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

REPLY BRIEF OF OHIO POWER COMPANY
IN SUPPORT OF
THE JOINT STIPULATION AND RECOMMENDATION

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INTRODUCTION

The Ohio Power Company ("AEP Ohio" or the "Company") filed its application to increase its rates pursuant to R.C. 4909.18 (Application) over a year ago. The Public Utilities Commission of Ohio ("Commission") established a procedural schedule and all parties submitted their objections and litigation positions after issuance of the Staff Report of Investigation ("Staff Report"). After months of serious bargaining by capable, knowledgeable parties, the Signatory Parties reached a Joint Stipulation and Recommendation ("Stipulation") on March 12, 2021, which was updated with formatting and clarifying corrections; that version was ultimately entered into the record as Jt. Ex. 1. Besides the Company, the Signatory Parties to the Stipulation include Staff, the Office of the Ohio Consumers' Counsel ("OCC"), several customer groups and the majority of other intervenors.

A small group of intervenors oppose adoption of the Stipulation based on their insular perspective and interests. Environmental Law & Policy Center ("ELPC"), the Ohio Environmental Council ("OEC"), and the Natural Resources Defense Council ("NRDC") (collectively, the "Environmental Advocates") and the Ohio Partners for Affordable Energy ("OPAE") advocate adoption of a demand-side management plan ("DSM") even though none is legally required and there is no precedent supporting the notion that lacking a DSM plan in a base rate case violates any important regulatory practice or principle. Two competitive retail electric service ("CRES") providers, Interstate Gas Supply, Inc. ("IGS") and Direct Energy Business, LLC ("Direct"), oppose the Stipulation because the standard service offer ("SSO") unbundling exercise did not produce the result IGS/Direct sought to artificially boost the price-to-compare which is the price they compete with for business. OPAE opposes the stipulated customer charge, which is below a cost-justified level; opposes adoption of a late charge for AEP

Ohio that would match the practice employed by the other electric distribution utilities; and seeks to collaterally attack the design and mechanics of riders adopted in the *ESP IV* case. Finally, Nationwide Energy Partners ("NEP") and Armada Power, LLC ("Armada Power") simply advance items they desire without any real basis in the three-part test.

In sum, none of the opposing intervenors establishes a valid basis for modifying or rejecting the Stipulation under the three-part test. Rather, as demonstrated in AEP Ohio's Initial Brief and in this Reply Brief, the Stipulation easily passes the three-part test. Accordingly, the Commission should adopt the Stipulation without modification so AEP Ohio's customers can realize the benefits that flow from the Stipulation.

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." *See In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 21 (May 13, 2010) ("*In re Columbus S. Power Co.*"). The Stipulation here easily satisfies that standard. (*See* AEP Ohio Br. at 4-5.) During the evidentiary hearing, the Environmental Advocates sought to cross examine AEP Ohio witness Moore multiple times regarding confidential settlement negotiations, but the Attorney Examiner properly sustained objections to such improper queries. (Tr. II at 244-256.)

The Environmental Advocates seek retribution for their unsuccessful cross examination by arguing that the Attorney Examiners do not understand the rules of evidence and that the Signatory Parties have not met their burden of proving that the nearly-unanimous Stipulation was based on serious bargaining among capable, knowledgeable parties. (Env. Adv. Br. at 5-7.) The

Environmental Advocates make the sole argument contesting that tier one has been satisfied, and their real issue is with the evidentiary rulings, which is not a basis for challenging the Stipulation. Further, they manufacture paranoid allegations that have no basis in the record concerning negotiations that supposedly occurred outside of the all-party negotiating process.

The Environmental Advocates also respond to arguments made by AEP Ohio counsel, even though the witness was permitted to answer. (*See id*. at 5 (arguing about the question is it "accurate to say that AEP [Ohio] changed some positions that benefited some parties but not other parties," which the witness answered); Tr. II at 247.) The Environmental Advocates question the Attorney Examiner rulings, even though they have not taken any of the required steps to formally challenge those rulings – and even though the only questions disallowed related specifically to the content of compromise negotiations. Not only is it appropriate to exclude such questions, they are simply not probative of tier one of the settlement test.

The Environmental Advocates' reliance (at 6) on Evid. R. 408 does not advance their point. The Commission's three-part test (endorsed by the Supreme Court of Ohio) is highly unique and applies only to Commission proceedings. Rather, the Commission gets to determine what is relevant to that standard and Evid. R. 408 does not transform something that might be admissible in civil litigation into relevant and admissible evidence in a Commission proceeding.

The Environmental Advocates are also wrong in claiming (at 5) that AEP Ohio witness Moore's testimony was the only testimony of record supporting a finding of serious bargaining. Signatory Party OCC witness Willis testified that there was a lot of give and take in the settlement negotiations and that the settlement discussions spanned several months, with three to four meetings per week at times. (Tr. II at 299.) And although the Environmental Advocates had every opportunity to back up their hollow assertion of the lack of serious bargaining with testimony, they simply attempted (and failed) to gather evidence through cross examination.

In reality, the Environmental Advocates' argument regarding the first prong of the test is a thin veil that exposes their objection to appropriate evidentiary rulings as baseless. And their objections to the Attorney Examiner rulings are simply "sour grapes" about not being part of the settlement. There can be no doubt that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. (*See* AEP Ohio Br. at 4-5.)

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

As discussed in AEP Ohio's Initial Brief, 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 Distribution Investment Rider ("DIR") and Enhanced Service Reliability Rider ("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

(*See id*. at 5-19.) The Opposing Parties do not raise anything new regarding the second prong of the three-part test that the Company did not already anticipate and address in its Initial Brief. The Company therefore rests on its Initial Brief, except to the extent supplemental points are made below regarding customer benefits in the context of the third prong arguments.

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

None of the arguments advanced by opposing intervenors establish that the Stipulation violates an important regulatory principle or practice. As set forth below, the Stipulation meets the third prong of the three-part test. To the extent not addressed in this Reply Brief, the Company rests on the points already addressed in its Initial Brief.

First, after months of serious bargaining, the Signatory Parties agreed that the voluntary DSM proposal in the Company's Application would not be proposed as part of the Stipulation, although the Signatory Parties fully reserved the DSM issues for a future proceeding. There is no legal requirement for a DSM plan to be included in a base rate case and not including such a component in the Stipulation violates no important regulatory principle or practice. The desire of Environmental Advocates and OPAE to support DSM is admirable but it does not present a valid basis for the Commission to modify or reject the Stipulation.

Second, neither the Customer Charge nor the Delayed Payment Charge violate any important regulatory principle or practice. The Customer Charge was endorsed by Staff and is fully justified as a just and reasonable charge for collecting the fixed costs associated with customer accounts. Regarding the Delayed Payment Charge, OPAE relies on an unreasonable and illogical position that a late fee will not influence customers to pay on time. The Commission should adopt the Stipulation's proposal without modification so that AEP Ohio can finally be put on equal footing with the other electric utilities.

Third, IGS and Direct's theory improperly conflates the Signatory Parties' rejection of an unjustified attempt to broadly allocate costs to the SSO product with an unlawful anticompetitive or discriminatory subsidy. No subsidy has been established to date that satisfies the Commission's established criteria for creating a non-zero adder to the SSO. AEP Ohio's costs to procure the SSO product are already recovered through bypassable riders (GEN-C, GEN-E, ACRR and AER), and the IGS/Direct argument is merely an unjustified rate design preference that the Commission should reject. Consistent with Staff's position, the Stipulation's continuation of zero placeholder values for the Retail Reconciliation Rider ("RRR") and SSO Credit Rider ("SSOCR") are supported by important policy considerations, as further discussed below.

Fourth, the Stipulation's continuation and expansion of the Basic Transmission Cost Rider ("BTCR") pilot program does not violate any important regulatory principle or practice. Contrary to IGS' current position (which it alone carries) and consistent with IGS' prior position, the BTCR Pilot is lawful and reasonable. IGS points to a handful of Commission statements, most of them years old and relating to the CRES market, but none of them justifies eliminating the BTCR or eliminating all restrictions on participation in the BTCR Pilot. Finally in this regard, participation in a pilot program must by necessity be limited – but it is not discriminatory.

Fifth, the Stipulation contains a two-part commitment by the Company to: (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. Although 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. More to the point, neither of these commitments violates any important regulatory principle or practice.

Sixth, IGS advances the outlandish claim that, just because it raised questions in discovery about the Company's practices in connection with R.C. 4928.47 (which permits customer-sited renewable projects sponsored by the Company subject to Commission approval of the projects), the Commission is blocked from issuing an order in this case – even though Staff reviewed the issue and found no concerns and IGS can point to no legal basis for such a claim. IGS alone advances this position, but it is wrong in thinking the Staff and Commission should merely ask "how high" every time IGS shouts "jump" – instead of considering and rejecting a claim that lacks merit.

Seventh, IGS and Direct wrongly rehash their attack on the supplier fees established in prior proceedings. The fees, and the policies underlying them, are supported, as the Commission has found on numerous occasions. Continuation of the supplier fees does not violate any important regulatory principle or practice.

Eighth, the Stipulation does not violate any important regulatory principles or practices by simply failing to include items that opposing parties desire. More specifically, the Stipulation does not violate any important regulatory principles or practices based on the lack of: (a) a new process for purchase of AEP Ohio facilities by master meter customers and customer construction requests as advocated by NEP, (b) a low-load factor customer pilot program as advocated by NEP, (c) a commitment to purchase and incorporate Armada Power's proprietary water heater technology as part of the DIR, or (d) a collateral attack on rider mechanics established in *ESP IV* as advocated by OPAE. Merely repeating one's litigation position is not an appropriate basis for contesting a settlement. And failing to include the proposals of non-signatory parties is not an appropriate basis for rejecting a stipulation.

1. The Stipulation's demand-side management provision neither results in unjust or unreasonable rates nor violates any important regulatory principles or practices.

In their initial briefs, the Environmental Advocates and OPAE take issue with the provision of the Stipulation withdrawing, without prejudice to any future case, the DSM proposal included in the Company's Application. In relevant part, the Environmental Advocates argue that the Stipulation provision withdrawing the DSM Plan in the Company's Application is inconsistent with R.C. 4909.18 because withdrawing the DSM Plan is "inconsistent with creating a just and reasonable rate." (Env. Adv. Br. at 9.) OPAE alternatively argues that the Stipulation's DSM provision violates R.C. 4905.70, is contrary to state policy, and, otherwise does not make sense in light of AEP Ohio employee Jon Williams' testimony regarding the DSM programs included in the Company's Application. (OPAE Br. at 15.) Based on these positions, both the Environmental Advocates and OPAE argue that the Commission should reject the Stipulation or modify the Stipulation to include, at least, the DSM programs included in the Company's Application. (*Id.* at 16; Env. Adv. Br. at 20-21.)

Both OPAE's and the Environmental Advocates' arguments misapply the cited provisions of the Ohio Revised Code and are inconsistent with relevant precedent. Further, contrary to the claims by the Opposing Parties, the DSM provision of the Stipulation is not contrary to state policy and makes complete sense given the current state of energy efficiency in Ohio. Thus, as explained further herein, the Stipulation's DSM provision does not violate any important regulatory principle or practice and the Stipulation, overall, is consistent with relevant precedent and results in just and reasonable rates.

a. The Stipulation's DSM provision does not result in unjust or unreasonable rates.

In their initial brief, the Environmental Advocates argue that the Company has failed to show that its *proposals* are just and reasonable. (Env. Adv. Br. at 9.) Specifically, they claim that the originally-proposed DSM Plan is cost effective and provides benefits to customers, which supports a finding that, without the DSM Plan proposed in the Company's Application or a more robust energy efficiency program, the Company has not met its burden of proving its rates are just and reasonable. (*Id.*) This position is contrary to the established record and the cited law.

Environmental Advocates fail to cite any precedent or legal requirement to support their claim that the Company's proposed rates, as set forth in the Stipulation, *cannot* be reasonable without a robust DSM program. (*Id.*) This is because there is no such precedent or requirement. Instead, the Environmental Advocates attempt to read such a requirement into general provisions of R.C. 4909.18, which in relevant part states the utility has "the burden of proof to show that the proposals in the application are just and reasonable. . . ." This argument has no basis in law or fact and, therefore, is without merit.

