

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for an)	Case No. 20-585-EL-AIR
Increase in Electric Distribution Rates)	
 In the Matter of the Application of)	
Ohio Power Company for)	Case No. 20-586-EL-ATA
Tariff Approval)	
 In the Matter of the Application of)	
Ohio Power Company for Approval)	Case No. 20-587-EL-AAM
To Change Accounting Methods)	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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BACKGROUND

As part of the settlement of its last Electric Security Plan (“ESP”) case, the Ohio Power Company (“AEP Ohio” or “Company”), agreed to file a base distribution case by June 1, 2020.¹ In approving that settlement agreement, the Public Utilities Commission of Ohio (“Commission”) directed the Company to take several actions as part of that filing. Specifically, the Company was ordered to update its weighted average cost of capital (“WACC”) rate if it completed a long-term debt financing or refinancing prior to filing.² The Commission also found, among other things, that

AEP Ohio should carry out its commitment to analyze, as part of the rate case, its actual costs of providing SSO generation service. AEP Ohio should also analyze, in the rate case, its actual costs associated with the choice program. Following a thorough analysis of AEP Ohio's distribution rates in the rate case, the Commission will determine whether it is necessary to reallocate costs between shopping and non-shopping customers, in order to ensure that the Company's rates are fair and reasonable for all customers.³

On June 8, 2020, AEP Ohio filed its application to increase its rates pursuant to R.C. 4909.18. Pursuant to R.C. 4909.19, the Commission Staff (“Staff”) conducted an investigation of the facts, exhibits, and matters relating to the application. On November 18, 2020, as corrected on November 25, 2020, Staff filed a written report of its Staff Report of Investigation (“Staff Report”).

¹ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 16-1852-EL-SSO, (Opinion and Order) (25 April 2018) (“AEP ESP IV Order”) at ¶45.

² *Id.* at 20.

³ *Id.* at 99.

On March 12, 2021, a Joint Stipulation and Recommendation (“Stipulation”) was filed by AEP Ohio and 13 other parties to the proceedings. Non-substantive corrected versions of the Stipulation and its schedules were filed on April 7, 2021 and May 11, 2021. Testimony was filed both in support of and in opposition to the Stipulation, and the evidentiary hearing commenced on May 12, 2021.

Staff is a signatory party to the Stipulation. Staff respectfully submits that the Stipulation resolves all of the issues identified by Staff in its Staff Report, and recommends that it be approved and adopted by the Commission without modification.

ARGUMENT

I. The Stipulation should be approved.

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation, as they have here. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123,125,592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155,157, 378 N.E.2d 480 (1978).

The standard of review for considering the reasonableness of a stipulation has been discussed in numerous prior Commission proceedings.⁴ The ultimate issue is whether the agreement is reasonable and should be adopted by the Commission. In

⁴ See, e.g., *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR and 14-1694-EL-AAM (Opinion and Order) (Mar. 31, 2016) at 48-49 (“PPA Case”).

considering the reasonableness of a stipulation, the Commission has used the following criteria⁵:

- (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; and
- (3) Does the settlement package violate any important regulatory principle or practice?

In support of the stipulation, AEP Ohio filed the testimony of David Roush, Managing Director, Regulated Pricing and Analysis, for AEP Service Corporation (AEP Ex. 4), Andrea Moore, Managing Director, Case Management, for AEP Service Corporation (AEP Ex. 6), and Adrien McKenzie, President of Financial Concepts and Applications, Inc. (AEP Ex. 5). The Office of the Ohio Consumers' Counsel filed the testimony of William Ross Willis, Senior Regulatory Analyst and Electric Industry Team Leader in the Analytical Department (OCC Ex. 1). EVgo Services, LLC ("EVgo") filed the testimony of Sara Rafalson, Vice President of Market Development and Public Policy (EVGo Ex. 1). Clean Fuels Ohio filed the testimony of Brendan Kelley, Director of Drive Electric Ohio (Clean Fuels Ohio Ex. 1). The Commission Staff filed the testimony of Dorothy Bremer, Public Utilities Administrator within the Regulatory Utility Services Division of the Rates and Analysis Department (Staff Ex. 5); Krystina Schaefer, Chief of the Grid Modernization and Retail Markets Division of the Rates and Analysis Department (Staff Ex. 4); James Zell, Public Utilities Administrator of the Financial

⁵ The Commission's use of these three criteria to evaluate the reasonableness of a stipulation has been endorsed by the Supreme Court of Ohio. See, e.g., *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373; *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 2002-Ohio-1735.

