity or highest demand established during the last eleven (11) months, whichever is greater * * * ." (*Id.*, Original Sheet No. 474-1 and 474-2.) Though some OHA members are currently paying those AFS fees, while others are "on grandfathered status and not paying AFS fees," the Stipulation "aligns the treatment of all OHA members." (AEP Ohio Ex. 4 at 5.) This "discount to OHA members for their AFS" also "lower[s] the financial impact to [hospital] customers that may have otherwise been recognized," thereby providing a timely benefit as the COVID-19 pandemic begins to ease. (AEP Ohio Ex. 6 at 17-18.)

The elimination of the PTBAR, the Company's agreement to waive reconciliation charges for 2021 exceeding $12 million, and the elimination of AFS fees for most OHA members are three additional reasons why the Stipulation, as a package, benefits ratepayers and the public interest and should be adopted and approved by the Commission.

C. The Stipulation does not violate any important regulatory principles or practices

The third and final prong of the three-part test asks whether a stipulation "violate[s] any important regulatory principle or practice." *In re Columbus S. Power Co*. at 21. The Stipulation here violates no important regulatory principle or practice. To the contrary, the Stipulation provides for mitigation rates for certain classes to provide a reasonable transition to the combined rates zones, results in a decrease to the revenue requirements as-filed in the Company's application, provides additional time for the implementation of the delayed payment charge, creates additional reliability reporting requirements associated with the DIR, and implements pilot programs to allow the Company to gather information on the impacts of emerging technology. (AEP Ohio Ex. 6 at 19.) Despite the record to the contrary, the parties opposing the Stipulation attempt to undermine the Stipulation by taking issue with multiple provisions they believe violate important regulatory principles or practices. Specifically, the opposing parties take issue with the DSM provision, the modified Customer Charge and Delayed Payment Charge, and with maintaining the placeholder values of the Retail Reconciliation Rider and SSO Credit Rider. Claims that these provisions of the Stipulation violate an important regulatory principle or practice are without merit. Conversely, some parties assert that the Stipulation violates important regulatory principles or practices because it does *not* include certain provisions. Any claims that important regulatory principles or practices required the Signatory Parties to adopt the opposing parties' suggestions wholesale are unsupported by the law.

1. The demand-side management provision does not violate any important regulatory principles or practices

In its Application, AEP Ohio proposed a demand side management (DSM) plan that, in the Company's opinion, represented a return to a more traditional utility role of engaging customers to help manage the peak usage of energy along with ways to reduce energy through more efficient technology. (ELPC Ex. 2 at 4.) However, given the current state of energy efficiency in Ohio, that the Commission has initiated workshops to allow interested stakeholders to provide input on energy efficiency programs, and that there is no legal requirement that the Company address its DSM proposal in this base case proceeding, the Company agreed to withdraw the DSM Plan, without prejudice. (Jt. Ex. 1 at Section III.G; AEP Ohio Ex. 6 at 15, 19.) The Company reserved the right to advance any proposal related to DSM, energy efficiency, electrification/EV, or similar projects in future proceedings. (*Id.*)

Witnesses Baatz and Neme offered testimony taking issue with the Stipulation provision withdrawing the Company's originally proposed DSM plan. (*See generally,* OEC Ex. 1; ELPC Ex. 1.) Specifically, Mr. Baatz and Mr. Neme argue that the Stipulation should have at least included a DSM program with the budget originally proposed in the Company's Application. (OEC Ex. 1 at 11; ELPC Ex. 1 at 34.) However, Mr. Baatz and Mr. Neme fail to identify what, if any, important regulatory principle or practice the Stipulation provision at issue violates. This is because the Company agreeing to withdraw its original DSM proposal, without prejudice, does not violate any important regulatory principle or practice.

Ohio Adm.Code 4901-7-01, Appendix A sets forth the requirements for an application for an increase in rates filed under R.C. 4909.18. The standard filing requirements do not include a requirement to provide an energy efficiency or DSM plan as part of the Application. The DSM plan included in the Company's application was a voluntary proposal that is not required to be decided as part of this proceeding and, therefore, removal of the DSM plan cannot support a finding that the Stipulation as a whole violates an important regulatory principle or practice. This is especially true given that the Stipulation otherwise addresses all the necessary components of an application for increase in rates as identified in the standard filing requirements.

Furthermore, R.C. 4928.02 sets forth the state electric policies regarding the provision of retail electric service. Although not explicit from the testimony of Mr. Baatz and Mr. Neme, the parties opposing the Stipulation seem to insinuate that the Company's withdrawal of its voluntarily proposed DSM plan violates the state policy objectives enumerated in R.C. 4928.02. However, as the Supreme Court of Ohio has made clear, R.C. 4928.02 does not impose strict conditions on the Commission. Rather those policy statements are "guidelines" 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. *In re 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*, 155 Ohio St. 3d 326, 2018-Ohio-4698, 121 N.E.3d 320, ¶ 49, citing *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 62.

As is evident from the Commission's Finding & Order in Case No. 16-574-EL-POR, the Commission is still in the process of determining whether cost-effective energy efficiency programs are an appropriate tool to manage electric generation costs in Ohio. Company witness Moore explained that, given the evolving nature of energy efficiency programs in Ohio, the Stipulation allows the Company to await clarifications that can better guide the parties on a future DSM filing, which both Mr. Baatz and Mr. Neme acknowledge that Company may propose in the future. (AEP Ohio Ex. 6 at 19; Tr. III at 512, 591-592.) Thus, the Company agreeing to defer a DSM or energy efficiency proposal until a future proceeding clearly supports the Commission's continued review of energy efficiency programs in the state and, as such, cannot support a finding that Stipulation violates any important regulatory principle or practice.

2. The Stipulation's implementation of a modified Customer Charge and a new Delayed Payment Charge does not violate any important regulatory principles or practices

The Stipulation includes a residential customer charge that will be set a $10.00 per month. (Jt. Ex. 1, Section III.E.3.). As Company witness Roush testified, the $10 charge was the result of the signatory parties reaching an understanding and compromise in an effort to find a gradual way to address the fact that there are significant fixed costs included in a volumetric charge for residential customers and to make an effort to align the collection of those fixed costs with the actual cost causer. (AEP Ohio Ex. 4 at 4.) Company witness Moore's testimony further supported Mr. Roush's conclusions by making it clear that the residential customer charge "slowly transitions alignment of cost causation and cost collection" and is also "balanced with other portions of the Stipulation such as the elimination of the PTBAR." (AEP Ohio Ex. 6 at 18).

The $10 monthly residential customer charge provided for in the Stipulation is also a materially significant reduction from the $14 charge initially proposed by the Company, as recognized by Staff witness Lipthratt and OCC witness Willis. (*See* Staff Ex. 6 at 5; OCC Ex. 1 at 8.) Willis concluded that "lower Customer Charges allow consumers an opportunity to better control (limit) their monthly electric bills through reductions in usage, so the Settlement result is better for consumers than AEP's original proposal Charge." (OCC Ex. 1 at 8.) It is evident that the reduction in the residential customer charge in the Stipulation provides a significant benefit to AEP Ohio's residential customers.

