

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INITIAL POST-HEARING BRIEF  
OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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**I. INTRODUCTION**

On March 12, 2021, a diverse group of Signatory Parties,<sup>1</sup> including the Ohio Manufacturers' Association Energy Group (OMAEG), filed a just and reasonable Stipulation and Recommendation (the Settlement), resolving the issues in the above-captioned distribution rate case of Ohio Power Company (AEP) before the Public Utilities Commission of Ohio (Commission). Adopting the Settlement would efficiently and equitably resolve numerous complex issues related to AEP's distribution rates in a just and reasonable manner that is in the public interest.

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<sup>1</sup> Parties that support the settlement include: AEP; the Commission Staff; OMAEG; the Ohio Hospital Association (OHA); Ohio Energy Group (OEG); the Kroger Co. (Kroger); Walmart, Inc. (Walmart); Industrial Energy Users-Ohio (IEU); Office of the Ohio Consumers' Counsel (OCC); One Energy; Clean Fuels Ohio; Charge Point; EVgo; and Ohio Cable Telecommunications Association (OCTA) (collectively, Signatory Parties).

Despite Opposing Parties' claims,<sup>2</sup> the record clearly demonstrates that the Settlement is the product of serious bargaining between capable, knowledgeable parties, and as a package, benefits ratepayers and the public interest, and does not violate any regulatory principle or practice. Accordingly, the Settlement passes the Commission's three-part test for evaluating stipulations, and should be adopted by the Commission in its entirety.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

On April 9, 2020, AEP filed a notice of intent to file an application for an increase in its electric distribution rates with the Commission<sup>3</sup> and on June 1, 2020, AEP filed an Application for an increase in its electric distribution rates.<sup>4</sup> On November 18, 2020, the Commission Staff filed an initial Staff Report regarding AEP's Application, but re-filed and replaced the Staff Report in its entirety on November 25, 2020 to correct errors. R.C. 4909.19 provides that the filing of objections to the Staff Report must be made "within thirty days after such filing and the mailing of copies thereof." On December 10, 2020, the Commission deemed the Staff Report filed as of the initial date, November 18, 2020.<sup>5</sup> Therefore, pursuant to the Commission's Entry interpreting R.C. 4909.19 and Ohio Adm. Code 4901-1-28, several parties, including OMAEG, filed their objections to the Staff Report on December 18, 2020.

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<sup>2</sup> Parties that oppose the Settlement include: Nationwide Energy Partners, LLC (NEP); Armada Power LLC (Armada); Interstate Gas Supply, Inc. (IGS); Direct Energy Business LLC & Direct Energy Services LLC (Direct); Ohio Environmental Council (OEC); Environmental Law & Policy Center (ELPC); Natural Resources Defense Council (NRDC); and Ohio Partners for Affordable Energy (OPAE) (collectively, hereinafter "Opposing Parties").

<sup>3</sup> See AEP's Pre-Filing Notice of Intent to File an Application (April 9, 2020).

<sup>4</sup> Due to the closure of the Commission's offices from June 1, 2010 through June 5, 2020, the application for a rate increase, submitted by AEP on June 1, 2020 was accepted for filing on June 8, 2020, and deemed timely filed in accordance with R.C. 1.14 and Ohio Adm. Code 4901-1-07 and 4901-1-13. See *In re the Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 20-1132-AU-UNC, Entry (June 8, 2020).

<sup>5</sup> Entry at ¶ 12 (December 10, 2020).

Subsequently, intervening parties engaged in numerous settlement conferences over an extended period of time to ultimately reach a compromise on the various issues raised in the Application of AEP and the objections to the Staff Report. On March 12, 2021, fourteen Signatory Parties, including AEP, the Commission Staff, OMAEG, and eleven other intervenors, filed the Settlement with the Commission to resolve the above-referenced cases.<sup>6</sup> While all intervening parties actively participated in the settlement negotiations, some parties declined to join the Settlement. Nonetheless, the Settlement contains several provisions that, if approved, will benefit all customers and is in the public interest.

First, the Settlement reduces AEP's revenue requirement by roughly \$111 million from what was initially requested in AEP's Application.<sup>7</sup> Similarly, the Settlement reduces AEP's rate of return to 7.28%<sup>8</sup> from the 7.90% rate of return included in AEP's Application.<sup>9</sup> If the Settlement is adopted, AEP's customers will pay roughly \$24.4 million less in annual base distribution charges than what AEP had initially proposed.<sup>10</sup>

Second, the Settlement implements customer-friendly changes to several AEP charges and riders including: delaying the implementation of a delayed payment charge; reducing the Distribution Investment Rider (DIR); eliminating the Pilot Throughput Balancing Adjustment Rider (Rider PTBAR); reducing the Enhanced Service Reliability Rider (ESRR); implementing mitigation rates to phase-in increases of AEP's zonal rates; reducing demand charges;

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<sup>6</sup> On May 11, 2021, an Updated Joint Stipulation and Recommendation was filed with the Commission to correct typographical errors. No substantive or pagination changes were made.

<sup>7</sup> OCC Exhibit 1, Direct Testimony of Wm. Ross Willis at 6 (April 9, 2021) (Willis Testimony) (citing the Settlement at Attachment A, Schedule A-1).

<sup>8</sup> Joint Exhibit 1, Settlement at 4.

<sup>9</sup> AEP Exhibit 1, Application (part 1 of 16) at 5.

<sup>10</sup> OCC Exhibit 1, Willis Testimony at 6.

implementing Distribution Generation (DG) Tariff; and the expansion of the Basic Transmission Cost Rider (BTCR) Pilot Program.