First and foremost, the standard of review for considering the reasonableness of a stipulation is the well-established three-part test set forth in *In re Columbus S. Power Co. In re Columbus S. Power Co.* at 20. As explained in its Initial Brief, the Company has already established that the Stipulation meets the requirements of the three-part test. (*See generally* AEP Ohio Br.) As such, the Company has met its burden of showing the reasonableness of the Stipulation, which includes the provision withdrawing the DSM Plan included in its Application. Additionally, the Company explained in its Initial Brief that the standard filing requirements set forth in Ohio Adm.Code 4901-7-01, Appendix A contains no requirement for the utility to provide an energy efficiency or DSM plan as part of its application. (*Id.* at 21.) On this basis alone, the Commission should disregard the Environmental Advocates' argument on this issue.

Furthermore, the record clearly demonstrates the Stipulation results in just and reasonable rates. As explained in greater detail in the Company's Initial Brief, the Stipulation implements a reasonable revenue allocation and rate mitigation provision to ensure reasonable rate impacts for *all* customer classes, which the Environmental Advocates do not challenge. (*Id.* at 14-18.) Thus, as explained further herein and in the Company's Initial Brief, the Stipulation results in just and reasonable rates and, as such, benefits ratepayers and the public interest and does not violate any important regulatory principles or practices.

Environmental Advocates go on to use the language of R.C. 4909.18 to take issue with the Company proposing and then withdrawing, without prejudice, the DSM Plan in its Application. (Env. Adv. Br. at 9.) Specifically, they argue that withdrawing the DSM Plan without prejudice is inconsistent with creating just and reasonable rates. (*Id.*) This argument similarly is without merit as R.C. 4909.18, by its plain language, applies to the Company's *proposals*. The Company is not *proposing* a DSM Plan as part of the Stipulation. R.C. 4909.18 does not require the Company to prove that *withdrawing* the DSM Plan is just and reasonable. However, even if there were such a requirement, the Company did establish that the withdrawal of its DSM Plan as part of the overall package of settlement compromises in this case embodied in the Stipulation was just and reasonable.

Specifically, the DSM provision included in the Stipulation is reasonable because it is limited in nature. In relevant part, the Stipulation makes clear that the Company is only withdrawing its DSM Plan within the context of this proceeding and that 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. (Jt. Ex. 1 at 18.) The withdrawal is limited in scope, applicability, and time, which supports its reasonableness. Further, as explained in more detail in the Company's Initial Brief, withdrawing its DSM Plan as part of the Stipulation is reasonable in light of the current state of energy efficiency program in Ohio, as the Commission is currently in the process of determining whether cost-effective energy efficiency programs are an appropriate tool to manage electric generation costs in Ohio. (*Id.* at 22.) The Stipulation directly supports the Commission's continued review of energy efficiency programs and, thus, is reasonable.

Finally, Environmental Advocates' arguments regarding the benefits of the Company's withdrawn DSM plan similarly cannot support a finding that the Stipulation violates any important regulatory principle or practice. In support of their position that a DSM plan is necessary to establishing just and reasonable rates, the Environmental Advocates rely, almost exclusively, on the testimony provided by Jon Williams at hearing to state that the originally-proposed DSM Plan is cost-effective and provides benefits to customers. (Env. Adv. Br. at 9-20.)

However, Environmental Advocates fail to establish their case, either through Mr. Williams or the witnesses who provided testimony opposing the removal of the DSM Plan, under the three-part test, as they provide no evidence of the impacts of modifying the Stipulation, and the rates set therein, by including either the DSM Plan in the Company's Application or some other DSM plan. Relevantly, neither ELPC witness Neme nor OEC witness Baatz made any attempt to analyze the impact on the otherwise just and reasonable rates set in the Stipulation. Rather, both Mr. Neme and Mr. Baatz speak generally about the benefits and potential cost savings associated with DSM. (ELPC Ex. 1; OEC Ex. 1.) In essence, Environmental Advocates are asking the Commission to modify the Stipulation to add DSM programs, which would add costs to be allocated across the customer classes, based merely on a discussion of the benefits associated with DSM without providing the Commission with any information as to how such modification would impact the otherwise just and reasonable rates set therein. It is clear Environmental Advocates have failed to establish any record that the DSM provision of the Stipulation violates any important regulatory principle or practice or that inclusion of a DSM plan would result in just and reasonable rates. On the contrary, the evidence shows that the DSM provision is, itself, reasonable and promotes regulatory principles and practices by providing the Commission time to review energy efficiency and DSM in Ohio generally. Thus, the Commission should approve the Stipulation without modification.

b. The Stipulation's DSM provision does not violate any important regulatory principle or practice.

OPAE also takes issue with the DSM proposal, arguing that the failure to include a DSM plan is in violation of R.C. 4905.70, is contrary to state policy, and "does not make sense." (OPAE Br. at 15.) Specifically, OPAE asserts that the language of R.C. 4905.70 mandates that the Commission to ensure utilities have programs that encourage conservation of energy and reduction in the growth rate of consumption and that the Stipulation fails to satisfy the state policy objectives enumerated in R.C. 4928.02. (*Id.* at 16.) OPAE's arguments misapply the cited law and are otherwise without merit.

First, R.C. 4905.70 in relevant part provides that:

> The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies and take into account long-run incremental costs.

This provision does not mandate that the Commission approve DSM plans either as part of a utility's application for a rate increase or otherwise. Rather, R.C. 4905.70 only requires that the Commission initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, which the Stipulation does. For example, the Stipulation includes provisions incentivizing public and residential EV charging stations to charge during off-peak times and incentivizing renewable resources to operate during peak times to help reduce the overall six coincident peaks. (AEP Ohio Ex. 6 at 19.) Although DSM is a tool to accomplish that objective, it is not the only tool as evidenced by the provisions of the Stipulation. Therefore, based on the plain language of the law, the Commission has no mandate to require each public utility to have a DSM plan to satisfy the requirements of R.C. 4905.70.

This conclusion is also consistent with relevant precedent on this issue; the Stipulation's reservation for the parties (and the Commission) to address DSM in future proceedings is also consistent with the statute. Specifically, OPAE made similar arguments in other proceedings, which were rejected by the Commission and, on appeal, by the Ohio Supreme Court. *See Ohio Consumers' Counsel v. Pub. Util. Comm.,* 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261 ("*Ohio Consumers' Counsel*")*; Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790, 874 N.E.2d 764 ("*Ohio Partners*").

In *Ohio Consumers' Counsel*, OCC argued that the straight-fixed variable rate plan approved by the Commission violated R.C. 4905.70 because it was contrary to the state policy goal to "encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods." *Ohio Consumers' Counsel* at ¶ 38. The Court there, in affirming the Commission's approval of a straight-fixed variable rate plan, made clear that the General Assembly left it to the Commission to determine how best to carry out the state policy goals and contained in R.C. 4929.02(A)(4) and 4905.70 and reiterated its rejection of OPAE's argument in *Ohio Partners* that R.C. 4905.70 required the Commission to approve any particular demand-side management and energy-conservation programs or specific levels of funding for such programs. *Id.*, citing *Ohio Partners* at ¶ 36. Moreover, the Court held that conservation of energy is just one of many factors set forth in the state policy objectives, which are guidelines for the Commission to weigh in determining whether a utility's service and demand-side and energy conservation programs complied with the statute, that the Commission must balance in determining an appropriate rate design. *Id.*

Here, OPAE rehashes the same argument that has been explicitly rejected by the Commission and the Ohio Supreme Court. Specifically, it argues that the withdrawal of the DSM Plan violates the state policy objectives in R.C. 4928.02 and 4905.70. (OPAE Br. at 16.) The Commission should, consistent with its precedent, reject this argument. The Commission is not required to approve a DSM plan as part of this proceeding because the Commission has the authority to determine how to best carry out the state policy goals contained in R.C. 4928.02 and 4905.70. The Company has definitively established why the DSM provision withdrawing the DSM Plan in the Application does not violate any state policy objectives and, in fact, supports the Commission review of energy efficiency and DSM plans in Ohio. As the Commission is still in the process of evaluating the future of energy efficiency and DSM in Ohio, deferring a ruling on this DSM in this case is completely within its authority.

Finally, despite OPAE's claim, the DSM provision in the Stipulation makes perfect sense in light of Mr. Williams' testimony. As explained above, the Company reserves the right to put forward any DSM proposal in the future while providing the Commission time to evaluate the future of energy efficiency in the State. Further, as established in the Company's Initial Brief and herein, the Stipulation does ensure the availability of efficient, nondiscriminatory, and reasonably priced rates. As such, the Stipulation does not violate any important regulatory principle or practice and should be approved, without modification.

2. Neither the Stipulation's Customer Charge nor Delayed Payment Charge violates any important regulatory principles or practices.

OPAE requests that the Commission reject both the residential customer charge and the residential delayed payment charge as agreed in the Stipulation. (OPAE Br. at 2-9.) Neither provision violates any important regulatory principle or practice.

a. The Customer Charge is a reasonable compromise and does not violate any important regulatory principle or practice.

OPAE argues that the Commission should reject the $10.00 monthly residential customer charge and adopt a lesser residential customer charge of $6.01, as was originally suggested by Staff. (*Id.* at 2). The record in this proceeding clearly reflects that Staff, as a Signatory Party to the Stipulation, has accepted the $10.00 charge as appropriate, as has OCC on behalf of residential customers. (AEP Ohio Br. at 23.)

OPAE asserts that including charges above the $6.01 initially calculated by Staff for the residential customer charge (Staff Ex. 1 at 41) is "unjust and unreasonable" and "violates the regulatory principal of cost causation." (OPAE Br. at 4.) OPAE asserts that including a portion of secondary distribution costs in a customer charge is inconsistent with cost causation principles and such costs are best allocated to variable charges based on a customer's volumetric use. (*Id.* at 4-5.) In fact, the opposite is true. It is inconsistent with cost-causation principles to collect fixed, demand-related costs fully through an energy charge. As Staff recognized in its report, "[i]n generally accepted ratemaking practices, fixed costs are recovered by an electric utility in two ways: customer charges and demand charges. The customer charge recovers some of the fixed costs that are directly attributable to serving an individual customer." (Staff Ex. 1 at 39.)

As referenced by witness Roush on cross-examination, the Stipulation's residential customer charge includes costs associated with local secondary distribution facilities. (Tr. I at 102). Secondary distribution facilities, and correspondingly the associated cost, allow each customer to make its individual connection with the greater distribution system and receive electric service, irrespective of the customers use or demand. Secondary distribution facilities – for example, the transformer that the customer's service drop connects to and the conductor that must be present to connect that transformer to the grid – are necessary to provide service to each customer and the costs associated with such facilities can be reasonably and rationally collected through a customer charge mechanism that attributes such cost more directly and equitably to the beneficiary of the expense, the customer. The inclusion of a portion of secondary costs being proposed by AEP Ohio is preferred in cost allocation paradigms like this where there is no separate demand charge. (*Id*.).

In summary, each of OPAE's criticisms of the customer charge fail.

b. The Delayed Payment Charge is reasonable, consistent with other Ohio utilities' charges, and does not violate any important regulatory principle or practice.

As AEP Ohio covered pointedly in its Initial Brief, there is plain evidence in the record of this proceeding that OPAE believes that any electric utility residential delayed payment charge is unacceptable and where such exist, they should be stopped. (AEP Ohio Br. at 26.) OPAE's brief expounds upon its aversion to the concept of a residential delayed payment charge, faults AEP Ohio for not performing any studies regarding how a residential delayed payment charge might incentivize on-time customer payment, and chastises AEP Ohio witness Moore for not knowing specific information regarding residential customers' ability to pay their electric bill. (OPAE Br. at 6-7.) Ironically, OPAE has not provided any information, in its brief or elsewhere, that would answer any of the questions it claims AEP Ohio should be able to address concerning residential customers and the potential for a delayed payment charge to incentivize timely payment.

What AEP Ohio and OPAE both know about AEP Ohio customers is that "38 percent of all residential customers pay their bills late." (OPAE Ex. 1 at 20.) Even though OPAE staunchly maintains that there is no evidence in the record that a residential delayed payment charge will incentivize on-time payment (*id.* at 9), OPAE acknowledges that Staff believes that residential customers would likely increase their timely payments when subjected to a late fee. (*Id.* at 8.)

Residential delayed payment charges in Ohio are neither unusual nor unique. As AEP Ohio showed in its Initial Brief, every other investor-owned electric utility certified by this Commission in Ohio has already been authorized to collect residential delayed payment fees. (AEP Ohio Br. at 26.) Clearly, it is well established in Ohio, upon orders of this Commission, that the implementation of a residential customer delayed payment charge by an electric distribution utility is not only acceptable, but thus far excluding AEP Ohio, it has been the regulatory standard.

OPAE's unsupported (and therefore possibly inaccurate) allegations of potential unfairness in the application of the delayed payment charge to certain customers flatly fail to show how the implementation of the Stipulation's residential customer delayed payment charge would violate any regulatory principle or practice. Accordingly, the Commission should disregard OPAE's position on this issue too.