Although OCC witness Willis testified that he supports the Stipulation (*id.* at 3) and considers the reduced customer charge a benefit to customers (*id.* at 8), Ohio Partners for Affordable Energy (OPAE) witness and Executive Director David Rinebolt challenged many of the benefits of the Stipulation as applied to certain customers through his proffered testimony. (OPAE Ex. 1.) Mr. Rinebolt indicated at hearing that OPAE represents low income residential customers. (Tr. II at 442.) He further testified and made clear that the OCC also represents residential customers. (*Id.*) Although Mr. Willis and the OCC support the Stipulation and the residential customer charge, OPAE witness Rinebolt takes a different view of the acceptability of the residential customer charge. Mr. Rinebolt indicated that fixed charges such as the residential customer charge "fall more heavily on the low-income customer," "disproportionately impact low-use customers' bills," "are not in the public interest," and are "discriminatory." (OPAE Ex. 1 at 8.)

Mr. Rinebolt spent six pages of his testimony describing how he believes low-use customers may be adversely impacted by fixed charges such as the residential customer charge. (*Id.* at 4-10.) Mr. Rinebolt appeared to use "low-use customer" and "low-income customer" interchangeably. However, on cross examination Mr. Rinebolt openly admitted that the two references are actually not interchangeable and that not all low-income customers are low-use customers. (Tr. II at 447-448.) He also freely admitted that he failed to review any studies or surveys of specific customers in the AEP Ohio service territory to actually determine what would constitute a low-use customer for AEP Ohio. (*Id.* at 450, 452.) Additionally, although he claimed that "low-use customers place little demand on [AEP Ohio's distribution] system" (OPAE Ex. 1 at 17), he admitted that he does not have any specific studies in regards to the demand that low-use customers place on the AEP Ohio system. (Tr. II at 466.) He also acknowledged that his opinion regarding the usage patterns of AEP Ohio's low-use customers of AEP Ohio is based solely upon "inferences from the data" collected from his "clients" in "all types of housing in Ohio," but not specifically AEP Ohio customers. (*Id.* at 452.)

Finally, concerning Mr. Rinebolt's assessment that fixed charges such as the residential customer charge will place a greater proportional burden on what he refers to as low-use customers than other customers, when he was asked to review Company witness Roush's Revised Exhibit DMR-S2 (AEP Ohio Ex. 4A) he agreed, based upon the information in Mr. Roush's table, that there is a greater percentage reduction in the monthly bill for low-use customers than higher-use customers following implementation of the Stipulation. (Tr. II at 458-459.) Mr. Rinebolt's conclusions regarding how the residential customer charge would adversely impact either low-use or low-income customers of AEP Ohio are simply unfounded opinion and speculative at best. He has shown no certainty as to who actually is a low-use customer, has no support regarding how much burden might be placed on the Company's distribution system by a low-use customer, has not conducted or even reviewed any data specific to the use of the AEP Ohio system by low-use customers, and is clearly incorrect about his conclusion that the Stipulation creates a greater percentage bill impact for low-use customers.

The Stipulation also includes a delayed payment charge, but the stipulating parties have agreed that such charge will not be implemented until twelve months following the date of the Stipulation and will provide for a seven-day grace period ensuring that any late payment charge will not be assessed to a customer until the 22nd day after the issuance date of the customer's bill. (Jt. Ex. 1, Section III.E.20.) Company witness Moore testified that the provision of additional time for the delay of the implementation of the late payment charge will "provide a benefit particularly during the time of the pandemic to lower the financial impact to customers * * * ." (AEP Ex. 6 at 18.)

OPAE witness Rinebolt maintained that he understood that the Company "views the fee as a means to incent customers to pay on time" and that Company witness Moore had previously provided testimony for AEP Ohio that "approximately 38 percent of residential customers pay their bills late," but witness Rinebolt asserted such a fee is "punitive." (OPAE Ex. 1 at 19-20.) He makes great effort in his testimony, by inferring through nationwide studies, to point out that many economically challenged households are also minority households and opined that aside from the "say roughly 10 percent – that have money but chronically pay late" the "balance of customers that will be assessed the delayed payment charge have low incomes, and are families that face energy insecurity issues." (*Id.* at 20-21.) Unfortunately, Mr. Rinebolt provided no additional supporting information (empirical or otherwise) in his testimony to support his inferences and show exactly how, or even if, the fee would be disproportionately applied to any specific AEP Ohio customers, low-income, minority, or otherwise. As AEP Ohio does not currently assess a residential delayed payment fee, it might be understandable that Mr. Rinebolt would be unable to provide insight into how residential customers are impacted by such a fee in the AEP Ohio service territory, but there is significant information here in Ohio regarding the issue. When questioned during cross examination about the existence of residential delayed payment charges elsewhere in Ohio, Mr. Rinebolt admitted that each and every other Ohio investor-owned electric utility has for some time assessed residential delated payment charges. (Tr. II at 468-469.)

Even though every other investor-owned electric utility certified by this Commission in Ohio has been already been authorized to collect such fees and complimentary comparative data concerning the issue would be available to Mr. Rinebolt, he provided no analysis in this instance of the effects or impacts on customers of such fee assessments by other electric utilities here in Ohio, good, bad, or indifferent - perhaps because he simply does not like residential late payment charges and is unwilling to accept them at all. He communicated his bias clearly when he was asked on cross examination about the other electric utilities in Ohio having such a fee, stating: "Yes, they do. And we are trying to stop it here and begin the rollback." (*Id.* at 468.) A residential delayed payment fee has been previously approved by this Commission for every other certified provider of electric distribution service in Ohio, and although Mr. Rinebolt takes offense as to its mere existence, he has provided no evidence that the proposal as included in the Stipulation with its delayed implementation of a year and the added seven-day grace period for assessment is not a material benefit to customers, or that it violates any known regulatory principle or practice. On the contrary, he certainly has confirmed that residential late payment fees are an accepted regulatory practice in Ohio.

3. The Stipulation's continuation of placeholder values for the Retail Reconciliation Rider and SSO Credit Rider does not violate any important regulatory principles or practices

As a threshold matter, AEP Ohio discharged its obligation under the *ESP IV* Order to present SSO unbundling information with the analysis presented in its Application and supporting testimony. The Stipulation's continuation of placeholder values for the RRR and SSOCR, consistent with the Staff Report, is fundamentally supported because the SSO and open access services are both EDU obligations that benefit all customers. IGS/Direct witness Lacey's thematic position that the SSO should be treated as a transaction with an unregulated affiliate is misguided and his cost allocation method is riddled with flaws. This Commission should not be the first regulatory body to embrace IGS/Direct's extreme position but should, instead, join other commissions in rejecting it.

a. Contrary to IGS/Direct claims, AEP Ohio discharged its obligation under the *ESP IV* Order to present SSO unbundling information with the analysis presented in its Application and supporting testimony

Paragraph III.E.2 of the Stipulation continues the current placeholder rider values for the RRR and the SSOCR. Consistent with the Staff Report, Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there are an equal amount of CRES costs, and there is no reason to differentiate the two. (Tr. II at 366-367.) The Commission should reject IGS/Direct witness Lacey's extreme position, which is based on superficial and flawed analysis.

Mr. Lacey inaccurately claims that the *ESP IV* Stipulation "recogniz[ed] that shopping customers were overpaying for SSO services they did not receive." (IGS/Direct Ex. 2 at 6.) From that false premise, Mr. Lacey offers that AEP Ohio was required in this rate case "to propose the recovery of the actual costs required to provide the SSO from only default service customers" and goes on to conclude that the Company "fail[ed] to perform this analysis correctly." (*Id.* at 9.) As shown below, Mr. Lacey misconstrues the *ESP IV* Order at the outset, mischaracterizes the Company's analysis in this case, and sets forth a speculative and unsupported alternative analysis that is irretrievably flawed.