Under the Settlement, AEP's delayed payment charge will not be implemented before one year after the Settlement was executed, and will not be billed to customers until the 22<sup>nd</sup> day after the issuance date on a customer's bills.<sup>11</sup> This provision is consistent with the recommendations of the Commission Staff<sup>12</sup> and other intervenors<sup>13</sup> and is intended to mitigate bill impacts as customers continue to recover from the economic effects of COVID-19.<sup>14</sup>

The Settlement reduces revenue caps on AEP's DIR for 2021-2024 by \$247.75 million (with the possibility of approximately \$20 million aggregate in cap increases if AEP meets certain reliability standards subject to annual review by Commission Staff).<sup>15</sup> The Settlement specifically reserves the Signatory Parties' rights to support or oppose the establishment of new distribution reliability standards.<sup>16</sup> The Signatory Parties have also agreed that AEP will continue to file its DIR work plan and allow the Commission Staff and certain Signatory Parties to review DIR data and data related to specific distribution facilities.<sup>17</sup>

The Settlement eliminates AEP's decoupling mechanism, Rider PTBAR, effective with new base rates, subject to final reconciliation.<sup>18</sup> The Settlement also caps Rider PTBAR for the

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<sup>11</sup> Joint Exhibit 1, Settlement at 14.

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.,* OCC Objections at 17 (December 18, 2020).

<sup>14</sup> *See* AEP Exhibit 6, Direct Testimony of Andrea E. Moore at 17-18 (April 9, 2021) (Moore Testimony).

<sup>15</sup> Joint Exhibit 1, Settlement at 6-7; Staff Exhibit 1, Staff Report at 29.

<sup>16</sup> Joint Exhibit 1, Settlement at 7.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.* at 10.

period of February 2021 until the new base rates become effective.<sup>19</sup> In comparison, AEP's initial proposal called for the continuation and expansion of Rider PTBAR.<sup>20</sup>

Furthermore, the Settlement establishes a total spending cap on the ESRR during the period of January 2021 through May 2024 of \$153.75 million.<sup>21</sup> For planning purposes and to establish annual ESRR rates, the funding cap will be set at \$45 million annually (prorated for 2024).<sup>22</sup> Any spending above the \$45 million annual amount will be deferred for later collection from customers, and there will be no financing charges assessed to customers.<sup>23</sup> In comparison, the Application did not contemplate any spending cap on the ESRR.<sup>24</sup>

The Settlement allows AEP to consolidate the Ohio Power (OP) and Columbus Southern Power (CSP) rate zones, consistent with prior directives from the Commission.<sup>25</sup> Importantly, the Settlement provides that the new rates for CSP customers will be gradually phased-in over a four year-period.<sup>26</sup>

The Settlement also reduces demand charges for customers from AEP's initial proposal<sup>27</sup> and establishes a Distributed Generation (DG) Tariff.<sup>28</sup> The DG Tariff provides a demand charge

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<sup>19</sup> *Id.*

<sup>20</sup> *See* Staff Exhibit 1, Staff Report at 29-30.

<sup>21</sup> Joint Exhibit 1, Settlement at 9.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See* Staff Exhibit 1, Staff Report at 29.

<sup>25</sup> *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Entry at ¶¶ 14, 37 (March 7, 2012) (confirming the merger of Ohio Power Company and Columbus Southern Power Company and directing that the consolidation of the companies' distribution rates would occur in a subsequent proceeding).

<sup>26</sup> AEP Ohio Exhibit 6, Moore Testimony at 13.

<sup>27</sup> Joint Exhibit 1, Settlement at 18.

<sup>28</sup> Joint Exhibit 1, Settlement at 13-14.

to participants based on their six coincident peaks (6 CP) and encourages participants owning distribution generation to operate the system during the summer and winter peaks.<sup>29</sup>

In regards to the BTCR Pilot Program, the Settlement continues the Pilot Program and expands the eligibility and MW cap for BTCR Program Pilot participants,<sup>30</sup> which has the potential to reduce transmission investments and thus costs for all Ohio consumers.<sup>31</sup> The Settlement also provides that AEP will undertake collaborative discussions with certain Signatory Parties to consider the potential future expansion of the BTCR and other demand response programs for transmission customers.<sup>32</sup>

Finally, the Settlement expressly preserves parties' rights to take any desired position in future proceedings on matters such as energy efficiency (EE) and demand side management (DSM), electric vehicle (EV) programs, and federal taxation.<sup>33</sup>

In exchange for obtaining these benefits and conditioned on the Commission's approval of the Settlement without modification, the Signatory Parties agreed to recommend that the Commission approve an increase to AEP's electric distribution rates, as set forth in the Settlement.<sup>34</sup>

### **III. LAW AND ARGUMENT**

Any two or more parties to a Commission proceeding may enter into a stipulation concerning the proposed resolution of some or all of the issues in a proceeding.<sup>35</sup> While a

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<sup>29</sup> AEP Ohio Exhibit 4, Direct Testimony of David M. Roush at 5 (April 9, 2021) (Roush Testimony).

<sup>30</sup> Joint Exhibit 1, Settlement at 17-18.

<sup>31</sup> See IGS Exhibit 1, Direct Testimony of Joseph Haugen at 7 (April 21, 2021) (Haugen Testimony).

<sup>32</sup> Joint Exhibit 1, Settlement at 18.

<sup>33</sup> *Id.* at 14-15 and 18-19.

<sup>34</sup> *Id.* at 20.

<sup>35</sup> Ohio Adm. Code 4901-1-30(A).



stipulation does not bind the Commission,<sup>36</sup> the Commission may put substantial weight on the terms of the stipulation.<sup>37</sup> The Commission uses a three-part test to determine if it should adopt a stipulation:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?<sup>38</sup>

In this case, all of the parties engaged in settlement negotiations and were capable, knowledgeable parties. Ultimately, after robust negotiations, fourteen of the parties entered into the Settlement, which efficiently and equitably resolves all of the issues in the above-referenced proceeding as a package in a way that benefits ratepayers and the public interest, and does not violate any regulatory principle or practice. The weight of the evidence presented by the parties demonstrates that the Settlement passes the Commission's three-part test, and should be adopted in its entirety by the Commission.