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.

IGS argues that Ohio law, including R.C. 4928.02(H) and 4928.03, purportedly requires the Commission to unbundle from distribution rates indirect costs used to offer the SSO product to customers. (IGS Br. at 12-18.) IGS also selectively invokes policy arguments to try and create a legal challenge to the zero rate placeholder riders. Similarly, Direct argues that the zero placeholder riders violate R.C. 4928.02(H). (Direct Br. at 11.) IGS and Direct's theory improperly conflates an unjustified attempt to broadly allocate costs to the SSO product with the elimination of an unlawful anticompetitive or discriminatory subsidy. No subsidy has been proven to date that satisfies the Commission's established criteria for creating a non-zero adder to the SSO. The liberal and loose general allocation of costs advocated by IGS and Direct is not justified and the allocation method used by IGS/Direct witness Lacey is fundamentally flawed and unreliable. In reality, AEP Ohio's costs to procure the SSO product are already recovered through bypassable riders (GEN-C, GEN-E, ACRR and AER). The IGS/Direct argument is merely an unjustified rate design preference that the Commission should reject. AEP Ohio continues to rely on each of the arguments in its Initial Brief that refutes IGS and Direct's proposal to adopt an SSO adder. (AEP Ohio Br. at 27-44.) Nevertheless, the Company presents the following additional arguments in response to points advanced by IGS and Direct on brief.

a. IGS and Direct's claimed "undisputed subsidy" does not exist.

IGS introduces its legal position by claiming that AEP Ohio will "recover at a minimum $4.7 million that are directly assignable to standard service offer service." (IGS Br. at 12.) Further, IGS repeatedly portrays that statement as if it is a stipulation or an undisputed fact. (*Id.* at 10, 12, 21, 24.) Similarly, Direct wrongly alleges that AEP Ohio "has recognized since at least 2015 that its distribution rates recover costs incurred to provide generation service" and vaguely claims that "everyone knows the amount of SSO costs lodged in distribution rates is not \$0." (Direct Br. 11, 13.) AEP Ohio and the Signatory Parties strongly oppose any suggestion of an undisputed SSO product subsidy for several reasons.

As a threshold matter, IGS and Direct's reliance on Mr. Roush's initial attempt to quantify costs associated with offering the SSO product is misplaced. While Mr. Roush generally affirmed his original analysis as being a reasonable attempt to evaluate the unbundling issue, the Company did not offer Mr. Roush's Application testimony in support of the Stipulation. And Mr. Roush testified that his original view was reflected in the Application but that all the other parties disagreed. (Tr. I at 50.) While the Company complied with the Commission's directive to try and quantify costs associated with offering the SSO product, Staff and other parties pointed out shortcomings in the analysis because separating indirect back office costs between SSO and competitive retail electric service ("CRES") customers is not feasible. Those parties ultimately concluded that the attempted analysis did not satisfy the standard of proof set forth in prior Commission orders on this point. Without offering suggestions on how to improve the original analysis, IGS and Direct disagreed with Mr. Roush and called the analysis "anything but thorough," "woefully inadequate," "not the right answer," "not the right way to do it" and "improper." (Direct Br. at 12; Tr. V at 1098-1100; IGS Br. at 8.) Put simply, the Company complied with the Commission's directive in good faith, but Staff and the Signatory Parties ultimately persuaded the Company that the analysis was not sufficient to justify populating the placeholder riders with costs. The Company is not required to maintain a position advanced in its filing and the whole premise of a Stipulation is compromise and common ground.

Therefore, it would be procedurally improper for the Commission to make a critical factual finding that relies upon Mr. Roush's initial Application testimony (as IGS and Direct ask it to do) that was not offered into evidence, not to mention creating a chilling effect for settlement and negotiation through the employment of such tactics. As a related matter, it is unfair to use the Application testimony against the Company or the Signatory Parties as proving a key factual matter in this case just because Mr. Roush discharged the Company's obligation from *ESP IV*[1] to do an SSO unbundling analysis. Staff and all of the intervenors rejected Roush's analysis through their litigation positions. Further, IGS/Direct witness Lacey flatly rejected Mr. Roush's position. (Tr. V at 1098-1100.) Moreover, Mr. Roush did not even sponsor the position as his testimony in this proceeding. Because IGS and Direct now rely on the very same analysis as a critical part of their litigation position for the first time in post-hearing briefs (after affirmatively criticizing and rejecting it), the Commission should reject the bait-and-switch tactic to suddenly support a $4.7 million subsidy and characterize it as being undisputed; it should be rejected as disingenuous gamesmanship that is lacking in credibility.

Mr. Roush's original analysis suggested a net quantified cost of $3.5 million, after deducting $1.2 million of quantified costs associated with facilitating customer choice (or "open access") – not $4.7 million. (*See* AEP Ohio Ex. 4A.) As further discussed below, the Commission has said all along that the customer choice costs must be evaluated as an integral part of the SSO unbundling exercise. Any claim of an undisputed micro-subsidy of $4.7 million by IGS/Direct is significantly overstated at best and incomplete at worst.

In any case, the unbundling analysis in Mr. Roush's Application testimony does not support a definitive conclusion or basis for a finding of subsidy by the Commission for two

[1] *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.*

related reasons: (1) prior rulings of the Commission have made it clear that a robust netting of costs associated with offering the SSO product and open access product is required before any final conclusions can be reached, and (2) Mr. Roush encountered difficulty quantifying several categories of cost and could not reach a definitive level of cost for either the SSO product or open access product functions. (Tr. I at 34-36.) A prime example of this problem is costs associated with the Call Center. As Company witness Roush explained, AEP Ohio did not differentiate between call center-related expenses associated with the SSO product and open access product because there is no basis to do so. (*Id.* at 45-46.) Calls are not tracked based on Choice or Non-Choice, and it would be difficult to categorize calls in that manner. (*Id.* at 46-47.) 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.) Moreover, the Company does not maintain call center records based upon a customer's shopping status. (*Id.*)

The same circumstance exists with respect to other back office business functions that could be characterized as indirectly supporting the SSO product. 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 offering the SSO product to customers. And the Commission has never imposed such a requirement in the context of any SSO, corporate separation or rate proceeding directive. Indeed, the Staff Report found that "the Company did not examine all cost causation factors" but Staff "maintains that SSO is a default service, available to all customers and required by electric distribution companies to provide." (Staff Ex. 1 at 31.) Thus, there is no factual basis to support IGS and Direct's position that there is an undisputed subsidy in this case. The record simply does not support a showing that meets the Commission's established standard of proof for establishing an SSO adder.

Regarding the netting issue or simultaneously accounting for costs associated with offering both the SSO product open access product to customers, the Commission in the *ESP IV* decision directed the Company to simultaneously evaluate customer choice costs:

> Although we agree that there may be costs recovered through AEP Ohio's distribution rates that are attributable to the SSO, the Company's distribution rates likewise may include call center costs solely incurred to promote competition or other costs related to the customer choice program. The Commission, therefore, finds 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.

ESP IV, Opinion and Order at ¶ 215 (Apr. 25, 2018) ("*ESP IV* Order"). Thus, although the Commission did not explicitly endorse netting the two sets of costs, it obviously found them to be inextricably linked.

The Commission reached a similar result in Dayton Power & Light Company's ("DP&L") prior base rate case. *See Dayton Power & Light Co*., Case No. 15-1830-EL-AIR, Opinion and Order at ¶ 28 (September 26, 2018) ("If we are to evaluate whether there are actual distribution costs solely related to providing SSO service, we should also evaluate whether there are actual distribution costs solely related to the customer choice program. Then, the Commission may determine whether it is necessary to reallocate costs between shopping and non-shopping customers in order to ensure an EDU's rates are fair and reasonable to all customers".) If there were any remaining doubt, the Commission reiterated in Duke Energy Ohio's ("Duke") recent base rate case:

> As we have previously expressed, separating SSO-specific costs from distribution rates would likewise *necessitate* separating any costs related specifically to the customer choice program. *Until both costs are determined and evaluated, the Commission cannot evaluate whether it is appropriate to reallocate costs.*

In the Matter of Duke Energy Ohio, Case Nos. 17-32-EL-AIR, *et al.* Opinion and Order at ¶ 231 ("December 19, 2018) (emphasis added) ("*Duke 17-32 Case"*). The clear implication of the Commission's repeated explanation of the netting principle is that an SSO adder should not be implemented if the customer choice costs outweigh or at least offset the SSO-specific product costs.

In sum, IGS and Direct's attempts to rely on an undisputed subsidy to make its case is misguided and flawed. Moreover, the Commission has made it clear that a robust netting analysis needs to be completed before it would impose an SSO adder. As of now, it is simply not known what conclusion the full netting analysis would yield. Of course, a fully completed netting analysis could yield a total offset or a net adder for shopping customers, which would negate any subsidy conclusion.

Regardless, maintaining the riders at zero does not mean it will always stay there if future cases prove the necessary factual predicate for resetting the riders. As the Commission found in the *ESP IV* decision, establishing the placeholder riders is a "more measured approach" that "is consistent with our obligations to ensure the availability of reasonably priced retail electric service and to avoid certain types of anticompetitive subsidies under R.C. 4928.02(A) and (H), respectively." *ESP IV* Order at ¶ 216. The same logic applies to continuing the riders with placeholder values as proposed in the Stipulation. If IGS/Direct or another interested party proves a subsidy in the future, perhaps rates can be adjusted or re-designed. Alternatively, the Commission could further examine this issue in a generic or industry proceeding – since this is not an AEP Ohio-specific issue and necessarily involves a discussion of statewide policy issues.

Currently, however, any claim by IGS/Direct that there is an undisputed subsidy – no matter how small and insignificant – is false.

b. Contrary to IGS and Direct, the Commission is not legally required to allocate overhead distribution costs generally perceived to indirectly or incidentally support the SSO product.

As a starting point, the legal argument advanced by IGS relies on R.C. 4928.03's requirement for comparable and nondiscriminatory access to noncompetitive retail electric services of an electric utility and R.C. 4928.02(H)'s policy of ensuring effective competition by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service. (IGS Br. at 14-15; s*ee also* Direct Br. at 11.) From that building block, however, IGS makes an unjustified leap of logic in claiming that the Commission is legally required to allocate distribution costs to the SSO product and in concluding that the Stipulation's continuation of placeholder values for the RRR and SSOCR violates these legal requirements. (IGS Br. at 16.) Four primary flaws of the IGS legal position are that: (1) because AEP Ohio does not provide any capacity or energy used to supply the SSO product and none of the resulting SSO product revenue goes to AEP Ohio or its affiliate, there cannot be an anti-competitive subsidy in violation of R.C. 4928.02(H) or nondiscriminatory service under R.C. 4928.03 (or an undue preference or advantage conveyed to AEP Ohio or any affiliate in violation of R.C. 4928.17); (2) the SSO product is unique among all other services in that the EDU has a statutory obligation to be the default provider for the benefit of all customers, especially when considering that procuring the SSO product itself is done through competitive external procurement; (3) costs supporting the SSO product have not been adequately shown in this record to be reflected in base distribution rates; and (4) a general allocation of overhead distribution costs is not required in order to satisfy R.C. 4928.02(H), R.C. 4928.17 or R.C. 4928.03. Accordingly, the position of IGS and Direct is factually and legally incorrect.

In the *Duke 17-32* case, the Commission rejected the same argument by IGS:

> Initially, while there may be differential cost implications associated with the provision of competitive electric commodity service when compared to that of regulated default service, these differentials do not, on their face, constitute discriminatory treatment nor an unlawful subsidy. Thus, we reject IGS's argument in this regard. We similarly reject IGS's assertion that the Commission's ability to authorize such recovery is outside the bounds of our jurisdiction. Pursuant to R.C. 4928.141, all EDUs are required to offer an SSO that is available for all customers as the default service. Further, as described in R.C. 4928.14, customers will default to the SSO if a CRES supplier fails to provide service. Duke is thus statutorily required to be able to provide service to all customers in its service territory and the expenses are unavoidable, regardless of how many customers choose to shop. Accordingly, all customers benefit from Duke's ability to provide the SSO. The recovery of costs attributable to the SSO is consistent with previous Commission decisions. *See, In re Ohio Power Company*, Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 26, 2018) at ¶ 215; *DP&L Rate Case Order* at ¶ 28. As we discussed in those cases, and in our decision in this proceeding, expenses that IGS attributes solely to the SSO, such as Duke's call center, include costs that are exclusively related to the customer choice program and promoting competition. Opinion and Order at ¶ 232. Thus, IGS's contention that allowing such recovery is discriminatory is without merit. *As the expenses are non-discriminatory, assist all customers, and promote the customer choice program, we find that allowing this recovery is consistent with the state policy espoused in R.C. 4928.02(H) to ensure the availability of unbundled and comparable electric service.*

Duke 17-32 Case, Second Entry on Rehearing at ¶ 32 (June 27, 2019) (emphasis added). The Commission's rejection of the IGS argument was reasonable and lawful and the Supreme Court dismissed IGS's appeal of the order. *Interstate Gas Supply v. Pub. Util. Comm*., S. Ct. Case No. 2019-1269, Entry (Apr. 22, 2020). The same rationale set forth in the *Duke 17-32 case* decision applies here and should be followed, makes sense for the reasons stated, makes sense for additional reasons, and is consistent with pertinent statutes.