Mr. Lacey complains without basis that both the Company and the Commission failed to resolve this issue earlier. (IGS/Direct Ex. 2 at 6-7, 9, 12). In its *ESP IV* decision, however, the Commission repeatedly held (over IGS's objection) that the RRR and the SSOCR are only to be populated "if the Commission determines such to be appropriate in the AEP Ohio's next base rate case." *ESP IV*, Second Entry on Rehearing at ¶ 70 (Aug. 1, 2018), citing *ESP IV* Order at ¶¶ 203, 212-216. *See also ESP IV*, Second Entry on Rehearing at ¶¶ 76, 89 (stating that in the distribution rate case, the Commission will determine whether it is necessary to reallocate costs between shopping and non-shopping customers, in order to ensure that AEP Ohio's rates are consistent with the state policy objectives set forth in R.C. 4928.02). Thus, while IGS was frustrated with the outcome of the *ESP IV* decision, the current case is clearly the forum where the Commission will decide "whether" and "how" to do the SSO unbundling.

AEP Ohio witness Roush summarized the Signatory Parties' position concerning the SSO unbundling issue, as reflected in Paragraph III.E.2 of the Stipulation:

> The Signatory Parties to the Stipulation agree that the Retail Reconciliation Rider and the Standard Service Offer (SSO) Credit Rider will remain at zero based on the Staff Report's recommendation. As with many other issues and items in this proceeding, various parties to this proceeding have different perspectives on the

> potential quantification and allocation of costs between SSO and shopping customers. Consistent with the Commission's Order in Case No. 16-1852-EL-SSO, et al., the Company in its Application prepared a quantitative and qualitative analysis of its costs related to the provision of SSO service that are included in its distribution cost of service and the costs related to shopping service that are included in the distribution cost of service.

(AEP Ohio Ex. 4 at 3-4.) In short, the Company presented its analysis as required and *none*[1] of the other parties agreed with it, so it was not adopted into the Stipulation. Stated differently, this is the case to decide "whether" to unbundle, and the Staff Report and Signatory Parties recommend against it.

It is clear from the record that the Company properly discharged its obligation to present an SSO unbundling analysis in this case – contrary to Mr. Lacey's claims of failure. As explained by AEP Ohio witness Roush on cross examination, Exhibit DMR-2 to his testimony filed with the Company's Application (found in part in the record as IGS Ex. 3) was prepared based on his analysis performed in advance of filing the Application in this case. (Tr. I at 32.) The analysis identified discrete costs to be allocated to SSO service, including assessment fees and uncollectible costs, as well as qualitative costs, such as call center-related expenses, that cannot be separately quantified but which are already properly allocated in the cost of service study. (*Id.* at 33-36, 49.) AEP Ohio does not differentiate between or maintain records regarding those qualitative costs based upon a customer's shopping status because there is no basis to do so. (*Id.* at 47.) Indeed, with regard to call center costs, Mr. Roush explained that when a "customer calls about a bill, * * * whether it's a CRES bill or an SSO bill, they are calling about the bill." (*Id.* at 47.) Ultimately, Mr. Roush affirmed that Ex. DMR-2 presented an accurate view of the costs specific to Standard Offer Service and Open Access Service included

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[1] This includes IGS and Direct. When asked about whether those parties would be happy with AEP Ohio witness Roush's original assignment of costs to SSO of $3.5 million, Mr. Lacey commented that it would be "woefully inadequate," "negligible," and "closer to zero" than Mr. Lacey's own analysis. (Tr. V at 1099-1100.)

in distribution rates. (*Id.* at 50.) But as mentioned earlier, no party in this case fully agreed with Mr. Roush's analysis, and it did not end up being incorporated into the Stipulation.

Mr. Lacey's complaints that the Company analysis was not adequate or sufficiently thorough merely reflect his opinion that the Company's analysis was "inadequate" because he believes it "understates the true cost of operating the SSO business" and his opinion that it represented a failure because he believes it "inappropriately includes those costs in its distribution rates." (IGS/Direct Ex. 2 at 9.) When later asked on cross examination whether there was more than one way to do the SSO cost analysis, Mr. Lacey enthusiastically agreed that allocation of costs "is definitely an art." (Tr. V at 1098.) In reality, Mr. Lacey asserts that Company witness Roush's original SSO unbundling analysis filed with the Application was inadequate and not sufficiently thorough simply because Mr. Lacey disagrees with the analysis.

Staff witness Smith testified that it is Staff's opinion that the Company attempted to comply with the Commission's cost study directive in *ESP IV* as best as it could. (Tr. II at 362.) He also acknowledged that the *ESP IV* Order did not direct AEP Ohio to track or build a new accounting system, but merely to analyze existing costs. (*Id.* at 372.) Similarly, Staff witness Smith definitively concluded that the Company's accounting and tracking systems were never designed to differentiate between SSO service versus open access service and cannot track or identify those costs separately. (*Id.* at 370-372.) By contrast, Mr. Lacey superficially interpreted the Commission's *ESP IV* Order as requiring more while also repeatedly responding "I don't know" when asked whether the *ESP IV* Order created new accounting procedures or tracking mechanisms to separate SSO costs. (Tr. V at 1103-1105.) As a practical matter, Staff witness Smith's observation that the lack of granular cost of service information actually prevents an accurate and verifiable accounting is the most accurate, reliable, and cogent conclusion in this regard. (Staff Ex. 3 at 6.)

In sum, the Company's analysis fulfilled its obligation and Mr. Lacey's claims of noncompliance or failure simply reflect his disagreement with the results of Mr. Roush's analysis.

b. The Stipulation's continuation of placeholder values, consistent with the Staff Report, is fundamentally supported because the SSO and open access services are both EDU obligations that benefit all customers

Consistent with the Staff Report, Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there's an equal amount of CRES costs and there's no reason to differentiate the two. (Tr. II at 366-367.) Stated differently, Staff witness Smith explained:

> An electric distribution utility in Ohio as part of its distribution function must both interact and transact with transmission and generation providers whether as CRES or as providers of last resort. The costs associated with employees in the companies call center, the servers in the IT billing department, and other incidental equipment and expenses used by the Companies personnel are not generation related. These are distribution facilities and employees required of a distribution company to facilitate both a CRES market and a provider of last resort. These are costs to the distribution company regardless of the generation provider. Staff believes that the identified CRES costs are distribution costs required of the Company to interact, transact, and function as an electric distribution utility with a competitive generation market. The Company is required to operate and function as a distribution company with a competitive generation market which means that the Company will have expenses and capital that is solely for the purpose of interacting with CRES providers and their customers.

(Staff Ex. 3 at 7; *see also id*. at 9 ("Electric distribution utilities are required to provide SSO service or default service as electric distribution utilities. No other entity provides default service. The distribution utilities cost and unwanted risk to provide SSO service is a distribution function in Ohio and should be socialized within base rates.").) Similarly, AEP Ohio witness Roush explained that:

> Staff and a number of intervenors did not concur with the Company's [non-zero analysis and] proposal and Staff maintained in its report that "SSO is a default service, available to all customers and required by the electric distribution companies to provide" (Report at 31). One conceptual underpinning of that position is that SSO service is available to all customers and SSO-related costs should be viewed as universal. The Stipulation's continuation of the Riders at zero is reasonable.