Analysis Section of the Rates and Analysis Department (Staff Ex. 2); Craig Smith, Public Utilities Administrator with the Reliability and Service Analysis Division within the Service Monitoring and Enforcement Department (Staff Ex. 3); and David Liphtratt, Chief of the Accounting and Finance Division of the Rates and Analysis Department (Staff Exs. 6 & 7).

A. The settlement is a product of serious bargaining among capable, knowledgeable parties

The parties engaged in a number of settlement discussions, both with individual stakeholder groups and in meetings open to all intervening parties. Company witness Moore testified that she attended the settlement meetings and several meetings with individual parties that led to the stipulation. AEP Ex. 6 at 3.

Ms. Moore testified that the stipulation was the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder groups. Ms. Moore also states the parties to the cases at issue are capable and knowledgeable about the issues raised. AEP Ex. 6 at 16. The parties in these proceedings routinely and actively participate in rate and regulatory matters before the Commission. The evidence of record conclusively demonstrates participation in the negotiation sessions by signatory and non-signatory parties alike, and demonstrates the knowledge and experience of the parties.

In her testimony, Ms. Moore noted that the signatory parties represent a variety of diverse interests. Specifically, she testified that the parties include:

Ohio Power Company (AEP Ohio or Company); the staff of the Commission (Staff); The Kroger Company; the Ohio Hospital Association (OHA); the Ohio Energy Group (OEG); Walmart Stores East, L.P. and Sam's East, Inc; Industrial Energy Users – Ohio (IEU); Ohio Consumers' Counsel (OCC); Ohio Manufacturers' Association Energy Group (OMAEG); One Energy; Clean Fuels Ohio (CFO); Charge Point; EVgo; and the Ohio Cable Telecommunications Association (OCTA) . . .

AEP Ex. 6 at 3-4 (collectively, the “Signatory Parties”). In addition, Zeco Systems, Inc. d/b/a Greenlots, submitted a letter in the docket on March 25, 2021 stating that it did not object to the Stipulation.

Not all parties signed the Stipulation, of course. Notably, the following parties oppose the Stipulation: Armada Power, LLC (“Armada”), Direct Energy Business, LLC and Direct Energy Services, LLC (“Direct”), Environmental Law & Policy Center (“ELPC”), IGS Energy (“IGS”), Nationwide Energy Partners, LLC (“NEP”), Natural Resources Defense Council (“NRDC”), Ohio Environmental Council (“OEC”), Ohio Partners for Affordable Energy (“OPAE”) (collectively “Opposing Parties”).

There is no requirement that a stipulation be executed all parties, or even by a diverse group of stakeholders, in order to be approved by the Commission. The decision by the Opposing Parties not to sign the stipulation does not somehow “trump” this first prong of the test. As the Commission recently held,

The three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component . . . We reject [the] attempt to revise the test to evaluate stipulations based on the diversity of signatory parties. . . . The Commission has repeatedly determined that we will not require any single party . . . to agree to a stipulation, in order to meet the first

prong of the three-prong test. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005), Entry on Rehearing (Mar. 23, 2005) at 7-8. However, no particular customer class may be intentionally excluded from negotiations. The Ohio Supreme Court has previously expressed grave concern regarding the adoption of a partial stipulation where the stipulation arose from settlement talks from which an entire customer class was intentionally excluded. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). The record in these proceedings demonstrates that representatives of each of the customer classes . . . participated in the settlement negotiations. . . . There is no evidence in the record that an entire class of customers was excluded from the settlement negotiations.⁶

As in that case, all parties were invited to and participated in negotiations.

AEF Ex. 6 at 16.