Initially, it is important to acknowledge that AEP Ohio does not supply the SSO product to customers; it merely procures it externally, in accordance with competitive bidding procedures established in *ESP IV*. The SSO auction process is run by an independent auction manager, whose costs (along with the labor costs for AEP Ohio's employee who oversees the process) are billed through the bypassable Auction Cost Reconciliation Rider ("ACRR"). And AEP Ohio keeps $0 of the SSO revenue received; it all gets passed through to the auction suppliers. Thus, it is literally not possible that the procurement of the SSO product involves an anti-competitive subsidy or an undue preference or advantage to AEP Ohio or its affiliates.

As a related matter, the nature of the SSO obligation being strictly on the EDU is a related point that undermines the idea of being discriminatory or creating an anti-competitive subsidy or undue advantage. IGS/Direct witness Mr. Lacey acknowledged during cross examination that the utility must offer the SSO product 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 product by choice; and that the SSO product benefits both shopping and non-shopping customers. (Tr. V. at 1087-1088.) Yet, Mr. Lacey illogically maintains that customer choice activities are a distribution function, while the SSO is not a distribution function. (*Id.* at 1090.)

In any case, the Commission and the Supreme Court of Ohio have recognized the unique status of the EDU-specific obligations, including the SSO and Provider of Last Resort obligations, in permitting non-bypassable recovery of costs indirectly related to competitive services on numerous occasions. *See In re Commission Review of the Capacity Charges of Ohio Power Co.*, 147 Ohio St. 3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶10 (finding that capacity service is not a competitive retail electric service because AEP was not providing capacity to end-use energy consumers); *Indus. Energy Users v. Pub. Util. Comm.*, 117 Ohio St. 3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶37 (holding that the Commission may, in accordance with R.C. Chapters 4905 and 4909, approve recovery of an electric distribution utility's noncompetitive costs associated with its effort to secure competitive retail service in further of its POLR obligation); *In the Matter of the Commission's Review of its Rules for Electrical Safety* *and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order, ¶ 20 (Feb. 26, 2020) (requiring EDUs to accommodate non-jurisdictional services on utility consolidated bills because the utility's billing is subject to the Commission's jurisdiction); *In the Matter of the Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 12-2050-EL-ORD, Fifth Entry on Rehearing, ¶38 (Dec. 19, 2018) (finding that because EDUs are statutorily obligated to provide net metering services, costs, other than generation credits, of providing the service are appropriately recovered through base distribution rates).

The discrimination claim under R.C. 4928.03 also suffers from another major defect: shopping and non-shopping customers are not a static group, so there cannot be a subsidy among services or classes. On the contrary, Mr. Lacey agreed that due to migration "today's shopping customer might be tomorrow's SSO customer and vice versa." (Tr. V. at 1088.) Mr. Lacey also acknowledged that both shopping and non-shopping residential customers are in the residential customer class. (*Id.* at 1089.) Thus, it is evident that there is no separate customer class or distinct set of beneficiaries or users of SSO or open access service.

In this regard, the Commission has repeatedly rejected discrimination arguments where all customers are receiving benefits from an SSO-related activity or charge. *See e.g. In the Matter of the Application of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider,* Case No. 14-1693-EL-RDR, *et al.*, Second Entry on Rehearing, ¶237 (Nov. 3, 2016) (finding that the Power Purchase Agreement ("PPA") Rider Order does not violate R.C. 4928.02(H) because the PPA Rider will service AEP Ohio's retail customers whether they are SSO customers or are served by a CRES provider); *In the Matter of the Application of [FirstEnergy] for Authority to Provide for* *a Standard Service Offer Pursuant to R.C. 4928.143 in the form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at p. 110 (Mar. 31, 2016) (finding that the Retail Rate Stability Rider is not anticompetitive because it is non-bypassable and has the same impact on customers' bills on shopping customers as SSO customers); *see also In the Matter of the Application of the Dayton Power and Light Co. to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO, *et al.*, Third Entry on Rehearing, ¶66 (Sept. 19, 2018) (finding that the reconciliation rider presents no obstacle to effective competition because it will be charged in the same amounts irrespective of whether the customer is obtaining generation from the standard service offer or from a competitive retail electric supplier).

Further, given that the law requires an EDU and not an affiliate or separate entity to procure the SSO product, the anticompetitive subsidy statute only encompasses actual or direct costs as generation costs. Stated differently, a "generation-related cost" under R.C. 4928.02(H) does not include allocated cost, especially overhead distribution costs that have not been proven to be specifically related to the SSO product. Moreover, since customer choice functions fall into the same category and description with costs that should be similarly treated, this outcome also is fair and just. Until those issues are fully developed and analyzed, it is premature to establish a non-zero value for the RRR and SSOCR.

In addition, neither the ESP statute nor the corporate separation statute has been interpreted or applied in a way that requires allocation of overhead distribution costs to the SSO product. Of course, the ESP statute is an exception to the corporate separation statute; R.C. 4928.17(A) prefaces the entire corporate separation statute with "[e]xcept as provided in" the ESP statute. AEP Ohio's ESP has set SSO rates that fully recover the costs of procuring the SSO product. The ESP statute and AEP Ohio's SSO rate plan should not be interpreted as requiring allocation of general distribution costs to the SSO product, especially given the other aspects of the ESP statute that conflict with such a strained interpretation. For example, the ESP statute allows nonbypassable generation charges for use in procuring the SSO. R.C. 4928.143(B)(2)(c). And the ESP statute authorizes the Commission to establish terms, conditions or charges relating to limitations on customer shopping, stability charges, and provisions regarding default service. R.C. 4928.143(B)(2)(d). Certainly, the Commission has the ability to determine, consistent with its own Staff's recommendations and as it did initially in the *ESP IV* case itself, that the RRR and SSOCR remain at zero for good public policy reasons.

Although the SSO product itself could be considered a competitive service under R.C. 4928.141 and R.C. 4928.03, the back office EDU functions supporting the SSO product are not (CRES providers such as IGS and Direct certainly do not perform these functions). Back office support services are non-competitive and properly considered distribution services. The Commission has found that open access costs are properly classified as distribution or billing and collection services and not competitive generation services:

> Further, there does not appear to be a subsidy of a competitive service by a noncompetitive service in violation of Section 4928.02(H), Revised Code, as alleged by FirstEnergy. The function of switching customer accounts from one generation service provider to another generation service provider does not appear to be a generation service; it is a necessary part of maintaining a competitive market, but it appears to be a distribution service or a billing and collection service. Distribution service and billing and collections service are noncompetitive services. Therefore, there is no collection of distribution revenues being used to subsidize costs related to generation service.

In the Matter of the Complaint of NOPEC v Ohio Edison Company, Case No. 09-423-EL-CSS, Entry, 4 (July 8, 2009). In other words, the Commission has held that the costs associated with functions performed by the EDU to support the customer choice regulatory framework in Ohio are properly collected through distribution revenues.

Likewise, the back-office services indirectly supporting the SSO product should be considered a non-competitive EDU function. After all, the SSO-related functions performed by an EDU are similar to the open access services – all of which serve the same purpose of facilitating retail choice and competition. Although the actual provision of the SSO product is performed by the auction winners and not the EDU, the supporting services are not competitive and not provided by anyone except the EDU. This status also means, in practical terms, that the provision and funding of those services cannot possibly be anti-competitive in impact or effect.

Mr. Lacey repeatedly claimed that the SSO product is not a moderator of the market by itself but is merely one of the competitive offers that impacts the market prices. (Tr. V at 1049, 1051, 1079.) So, it is clear under Mr. Lacey's premise that pricing of the SSO product has little effect on competitive CRES offers, since CRES primarily compete against each other under the IGS/Direct position of record. Regardless, the utility functions supporting the SSO product do not impede effective competition as defined in the Commission's adopted standard. *See In the Matter of the Commission's Investigation of the Retail Electric Market*, Case No. 12-3151-EL-COI, Finding and Order, ¶¶11-12 (Mar. 26, 2014) (defining effective competition as existence of the following characteristics: 1) participation in the market by multiple sellers so that an individual seller is not able to influence significantly the market price of the commodity; 2) participation in the market by informed buyers; 3) lack of substantial barriers to supplier entry into the market; 4) lack of substantial barriers that may discourage customer participation in the market; and 5) sellers offering buyers a variety of CRES products).

For example, making the AEP Ohio call center available for SSO questions or incurring costs for regulatory or legal support related to SSO issues in Commission proceedings are EDU functions that promote a competitive market and discharge SSO obligations that are available to all customers (and benefit all customers). Even if there was a clear record to support a finding that a significant level of indirect SSO product costs are embedded in base distribution rates (which there is not), it is sufficient that all direct costs of the SSO product are recovered through bypassable riders that, together, constitute the price-to-compare for AEP Ohio's non-shopping customers.

As discussed above, call center costs demonstrate why it is not easy or appropriate to allocate costs associated with general EDU functions between SSO and choice customers. Call Center costs are generally incurred to interact with all of AEP Ohio's customers and the system is not designed to serve only shopping customers or only non-shopping customers, so it is just and reasonable to require all customers to pay for such costs. And the Commission has specifically referenced call center costs as an example of costs that support choice and SSO operations, benefitting all customers and being appropriate for recovery in base rates. *Duke 17-32 Case*, Second Entry on Rehearing at ¶ 32. Finally, the premise of a subsidy is misguided because (as discussed in Section I.C.3.a above), IGS and Direct have not established that a subsidy exists based on the record in this case.

In reality, the allocation of costs and design of the SSO rates is more akin to a discretionary rate design issue, not a mandatory legal requirement. The Supreme Court has frequently acknowledged that decisions about how rates are designed—including which customers pay and under what circumstances—are matters within the Commission's discretion. *Green Cove Resort Owners' Ass'n. v. Pub. Util. Comm.*, 103 Ohio St.3d 125, 2004-Ohio-4774, 814 N.E.2d 829, ¶ 1 (recognizing the Commission's "unique rate-design expertise"); *Citywide Coalition for Util. Reform v. Pub. Util. Comm*., 67 Ohio St.3d 531, 533, 620 N.E.2d 832 (1993) (affording the Commission "considerable discretion" in matters of rate design); *see also Consumers' Counsel*, 32 Ohio St.3d at 268 (ratemaking involves extensive hearings, voluminous testimony, and technical questions which must be resolved on the basis of complex and often disputed evidence; the Court's function is not to weigh the evidence or choose between debatable rate structures). Just like rate design debates, Mr. Lacey enthusiastically asserted that allocation of costs "is definitely an art" when asked about whether there was more than one way to do the SSO cost study. (Tr. V at 1098.) More importantly, as discussed further below in Section I.C.3.e., the placeholder rate recommendation in the Stipulation is supported by policy considerations and certainly does not violate any important regulatory principle or practice.

In any case, although IGS and Direct may advocate an SSO adder to advance their own policy or economic agenda, advancing that position as a legal requirement lacks merit.

c. An immaterial or insignificant micro-subsidy does not violate R.C. 4928.02(H), R.C. 4928.03, or R.C. 4928.17(A).

Neither the corporate separation statute nor AEP Ohio's corporate separation plan has ever been interpreted or applied as including an SSO unbundling requirement, let alone in a way that is absolute or unqualified. In reality, R.C. 4928.17(A)(3) only prohibits an "undue" preference or advantage. Likewise, R.C. 4928.02(H) only prohibits "anticompetitive" subsidies, and that standard certainly is not absolute or unqualified. Similarly, R.C. 4928.02 only requires comparable and nondiscriminatory service. As discussed, it has not been established in this record that distribution overhead costs specifically relate to the SSO product or support those functions, except at an immaterial or incidental level at the very most (and without a full netting due in part to quantification challenges). But even presuming for argument purposes that the entire $4.7 million is relied upon as an SSO-related overhead cost amount that is reflected in distribution rates (which it should not be considered because that number excludes the $1.2 million offset and does not capture the components that are not tracked or remain unquantified and for all the additional legal reasons explained in Section I.C.3.b above), IGS is wrong in concluding that that situation violates Ohio law or an important regulatory principle or practice.