(AEP Ohio Ex. 4 at 3-4.)

As a related matter, Staff witness Smith explained in his testimony why Staff believes that unbundling costs of Open Access Service (also referred to by Staff as CRES functionality or CRES costs) under current circumstances would actually be contrary to policy and past practice:

> Staff believes that distribution customers whether shopping or on default service receive similar if not identical service from their electric distribution utility. Likewise, Staff believes that distribution customers whether shopping or on default service should pay similar if not identical costs for their distribution service. To only apply cost causation to CRES related functionality is not supported by Staff's experiences with customer choice. The CRES costs identified by the Company were for interactions and functionality not caused by CRES customers but to improve efficiency and functionality of the electric distribution utility regarding CRES providers to further the Ohio competitive market. The Company has since the beginning of the competitive market needed to invest in processes, people, and plant to create the functionality to operate in a competitive generation market. These investments were socialized in rates amongst both shopping and non-shopping customers. Staff believes to now add costs to customers without any clear service differentiation because the Company is furthering State policy is contrary to past regulatory practices.

(Staff Ex. 3 at 7-8.) As he further explained on cross examination, even though in theory IT, physical plant, legal, accounting and regulatory costs relating to the SSO are possible costs embedded in distribution rates (Tr. II at 347-348, 370), Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there's an equal amount of CRES costs and there's no reason to differentiate the two (*id.* at 366-367).

Ironically, IGS/Direct witness Lacey advances an identical argument to support the notion that open access service costs should remain in distribution rates, in response to Mr. Roush's analysis in Ex. DMR-2 that netted certain choice costs:

> This is an incorrect analysis as the choice-related costs benefit all customers, not just those who choose an alternative supplier. As discussed in more detail below, these are not competitive costs. The costs relate to service that only AEP can provide and they benefit all customers. As such, they should be classified as regulated distribution service costs.

(IGS/Direct Ex. 2 at 8; *see also id*. at 43 ("the clear answer is to charge all customers for the costs of the choice program, for all customers benefit from the choice program").) Indeed, Mr. Lacey admitted during cross examination that he did not analyze discrete costs associated with shopping customers and did not allocate any costs to shopping customers, because those costs are costs of operating a market that should be borne by all customers. (Tr. V at 1042-1043.)

Of course, this same description fits SSO costs. And Mr. Lacey acknowledged during cross examination that the utility must offer the SSO to any customer in its service territory; that the utility must serve customers that default from a CRES supplier or otherwise return to the SSO by choice; and that the SSO benefits both shopping and non-shopping customers. (*Id.* at 1087-1088.) Yet, Mr. Lacey stubbornly and illogically maintains that customer choice activities are a distribution function, while the SSO is not a distribution function. (*Id.* at 1090.) And he acknowledged that under his proposal, a shopping customer would always get a net credit and an SSO customer would always pay a charge. (*Id.* at 1058-1059.) He also agreed that his volumetric rate design would mean that residential customers bear four times as much of the costs being allocated than non-residential customers. (*Id.* at 1069-1070.)

By contrast, the Staff Report and Stipulation positions – that neither SSO nor open access costs need to be unbundled at this time – make more sense than Mr. Lacey's conflicting and lopsided views. Shopping and non-shopping customers are not a static group. On the contrary, Mr. Lacey agreed that due to migration "today's shopping customer might be tomorrow's SSO customer and vice versa." (*Id.* at 1088.) Mr. Lacey also acknowledged that both shopping and non-shopping residential customers are in the residential customer class. (*Id.* at 1089.) In this same vein, it is evident that there is no separate customer class or distinct set of beneficiaries or users of SSO or open access service.

c. IGS/Direct witness Lacey's thematic position that the SSO should be treated as a transaction with an unregulated affiliate is misguided

IGS/Direct witness Lacey not only bases his SSO unbundling theory on the inaccurate premise that SSO service is offered as a different business unit or business segment from distribution service (IGS/Direct Ex. 2 at 16-17, 32-33), but he pervasively relies on regulatory concepts that are explicitly designed for application to transactions between regulated utilities and their unregulated affiliates (*id*. at 25-30, Exs. FPL-6, FPL-13 and FPL-14). His primary conclusion from this misapprehended starting point is that fully allocated cost principles must be applied in performing the SSO unbundling analysis, in order to avoid an anti-competitive subsidy of a "competitive" SSO service. (*Id*. at 20-21.) These assertions are unsupported in regulatory practice or precedent and misapply regulatory concepts designed for a different purpose and context.

SSO service is not offered through a separate affiliate or business unit; there is no separate accounting ledger or segregation of overhead and common costs. There is no factual basis to conclude that separation of business activities, separate accounting, cost tracking or separation of any kind has been implemented by the Company relative to overhead and common costs associated with SSO activities. And the Commission has never imposed such a requirement. So the idea that the American Electric Power Cost Allocation Manual (AEP CAM) or any other regulatory obligation related to affiliate transactions *require* the result sought by IGS/Direct witness Lacey is simply wrong.

In apparent recognition of this distinction, Mr. Lacey posits that the AEP CAM (FPL-6) "should apply" to the SSO operations even though the SSO operation is not an "affiliate per se" and even though the AEP CAM explicitly provides in multiple places that it applies to transactions between regulated utilities and unregulated affiliates. (Tr. V at 1105-1107; *see also* IGS/Direct Ex. 2 at 26 (the concepts in the AEP CAM are "descriptive" of SSO business and support the same purposes that his SSO unbundling analysis serve).) Although Mr. Lacey maintains in his written testimony (page 20, lines 14-15) that NARUC guidelines (FPL-13) and the AEP CAM (FPL-6) suggest that "all" utility products should be priced at fully allocated cost, he admitted on cross examination that both of these authorities only apply to transactions between regulated utilities and unregulated affiliates. (Tr. V at 1105-1107, 1121-1124.) Regarding the NARUC Cost Allocation Manual heavily relied upon by Mr. Lacey (narrow excerpt in FPL-14 and entire Chapter in AEP Ohio Ex. 15), Mr. Lacey admitted on cross examination that the manual was developed in 1992 – well prior to any restructuring in the electric industry; that it was written to apply to vertically-integrated utilities; and that it contains several important disclaimers and qualifications about non-cost factors in ratemaking that undermine Mr. Lacey's overbroad reliance on it. (*Id.* at 1125-1128.) Overall, IGS/Direct witness Lacey acknowledged on cross examination that the SSO is not offered through a separate affiliate, though Mr. Lacey is requesting that "it should be treated as an affiliate." (*Id.* at 1100, 1102.)

Thus, while Mr. Lacey attempts to borrow corporate separation concepts to advance his position, the authorities he cited do not directly impose any pertinent requirement and do not lend credence to his overbroad unbundling theory.

d. IGS/Direct witness Lacey's cost allocation method is riddled with major flaws

At the heart of Mr. Lacey's cost analysis in Lacey Appendix 1 are the factors he uses to allocate common costs to the SSO. Specifically, he uses three allocation factors in combination to allocate the pool of costs he claims are common to distribution and SSO services: the revenue allocator (R allocator), the customer allocator (C allocator) and the actual allocator (A allocator). (*Id.* at 1131-1132.) All of the allocators are based on unproven cost relationship assumptions that do not relate to direct costs and are otherwise flawed. When these flaws are combined with the misguided assumption that the Company operates a separate "SSO business" and the fact that there are costs associated with AEP Ohio's legal obligations to provide both SSO service and open access service through promoting customer choice operations, the entire analysis in Lacey Appendix 1 is unreliable and unusable.