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

All parties to the proceeding are capable and knowledgeable and were involved in the settlement negotiations. The Signatory Parties to the Settlement represent a diverse range of interests and consist of the following: an electric distribution utility;<sup>39</sup> the Commission Staff; the State's residential consumer advocate;<sup>40</sup> statewide associations representing commercial and

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<sup>36</sup> Ohio Adm. Code 4901-1-30(E).

<sup>37</sup> *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125-26 (1992).

<sup>38</sup> *Id.*

<sup>39</sup> AEP.

<sup>40</sup> OCC.

industrial consumers of various sizes;<sup>41</sup> a nationwide grocery chain headquartered in Ohio;<sup>42</sup> EV infrastructure companies;<sup>43</sup> Ohio-based organizations that promote renewable energy use;<sup>44</sup> a nationwide retailer with 61 facilities in AEP's service territory;<sup>45</sup> a statewide association representing hospitals;<sup>46</sup> and a statewide association representing the cable telecommunications industry.<sup>47</sup> Many of the Signatory Parties, such as OMAEG, have a history of participating in proceedings before the Commission, including participation in a number of prior cases involving distribution rates.<sup>48</sup>

Moreover, the Signatory Parties engaged in serious bargaining to reach the Settlement. As one of AEP's witnesses explained, the Signatory Parties participated in several bargaining conferences before reaching the Settlement and were represented by competent, capable and knowledgeable counsel and with access to technical experts.<sup>49</sup> The negotiations occurred over the course of more than two months and several hours of virtual meetings.<sup>50</sup> All parties were invited to participate in these settlement conferences and no party was excluded.<sup>51</sup> The Settlement

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<sup>41</sup> OMAEG; IEU; and OEG.

<sup>42</sup> Kroger.

<sup>43</sup> Charge Point and EVgo.

<sup>44</sup> Clean Fuels Ohio and One Energy.

<sup>45</sup> Walmart.

<sup>46</sup> OHA.

<sup>47</sup> OCTA.

<sup>48</sup> See, e.g., *In the Matter of the Application of The Dayton Power and Light Company to Increase its Rates For Electric Distribution*, Case No. 20-1651-EL-AIR; *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates*, Case No. 17-0032-EL-AIR; *In the Matter of the Application of The Dayton Power and Light Company to Increase its Rates for Electric Distribution* (Case No. 15-1830-EL-AIR).

<sup>49</sup> See AEP Exhibit 6, Moore Testimony at 16.

<sup>50</sup> OCC Exhibit 1, Willis Testimony at 5.

<sup>51</sup> AEP Ohio Exhibit 6, Moore Testimony at 16.

resolves numerous complex issues and required major concessions from all parties, resulting in extensive changes to AEP's original Application.<sup>52</sup>

Opposing Parties' witnesses do not refute the capability or knowledge of the Signatory Parties. Moreover, there is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory.<sup>53</sup> The Commission acknowledges that the parties to a proceeding are in the best position to evaluate their own best interests and costs, and "expects that parties to Settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation."<sup>54</sup> In this case, Opposing Parties declined to join the Settlement based on their own interests and not because of any procedural defect of the Settlement.<sup>55</sup> Consequently, the Settlement passes the first prong of the Commission's three-prong test, as it constitutes a product of serious bargaining among capable, knowledgeable parties.

#### **B. The Settlement, as a package, benefits ratepayers and the public interest.**

When analyzed as a package, overall the Settlement benefits ratepayers and the public interest and is significantly more favorable than AEP's Application or litigation positions in the above-referenced proceeding. As explained above, specifically, the Settlement reduces the revenue requirement and rate of return compared to AEP's initial proposal. In addition, the Settlement seeks to implement several changes to charges and riders of AEP to the direct benefit of ratepayers and the public interest. Lastly, the Settlement expressly preserves the rights of the

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<sup>52</sup> *Id.*; Tr. Vol. V at 990-991 (Cross-Examination of Williams).

<sup>53</sup> *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (December 30, 2020).

<sup>54</sup> *Id.*

<sup>55</sup> *See, e.g.*, Tr. Vol. IV at 828 (Cross-Examination of Rehberg) (Armada's witness stating that he took no position on whether the Settlement was a product of serious bargaining).

Signatory Parties to advance their desired positions in future proceedings on a variety of issues including EE/DSM, EV programs, and federal taxation.

While the Settlement secures numerous benefits for ratepayers and the public, Opposing Parties advance proposals that conflict with Commission precedent or rely on incomplete analyses. As further explained below, the Commission should find that the Settlement passes the second-prong of the three-prong test and reject arguments to the contrary.

As a threshold matter, the Settlement directly benefits customers by reducing the revenue requirement from AEP's initial proposal by approximately \$111 million.<sup>56</sup> The Settlement also reduces AEP's rate of return from 7.90% to 7.28%, which reduces the annual base distribution charges for customers by \$24.4 million when compared to the initial proposal in AEP's Application.<sup>57</sup>

Next, the Settlement makes beneficial changes to several AEP charges and riders. For example, under the Settlement, AEP's delayed payment charge will not be implemented before 12 months after the Settlement was executed, and the delayed payment charge will not be billed to customers until the 22<sup>nd</sup> day after the issuance date on a customer's bills.<sup>58</sup> These conditions comport with the recommendation in the Staff Report<sup>59</sup> and will lessen financial burdens on customers as the economy continues to recover from the pandemic.<sup>60</sup>

The Settlement also institutes several beneficial provisions related to AEP's DIR. First, the Settlement reduces the 2021-2024 revenue caps on the DIR by \$247.75 million. Second, while

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<sup>56</sup> See OCC Exhibit 1, Willis Testimony at 6.