No matter how it is measured, the costs are insignificant and immaterial and could not fairly be characterized as anticompetitive. Quantitatively, $4.7 million is less than ½ of 1% of AEP Ohio's stipulated distribution revenue requirement (4.7/955.1=0.00492), slightly over ½ of 1% of SSO revenue for 2019 (4.7/730=0.00644), and less than 1/5 of 1% of total Company revenue for 2019 (4.7/2,479.9=0.00190). (*See* Jt. Ex 1 at Schedule A for stipulated revenue requirement; IGS Ex. 2 at FPL-8 for historical revenue figures.) Even if a $4.7 million subsidy technically exists (which it does not), that could not possibly create an undue preference or advantage. Of course, the $3.5 million figure actually reflected in Mr. Roush's Application testimony results in an even smaller and more insignificant micro-subsidy.

Based on a straightforward application of pertinent statutes to the record in this case, there is no basis for a finding that an undue preference or advantage exists under R.C. 4928.17(A)(3) or an anti-competitive subsidy exists under R.C. 4928.02(H).

d. The liberal and loose allocation concept advocated by IGS and Direct simply does not prove the existence of actual distribution costs solely related to procuring SSO service.

Building on its flawed legal argument, IGS argues that cost allocation is necessary to properly price AEP Ohio's competitive and noncompetitive services. (IGS Br. at 18-22.) Specifically, IGS characterized the *ESP IV* decision as "recognizing that there may be costs that should be assigned and allocated to the riders." (*Id*. at 19.) Similarly, Direct wrongly claims that "[t]he Commission would not have approved the riders if there were any doubt about whether SSO-related costs are being recovered in distribution rates." (Direct Br. at 12.) Contrary to the presumption advanced by IGS and Direct, this case is the "whether and how" case and it was not a foregone conclusion in this case that a subsidy exists or that a non-zero rate had to be established. The *ESP IV* decision also made it clear that the Commission was *not* pre-deciding the issues, as IGS and Direct suggest:

> In approving the stipulation, the Commission was clear that, although AEP Ohio had agreed to file various proposals in future proceedings, such proposals would be subject to further review by the Commission. The Commission also noted that, while there was a benefit in AEP Ohio's commitment to offer future proposals related to retail competition and other matters for the Commission's consideration, the Commission's recognition of that benefit should not be construed as a predetermination of the outcome of the future proceedings.

ESP IV, Second Entry on Rehearing at ¶ 87 (Aug. 1, 2018). The *ESP IV* decision rejected the legal position without a supporting factual basis – and there still is none.

IGS argues that the Commission should broadly allocate costs. (IGS Br. at 20-21.) Even *arguendo* setting aside the crippling flaws with IGS/Direct witness Lacey's allocation methodology that were identified in AEP Ohio's Initial Brief (at 36-38), Mr. Lacey's allocation method simply does not meet the standard of proof established by the Commission. The Commission set a high bar for establishing that the SSO adder should be adopted.

In the *ESP IV* decision, the Commission directed AEP Ohio to evaluate costs related to providing the customer with both customer choice and costs "attributable to the SSO." *ESP IV* Order at ¶ 215. In the *DP&L* case, the Commission further specified that the evaluation is to determine whether there are "*actual* distribution costs *solely related to* providing SSO service." *Dayton Power & Light Co*., Case No. 15-1830-EL-AIR, Opinion and Order at ¶ 28 (emphasis added). *See also Duke 17-32 Case*, Opinion and Order at ¶ 231 (should separate "SSO-specific costs" to determine "whether it is appropriate to reallocate costs"). The notion IGS and Direct endorse of liberally allocating costs that might potentially have some loose connection to the SSO product is simply not good enough. The actual costs solely related to the SSO product are those costs already reflected in the bypassable price-to-compare riders – not broadly allocated overhead costs that are merely assumed to be loosely related to providing the SSO product.

Ultimately, Mr. Lacey's testimony did not establish that any of the costs he so generously allocated to the SSO product are actually tied to providing SSO service – and it appears that he was not even aware of the standard of proof established by the Commission. The Company's Initial Brief chronicled several gross flaws and unjustified assumptions in Mr. Lacey's allocation method. (AEP Ohio Br. at 36-38.) For example, Mr. Lacey assumes that everyone from the CEO to the line worker spends a significant amount of time on providing the SSO product – 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. (Tr. V at 1140.) And as discussed below, Mr. Lacey was not even aware of the direct costs associated with the SSO product being recovered through the Auction Cost Reconciliation Rider (ACRR). (*Id.* at 1092-94.) He also categorically assumed that 100% of the Company's advertising was aimed solely at promoting the SSO product (*id.* at 1144-45) – even though test year advertising costs were included in the Application (though he did not review the material prior to taking the stand) and show that *none* of it was aimed at promoting the SSO product or even mentioned the SSO product at all (AEP Ohio Ex. 1 Part 15.) More to the point, because IGS/Direct witness Lacey's testimony made no attempt to demonstrate that the allocated costs were "*actual* distribution costs *solely related to* providing SSO service" as required by the Commission in the *Dayton Power & Light* case, his conclusion must be rejected.

By contrast, Mr. Roush testified that the direct costs associated with the SSO product were removed as part of the jurisdictional cost-of-service study, including the SSO auction costs, the cost of the employee that works on auctions and the auction manager costs. (Tr. I at 37-38.) All of those direct costs are reflected in the bypassable charge that makeup the rates for SSO service: the GEN-C, GEN-E, ACRR and AER riders. (IGS/Direct Ex. 2 at 39.) Those direct costs, which are already collected on a bypassable basis, are the only costs that meet the standard of being actual distribution costs solely related to providing the SSO product.

For all of those additional reasons, the RRR and SSOCR should remain at zero placeholder rates as recommended in the Stipulation.

e. It is not good policy to allocate costs to the SSO product as IGS and Direct advocate, especially without meeting the standard of proof established by the Commission.

As a related matter, IGS also claims (at 22-29) that the Signatory Parties do not have sound policy supporting the recommendation to maintain zero placeholder rates for the RRR and SSOCR. Beyond repeatedly rearguing the facts and law in this section of its brief, however, IGS only makes a couple of discrete policy arguments – both of which are unpersuasive. On the other hand, there are strong policy considerations that support the Stipulation's outcome as cogently argued by the Commission's Staff.

First, IGS argues that the policy of socializing the direct and indirect costs of providing the SSO product is "wrong" because it undermines fundamental principles of cost assignment and treats SSO as a distribution service. (IGS Br. at 26-27.) IGS argues that AEP Ohio is attempting to relabel SSO costs as distribution costs which, according to IGS, is like calling a monkey a rabbit. (*Id*. at 23.) Ironically, it is IGS that wants to "pull a rabbit out of the hat" for its investors by relabeling EDU functions and costs (currently recovered in distribution rates) as indirectly supporting the SSO product based on faulty logic and assumptions – and without addressing the standard of proof established by the Commission. Like the obligation to promote customer choice through open access services, providing the SSO product is exclusively an EDU function as discussed above. It is IGS that engages in conflicting and illogical positions by insisting that the Commission treat open access as a critical distribution service that must be socialized while refusing to acknowledge that the SSO falls in the same category and description.

Second, IGS argues that the socialization policy is bad for customers because it will understate the cost of default service and frustrate the entry of new products and services by CRES providers. (*Id*. at 27-28.) Regarding the underpricing argument, IGS wants higher prices for non-shopping customers so that it might charge higher prices to its customers. Although it is easy to understand why IGS wants that outcome, it is not clear why the Commission or retail customers would want that scenario to materialize, since non-shopping customers already receive benefits from the SSO and shopping customers benefit from the SSO product's continuous availability. Regarding the frustration of new products and services, there is no credible evidence in the record to support this assertion. And unless IGS sees a subsidy opportunity, it makes little sense to conclude that other competitive products and services suffer from SSO pricing.

Contrary to the position advanced by IGS, it is bad policy to adopt the liberal and unjustified allocation theory advanced by IGS and Direct – especially in the context of considering a Stipulation where the Staff, the Company and most intervenors recommend leaving the riders as zero-value placeholders. If the Commission believes an SSO adder outcome might involve an important regulatory policy or principle that merits further consideration (which it should not, based on this record), it should certainly not be enforced only against AEP

Ohio. Stated differently, if the Commission wishes to further consider such a proposal or such policies, it should consider the issue in a generic industry forum based on a different record. But there is more than ample policy to support the Stipulation's proposal.

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 product 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).

And it is bad ratemaking policy to broadly assign costs without basis. Mr. Roush testified that the purpose of an allocation is not to guess or estimate the causer of the costs; rather, it is a proper allocation based on identified costs and causation. (Tr. I at 42.) By contrast, Mr. Lacey's method uses inaccurate and baseless estimates, broad assumptions and conflicting principles. Staff witness Smith aptly summed up the reasons to reject IGS/Direct's SSO unbundling proposal and cautioned against speculation and guesswork:

> 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. * * * 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 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.)

As explained in the Company's Initial Brief, no other State commission has adopted an SSO adder using the IGS/Direct allocation theory. (AEP Ohio Br. at 38-44.) In particular, the New Jersey and Pennsylvania Commissions articulated highly persuasive reasons to reject the theory. In a case involving PECO, the Pennsylvania Commission rejected the same allocation method based on familiar flaws – including the fictional assumption of a separate SSO operation and allocations with basis in a proper cost analysis. (*Id*. at 38-40.) In a separate case, the New Jersey Board similarly rejected Direct's SSO unbundling theory noting that open access services are funded by distribution rates at an equal or greater level, and refused to adopt an SSO adder without a shopping surcharge because that result "would actually create the incomparable scenario that Direct is attempting to resolve" with SSO services. (*Id*. at 41-43.) These same policy objections apply to the IGS/Direct SSO adder proposal in this case. More to the point, the

Stipulation's proposed continuation of zero placeholders rates for the RRR and SSOCR promote, rather than violate, important regulatory principles and practices.

In short, there has been no Commission requirement for an SSO adder to date and it should not be imposed in this case to AEP Ohio based on the record in this case.

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

a. The BTCR is not unlawful.

Ohio statute authorizes the Commission to "provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization * * * ." R.C. 4928.05(A)(2). The Commission adopted Chapter 4901:1-36 of the Ohio Administrative Code to effectuate this grant of authority.

AEP Ohio proposed its existing Basic Transmission Cost Rider (BTCR) in 2015, as a mechanism to allow the Company to "recover non-market based transmission charges from all of its customers * * * ." *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, 65 (Feb. 25, 2015). At the time AEP Ohio proposed it, IGS and other intervenors supported the BTCR, asserting that it would make it easier for "CRES providers to predict and manage certain non-market based transmission charges" and "would be competitively neutral, efficient, and likely to result in more competitive prices for consumers." (Internal citations omitted.) *Id*. So the Commission followed IGS's recommendation and approved the BTCR, noting when it did that the BTCR was "comparable to the transmission riders approved for the other electric utilities." (Internal citations omitted.) *Id.* The Commission has recognized that its approval of the BTCR is "[c]onsistent with R.C. 4928.05." *In the Matter of the Application of Ohio Power Co. to Update its Basic Transmission Cost Rider*, Case No. 18-96-EL-RDR, Finding and Order, ¶ 4 (Mar. 28, 2018).

Only six years later, however, IGS argues that the Commission's adoption of the BTCR (and, presumably, every other Ohio electric utility's transmission rider) was unlawful. According to IGS's new position, AEP Ohio cannot "use transmission service resale billing determinants" that are "different from those contained in the controlling PJM OATT [Open Access Transmission Tariff]." (IGS Br. at 47.) But as discussed above, the BTCR does not impose charges for transmission service resale; it is the mechanism by which "AEP Ohio passes through to customers the transmission and transmission-related costs charged to the Company by PJM * * * ." *In the Matter of the Application of Ohio Power Co. to Update its Basic Transmission Cost Rider*, Case No. 18-96-EL-RDR, Finding and Order ¶ 4 (Mar. 28, 2018). And IGS has not pointed to any specific provision of the PJM OATT that the BTCR would violate, or to any Commission or FERC precedent that requires an electric distribution utility to use the same billing determinants to recover its non-market-based transmission costs from customers as PJM uses to impose those costs on AEP Ohio. For all of these reasons, the Commission should reject IGS's new position on the BTCR and affirm that the continuation of AEP Ohio's existing BTCR is lawful.

b. The BTCR is consistent with state policy and Commission directives.