The fact that the Stipulation was neither negotiated nor signed by specific customers is of no consequence. Staff witness Lipthrott acknowledged on cross-examination that the Stipulation did not include schools or apartment owners, for instance. In the first instance, no such parties sought to intervene and protect their interests in this case. Moreover, this does not mean that the interests of such parties were not considered. It is Staff's responsibility to balance the interests of all customers, regardless whether they are formal intervening parties. Tr. Vol II at 425, line 20. Indeed, the Ohio Supreme Court has recognized that "the deliberate exclusion of specific

⁶ *PPA Case* (Opinion and Order) (Mar. 31, 2016) at 52-53.

customer-class members does not raise the same concern, so long as the class in its entirety is not excluded [from settlement talks].”⁷ No intervenor, no customer class, was excluded from settlement discussions. Nor is there

a preferred method of communicating an offer or counteroffer, whether by in-person meetings, telephone conference, or electronic mail, to comply with the first criterion of the three-part analysis. At any time in the negotiation process, any two parties to a Commission case may enter into an agreement to resolve some or all of the issues raised in the case.⁸

Neither is it of any consequence that any specific proposal from an Opposing Party, whether or not advanced in negotiations, was not included in the final Stipulation. It is not a requirement of serious bargaining that an offer or counteroffer be accepted. “Serious bargaining” is not determined by the content of the final agreement alone, but also by the process by which it resulted.

Aside from the exclusion of a customer class from negotiations, the only instance in which either the Commission or the Ohio Supreme Court has found bargaining not to have been serious was where the resulting agreement was reached because other secret undisclosed side agreements were also executed.⁹ There is no evidence in this record that the negotiation process was anything but open, or that the agreement was incomplete by

⁷ *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶ 16-24.

⁸ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Extend and Increase its Infrastructure Replacement Program*, Case No. 16-2422-GA-ALT (Opinion and Order) (31 Jan 2018) at ¶33.

⁹ *Ohio Consumers' Counsel v. PUC*, 111 Ohio St. 3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶86.

its terms. There is no evidence that there were any “concessions or inducements apart from the terms agreed to in the stipulation.”¹⁰

Based on the record, it is undisputed that all parties to this proceeding were afforded the opportunity to participate in numerous settlement meetings over the course of several month, and were each represented by able counsel and technical experts familiar with regulatory matters before the Commission. No party asserts a particular customer class was specifically excluded from participating in negotiations. The 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. Based on the record before the Commission, the Stipulation is the product of serious bargaining among capable, knowledgeable parties, and satisfies the first prong of the three-part test.

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

The Commission must determine whether the settlement, as a package, benefits ratepayers and the public interest. That is, it must look at the overall impact of the settlement. There is no requirement that each individual provision, or that any particular provision, of the settlement must satisfy some “cost / benefit” analysis. There is also no requirement that a settlement seek to “maximize” benefits to ratepayers. If the package, as a whole, *provides benefits* to ratepayers and the public interest, it should be approved.

¹⁰ *Ohio Consumers' Counsel v. PUC*, 111 Ohio St. 3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶86.

Because the stipulation before the Commission benefits both ratepayers and the public interests it should be approved.

As a general matter, Company witness Moore testified that stipulations offer efficiencies when compared to fully litigated cases. AEP Ex. 6 at 17. Ms. Moore, Staff witness Liphtratt, and OCC witness Willis all offered testimony that the Stipulation provides numerous other benefits to ratepayers and the public interest.

The stipulated overall increase is \$110.8 million less than the Company's proposed revenue requirement of \$1,066 million. AEP Ex. 6 at 17; Staff Ex. 6 at 5; OCC Ex. 1 at 6. The stipulated rate of return of 7.28% is lower than the 7.90% requested in the original application (Staff Ex. 6 at 5, OCC Ex. 1 at 6), and below the midpoint of the range recommended by the Staff (Staff Ex. 2 at 3). AEP witness McKenzie testified that these rates would allow customers to enjoy the benefits that come from ensuring that the utility has the financial wherewithal to take whatever actions are required to ensure safe and reliable service. AEP Ex. 5 at 10. AEP witness Moore concluded that this compromise provides for reasonable charges for customers. AEP Ex. 6 at 17.