Regarding the R allocator (generation revenue), Mr. Lacey acknowledged that general plant such as a distribution center building are included – even though he understands that such buildings are used for the "pure distribution business" and do not support the SSO. (*Id.* at 1133-1134.) Further, regarding the numerator for the R allocator (SSO revenue), Mr. Lacey admitted on cross examination that SSO revenue can be volatile and cause the allocated cost level to fluctuate significantly – even though the underlying costs don't necessarily change. (*Id.* at 1134-1135.) For example, Exhibit FPL-8 shows that the R allocator (if calculated annually instead of over the entire 2 ½ year period) would have varied by 50%. (IGS/Direct Ex. 2 at FPL-8 (33% allocator using 2018 data and 22% using 2020 data).) And because most of the direct costs are pass through costs associated with the SSO auctions (generation revenues used to create the R allocator), it makes no sense to allocate the "generation revenue" proportion of common costs to the SSO. In short, the R allocator should not be used because it is arbitrary and reflects no relationship whatever between general plant and SSO service.

Similarly, regarding the C allocator, Mr. Lacey assigned over 20% of his $64 million position based on the cost of employee salaries (Account 920). (*Id.* at 1139.) Through this assumption, Mr. Lacey assumes that everyone from the CEO to the line worker spends a significant amount of time on the SSO – separate and apart from anything related to the distribution service. Upon cross examination, he admitted that he has no direct evidence to support that assumption. (*Id.* at 1140.) And as discussed below, Mr. Lacey was not even aware of the direct costs associated with the SSO being recovered through the Auction Cost Reconciliation Rider (ACRR). (Tr. V at 1092-94.)

Finally, regarding the A allocator, he admitted that it should really be considered a direct cost assignment – even though he had emphatically cautioned against confusing the two concepts. (Tr. V at 1140, 1097.) More to the point, Mr. Lacey assigned 100% of the advertisement costs in Account 930 to the SSO – but failed to examine any specific ads or line item costs, even though a three-month sample of actual ads and costs were included in Part 15 of the Company's Application per the standard filing requirements. (Tr. V at 1141-1143.)

Instead of reviewing any of the test year advertising (with actual costs) presented as part of the Application in this case, Mr. Lacey simply *assumed* across the board that AEP Ohio was solely trying to attract SSO customers through all of its advertising, as he asserted during cross examination:

> Well, you're seeking to attract customers, I would assume. You don't need to attract distribution customers because you own a monopoly on that service. So

> the other service that you would attract with this ad is SSO. So to the extent it's meant to attract customers, which is what most ads do, then it's an SSO ad because it doesn't mention distribution and there is no need to advertise for distribution services.

(*Id.* at 1144-45.) Thus, his entire allocation is based on a baseless assumption. As is evident from an examination of AEP Ohio Ex. 1 (Part 15), none of the ads refer to the SSO and all refer to safety, reliability/outage communications, community philanthropy, customer blog posts and newsletters regarding smart grid, billing and other general issues, and customer relationship/Company image messages (all of which relate to distribution service and none of which relate to the SSO).

Nonetheless, Mr. Lacey tried to defend this *post facto* position by explaining that his definition of advertising related to the SSO is any advertising that doesn't mention distribution service. (*Id*. at 1145-46.) Even that extemporaneous attempt to justify his 100% "allocation" (aka direct assignment) is, however, obviously flawed because: (1) Mr. Lacey admitted that he did not review the test year advertising and costs presented in the Application and he saw it for the first time on the stand; and (2) and none of the advertising mentions or refers to the SSO. (Tr. V at 1141-42, 114; AEP Ohio Ex. 1 (Part 15).) Of course, it is baseless and completely illogical to claim that advertisement is designed to promote something that is not mentioned or referenced at all. In sum, none of the allocators used in Lacey Appendix 1's unbundling analysis bear any logical or actual relationship to the SSO incurring common costs – rendering the analysis unreliable and useless.

e. The Commission should not be the first regulatory body to embrace IGS/Direct's extreme position but should, instead, join other Commissions in rejecting it

Two articles from industry publications authored by Mr. Lacey, attached to IGS/Direct Ex. 2 as FPL-3 and FPL-4, advance the position that SSO pricing approved by regulators have been "wrong all along" for decades – and similarly that the error was compounded in the natural gas industry.[2] (Tr. V at 1111-1113.) To address the problem, the articles present "a solution that was modeled based on a fully-allocated implementation of a model similar to the Retail Reconciliation model in place in Ohio." (IGS/Direct Ex. 2 at 4.) In the *PECO* case cited in both articles, the Pennsylvania Commission rejected the NRG position that was highly similar to Mr. Lacey's position in this case. (Tr. V at 1118.) This Commission should follow the recommendation of its Staff and reject Mr. Lacey's SSO unbundling analysis – just as the Pennsylvania Commission did.

In the *PECO* Case, NRG Energy was the proponent of the SSO unbundling theory (as noted in Ex. FPL-3 at 5) and the supporting witness was Mr. Peterson. Like Mr. Lacey in this case, the Pennsylvania Commission noted that "[t]he cost causation principles used by Mr. Peterson were guided by two assertions: that (1) PECO operates two "separate and distinct" businesses providing distribution service and default service that requires the allocation of PECO's indirect expenses between distribution customers who receive default service and those who shop * * * ; and (2) the allocation of those indirect expenses should be based upon PECO's default service revenues and the number of customers receiving default service." *Pa. Pub. Util. Comm. Office of Consumer Advocate v. PECO Energy Co*., 2018 Pa. PUC LEXIS 459, Opinion and Order at *116 (Dec. 20, 2018). Like Mr. Lacey in this case, NRG witness Peterson relied on a "hypothetical separation of functions PECO performs as a distribution company." *Id*. at *117-118. The Commission squarely rejected the position, finding overall that "[a]s there is no 'separate and distinct' distribution service for default service customers and [shopping] customers, it is not appropriate to rely on the [corporate separation] proceeding to argue that

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[2] Another policy that has been in Mr. Lacey's opinion "wrong all along" is the Ohio Price-to-Compare concept; in his view, the PUCO's apples-to-apples website should be considered "apples to baked beans." (Tr. V at 1120.)

distribution service to default service customers should be separated from distribution service to [shopping] customers." *Id*. at *118.

The Commission went on to make more detailed findings that expose the flaws in the SSO unbundling theory:

> Mr. Peterson could not identify specific additional costs related to providing default service, having done no analysis of the costs that PECO actually incurs to provide default service. Rather, Mr. Peterson merely indicated that a "significant portion" of PECO's expenses "reasonably support" residential default service since PECO provides default service to approximately sixty-six percent of its residential customers and those costs would be incurred if default service was provided through a division of PECO separate from its distribution operations. Therefore, we agree with the ALJs and PECO witness Cohn that the primary goal of cost allocation is appropriate recognition of cost causality, and that Mr. Peterson has not shown that the costs that he proposed to be reallocated to default service are caused by, or even vary with, his chosen allocators. Thus, we are of the opinion that the record in this case does not support the quantification of the unbundled rates that results from the application of Mr. Peterson's methodology. Accordingly, NRG has not sustained its burden.