IGS also argues that the BTCR is contrary to the principle of cost-causation. To support that argument, IGS points to a handful of Commission statements, most of them years old and relating to the CRES market. (*See* IGS Br.at 48.) None of them justifies eliminating the BTCR or eliminating all restrictions on participation in the BTCR Pilot.

First, IGS points to R.C. 4928.02(O) and (P), which state that it is Ohio's policy to "[e]ncourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization" and "[e]nsure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers." Both of these statements of principle relate to the CRES market, not to transmission service. And regardless, the policy statements in R.C. 4928.02 are simply "guidelines" for the Commission to weigh in evaluating utility proposals, not binding mandates. *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.

Next, IGS notes that the Commission adopted a Staff recommendation in 2014 to require electric distribution utilities to amend their tariffs to "address or include the implementation of individual network service peak load and peak load contribution formulas * * * ." *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order, 36 (Mar. 26, 2014). This holding, which also relates to the CRES market and not to transmission service, predates the Commission's creation of the BTCR and, accordingly, cannot justify a reversal of the Commission's decision to approve the BTCR in 2015.

IGS also points (*see* IGS Br. at 48) to a statement in the Commission's 2018 PowerForward Roadmap that, "[f]or shopping customers, the implementation of grid modernization technologies should remove barriers between the wholesale and retail markets * * * for generation." Public Utilities Commission, *PowerForward: A Roadmap to Ohio's Electricity Future* at 31 (2018). Yet again, the Commission's statement relates to the CRES market, not transmission service. And as the document itself cautioned, *PowerForward* was simply a "policy document," and nothing in it "should be construed as binding upon the Commission in any future case before the Commission." *Id.* at 5 n.1.

Finally in this regard, IGS points to an isolated comment in a 2020 Entry striking the "shared savings" provision from Duke Energy's application to implement a new portfolio of energy efficiency / demand-side management programs. *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 No. 20-1013-EL-POR, Entry at ¶ 9 (June 17, 2020). There, the Commission commented that "[i]n a competitive market" where "customers and suppliers are free to work out mutually beneficial cost and benefit sharing arrangements without subjecting other customers to extra risk or cost burdens * * * , it continues to be important that EDUs focus on providing consumers and CRES providers with direct and comparable access to meter data and enabling billing mechanisms that properly reflect cost-causation for things like generation capacity and network integration transmission service." *Id.* Here, however, IGS has not shown that eliminating all restrictions on participation in the BTCR Pilot would not subject other customers to extra risk or cost burdens. IGS witness Haugen admitted he did not analyze the rate impact for residential customers of opening up the BTCR Pilot to anyone who wishes to participate. (*See* Tr. V at 1031.) The existing pilot program, on the other hand, "insulates residential customers from incurring additional costs as a result of the BTCR pilot." *ESP IV* Order at ¶ 147.

IGS asks the Commission to eliminate the BTCR Pilot in deference to the regulatory principle of cost-causation. But IGS ignores an equally important regulatory principle: gradualism. The BTCR Pilot is only a few years old. The Commission has approved gradual increases in customer and megawatt participation in the BTCR Pilot over the last few years, as discussed below, and IGS witness Haugen conceded at hearing that the Stipulation would continue that gradual expansion. (Tr. V at 1030.) Those gradual increases in customer and megawatt participation are the best way to ensure that residential customers will continue to be insulated from potential unexpected adverse rate impacts. In deference to the principle of gradualism, the Commission should approve the Stipulation and its limited expansion of the BTCR Pilot.

c. The BTCR Pilot is not unduly discriminatory.

Finally in this regard, IGS argues that the expansion of the BTCR Pilot is "unduly limiting, discriminatory, and unjust" because it excludes "customers that are not members of * * * three stakeholder groups" that signed the Stipulation. (IGS Br. at 49.) But the BTCR Pilot is, as its name suggests, a pilot program. Participation in a pilot program must by necessity be limited. And for this program, participation has always been largely (but not entirely) restricted to the members or customers of the signatories of (or non-opponents to) the stipulations that created it.

The "Global Settlement Stipulation" in which AEP Ohio agreed to seek approval to establish the BTCR Pilot limited the program to "19 customers filed by Signatory Parties or non-opposing parties" or their members: "five for OMAEG members, three for Direct Energy public school customers, four for lEU members, five for OEG members, and two for an IGS customer."

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, 32 (Feb. 23, 2017). The next year, the BTCR Pilot was expanded to 34 participating customers, but enrollment was still largely limited to members or customers of the same "sponsoring groups." *ESP IV* Order at ¶ 96. However, an "additional 20 MW of BTCR Pilot enrollment" was also opened up to schools, "with no specific number of participation slots being established." *Id.* at ¶ 98.

An intervenor opposing that expansion to the BTCR Pilot made the same argument that IGS is making now, that "the BTCR pilot program is unduly preferential and discriminatory." *Id.* at ¶ 146. The Commission rejected that argument, stating that pilot programs necessarily limit enrollment and that pilot participants are not substantially similar to non-participants:

> We disagree. The 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. In these proceedings, the Stipulation increases the number of participants from 19 to 34 and expands the program to include schools. No school or association of schools is a party to these proceedings. The other designated BTCR pilot participants are members of Signatory Parties or non-opposing parties to the Stipulation. It is the BTCR participant that must adjust its consumption of energy to directly obtain the benefits of the pilot. * * * We find a BTCR pilot participant's adjustment in consumption to constitute a difference in the service received in comparison to a non-BTCR pilot participant. The Commission finds the limitation on the number of participants to be reasonable, key to controlling the cost of the pilot, and to facilitating an evaluation of the efficacy of the pilot.

Id. (internal citations omitted). IGS points to no change in law or fact that would require the Commission to reverse its holding now.

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).) Although 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. The only argument IGS can muster in opposition to the 20-1408 case commitment is the observation (at 37) that the agreement "has no bearing on the present case" – Direct makes a similar criticism (at 12) that the provision is not related to anything raised in the Application and calls it a "side deal." Of course, it is exceedingly common for parties to make commitments as part of a settlement package that do not relate strictly to the Application filed in the proceeding; and a provision that is explicitly included in the Stipulation and addressed in supporting testimony can hardly be called a side deal. But being unrelated to the Application is not a valid criticism for rejecting a Stipulation commitment that otherwise does not violate any important regulatory principle or practice.

Regarding the Shadow Billing Report commitment, IGS argues (at 37-38) that it should be removed from the Stipulation because AEP Ohio customers "will serve as guinea pigs" for an exercise without benefit that is based on the "mistaken belief that a lower rate is the only benefit customers can receive from competition" and conflicts with the Commission's precedent. Of course, customers and their advocate groups care deeply about market prices as does the Commission, which consistently features the Apples-to-Apples page on its website as a core principle for educating customers about their competitive choices. It is not surprising that IGS disdains such market data given IGS/Direct witness Lacey's open contempt for the price-to-compare construct that the Commission has embraced as a core principle in its Apples-to-Apples website – which he refers to as "apples to baked beans." (Tr. V at 1120.) Obviously, Mr. Lacey's perspective that the price to compare is misleading and flawed undermines his equally misguided claim that the Shadow Billing Report is also misleading and flawed.

In an additional red herring argument, IGS argues (at 38) that the information in the Shadow Billing Report will merely provide backward-looking data that is useless to customers. In reality, the data in the report will not be accessed by individual customers or used in making specific shopping decision. Rather, it is a report that presents aggregated data for consideration by Ohio regulator and policy stakeholders such as OCC. 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.) Similarly, as AEP Ohio witness Moore testified, 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.) Thus, while IGS thinks the information is useless and customers don't care about price data, the residential advocate disagrees and desires to receive and evaluate the aggregated data.

Next, IGS criticizes the Shadow Billing Report (at 39) as reflecting data that is "heavily manipulated." In reality, the data exclusions are made in order to make the data more comparable to the SSO and avoid a distorted comparison, which is something IGS has also complained about in the 20-1408 case. 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 Shadow Billing Report explains the exclusions in detail on the face of the report. (Jt. Ex. 1 at Att. D.) And the purpose of all 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.) So, while IGS complains about data manipulation, a more accurate description of the exclusions is quality control data scrubbing to ensure consistency – a normal practice in processing and evaluating data. While the data may not be perfect and is limited to information reported to AEP Ohio by CRES providers, it is useful and provides appropriate exclusions and disclaimers.

Finally, IGS claims (at 40) that the Shadow Billing Report is inconsistent with prior Commission orders. In those cases, the Commission generally refused to impose a mandatory requirement for shadow billing (and associated costs) but those decisions did not address a voluntary commitment as part of a Stipulation. In a more apt line of precedent, the Commission initially approved and then subsequently continued a voluntary shadow billing commitment by Columbia Gas for a number of years. *In the Matter of Columbia Gas of Ohio*, Case No. 12-2637-GS-EXM, Opinion and Order at 46 (January 9, 2013); November 27, 2012 Amended Stipulation at ¶ 36. Given the intended use of the report and the voluntary commitment entered into as part of the settlement package in this case, the Commission should leave the Stipulation provision intact. The bottom-line conclusion reached by IGS in this regard (at 40) is that the commitment is "completely unnecessary" – but that is not a relevant query when the provision does not violate any important regulatory principle or practice.

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.

6. IGS and Direct fail to establish anything relevant to the three-part test or the Stipulation concerning the Company's activities relating to customer-sited generation projects.

Recent changes to Ohio law permit an EDU to enter into an agreement with mercantile customers for the purpose of constructing a customer sited renewable energy resource, subject to Commission approval. R.C. 4928.47(A). IGS argues (at 34-35) that just because IGS sent discovery requests related to the Company's activities in this regard, the Staff should have investigated the issue and the Commission should have found a violation of R.C. 4928.47.

Further, IGS claims (at 35) that the Commission is blocked from issuing an order in this case without a proper investigation of this issue – though that erratic point is mentioned in passing without any further support or explanation.

IGS is alone in advancing the misguided claim that AEP Ohio is violating R.C. 4928.47. More to the point, there is no provision in the Application or Stipulation remotely related to this issue. IGS is wrong in thinking the Staff and Commission should merely ask "how high" every time IGS shouts "jump" – instead of considering and rejecting a claim that lacks merit.

In response to a general IGS interrogatory about how AEP Ohio would track costs if there were a customer-sited renewable project under R.C. 4928.47, the Company stated "[i]f the Company has a project a separate work order would be created to track all costs associated with the project. The costs would be tracked and recovered as part of the agreement between the Company and mercantile customer(s)." (IGS Ex. 18.) After an additional interrogatory asking about details of any solicitation activity, the Company objected for lack of relevance and indicated that only preliminary conversations had occurred with interested customers, which were incidental and did not constitute project costs. (IGS Ex. 19.)

AEP Ohio witness Williams confirmed the same things on the stand. (Tr. V at 979, 984.) He also explained that no customer-sited projects ever materialized from the preliminary conversations, that would have triggered any project cost tracking. (*Id.* at 985.) During cross examination, Staff witness Smith agreed with the Company that preliminary negotiations or discussions with customers interested in customer-sited renewable energy resources are incidental and often involve interconnection arrangements with the utility anyway. (Tr. II at 328-329.)

In sum, there were no projects so there was no cost tracking; and had there been a project, costs would have been tracked to ensure that all direct and indirect costs were accounted for. IGS alone holds the view that a preliminary conversation (which could only involve negligible costs, at best) should trigger an administratively burdensome cost tracking procedure that is not required by R.C. 4928.47 or any other statute or regulation. The Staff concurred in this reasonable view and nothing further was done. There is nothing in the Application or the Stipulation relating to this topic and it is not relevant to the three-part test. IGS has submitted no evidence of any cost or the existence of any subsidy to back up its claim, so it should be ignored.

7. The Company's supplier fees do not violate any important regulatory principle or practice.

Like IGS's arguments against the Stipulation's proposal to continue and expand the BTCR Pilot, IGS and Direct's arguments against the Company's various supplier fees are simply a rehash of old arguments the Commission has already rejected multiple times. AEP Ohio's current, Commission-approved tariff sheets include various fees for competitive retail electric service (CRES) providers. IGS (*see* IGS Br. at 30-31) and Direct (*see* Direct Br. at 2 and 3 n.8) challenge several of those fees, including:

- the \$5 switching fee for customers switching from the SSO to a CRES supplier, after their "initial change to service under the Company's open access distribution schedules and service from a CRES Provider" (PUCO No. 20, 6th Revised Sheet No. 103-22, § 27; 3rd Revised Sheet No. 103-27, § 31.4; 6th Revised Sheet No. 103-23D, § 27; 6th Revised Sheet No. 103-28D, § 32.4);

- the \$100 initial registration fee and \$100 annual renewal fee (*see id.*, 3rd Revised Sheet No. 103-30, § 31.8; 6th Revised Sheet No. 103-31D, § 32.8);

- the \$500 initial registration and fee and \$100 annual registration fee for Meter Service Providers (*see id.* 3rd Revised Sheets No. 103-37 and -38, § 31.13);

- the \$100 annual registration fee for Meter Data Management Agents (*see id.*, 3rd Revised Sheet No. 103-39, § 31.14); and

- the fee for interval load data reports (*see id.*, 3rd Revised Sheet No. 103-50, § 31.22.m.; 6th Revised Sheet No. 103-53D, § 32.22.m.).