<sup>57</sup> *Id.*

<sup>58</sup> Joint Exhibit 1, Settlement at 14.

<sup>59</sup> *Id.*

<sup>60</sup> See AEP Exhibit 6, Moore Testimony at 17-18.

the Settlement allows for up to \$20 million in cap increases, this is expressly conditioned on AEP achieving certain reliability standards subject to oversight from the Commission Staff.<sup>61</sup> Third, the Settlement reserve Signatory Parties' rights to advocate for their positions on new distribution reliability standards going forward.<sup>62</sup> Finally, the Settlement requires that AEP will continue to file its DIR work plan and allow the Commission Staff, OCC, and OMAEG to review DIR data and data associated with certain distribution facilities.<sup>63</sup>

Furthermore, the Settlement eliminates Rider PTBAR and caps the rider for the period of February 2021 until the date of effective rates in this proceeding.<sup>64</sup> AEP's Application requested that the Commission continue Rider PTBAR and expand the rider to new customer classes whose revenue was not previously decoupled.<sup>65</sup> The elimination of Rider PTBAR is important as AEP is no longer offering EE programs,<sup>66</sup> which served as the principal justification for the decoupling mechanism.<sup>67</sup>

The Settlement also caps AEP's total spending cap on the ESRR from January 2021 through May 2024 at \$153.75 million with the annual funding cap set at \$45 million.<sup>68</sup> Should AEP spend above the annual cap, the amount will be deferred for later collection from customers,

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<sup>61</sup> Joint Exhibit 1, Settlement at 4-7; Staff Exhibit 1, Staff Report at 29.

<sup>62</sup> Joint Exhibit 1, Settlement at 7.

<sup>63</sup> *Id.* at 8.

<sup>64</sup> *Id.* at 10.

<sup>65</sup> See Staff Exhibit 1, Staff Report at 29-30.

<sup>66</sup> See OEC Exhibit 1, Direct Testimony of Brendon J. Baatz at 4 (April 20, 2021) (Baatz Testimony).

<sup>67</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case Nos. 11-351-EL-AIR, Opinion and Order at 9 (December 14, 2011).

<sup>68</sup> *Id.*

and AEP will not assess customers financing charges.<sup>69</sup> Customers directly benefit from this provision as AEP's initial proposal lacked a cap of any amount on the ESRR spending.<sup>70</sup>

The Settlement provides for the consolidation of AEP's OP and CSP rate zones, allowing the CSP rates to be phased-in gradually over four years and terminating the separate rate zones.<sup>71</sup>

In addition, the Settlement reduces demand charges for customers compared to AEP's litigation position.<sup>72</sup> The Settlement also establishes the DG Tariff Pilot Program,<sup>73</sup> which will provide demand charges to participants based on their 6 CP and encourages participants who own distribution generation to operate the system during the summer and winter peaks by billing them based on their demands during the summer and winter peaks.<sup>74</sup>

The Settlement achieves multiple improvements to the BTCR Pilot Program. First, under the Settlement, the Pilot Program will continue. Second, the Settlement expands the allotments for participants in the BTCR Pilot Program and the Program's MW cap.<sup>75</sup> Third, the Settlement requires AEP to commence a collaborative discussion with the Commission Staff, OMAEG, and others, to examine expansion of the BTCR Pilot Program and other potential demand response programs for transmission customers.<sup>76</sup> These incremental improvements to the BTCR Pilot Program are particularly important for customers as transmission costs continue to increase.<sup>77</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> See Staff Exhibit 1, Staff Report at 29.

<sup>71</sup> AEP Ohio Exhibit 6, Moore Testimony at 13.

<sup>72</sup> Joint Exhibit 1, Settlement at 18.

<sup>73</sup> Joint Exhibit 1, Settlement at 13-14.

<sup>74</sup> AEP Ohio Exhibit 4, Direct Testimony of David M. Roush at 5(April 9, 2021) (Roush Testimony).

<sup>75</sup> Joint Exhibit 1, Settlement at 17-18.

<sup>76</sup> Joint Exhibit 1, Settlement at 18.

<sup>77</sup> IGS Exhibit 1, Haugen Testimony at 4-5 (citing that the "the AEP Transmission Zone revenue requirement has gone from \$1.3 billion in 2018 to \$2.1 billion in 2021.").

Moreover, increasing the eligibility in the BTCR Pilot Program and expanding the MW caps have the potential to reduce transmission investments and thus costs for all Ohio consumers.<sup>78</sup>

Lastly, the Settlement allows Signatory Parties to advance any position in future proceedings regarding critical issues such as EE/DSM, EV programs, and federal taxation.<sup>79</sup> Because each case before the Commission is unique, this provision will allow Signatory Parties to address the merits of a future proceeding independent of their interests in this distribution rate case.

While the record demonstrates that the Settlement provides numerous benefits to ratepayers and the public interest, the Commission should reject Opposing Parties' arguments to the contrary, which fail to address the proper legal standards, rely on unsound analyses, or tout speculative benefits.

In describing the second-prong of the three-prong test, the Commission has determined that, "[t]he question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest."<sup>80</sup> Despite this precedent, Opposing Parties ask that the Commission ignore the concrete benefits of the Settlement and instead adopt their proposals, which in their view (albeit misguided), would better benefit ratepayers.

For example, OEC's sole objection to the Settlement is that the inclusion of EE programs in AEP's distribution rates would, purportedly, provide additional benefits to customers.<sup>81</sup> Correspondingly, ELPC's witness, Chris Neme, "focuses on *just one issue* before the Commission

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<sup>78</sup> See *id.* at 7.