Id. at *118-119 (internal citations omitted). The Commission's decision went on to identify the fundamental problem with NRG witness Peterson's analysis:

> Mr. Peterson assumed a problem existed within the cost allocation of these accounts, assumed that he can locate where that problem resided and assumed that the problem has a clear correlation with either the number of distribution customers that receive default service or the amount such customers pay for default service. This is not a sound basis on which to determine rate responsibility. Indeed, customers move from shopping to default service and back again, but all customers use the distribution services of the Company in essentially the same way. The distinction that NRG wishes to draw between shopping and non-shopping customers is not a definable classification.

Id. at *122-123.

After referencing the *PECO* case in his testimony and being cross examined about it, Mr. Lacey attempted to distinguish the *PECO* decision on redirect because Pennsylvania already includes direct costs in the default service rate and it was the indirect cost allocation that was rejected. (Tr. V at 1149.) Of course in Ohio, the GEN-C, GEN-E, ACRR, and Alternative

Energy Rider (AER) already contain all of the direct costs associated with the SSO and they are charges on a bypassable basis to subscribe to the SSO; it is the allocation of indirect costs that is being addressed by Mr. Lacey (and should be rejected here as it was bt the Pennsylvania Commission).

A corollary to SSO and open access services being properly recovered through distribution rates as EDU obligations that benefit all customers is that the direct costs associated with SSO service are already recovered through bypassable riders. IGS/Direct witness Lacey acknowledged the four riders that constitute the price-to-compare (PTC) are the GEN-C, GEN-E, AER and the ACRR). (IGS/Direct Ex. 2 at 39.) But Mr. Lacey does not actually know what costs are in the ACRR, GEN-C, GEN-E or AER riders other than what is suggested by the rider name; for example, he does not know whether AEP Ohio labor costs are in the ACRR. (Tr. V at 1092-1094.) Mr. Lacey's lack of basic knowledge about the riders that recover direct SSO costs is telling and severely undermines his exercise that claims to identify the correct common costs to allocate to the SSO. From the initial approval of the ACRR, the Commission provided that the rider would reflect the direct costs associated with the SSO auctions, including "all costs associated with the CBP process such as auction manager fees, incremental auction costs, and the costs associated with the contingency plan to procure replacement supply, as necessary." *In the Matter of the Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al*., Opinion and Order at 33 (Feb. 25, 2015) ("*ESP III* Order").

The New Jersey Board of Public Utilities also has rejected Direct Energy's SSO unbundling theory. *See In the Matter of the Provision of Basic Generation Service*, 2018 N.J. PUC LEXIS 266, Decision and Order (Nov. 19, 2018). In that case, "Direct Energy asserted that by modifying the [SSO] price structure to reflect the full costs incurred by [electric distribution utilities] to provide default service, the Board can begin to rectify the problems created by the [EDUs']' failure to allocate sufficient costs to [SSO] and improperly using distribution revenues to subsidize this service." *Id*. at *38-39. The Board noted Direct Energy's assertion that SSO prices "are understated and the corresponding distribution charges are over-stated. Direct Energy believes this is a significant barrier to the development of the competitive retail electric market because competitive retailers are forced to compete with artificially low prices charged" for the SSO. *Id*. at *35-36. Finally, the Board noted that Direct Energy believes that for EDU's cost allocation purposes, the SSO "business should be treated as a division or unit that is functionally separate from the distribution business, with all direct costs and an appropriate level of indirect or shared costs allocated to it and recovered from" SSO customers. *Id*. at *37. In rejecting Direct Energy's argument, it held that "the Board understands Direct Energy's argument but does not agree with its conclusion." *Id*. at *45.

The Board also referenced and described the EDU position:

> Along with the obligation to provide a [SSO] default service option for its customers, [EDUs] are required to provide the systems, processes, and resources to enable its customers to receive service from [CRES], and to support [CRES] directly by including [CRES] charges in the [EDU] bills. These activities and services require that the [EDUs] incur a similar, if not greater, level of costs compared to the costs associated with the [SSO] obligation. These [CRES]-related costs are presently included in the [EDUs'] distribution rates. If these ([EDU]-specific) costs related to [SSO] are allocated to [SSO] rates, but similar categories of costs related to the [EDUs] retail access obligation are not similarly charged directly to [CRES] (or directly to their customers), the [EDUs] purport that Direct Energy's proposal would actually create the incomparable scenario that Direct Energy is attempting to resolve.

Id. at *42-43 (internal citations omitted). The Board went on to find that, at a minimum, some of the same overhead costs Direct Energy wanted to allocate to SSO would need to be captured and allocated to those CRES-related services. *Id*. at *45.

Since no other State Commission has adopted the theory, Mr. Lacey is asking this Commission to be the first to adopt the theory. (Tr. V at 1119.) Similar to the Pennsylvania and New Jersey decisions, the Commission's Staff here in Ohio aptly summed up the reasons to reject IGS/Direct's SSO unbundling proposal:

> IGS advocates that generation costs are embedded in the call center, legal counsel, regulatory counsel, IT employees and infrastructure, software, office space, human resources, office supplies, accounting services, printing, postage, uncollectible expenses and cash working capital. IGS fails to acknowledge if there are generation costs for SSO service then there would also be equal if not greater generation costs for CRES customers. IGS objects to the Staff Report and the Company for failing to appropriately functionalize SSO related costs to that service. What IGS fails to recognize is that there is no reason to functionalize customers by generation provider and perhaps that is why no electric utility produces a cost of service study with such functionalization. The accounting systems and internal tracking systems were not designed to assist in functionalizing possible associated generation costs within a distribution utility. Staff does not advocate guessing. Staff also notes that most customers are provided both a default service option as well as an opportunity to shop at the same time and could be on default service one month and with a CRES provider the next. An attempt to assign illusionary costs as a customer moves between generation providers and as customer levels of shopping change is a far more difficult of a study than IGS would lead the Commission to believe and arrive at just and reasonable rates.
>
> Staff's experience is that customers who utilize CRES service utilize far more of the distribution utilities resources than customers who utilize SSO service. The Commission's call center receives more complaints and inquires for CRES providers than for default service. To insinuate that this increased service created by CRES providers is anything but equal to the service of the SSO, is contrary to the Staff's experience.

(Staff Ex. 3 at 10-11.) In sum, Staff recommended in the Staff Report that the RRR and SSOCR remain at zero due to the lack of cost basis to support a positive value for those riders. (Tr. II at 397.)

Like the Pennsylvania and New Jersey regulators, the Commission should reject IGS/Direct's invitation to be the first regulator to adopt the flawed SSO unbundling analysis.

4. The Stipulation's continuation of the Basic Transmission Cost Rider and Pilot program does not violate any important regulatory principles or practices

The continuation of the BTCR and expansion of the BTCR Pilot also would not violate any important regulatory principles or practices. The BTCR has been in place since 2015. *See ESP III* Order at 67. When the Commission approved the Company's proposal to implement the BTCR, the Commission noted that the BTCR was "comparable to the transmission riders approved for the other electric utilities" in Ohio. (Citations omitted.) *Id.* And the BTCR, as explained above, has been in place since 2017. Given the Commission's prior adoption and reaffirmation of both the BTCR and BTCR Pilot, and its adoption of comparable transmission riders and pilots for other electric utilities, it would be difficult to argue that either one violates any important regulatory principle or practice.