AEP Ohio's Application did not propose to amend or discontinue any of these fees, and the Stipulation does not mention them. According to IGS and Direct, however, AEP Ohio's failure to present "schedules, testimony or other calculations" justifying AEP Ohio's imposition of these charges on CRES suppliers (Direct Br.at 4; *see also* IGS Br. at 32) warrants a modification to the Stipulation to "eliminate the switching fees and other supplier fees from [AEP Ohio's] tariffs" (Direct Br. at 1; *see also* IGS Br. at 33).

The Commission has heard these arguments before. In DP&L's 2015 distribution rate case, for example, the Retail Energy Supply Association ("RESA") "object[ed] to the existence and amount of [DP&L's] switching fees and historical usage [interval data] fees" and "to the Staff Report's alleged failure to address [those] fees * * * ." *In the Matter of the Application of the Dayton Power and Light Co. for an Increase in its Electric Distribution Rates*, Case Nos. 15-1830-EL-AIR, *et al.*, Opinion and Order at ¶ 33. (Sept. 26, 2018). DP&L noted that those fees had been set in a prior proceeding and were not properly at issue in the distribution rate case. *See id.* at ¶ 34. The Commission agreed with DP&L, holding first that Staff had no obligation to review DP&L tariff charges that were not at issue in DP&L's rate case application:

> As an initial matter, the Commission finds that, contrary to claims by RESA and IGS, Staff's decision to forgo review of the Supplier Tariff was not unreasonable. The Supplier Tariff was not proposed to be amended in DP&L's distribution rate increase application. As a general rule, tariffs which are not proposed to be modified in a rate increase application are not subject to Commission review and modification during the rate case.

Id. at ¶ 36. The Commission went on to reject RESA's arguments that DP&L was obligated to justify its switching fees and historical usage interval data fees in its rate case (*see id.* at ¶ 39-40), holding that RESA had the obligation to support its objections to DP&L's fees:

> The Supreme Court of Ohio has held that when the Commission has made a lawful order, the Commission is bound by certain institutional constraints to provide an explanation before such order may be changed or modified. *Ohio Consumers' Counsel v. Pub. Util. Comm*., 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984). The Court has explained that this does not mean that the Commission may never revisit a particular decision, only that if the Commission does change course, it must explain why. *In re Application of Ohio Power Co*., 144 Ohio St.3d 1, 2015-0hio-2056, 40 N.E.3d 1060, ¶ 16, citing *In re Application of Columbus S. Power Co*., 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52 (citations omitted). * * *
>
> However, RESA presented no evidence that the switching fees are unreasonable or that, since the approval of the switching fees in *ESP III*, circumstances in the retail market have sufficiently changed to justify a modification of the switching fees. Instead, RESA focuses its attack on the lack of attention paid to the switching fees, arguing that Staff failed to address them in its review of the application and that neither DP&L nor Staff has adequately responded to its objection. As noted above, however, the Commission concludes that Staff's decision to forgo review of the Supplier Tariff was not unreasonable. Despite RESA's protestations to the contrary, although DP&L has the burden of proof in this case, RESA has the burden of production of evidence to support its objections; and RESA has failed to provide or cite to evidence sufficient to support changing our prior order in ESP in *ESP III*.

*Id.*at ¶ 42-43. IGS then attempted to raise those same arguments in DP&L's 2016 Electric Security Plan case, and the Commission rejected them again, holding that "[t]he issues regarding * * * DP&L's switching and interval data fees * * * were adjudicated in the distribution rate case and cannot be relitigated here." *See In the Matter of the Application of The Dayton Power and Light Co. to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO, Supplemental Opinion & Order, ¶ 85 (Nov. 21, 2019).

In Duke's distribution rate case, the Commission rejected the same arguments twice more. In that case, as in DP&L's case, RESA objected to Duke continuing its switching fee and interval customer energy usage data fee. *Duke 17-32 Case*, Opinion and Order at ¶ 21 (Dec. 19, 2018). As in DP&L's case, RESA argued that Staff should have "challenge[d] these fees or question[ed] where or how costs [were] incurred that would justify such charges." *Id.* at ¶ 21. And as in DP&L's case, the Commission rejected the argument, holding that "the Commission is required to provide an explanation" if it reverses its prior approval of a fee and that "RESA has not presented sufficient evidence that circumstances have changed since the fees were altered in 2011 in order to justify discontinuing the fees." *Id.* at ¶ 241. Then, IGS and RESA filed an application for rehearing, and on rehearing, the Commission rejected IGS and RESA's arguments once again, explaining further:

> Here, while Duke carries the burden to support its application, IGS and RESA bear the burden to support their objections. The parties did not present sufficient evidence to demonstrate how the fees became unreasonable after they were determined to be lawful in *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 39-40. The testimony presented by IGS and RESA did not offer any change in circumstances that would justify altering our previous decision. IGS/RESA Ex. 4 at 2-4. We additionally do not find it unreasonable that Staff did not investigate whether the fees are cost-justified. Here, Duke was not requesting to modify the fees in any way and, generally, tariffs which are not proposed to be modified in a rate increase application are not subject to Commission review and modification during a rate case. DP&L Rate Case Order at ¶ 36.

Duke 17-32 Case, Second Entry on Rehearing at ¶ 35 (June 27, 2019).

IGS and Direct make no attempt to distinguish the Commission's numerous and recent rulings on these issues – in fact, they avoid mentioning them entirely. Instead, they simply repeat the arguments that IGS and RESA made, unsuccessfully, in the *DP&L* and *Duke* rate cases. Rather than presenting evidence to support their objections to AEP Ohio's supplier fees, they argue (for example) that AEP Ohio "should have provided a cost justification" for the fees (IGS Br. at 33), that the Commission's prior decision approving AEP Ohio's switching fee lacked adequate support in the evidentiary record (*see* Direct Br. at 5) and that, regardless, AEP Ohio's customer switching costs must have changed since the Commission approved the switching fees in 2011 (*see id.* at 7). For all of the reasons that the Commission rejected these same arguments in the *DP&L* and *Duke* cases, the Commission should reject them again in this case.

IGS and Direct further argue that charging a switching fee to customers who switch to a CRES provider, but not to customers who switch back to the Company's Standard Service Offer ("SSO"), is discriminatory and thus violates R.C. 4905.35. (*See* Direct Br. at 8-9; IGS Br. at 33-34.) This argument, too, is neither new nor has merit. IGS and RESA raised this argument in the *Duke* case as well, and the Commission properly rejected it. *See Duke 17-32 Case*, Second Entry on Rehearing at ¶ 35. Here, as there, intervenors have offered no change in circumstances or other evidence that would justify the Commission's previous decisions approving the switching fee and AEP Ohio's tariff, tacitly finding that that fee was not discriminatory.

Additionally, although intervenors dismiss Staff's opinion that the "process and cost of switching to and from CRES providers are not comparable" (Direct Br. at 9; IGS Br. at 34) and ignore Staff witness Smith's cogent explanation supporting that opinion (*see* Tr. II at 337-340), the simple fact is that often the two scenarios do not involve the same circumstances and conditions. As Mr. Smith explained at hearing, when a customer switches to or between CRES providers, that customer makes an affirmative choice to do so. When a customer switches to the SSO, whether as a result of a CRES provider's contract termination, default, or otherwise, the customer often has no choice in the matter. (*See, e.g.,* Tr. II at 337-339.) Customers are often defaulted to the SSO. (*Id.* at 338.) The Company's Commission-approved practice of not charging a switching fee to customer when the customer has not affirmatively chosen to switch also is consistent with the Commission's aggregation rules. *See* Ohio Adm. Code 4901:1-10-32(D) (providing that a switching fee shall not be assessed in connection with governmental aggregation). Customers participating in a governmental aggregation, like customers returned from CRES service to the SSO, are often switched by inaction by the customer. (*See* Tr. II at 337-338.) Customers switched to or from the SSO without an affirmative choice are not receiving retail electric service under "substantially the same circumstances" as customers who affirmatively elect to switch to or between CRES providers. *Accord Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184, ¶23-24. AEP Ohio's switching fee therefore represents a reasonable difference in rates and charges based upon actual service differences does not violate R.C. 4905.35. *Id.*

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

OPAE, 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). Armada Power argues that the failure to include its pilot program negates the Stipulation package of benefits but a missing intervenor request does not render a Stipulation in violation of prong two any more than it creates a problem under prong three; the Company addresses Armada Power's argument below. Consequently, the Stipulation does not violate any important regulatory principles or practices based on the lack of: (a) a new process for purchase of AEP Ohio facilities by master meter customers and customer construction requests as advocated by NEP, (b) a low-load factor customer pilot program as advocated by NEP, or (c) a commitment to purchase and incorporate Armada Power's proprietary water heater technology as part of the DIR, or (d) a collateral attack on rider mechanics established in *ESP IV* as advocated by OPAE. 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, OPAE, NEP, and Armada Power have failed to establish that excluding those provisions violates the three-part test.

a. The Stipulation and the Company sufficiently address customer equipment purchases and customer construction requests, and neither process violates any important regulatory principles or practices.

i. Customer Equipment Charge

The Stipulation, Part III, Section E, paragraph 12, provides language that states: "The Company agrees to make best efforts to respond within 21 days to customer requests to purchase AEP Ohio facilities on customer premises." (Joint Ex. 1, Section III.E.12). This language, as agreed to by all the signatory parties to the Stipulation, and referenced by AEP Ohio in its brief, "is intended to effectively address customer concerns about potential premises equipment ownership and provide for a reasonable response time to such customer inquiries." (AEP Ohio Br. at 48.) As previously discussed by AEP Ohio in its Initial Brief, NEP believes the language in the Stipulation is insufficient and requires additional significant and substantial modifications to be beneficial. (AEP Ohio Br. at 47.) NEP asserts that "the fact that the Stipulation contains certain language with respect to equipment purchases is an acknowledgement by AEP Ohio, as well as by the other signatory parties, that the current system needs to be reformed." (NEP Br. at 31.) But in fact, NEP is the only party in this proceeding objecting to the proposed language in the Stipulation as written, the only party suggesting modifications be made to the proposed language in the Stipulation, and the only party taking the position that the language in the Stipulation is "deficient" unless all of its suggested modifications be applied. (*Id.* at 31.) Without support or additional confirmation of concern from any other party, one is left to assume that the modifications being suggested by NEP are limited to its individual operations and specific business model. Additionally, it is important to highlight one additional material issue –

as AEP Ohio already did on in its brief (AEP Ohio Br. at 50) – there were only eight total requests for the purchase of equipment in 2020 by master meter customers of AEP Ohio. (Tr. II at 264.)

In its brief, NEP makes clear that specific language is missing from the Stipulation: "a process," "a good faith negotiation standard," and "a meaningful response as part of the negotiation." (NEP Br. at 32.) Each of those things exist and occur today, and the new language in the Stipulation provides additional value to the customer experience by committing AEP Ohio to use its best efforts to respond to customer requests within a reasonable 21-day time frame. (Joint Ex. 1, Section III.E.12.) Contrary to NEP assertion in its brief that AEP Ohio witness Moore acknowledged "that there is no process for customers to follow for equipment purchase requests" (NEP Br. at 31), there is a well-established existing process. On cross examination, NEP's legal counsel asked AEP Ohio witness Moore the following: "[a]s of today, AEP Ohio does not have a process that customers can follow when submitting a request to purchase AEP Ohio facilities on customer premises, correct?" (Tr. I at 207-208.) Witness Moore responded "my understanding is that the customers contact their customer service rep or engineer, their account manager." (*Id.* at 207.) She further clarified her answer by stating, "it's my understanding that customers that are requesting to purchase the equipment are managed accounts, so the customers should have their relationship with their account manager, and they would contact their account manager." (*Id.*) Based upon Ms. Moore's answers, it is quite clear that NEP is incorrect: there is a current process for customers to follow for equipment purchases.