<sup>79</sup> Joint Exhibit 1, Settlement at 14-15 and 18-19.

<sup>80</sup> *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020).

<sup>81</sup> See OEC Exhibit 1, Baatz Testimony at 4.

in this proceeding: the provision in the settlement between AEP and other parties to strike AEP's proposed voluntary efficiency programs.”<sup>82</sup> Although OEC seems to admit that AEP does not currently offer EE/DSM programs as their prior programs ended December 31, 2020 due to a change in law and AEP is not currently authorized to offer EE/DSM programs per the General Assembly's directive, OEC and ELPC advocate for a “voluntary EE/DSM” program that is paid for by all customers through distribution rates.<sup>83</sup> But, there is no such proposal pending before the Commission as AEP withdrew its proposal. Additionally, AEP's base distribution rate proceeding is not the proper forum to raise these issues.

As OMAEG has previously explained, there is no legal authority that allows an EDU to implement a voluntary EE program with mandatory cost recovery from customers.<sup>84</sup> Nonetheless, to the extent the Commission wanted to entertain such a policy debate, contrary to Opposing Parties' claims, it makes more sense to do so on a statewide basis instead of in the distribution rate case of a single utility. Here, the pertinent question before the Commission is whether the Settlement passes the three-part test. At the evidentiary hearing, parties provided substantial testimony to assist the Commission in answering this very question and *not* whether EDUs in general may offer voluntary EE programs under Ohio law. Accordingly, the Commission should not fundamentally alter the regulatory scheme of Ohio in an individual proceeding where a voluntary EE program is no longer proposed by the utility.

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<sup>82</sup> See ELPC Exhibit 1 Direct Testimony of Chris Neme at 7 (April 20, 2021) (Neme Testimony) (emphasis added).

<sup>83</sup> See, e.g., OEC Exhibit 1, Baatz Testimony at 4.

<sup>84</sup> See, OMAEG Objections to the Staff Report at 15 (December 18, 2020).



Notwithstanding the above, it is important to note that the Settlement does not restrict AEP from proposing such programs in the future.<sup>85</sup> It also does not prohibit or restrict parties' rights from advocating either for or against such EE/DSM programs in those future proceedings.

Bottom line, OEC and ELPC fail to address the proper legal standard: whether the Settlement as a package is just and reasonable and consistent with Ohio law, but, instead, argue how the addition of an EE component could "better benefit ratepayers and the public interest."<sup>86</sup> The Commission should reject both OEC and ELPC's arguments as their arguments contradict Commission precedent and they fail to address the pertinent question before the Commission.

Similarly, Armada's testimony fails to adhere to Commission precedent and should be disregarded. Armada's witness, Eric Rehberg, testified that "he did not oppose any of the substantive components [of the Settlement]."<sup>87</sup> Yet Armada opposes the Settlement because of the absence of a water heater controller pilot program that uses Armada's propriety technology.<sup>88</sup> Again, this self-serving position does not adequately address the second-prong of the Commission's test. Instead, Armada improperly attempts to add additional purported "benefits" to the Settlement rather than addressing whether the Settlement as a package provides benefits to ratepayers and the public.

IGS/Direct's witness, Frank Lacey, also urged the Commission to find that the Settlement does not pass the second-prong because of "a very narrow part of the Stipulation....".<sup>89</sup>

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<sup>85</sup> Tr. Vol. III at 512 (Cross-Examination of Baatz).

<sup>86</sup> *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020).

<sup>87</sup> See Tr. Vol. IV at 813-814. (Cross-Examination of Rehberg).

<sup>88</sup> *Id.* at 812 (Mr. Rehberg agreeing that his testimony on behalf of Armada can be characterized as "oppos[ing] the Stipulation due to the absence of the pilot program that uses Armada's water heater control technology.").

<sup>89</sup> Tr. Vol. V at 1046 (Cross-Examination of Lacey).

Specifically, IGS/Direct argue that the Settlement is not in the public interest because of the provision setting the Retail Reconciliation Rider (RRR) and the Standard Service Offer Credit Rider (SSO Credit Rider) to \$0.<sup>90</sup> Notably, Mr. Lacey did not consider the Settlement *as a package* and took no opinion on key provisions such as the overall rate of return, the DIR, or the revenue allocation among customer classes.<sup>91</sup>

Another IGS/Direct witness, Joseph Haugen, conceded that the Settlement improves the status quo for ratepayers by expanding the BTCR Pilot Program eligibility and increasing the MW caps.<sup>92</sup> However, the very same witness opposed the Settlement because, in his view, more expansive changes to the BTCR Pilot Program would better benefit ratepayers and the public interest.<sup>93</sup> There is no evidence that the Commission will eliminate the BTCR anytime in the foreseeable future. Accordingly, as IGS implicitly acknowledged, gradual improvements to the BTCR Pilot Program constitute benefits to ratepayers and the public interest under the second-prong. The foregoing arguments of the Opposing Parties (and any other arguments along the same line of logic) should be discounted for their failure to adhere to Commission precedent and apply the Commission's three-part test.

In addition to misconstruing the second-prong of the test, the Opposing Parties' arguments rest on the assumption that by adopting their piecemeal proposals, all of the benefits to ratepayers and the public interest that the Signatory Parties secured would remain intact. The reality is that the Signatory Parties made various concessions in order to reach a balanced, just, and reasonable

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 1046-1048.

<sup>92</sup> *See* Tr. Vol. V at 1016-1017 (Cross-Examination Haugen).

<sup>93</sup> *See* IGS Exhibit 1, Haugen Testimony at 8-9.