The benefits for residential customers were sufficiently significant to lead OCC to take the unusual step of becoming a signatory party. Setting the customer charge at \$10 per month, instead of the \$14 proposed by AEP Ohio, allows consumers an opportunity to better control their monthly electric bills through reductions in usage (OCC Ex. 1 at 8), while permitting the Company to continue a gradual transition aligning cost causation with cost collection (AEP Ex. 6 at 18).

The allocation of the revenue requirement responsibility among customer classes also benefits residential consumers. As OCC witness Willis testified, residential customers will be allocated 56.77% of the revenue requirement rather than AEP's initial proposal to allocate 58.86% to residential customers, saving residential consumers approximately \$20 million per year in avoided base distribution charges. OCC Ex. 1 at 6.

Phasing out the Pilot Throughput Balancing Adjustment Rider ("PTBAR") could save residential customers another \$20 million per year. Although AEP's decoupling charge "was created with the potential that consumers could receive a credit from AEP in some years, the history of this decoupling charge is that consumers always paid money to AEP." OCC Ex. 1 at 8. Eliminating the PTBAR provides a significant financial benefit to residential customers. Staff Ex. 6 at 5.

A number of other provisions are intended to benefit residential consumers. The charge for reconnecting customers at the meter, for example, will be reduced to \$0. OCC Ex. 1 at 9. The delayed payment fee will be delayed for a year (AEP Ex. 6 at 17), and won't be billed to customers until the 22nd day after the issuance date on a customer's bill (Joint Ex. 1 at 14), a full week later than the current tariff.

One of the expectations of this case was "to help address concerns about some of the distribution riders becoming excessive and to recalibrate the costs being reflected in base rates versus riders."¹¹ Agreed changes to two of these rider-recovered programs, the

¹¹ *AEP ESP IV* (Opinion and Order) (25 April 2018) at ¶45.

Distribution Investment Rider (“DIR”) and that Enhanced Service Reliability Rider (“ESRR”) benefit both ratepayers and the public interest.

The Company had proposed spending levels of approximately \$440 million, including the proration of 2024 through May, for the DIR. The Stipulation proposes reducing those caps to approximately \$315 million, saving customers over \$100 million compared to AEP’s original request. AEP Ex. 6 at 17, OCC Ex. 1 at 7. The DIR spend allows the Company to continue investing in programs to improve reliability for customers, and includes additional reliability commitments to gauge improvements to the system. Although the Company has limited opportunity to exceed those caps, it can only do so upon meeting certain more stringent reliability metrics. AEP Ex. 6 at 17. The Company has also committed to track and provide performance data to certain Signatory Parties. Joint Ex. 1 at 8.

The spend levels for the ESRR are also proposed to be lowered, reducing the amount requested by the Application by approximately \$57 million. AEP Ex. 6 at 17. Spending above the annual amounts would be deferred for later collection, with no financing charges to be assessed to customers. OCC Ex. 1 at 7.

The Stipulation also provides benefits to General Service customers. The Signatory Parties agreed that the Company would implement a stepped approach for the primary voltage demand rates as well as the non-demand metered energy rates to mitigate the potential for bill impacts. Not only will this ensure gradualism for the general service tariffs, it will effectively complete AEP Ohio’s transition to a combined rate zone. AEP Ex. 4 at 6, AEP Ex. 6 at 17.

The Basic Transmission Cost Rider (“BTCR”) Pilot will continue under the Stipulation, and expand opportunities for participation. AEP Ex. 6 at 18, Staff Ex. 6 at 5. Opposing party IGS’s witness Haugen agreed that the expansion of the BTCR would be beneficial:

Q: [Ms. Bojko]: You would agree with me, sir, that the BTCR pilot program contained in the Stipulation does provide benefits to those customers that are participating in the program, correct?

A: [Mr. Haugen]: That's correct. The customers that we have enrolled in the program have seen benefits and do plan to continue in the program.

Q: And is it your opinion, sir, that the pilot program is an improvement over not having the pilot program, meaning that all customers would just be allocated transmission costs based on the customer cost allocation -- customer class allocation methodology?