As to AEP Ohio's current use of a "good faith standard" when negotiating with customers regarding equipment purchases, again witness Moore was clear in her cross examination with NEP counsel at hearing. When asked, "you expect AEP Ohio to engage in good faith negotiations as to the price of equipment if both AEP Ohio and the customer agree to a request to purchase AEP Ohio facilities, correct?" she answered "we would negotiate price in good faith, yes." (*Id.* at 209.) It is also clear that AEP Ohio applies a good faith standard with customers requesting equipment purchases.

Regarding AEP Ohio providing customers who request equipment purchases a meaningful response as part of negotiation, witness Moore again provided clarity in her cross-examination at hearing. Witness Moore plainly stated that such request would be directed to the AEP Ohio Leadership team for input and processing. (*Id.* at 215-216.) That leadership team would include positions within AEP Ohio such as "the president [or] the vice president" (*Id.* at 216.) AEP Ohio is already engaging the top decision makers in the Company on such requests. The response provided to requesting customers will have received the attention of company leadership. For NEP to even suggest that AEP Ohio's existing process of having focused engagement of C-suite leadership on these types of requests in order to formulate and promulgate a decision for the customer would constitute something less than "meaningful" is hyperbole at best and gaslighting at worst. Based upon the record, it should be apparent that AEP currently has a process in place that provides the opportunity to have a meaningful response to customers requesting the purchase of facilities.

NEP, through its testimony and briefing in this proceeding, has dedicated a significant amount effort to providing a detailed argument and voluminous suggestions to address what it believes is otherwise lacking in the Stipulation's language regarding customer requests to purchase facilities. Noticeably absent from their argument and analysis concerning the alleged flaws and inadequacies of the language in Part III, Section E, paragraph 12, of the Stipulation, is any information or detail that shows how that language, its incorporation in the Stipulation, or its ultimate adoption by this Commission, would violate, contravene, or even remotely offend any important regulatory rule or practice. There is no evidence in the record that would support even the faintest assertion that Part III, Section E, paragraph 12, of the Stipulation as currently written is violative of any existing regulatory rule of practice.

ii. Construction Requests

In addition to its poorly reasoned assertion that the Stipulation's language regarding customer equipment purchases located in Part III, Section E, paragraph 12 remains unsatisfactory in its breadth and detail, NEP also takes issue with the language in Section 10, EXTENSION OF LOCAL FACILITIES of the Tariff as currently written and attached to the Stipulation. (NEP Br. at 36-38.) NEP posits that language beginning with Sheet 103-5 remains deficient without the addition of the specific language being suggested by NEP.

According to NEP, there is ample evidence in the record that demonstrates "frustration imposed on customers and their authorized construction representatives" by the process currently used by AEP Ohio when addressing customer requests for construction or line extensions. (*Id*. at 36.) The addition of NEP's suggested language, it claims, will address construction request issues being experienced by AEP Ohio customers. NEP's mendacious suggestion that the record contains "ample evidence" to warrant concern is unsupported. Of all the parties to this proceeding, signatory or otherwise, only NEP has expressed specific concern about the process AEP Ohio uses to address customer requests for construction or line extensions regarding any issues with the process. There is no other party taking issue with the item. NEP even pointed out in its brief that Staff went so far as to provide testimony clarifying it did not perform an operations and process review of AEP Ohio's process for construction service requests. (*Id*. at 36.)

Although the record does not make it clear as to why Staff chose not to perform such a review, it would be reasonable to expect that Staff simply failed to see the need. NEP claims it is offering modifications to "fix the current problem areas/issues in AEP Ohio's construction request process." (*Id*. at 38.) The Stipulation already proposes to add new language to Sheet 103-6 of the tariff. The language will be updated and amended to additionally include the further statement that "the company, at its discretion and where practicable, will consider alternative route designs on the customer's premises, and the customer will be responsible for the incremental cost associated with the alternative route" (Jt. Ex. 1, Attachment C, Original Sheet No. 103-6.) In her testimony, NEP witness Ringenbach agrees that NEP does not oppose the specific additional language, just the fact that the language being added failed to "resolve our construction issues." (Tr. IV. at 895.) It is apparent that NEP is focused on purported deficiencies in the language, not as to the general marketplace, but solely as to them. Without any additional party providing evidence of such problems or issues, it would not be unreasonable to conclude that NEP may not be offering its suggestions here as a matter of selfless benevolent leadership amongst the broader customer class, but is instead pursuing directed solutions it believes benefit its own narrow business interests.

In her testimony, NEP witness Ringenbach stated that "the existing process for construction requests, including line extensions and energizing new locations, is inefficient." (NEP Ex. 33 at 6.) Further, in its brief, NEP alleged that "AEP Ohio's construction request process is not in the public interest." (NEP Br. at 40) and additionally claimed that "the Stipulation, in its current form, does absolutely nothing to address such major problem, and for that reason alone is not in the public interest." (*Id*. at 41.) NEP is not making a claim that AEP Ohio fails to have a construction request process, just that NEP does not like the one AEP Ohio uses. AEP Ohio, as specifically referenced in language contained in tariff Sheet 103-6 as attached to the Stipulation, must comply with Ohio Administrative Code 4901:1-9-07. That specific language exists in the AEP Ohio tariff today, just as it will following the effective date of the updated tariff appended to the Stipulation. NEP is keenly aware of what AEP Ohio does today and will subsequently continue to follow the strictures and process required by Ohio Adm. Code 4901:1-9-07 because NEP made no request to remove or modify such Ohio Adm. Code reference in the "suggestions" it offers this Commission to allegedly better the language in Section 10, EXTENSION OF LOCAL FACILITIES in the tariff. Ohio Adm. Code 4901:1-9-07 promulgates the process AEP Ohio is required to follow when considering line extension construction. Therefore, NEP's real issue is not with AEP Ohio's tariff language, but certain specific language and requirements mandated by the Ohio Administrative Code itself. Logically then, NEP must also believe that the requirements of Ohio Adm. Code 4901:1-9-07 are essentially "inefficient" and "not in the public interest." Rather than attempting to piecemeal one-off suggestions into AEP Ohio's tariff language, NEP should be pursuing a change to the language of Ohio Administrative Code itself. AEP Ohio does and will continue to follow the policies and procedures regarding such construction requests as required by the Ohio Administrative Code. Nothing more is required.

As with its argument regarding customer equipment purchases, NEP makes much effort to describe what it believes is missing from the language in Section 10 of the Tariff and to prescribe with great specificity the insertion of unique language directly beneficial to NEP, but again fails to provide any evidence in the record that would support even the faintest assertion that such portion of the Stipulation as currently written is violative of any existing regulatory rule of practice.

b. The Stipulation's treatment of low-load factor customers and non-inclusion of the low-load factor pilot proposed by NEP do not violate any important regulatory principles or practices.

AEP Ohio has demonstrated and explained in its Initial Brief that the Stipulation's rate design and rate impacts are reasonable and appropriate. (AEP Ohio Br. at 14-18.) The Company fully anticipated and addressed NEP's criticisms regarding the Stipulation's purported impacts on low-load factor customers. (*Id.*; see NEP Br. at 8-21.) AEP Ohio also fully addressed the flaws and unreasonableness of the NEP low-load factor pilot, demonstrating that the inclusion, not exclusion, of NEP's pilot would violate important regulatory principles. (AEP Ohio Br. at 14-17, 51-52; *see* NEP Br. at 21-27)

As the Company already explained, and as was abundantly clear from the hearing record, NEP witness Rehberg simply is not qualified to offer the flawed and selective testimony he sponsors for NEP, and the Commission should give that testimony no weight. (AEP Ohio Br. at 14-15.) NEP's protestations on brief (*see* NEP Br. at 27-31) cannot rehabilitate Mr. Rehberg's demonstrable and incontrovertible lack of education, experience, training, or personal knowledge regarding the analysis and pilot he adopted.

Finally, NEP's attempt to characterize its self-serving arguments as being driven by concern for "its customers" (*id*. at 13) is belied by the fact that NEP did not bother to actually evaluate its customers' usage characteristics, or any other low-load factor customer's usage. (AEP Ohio Br. at 15-16.) NEP considered only four of its own master metered accounts. (*Id*.) There is no basis, and certainly none was developed or offered by Mr. Rehberg, to extrapolate and apply the conclusions NEP draws from its four selectively chosen accounts to low-load factor customers generally.

In summary, the Commission should reject NEP's low-load factor arguments and approve the Stipulation's revenue allocation and rate design proposals without modification.

c. The fact that the Stipulation does not include Armada Power's pilot program does not violate any important regulatory principle or practice.

Armada Power argues that the settlement is not beneficial as a package, but it does not oppose the Stipulation because of it what it contains. (Armada Power Br. at 3-4.) It opposes the Stipulation because of what it does not contain: an agreement to spend between $6 and $7.74 million on Armada Power's technology and software. (*See id.* at 3 and 8-10.) Armada Power spends almost thirty pages attempting to convince the Commission that a pilot program "to explore the grid reliability benefits of controlling water heater load" would provide "additional value" and that "the ratepayers and the public interest deserve more." (*Id.* at 3 and 28.) But "[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." *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, ¶ 73 (Dec. 30, 2020); *see also In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-791-GA-ALT, Opinion and Order, ¶ 63 (Apr. 21, 2021) ("the Commission's task in evaluating a settlement agreement under the three-part test is not to determine whether it reflects the best possible result or outcome for customers."). Because Armada Power largely ignores the Stipulation actually before the Commission, it does not disprove that the Stipulation, as a package, benefits ratepayers and the public interest or establish that the Stipulation violates any important regulatory principle or practice.

d. OPAE's suggestion that the Commission modify riders approved pursuant to R.C. 4928.143 in *ESP IV* is inappropriate and should be rejected.

The Commission should reject OPAE's inappropriate proposal that the Commission modify the mechanics of five riders previously approved in the *ESP IV* case. (*See* OPAE Br. at 9-14.) OPAE's characterization of the Stipulation as "including" the Economic Development Rider ("EDR"), gridSMART Phase 2 Rider, DIR, ESRR, and Storm Damage Recovery Rider (*see* OPAE Br. at 11) is misleading and incorrect. Although the Stipulation contained provisions related to specific aspects of certain of those riders (*e.g.,* DIR and ESRR caps), the fundamental structure, mechanics, and revenue allocation of the riders are <u>not</u> subjects of the Stipulation. The riders' mechanics simply are not before the Commission in this case, as the Signatory Parties are not proposing through the Stipulation to modify them. OPAE's arguments regarding them should be disregarded on this basis alone.

Additionally, the Commission approved the continuation of each of the riders that are the subject of OPAE's argument, including the methodology for allocating their revenue requirements, through May 2024 as part of the Commission's approval of the stipulation in the *ESP IV* case. *ESP IV* Order at ¶ 93, 105, 109, 189, 196. OPAE was a signatory party to the *ESP IV* settlement. *Id.* at ¶ 17. OPAE cannot seek to modify the terms of that Commission-approved settlement in this case. *See Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 9,10, 475 N.E.2d 782 (1985) (recognizing that the doctrine of collateral estoppel precludes the relitigation of a point of law or fact that was adjudicated between the same parties in a former action); *ESP IV*, Joint Stipulation and Recommendation at 41 (§ IV.G) (Aug. 25, 2017) (requiring OPAE as a signatory party to the *ESP IV* settlement to act in good faith and use reasonable efforts to support that stipulation). Nor would it be appropriate for the Commission to modify the Company's ESP approved pursuant to R.C. 4928.143, which the Supreme Court of Ohio has reviewed and affirmed,[2] in this proceeding filed pursuant to R.C. 4909.18.

Finally, OPAE's characterization of the riders as being collected or applied to customer bills as "fixed charges" (*see* OPAE Br. at 11-13) is incorrect. Residential energy charges are variable; base distribution rates are made up of both fixed and variable charges; and the EDR, DIR, and ESRR vary by consumption. (*See* Tr. II at 460-461.) Thus, the premise of OPAE's argument, that the riders disproportionately impact low-income customers due to their supposedly fixed nature, is false. AEP Ohio already anticipated and fully addressed OPAE's general arguments regarding the overlap, or not, between low-use and low-income customers in the Company's Initial Brief (*see* AEP Ohio Br. at 23-25) and incorporates those arguments herein.

In summary, OPAE's complaints about existing, previously-approved riders, that OPAE fully supported in settlement of the case approving them, and whose operation and allocation are unaffected by the Stipulation, provide no basis to conclude that the Stipulation is unreasonable or violates any important regulatory principle or practice.

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[2] *See In re Application of Ohio Power Company*, 159 Ohio St.3d 130, 2020-Ohio-143, 149 N.E.3d 451.

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 6th day of July, 2021, via email.

/s/ Steven T. Nourse
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