Settlement.<sup>94</sup> The addition of any number of provisions would fundamentally alter the deal and could cause the entire Settlement to implode, leaving ratepayers with no guaranteed benefits.

Moreover, many of the Opposing Parties' proposals to provide purported benefits to ratepayers and the public are at best incomplete, and at worst, could prove harmful if adopted. For example, OEC urged the Commission to approve the EE plan originally proposed in AEP's Application and require AEP to develop additional EE offerings.<sup>95</sup> OEC's recommendation relies on a study sponsored by its witness, Brendon J. Baatz, that reportedly demonstrates that EE programs, in general, result in significant customer savings and economic development.<sup>96</sup> Although, OMAEG generally supports *market-based* EE measures, the study offered by OEC is deficient and should not influence the Commission's evaluation of the Settlement in the above-referenced proceeding.

While OEC recommends that the Commission approve AEP's initial EE proposal (which has since been withdrawn<sup>97</sup>), the supporting study makes no findings specific to the costs of AEP's EE proposal.<sup>98</sup> OEC's witness, Mr. Baatz, testified that the Commission should adopt AEP's

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<sup>94</sup> AEP Ohio Exhibit 6, Moore Testimony at 16.

<sup>95</sup> OEC Exhibit 1, Baatz Testimony at 11.

<sup>96</sup> *See, e.g., id.* at 5.

<sup>97</sup> "The Company agrees to withdraw, without prejudice to any future case, the demand side management ("DSM") proposal in its Application. The Company reserves the right to advance any proposal related to DSM, energy efficiency, electrification/EV, or similar projects **in a future proceeding** based on then-current laws and regulations. The Company also reserves the right to advance any such proposal based on a future change of law or regulation, including but not limited to any future legal or regulatory obligation related to energy efficiency, demand response or electric vehicle infrastructure, equipment or incentives. **Signatory Parties reserve their rights to take any position regarding any future proposals.** It is expressly understood by Signatory Parties that this compromise settlement may not be cited or otherwise relied upon as a basis to oppose any such future proposal of the Company." Joint Exhibit 1, Settlement at 18-19 (emphasis added).

<sup>98</sup> Tr. Vol. III at 517 and 531-532 (Cross-Examination of Baatz).

withdrawn EE proposal<sup>99</sup> but Mr. Baatz did not participate in the preparation of that proposal.<sup>100</sup> Nor did Mr. Baatz independently conduct any generation price forecast.<sup>101</sup> In fact, the study sponsored by Mr. Baatz offers no findings unique to AEP or its service territory but presents statewide results that could be applied to any of Ohio's six electric distribution utilities (EDUs).<sup>102</sup> The study does not consider the bill impact on commercial or industrial customers<sup>103</sup> nor does the study consider a voluntary v. mandatory approach to EE offerings.<sup>104</sup> Consequently, OEC's study is irrelevant to Settlement (which does not contain an EE component) and in no way justifies requiring AEP's customers to subsidize EE programs through distribution rates.

ELPC goes even further than OEC and recommends that AEP should be required to offer an EE program portfolio of \$65 million (roughly double from what AEP had originally proposed in its Application).<sup>105</sup> However, ELPC endorsed AEP's withdrawn EE proposal (which was based on a lower overall cost) and did not propose an independent EE plan.<sup>106</sup> Additionally, ELPC had no part in the formulation of AEP's withdrawn EE plan, did not independently conduct a utility cost test analysis of the program or a generation price forecast.<sup>107</sup> Nor did ELPC conduct any independent analysis of EE savings resulting from PJM's energy market.<sup>108</sup> Thus, ELPC did not explain how the additional funding from customers for its proposed enhanced EE plan would be

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<sup>99</sup> OEC Exhibit 1, Baatz Testimony at 3-4.

<sup>100</sup> Tr. Vol. III at 598 (Cross-Examination of Baatz).

<sup>101</sup> *Id.* at 533.

<sup>102</sup> *Id.* at 524.

<sup>103</sup> *See id.* at 560.

<sup>104</sup> *See* OEC Exhibit 1, Baatz Testimony, attachment entitled *Estimating the Benefits of Energy Waste Reduction in Ohio* at 2.

<sup>105</sup> *See* ELPC Exhibit 1, Neme Testimony at 33; Tr. Vol. III at 606 (Cross-Examination of Neme).

<sup>106</sup> Tr. Vol. III at 597-598 (Cross-Examination of Neme).

<sup>107</sup> *Id.* at 597-598.

<sup>108</sup> *Id.* at 599.

spent. Notably, ELPC's proposal does not present a customer bill impact analysis. Thus, ELPC's support for why the Commission should embed \$65 million in EE program costs in AEP's distribution rates is vague, does not fully contemplate the impact on ratepayers, and should be rejected.

For the same reasons, the Commission should not entertain Armada's proposal that would allow AEP to own Armada's technology and implement a water heater controller pilot program.<sup>109</sup> Tellingly, Armada did not recommend that the Commission issue a Request for Proposal and use a competitive bidding process to select the most cost-effective technology for the benefit of ratepayers.<sup>110</sup> Instead, Armada recommended a program that exclusively uses its own technology and that would directly benefit the majority shareholder of Armada, who is also the majority shareholder of another Opposing Party, NEP.<sup>111</sup> Nor did Armada consider any disadvantages related to its proposal, which if adopted, would allow a regulated monopoly to acquire ownership rights over technology for which there is market demand.<sup>112</sup> Lastly, Armada's proposal does not flesh out potential cybersecurity,<sup>113</sup> cost,<sup>114</sup> or compatibility issues.<sup>115</sup> Accordingly, not only is Armada's proposal irrelevant to the second-prong of the three-prong test but because many components of the proposal are not fully developed and is adverse to competitive markets because

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<sup>109</sup> See Armada Exhibit 1, Direct Testimony of Eric Rehberg at 2 (April 20, 2021) (Rehberg Testimony).