A: I would agree with that, that the pilot program is a better cost method allocation policy than not having it at all.

Q: So that is an improvement over how other -- customers participating in the BTCR program, that's an improvement over not having the BTCR program for those participating customers, correct?

A: I would agree with that.

Tr. Vol. V, at 1016:16 – 1017:11.

AEP Ohio had proposed to move from negotiated Alternate Feed Service (“AFS”) contracts to AFS Tariff rates. The Stipulation provides that AFS fees would be waived for OHA members, subject to certain conditions, until the Company’s next base rate case, and that that waiver would not be subsidized by or charged to residential customers. Joint

Ex. 1 at 15, AEP Ex. 6 at 17. This provides a significant benefit to hospitals, especially critical at this time, without undue subsidization.

The Stipulation establishes a distributed generation tariff for eligible customers who wish to install on-site renewable generation. This will provide an opportunity for demand savings for those customers that can reduce demand during the Company's seasonal peak periods. AEP Ex. 6 at 18, Staff Ex. 6 at 5.

Finally, the Stipulation continues the Company's ability to examine the impact of the nascent but burgeoning electric vehicle ("EV") market on its system. AEP Ex. 6 at 18. The Plug-In Electric Vehicles Pilot (Schedule PEV) encourages customers to charge their vehicles off peak, contributing to the system to the benefit of other customers without placing a cost burden on the system or other customers. Tr. I at 93-94. EVGo witness Rafalson testified that the PEV tariff's Time of Use ("TOU") rates can increase the efficiency of the grid, reduce peak load, and drive down costs for all customers. Revised Testimony of Sara Rafalson, EVGo Ex. 1 at 5. Ms. Rafalson also testified that the Stipulation would facilitate the development of EV charging infrastructure, encourage more widespread adoption of EVs, and result in reduced emissions, a cleaner environment, and lower healthcare costs. *Id.*

The benefits, both to ratepayers and for the public interest, are numerous and widespread. Because this is a negotiated settlement, each party is likely to feel that some of the benefits that it sought were "left on the table." But the Commission's standard for evaluating stipulations does not require that agreements maximize benefits, or even result in the lowest cost to consumers. Rather, a stipulation must be reasonable, and provide

benefits to ratepayers and the public. Staff respectfully submits that this Stipulation does precisely that. Based on the record before the Commission, the Stipulation, as a package, benefits ratepayers and the public interest, and satisfies the second prong of the three-part test.

C. The settlement package does not violate any important regulatory principle or practice.

While there are many principles that guide the Commission in evaluating rate setting proposals, there is no “checklist,” no scorecard, that enumerates which “regulatory principles or practices” are important. Each stipulation must be evaluated on a case by case basis.

The signatory parties submit that the Stipulation in this case satisfies this criterion.

Company witness Moore testified that Stipulation does not violate any important regulatory principle or practice. To the contrary, she testified that the Stipulation advances important principles, by implementing gradualism to mitigate rate impacts, delaying certain charges to limit the impact of the pandemic, providing incentives for customers to manage their load and reduce their costs, affording opportunities for evaluating system impacts, and creating additional reliability reporting. AEP Ex. 6 at 19.

OCC witness Willis testified that the Stipulation was “the result of traditional rate setting policies, practices, and procedures and [is] consistent with sound regulatory principles and practices.” OCC Ex. 1 at 10. Similarly, Staff witness Lipthratt testified that the settlement did not violate any important regulatory principles or practices. Staff Ex. 6 at 5. Furthermore, he stated that the Stipulation “represents a fair, balanced, and

reasonable compromise of the issues in this proceeding,” and “meets all of the Commission’s criteria for adoption of settlements.” Staff Ex. 6 at 7.

Staff respectfully submits that the Stipulation is consistent with, and complies with, all relevant and important regulatory principles and practices.

CONCLUSION

The parties in this case have reached a Stipulation that resolves the issues among the signatory parties. That Stipulation satisfies the Commission’s three-part test for reasonableness. Staff respectfully requests that the Stipulation should be approved without modification.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 14th day of June, 2021.

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