IGS witness Mr. Haugen makes the effort, though, asserting that the BTCR violates the principle of "cost causation" because it does not align transmission costs and rates with "the single zonal coincident peak within the PJM zone * * * ." (IGS Ex. 1 at 6, 8-9.) The Commission rejected that same argument from a different party in 2015. In that case, an intervenor argued that "the BTCR would fail to provide customers with efficient price signals to reduce usage at times of peak demand" by "assign[ing] and bill[ing] certain non-market based transmission costs in a manner different from PJM." *ESP III* Order at 66. But the Commission concluded that it would be "inappropriate to modify the Company's current cost allocation methodology" without an analysis of the impact such a change would have on customer bills. *Id.* at 68. Here, IGS admits it has presented no such analysis in this case. (*See* Tr. V at 1023-24 (no analysis of the transmission cost rate impacts for AEP Ohio's residential customers, or any other customer class, from transitioning to IGS's proposed transmission cost rate structure), 1031 (no analysis of the rate impact for residential customers from opening up the BTCR Pilot to anyone who wishes to participate at any level of demand).)

Company witness David Roush offered an analysis demonstrating that the Stipulation, as a package, "result[s] in reasonable rates that continue to reflect the principles of cost causation while avoiding undue customer bill impacts." (AEP Ohio Ex. 4 at 8.) Absent any evidence to demonstrate that IGS's alternative proposed rate structure would have acceptable impacts on customer bills, the Commission should again decline to elevate strict adherence to cost-causation principles over all other customer interests. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 28 (rejecting the implication that "the commission is required by law to adhere to any specific regulatory principle in reviewing rate-design cases").

5. The Stipulation does not violate any important regulatory principles or practices by adopting the Shadow Billing report and commitment

The Stipulation includes a two-part commitment for the Company to pursue billing transparency and promote consumer education related to shopping: (1) provide Staff and OCC with a Shadow Billing Report at least once a year, and (2) work with OCC to amend the Company's application in Case No. 20-1408-EL-UNC. (Jt. Ex. 1 at 11 (¶ III.E.11).) While both of these commitments are intended to promote transparency and consumer education related to shopping, neither of these proposals involves any final or prejudicial action affecting the CRES opponents or retail choice. The Shadow Billing Report is merely aggregated data for consideration by Staff, OCC and other policy constituents interested in evaluating the retail choice market; individual consumers will not receive the data or use it in making shopping decisions. The commitment to amend the Company's application obviously does not result in any final action in the 20-1408 case, but will merely result in an updated proposal for further comment by stakeholders and consideration by the Commission. Accordingly, the Commission's adoption of the Shadow Billing commitment does not prejudice the opposing CRES parties or violate any important regulatory principle or policy.

Opposing parties wrongly attempt to portray the Shadow Billing Report as being flawed or counterproductive. As a baseline matter, IGS/Direct witness Lacey maintains that "[t]here is no justification to use the SSO as any type of baseline to which compare other products. This type of comparison has the impact of elevating the status of the SSO to something it is not." (IGS/Direct Ex. 2 at 52.) In Mr. Lacey's opinion, Ohio's Price-to-Compare (PTC) concept itself is another example of regulatory policy that has been wrong all along; in his view, the PUCO's apples-to-apples website should be considered "apples to baked beans." (Tr. V at 1120.) Obviously, Mr. Lacey's perspective that the PTC is misleading and flawed undermines his equally misguided claim that the Shadow Billing Report is also misleading and flawed.

In a more realistic fashion, AEP Ohio witness Moore explained that this provision "further supports transparency through providing information on shadow billing. This calculation as proposed will provide additional transparency for the residential class in a conservative approach by removing certain types of charges that are not in line with the cost per kWh, such as flat bills, and also other products such as renewable products that may have price structures that differ from the Standard Service Offer." (AEP Ohio Ex. 6 at 18.) Similarly, OCC witness Willis explained his understanding of the provisions as "compar[ing] (in the aggregate) what customers paid for electricity to marketers with what they could have paid had they instead purchased their generation from AEP's competitively bid standard service offer." (OCC Ex. 1 at 9.) Mr. Willis also explained that OCC has no current plans for the Shadow Billing Report but believes it is informative and provides transparency. (Tr. II at 301-302.)

Through cross examination, IGS attempted to show that the Shadow Billing Report will not be representative of the market comparison because there are exclusions from the data reflected in the report. It is true that customers that are billed under utility consolidated billing through bill-ready or rate-ready billing methods can be excluded from the Shadow Billing Report, but only when the charge description provided by the supplier is not a kWh-based charge. (Tr. I at 147-148, 152-153.) IGS Ex. 6 (IGS-INT-7-002 Att. 1) lists the billing line item descriptions from suppliers that are used for excluding charges from the Shadow Billing Report comparison. (Tr. I at 158.)

Of course, the purpose of the exclusions is to enhance the comparability of the data for purposes of the shadow billing calculation. For example, Supplier Consolidated Bills and Dual billed bills are excluded from the Shadow Billing Report because it only reflects billing data for customers billed by the Company. (*Id.* at 151.) But there are currently fewer than 400 customers billed under the supplier consolidated billing program and only 17,500 customers billed under the dual billing option – out of nearly 1.5 million customers. (Tr. II at 265.)

In sum, the Shadow Billing commitments in the Stipulation do not prejudice CRES parties and do not violate any important regulatory principle or practice.

6. The Stipulation does not violate any important regulatory principles or practices by simply failing to include items that opposing parties desire

Nationwide Energy Partners (NEP) and Armada Power seek to have the Commission insert provisions in the Stipulation that those parties failed to negotiate or otherwise cause to be included in the Stipulation – because those parties believe the provisions would be beneficial (mainly to them). The Stipulation does not violate any important regulatory principles or practices based on the lack of: (1) a new process for purchase of AEP Ohio facilities by master meter customers as advocated by NEP, (2) a low-load factor customer pilot program as advocated by NEP, or (3) a commitment to purchase and incorporate Armada Power's proprietary water heater technology as part of the DIR. Of course, merely repeating one's litigation position is not an appropriate basis for contesting a settlement. *Cf. Ohio Partners for Affordable Energy v. Pub. Util. Comm.'n (In re E. Ohio Gas Co.)*, 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32 (holding that "[t]he fact that [a] stipulation did not resolve all of [an intervenor]'s opposition arguments does not mean that the commission's approval of the stipulation was unlawful."). Consequently, NEP and Armada have failed to establish that excluding those provisions violates the three-part test.

a. The Stipulation does not violate any important regulatory principles or practices based on the lack of a new process for purchase of AEP Ohio facilities by master meter customers as advocated by NEP

The Stipulation, in addition to providing numerous other benefits to the Company's customers, memorializes the Company's pledge to timely address inquiries regarding potential customer purchases of AEP Ohio facilities through the commitment that "[t]he Company agrees to make best efforts to respond within 21 days to customer requests to purchase AEP Ohio facilities on customer premises." (Jt. Ex. 1, Section III.E.12.)

The Company's agreement with other signatory parties to include such language in the Stipulation is intended to effectively address customer concerns about potential premises equipment ownership and provide for a reasonable response time to such customer inquiries. It facilitates a process whereby the customer and AEP Ohio jointly dialogue and interact together to resolve the issue. The language provides the customer the opportunity to submit individualized requests and commits the Company to effectuate a prompt response. The flexibility to the customer concerning method of inquiry, the requirement of Company responsiveness, and the balancing of the various interests is in practice and principle an advancement of good regulatory policy.