<sup>110</sup> Tr. VI. IV at 710-711 (Cross-Examination of Rehberg).

<sup>111</sup> See *id.* at 710-11 and 758 (Mr. Rehberg explaining how both NEP and Armada share a majority shareholder in a holding company and that TJ Harper is both the president of NEP and Armada).

<sup>112</sup> *Id.* at 826-827; see R.C. 4928.02(H) (stating that is Ohio's policy to avoid "subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa"....).

<sup>113</sup> See, e.g., Tr. VI. IV at 696 (Cross-Examination of Rehberg) (stating that AEP has not tested the Armada device to make sure it complies with its cybersecurity protocols).

<sup>114</sup> See, e.g., *id.* at 718-719 (stating that Armada's proposal did not include installation costs in the estimates but that AEP would have to incur installation costs in order to implement Armada's proposal); *Id.* at 823 (Stating that Armada did not present an overall cost of its proposal).

<sup>115</sup> See, e.g., *id.* at 822 (stating that Armada does not know the details of AEP's existing system).

it would benefit one competitor over others, the Commission could affirmatively harm ratepayers by adopting the proposal.

Finally, the Commission should reject NEP's contention that the proposed rate schedules in the Settlement will disproportionately harm low-load factor GS customers.<sup>116</sup> NEP's sole support for this argument is a study that suffers from major deficiencies. As a threshold matter, the sample size of NEP's study is just four accounts.<sup>117</sup> And the unqualified expert, Eric Rehberg, sponsoring the study had no knowledge of how the sample was selected,<sup>118</sup> admitting that accounts used in the sample were selected and provided to him by NEP.<sup>119</sup> The study did not examine the various types of low-load factor customers that NEP identified in its testimony, but rather focused on a single sub-group, which only comprised of NEP multifamily unit development accounts that are customers of AEP.<sup>120</sup> The study did not attempt to determine what behaviors or independent factors caused the four accounts to experience low-load factors.<sup>121</sup> In addition, the Commission should note that the NEP witness who sponsored the testimony regarding the Settlement's impact on low-load factor customers did not even have access to the original data set that formed the basis of the analysis.<sup>122</sup>

Despite the study's considerable flaws, NEP claims that the study is representative of low-load factor customers<sup>123</sup> and urges the Commission to adopt an entirely new rate schedule or, in

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<sup>116</sup> See NEP Exhibit 35, Notice of Witness Substitution at 12 (May 5, 2021).

<sup>117</sup> See Tr. VI. IV at 743-744 (Cross-Examination of Rehberg).

<sup>118</sup> *Id.* at 760.

<sup>119</sup> *Id.* at 744.

<sup>120</sup> See NEP Exhibit 35, Notice of Witness Substitution at 3 (May 5, 2021); Tr. VI. IV at 747 (Cross-Examination of Rehberg).

<sup>121</sup> *Id.* at 763.

<sup>122</sup> *Id.* at 744.

<sup>123</sup> See NEP Exhibit 35, Notice of Witness Substitution at 4 (May 5, 2021).

the alternative, a \$3 million pilot program for low-load factor customers.<sup>124</sup> NEP acknowledges that AEP could experience a revenue shortfall if the low-load factor proposals are adopted, but offers no suggestions as to which customers will cover that shortfall.<sup>125</sup> Similarly, NEP made no attempt to evaluate the impacts on AEP or its electric services provided to customers if the revenue shortfall is not be shifted and recovered from other customers.<sup>126</sup> For the aforementioned reasons, the Commission should not give credence to NEP’s testimony when evaluating the benefits of the Settlement.

In sum, the record demonstrates that the Settlement benefits ratepayers and the public interest. The Settlement secures numerous guaranteed benefits for ratepayers and the public, such as reducing both AEP’s revenue requirement and DIR caps. The Opposing Parties’ purported costs of the Settlement, on the other hand, rely on inaccurate and unfounded assumptions that lack sound evidence. Thus, when analyzed as a package, the Settlement represents a just and reasonable outcome for ratepayers and is in the public interest

**D. The Settlement package does not violate any important regulatory principle or practice.**

The Settlement also satisfies the third prong of the Commission’s three-part test for evaluating stipulations. When determining whether a stipulation violates any regulatory principle or practice, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.<sup>127</sup>

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<sup>124</sup> *Id.* at 2.

<sup>125</sup> *See, e.g.*, Tr. VI. IV at 742 (Cross-Examination of Rehberg).

<sup>126</sup> *Id.* at 799.

<sup>127</sup> *See, e.g., In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (Dec. 30, 2020) (Where the stipulating parties had “presented adequate justification for the Commission to uphold the precedent” and “no argument presented by

The Settlement does not contain any provisions that run contrary to Commission precedent and advances important regulatory principles. For example, the Settlement addresses gradualism by mitigating the rate impacts for certain customer classes resulting from AEP's consolidation of the OP and CSP rate zones.<sup>128</sup> As explained above, the rate increase will be phased-in over a three-year period for CSP customers and, in the fourth-year, there will no longer be separate rate zones.<sup>129</sup> Furthermore, the Settlement allows for additional time for the implementation of the delayed payment charge as customers continue to recover from the economic impact of COVID-19.<sup>130</sup>

The Settlement also advances regulatory principles through changes to the BTCR Pilot Program. AEP assesses the cost of transmission services, such as Network Integration Transmission Services, to its customers through the nonbypassable BTCR.<sup>131</sup> Customers not participating in the BTCR Pilot Program have their demand charge billing determinate based on their peak the previous month.<sup>132</sup> Customers participating in the BTCR Pilot Program have their transmission costs allocated based on the customer's demand during the single zonal transmission peak, consistent with PJM's methodology.<sup>133</sup> As discussed above, the Settlement continues the BTCR Pilot Program, expands the eligibility for customers, and increases the MW caps on the

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opposing Intervenors [convinced] the Commission to change or revise this practice," the Commission adopted the stipulation.).