In her testimony addressing the Stipulation language concerning customer requests to purchase AEP Ohio facilities, NEP witness Teresa Ringenbach (NEP Ex. 33) asserted that the language in the Stipulation is not satisfactory and claimed it is "woefully inadequate." (NEP Ex. 33 at 3). Ms. Ringenbach illustrated in vast detail the specific process and exacting requirements NEP would propose AEP and its customers be required to adhere to and satisfy when customer purchases of AEP facilities are being considered. (*Id.* at 3-4). Such suggestions by NEP mandate meetings between AEP Ohio and interested parties to draft and create written forms necessitating the identification of authorized representatives and require pricing details and equipment lists. (*Id.* at 5). The "suggestions" are detailed and substantial, expanding a simple twenty-three word sentence of the Stipulation into a complex one hundred and sixty-six word, four sentence, paragraph – all of which expands a voluntary commitment the Company put into the settlement without the support of NEP as a signatory party. (*See id.*)

It is clear in her testimony that Ms. Ringenbach emphatically "supports a standardized process for equipment purchases to establish a reasonable and consistent approach among customers." (*Id.* at 5). It is also clear that she believes that "customers do purchase AEP equipment." (*Id.* at 3). What is not provided in her testimony is any insight into exactly how often AEP Ohio customers reach out to the Company to request an equipment purchase or if there have been any material issues with the informal process the Company uses to deal with such requests today. She called for a "higher quality of customer response" (*id.* at 4) and said the Stipulation should be revised to include a "good faith negotiation/dealing standard" (*id.*), but failed to cite to any instance or provide any example of an occurrence where the Company actually failed to respond to or deal with a customer's request to purchase equipment in a manner that was anything other than of the highest quality and in good faith. Were there issues with how the Company has worked in the past with its customers in this regard, it is reasonable to assume that NEP would be able to provide this Commission evidence of that fact. It would be simple enough in discovery for NEP to have asked the Company for a list of its customers who had made requests to purchase equipment and review the experience encountered with at least some of those customers. In fact, NEP did request information in discovery about the number of requests made by customers, and the Company provided a response to that request. In her testimony, Ms. Ringenbach made no suggestion that NEP ever attempted to conduct outreach and interview even one of the Company's master meter customers who may have requested equipment purchases. When Company witness Moore, on cross examination by NEP counsel, was asked about the actual number of master meter requests for the purchase of equipment in 2020, she succinctly replied "eight." (Tr. II at 264). Without more, one can only conclude that NEP's modification suggestions for the language in § III.E.12 of the Stipulation are not necessary or even intended to solve customers' existing or future problems, but rather are solely intended to satisfy NEP's interests.

Even though NEP has proposed a more defined "in-depth" process for customers seeking to purchase equipment from AEP Ohio, its proposal would still retain all the language in § III.E.12 of the Stipulation. (Tr. IV at 893.) Simply, Ms. Ringenbach did not propose removing any of the existing purchase of equipment language from the Stipulation in § III.E.12, just that significant additions be made to it. NEP clearly agrees that § III.E.12 of the Stipulation is acceptable but finds it insufficient for NEP's needs.

Although NEP believed it appropriate to create new requirements and numerous additions to the Stipulation language concerning customer requests to purchase AEP facilities, it neglected to identify any specific important regulatory principle or practice that may have been violated by the inclusion of existing § III.E.12 in the Stipulation. In her testimony, Ms. Ringenbach is clear that NEP believed the language in the stipulation could have included a more detailed and complicated "standardized" process (NEP Ex. 33 at 3) and "it would be unreasonable for the Commission to approve any stipulation without such" (*id.* at 4), but she flatly fails to show how the existing Stipulation language concerning customer requests to purchase facilities without the NEP suggested additions would contravene any accepted regulatory principle or practice.

b. The Stipulation does not violate any important regulatory principles or practices based on the lack of a low-load factor customer pilot program as advocated by NEP

That the Stipulation does not include the low-load factor customer pilot for which NEP advocates also does not violate any important regulatory principles or practices. (*See* NEP Ex. 34 at 9-12.) To the contrary, as Company witness Moore testified, the Stipulation, including its revenue allocation and rate design provisions, fosters the important regulatory principle of gradualism. (AEP Ohio Ex. 6 at 18-19.) Company witness Roush similarly confirmed that the Stipulation results in reasonable rates that continue to reflect the principles of cost causation while avoiding undue customer bill impacts. (AEP Ohio Ex. 4 at 8.) As set forth in detail in Section I.B.4, *supra*, the analysis that NEP witness Rehberg sponsors to support NEP's proposed low-load factor customer pilot is unreliable, and Mr. Rehberg is unqualified to offer it. Mr. Rehberg moreover testified at hearing that he did not create the pilot program and that it was created by Ms. Buckley, whose testimony Mr. Rehberg adopted in late April and without access to Ms. Buckley's workpapers or analysis. (Tr. IV at 673-674, 784.)

In addition to the significant flaws and shortcomings discussed above, the Commission's acceptance of NEP's low-load factor customer pilot proposal – and not the Stipulation's omission of that proposal – could violate the important regulatory principles of setting compensatory rates for the provision of utility service and of cost causation. Mr. Rehberg acknowledges that NEP's pilot proposal could result in a revenue shortfall. (NEP Ex. 34 at 11.) That revenue shortfall either would not permit AEP Ohio to recover its cost of serving pilot participants, or it would result in other customers paying more for costs caused by the pilot participants. Mr. Rehberg's testimony, however, does not address the impact on AEP Ohio's services that could result from a revenue shortfall under NEP's proposal. (Tr. IV at 798-799.) Nor did the analysis that Mr. Rehberg's NEP testimony sponsors consider the impact of NEP's pilot proposal on non-low-load factor customers if AEP Ohio were to charge them more to make up for a revenue reduction caused by implementing his proposal. (*Id.* at 799.) Accordingly, the Commission should find that the Stipulation's non-inclusion of NEP's flawed pilot proposal, which would itself violate important regulatory principles, does not cause the Stipulation to fail the third prong of the Commission's settlement test.

c. The Stipulation does not violate any important regulatory principles or practices based on refusal to purchase and incorporate Armada Power's proprietary water heater technology into the DIR

Finally, the Signatory Parties' decision to enter a stipulation that does not require AEP Ohio to purchase and install 20,000 Armada Power water heater controller units does not violate any important regulatory principles or practices. Armada Power is a company whose "main product is a * * * [software connected] water heater controller" designed to operate as "energy storage-type devices for the power grid * * * ." (Armada Ex. 17 at 1.) Armada Power has proposed that the Commission adopt a pilot program that would require AEP Ohio to purchase and install 20,000 of Armada's product, at a cost of $6 to $6.9 million (not counting installation costs, cellular service charges (*id.* at 7-8), and marketing and customer education costs (Tr. IV at 718)). Armada Power has not identified any regulatory principles that the stipulation violates. (*See id.* at 829.) Armada Power simply opposes the Stipulation because it does not require AEP Ohio to purchase and install Armada's product. (*See id.* at 812.) The fact that the Stipulation does not put millions of dollars into Armada Power's pockets does not violate any important regulatory principle or practice, and is not a basis for rejecting the Stipulation.

CONCLUSION

For the foregoing reasons, the Commission should adopt the Stipulation without modification.

Respectfully submitted,

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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 upon the following parties.In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 14th day of June, 2021, via email.

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