<sup>128</sup> AEP Ohio Exhibit 6, Moore Testimony at 13.

<sup>129</sup> Joint Exhibit 1, Settlement at 16-17.

<sup>130</sup> *Id.* at 14.

<sup>131</sup> IGS Exhibit 1, Haugen Testimony at 5.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 6; AEP Exhibit 6, Moore Testimony at 18.



BTCR Pilot Program.<sup>134</sup> By aligning costs and rates, the BTCR Pilot Program furthers cost causation principles.<sup>135</sup>

The Settlement also promotes Ohio public policy because it does not contain any provision, which would allow AEP to acquire ownership rights over competitive products/services. As OMAEG has previously explained,<sup>136</sup> R.C. 4928.02(H) establishes that it is the State’s policy to encourage competition in electric markets and to prohibit EDUs from offering competitive retail electric services or products. Thus, the Commission should find that the Settlement promotes competition, consistent with the State’s codified policy, and should reject any proposals, such as Armada’s proposed water heater controller pilot program, which would allow AEP to acquire ownership rights over a product for which there is existing market demand.<sup>137</sup>

Lastly, the Settlement also advances the State’s policy delineated in R.C. 4928.02(P) which seeks to “ensure that a customer’s data is provided in a standard format and provided to third-parties...in order to spur economic investment and improve the energy options of individual customers.” For example, the Settlement provides for the provision of DIR data to certain Signatory Parties, including OMAEG, and data regarding specific distribution facilities.<sup>138</sup>

For all of the above-stated reasons, the Settlement passes the third-prong of the Commission’s three-prong test as it comports with precedent and advances important regulatory principles.

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<sup>134</sup> Joint Exhibit 1, Settlement at 17.

<sup>135</sup> See IGS Exhibit 1, Haugen Testimony at 8-9.

<sup>136</sup> See OMAEG’s Objections to the Staff Report at 14-15 (December 18, 2020).

<sup>137</sup> See Armada Exhibit 1, Rehberg Testimony a 2; Tr. VI. IV at 826-827 (Cross-Examination of Rehberg).

<sup>138</sup> Joint Exhibit 1, Settlement at 8.

The Commission should reject requests from the Opposing Parties that would require the Commission to adopt proposals that conflict with precedent and important regulatory principles. As explained above, OEC and ELPC argue that the Settlement should be rejected because of the non-inclusion of an EE program and mandatory administrative fee.<sup>139</sup> Am. Sub. House Bill 6 (H.B. 6) terminated ratepayer subsidies for EE programs. The Commission acknowledged as much when it stated “that, in light of H.B. 6, the future for EE programs in this state will be best served by reliance upon *market-based approaches* such as those available through PJM and competitive retail electric service providers.”<sup>140</sup> There is no Ohio law or rule that allows an EDU to implement voluntary EE programming with mandatory cost recovery from customers. Even if such authority did exist (which it does not), Opposing Parties’ arguments are meritless because AEP is not proposing to voluntarily implement any EE/DSM programs at this time and cannot be required to do so.

In addition, OEC and ELPC advocate that the Commission should approve AEP’s now-withdrawn EE Plan, which included a mandatory “administrative fee” to promote “voluntary” EE/DSM programs.<sup>141</sup> This proposal should be rejected outright because the Commission has already determined that a similar proposal “has no statutory basis” and such proposals “must be accompanied with a demonstration of need that cannot otherwise be met through market-based approaches.”<sup>142</sup> The Commission’s decision comports with R.C. 4928.02(H), which prohibits the provision of anti-competitive subsidies to monopolistic electric utilities.

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<sup>139</sup> See OEC Exhibit 1, Baatz at Testimony 4; ELPC Exhibit 1, Neme Testimony at 7.

<sup>140</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case Nos. 20-1013-EL-POR, et al., Entry (June 17, 2020) at ¶ 9 (emphasis added).

<sup>141</sup> See OEC Exhibit 1, Baatz at Testimony 14.

<sup>142</sup> *Id.* at ¶ 8.

Finally, the Commission recently announced that it will in the future, in a yet to be determined statewide proceeding, solicit the views of stakeholders on whether cost-effective EE programs are appropriate to manage electric generation costs in Ohio and the region.<sup>143</sup> In order to receive input from stakeholders, the Commission stated that it will hold a series of workshops on the scope and nature of future EE programs and how such programs fit into a competitive retail electric service market.<sup>144</sup> These statements evidence that the Commission has embraced market-based approaches towards implementing EE programs in Ohio and intends to do so on a statewide basis rather than in a one-off distribution case for a single utility.

For the aforementioned reasons, the Commission should find that the Settlement comports with Ohio laws, regulations, and precedent and reject Opposing Parties' arguments to the contrary.

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<sup>143</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan For 2017 Through 2020*, Case Nos. 16-574-EL-POR, et al., Finding and Order at ¶ 13 (February 24, 2021).

<sup>144</sup> *Id.*

#### IV. CONCLUSION

The Settlement passes the Commission's three-part test for evaluating stipulations. By resolving a variety of complex issues involving AEP's base distribution rates through serious bargaining, the Signatory Parties have secured a just, reasonable, and expeditious outcome that obtains major benefits for customers, is in the public interest, does not violate any important regulatory principle or precedent, and is consistent with Ohio law. In order to fully provide these benefits to customers, the Commission should adopt the Settlement in its entirety.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on June 14, 2021 upon the parties listed below.

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Summary: Brief Initial Post-Hearing Brief of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group