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

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

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I. INTRODUCTION

In accordance with the Attorney Examiners' directive during the evidentiary hearing concerning the base distribution rates of Ohio Power Company (AEP),[1] the Ohio Manufacturers' Association Energy Group (OMAEG) submitted its Initial Post-Hearing Brief in the above-referenced proceeding on June 14, 2021. Therein, OMAEG demonstrated that the Stipulation and Recommendation (the Settlement) filed by numerous Signatory Parties[2] is just and

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[1] Tr. Vol. V at 1159.

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

reasonable, is in the public interest, and, therefore, satisfies the Public Utilities Commission of Ohio (Commission)'s three-prong test to evaluate settlements.[3]

Despite ample evidence establishing that the Settlement is the product of serious bargaining between capable, knowledgeable parties, and as a package, benefits ratepayers and the public interest, and does not violate any regulatory principle or practice, some parties opposed adoption of the Settlement.[4] Specifically, the Ohio Environmental Council (OEC), Environmental Law & Policy Center (ELPC), and Natural Resources Defense Council (NRDC) (collectively, the Environmental Groups) argued that the existing process for evaluating settlements before the Commission is flawed and contested that the Settlement is the product of serious bargaining.[5] Moreover, the Environmental Groups, Nationwide Energy Partners, LLC (NEP), Armada Power LLC (Armada), and Ohio Partners for Affordable Energy (OPAE) requested that the Commission modify the Settlement to include various additional proposals that lack evidentiary support, conflict with Ohio's laws, regulations, and public policy, or otherwise exceed the scope of an electric distribution utility's distribution rate case.

Accordingly, as explained further below, OMAEG respectfully requests that the Commission reject Opposing Parties' arguments and find that the Settlement satisfies the three-prong test and adopt the Settlement in its entirety, without modification.

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3 *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 126, 592 N.E.2d 1370 (1992).

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

5 *See* Environmental Groups' Initial Post-Hearing Brief at 1 and 5.

II. ARGUMENT

A. The Commission should uphold its long-standing precedent and reject the Environmental Groups' vague proposal to alter the three-prong test for evaluating settlements.

As a threshold matter, the Environmental Groups urged the Commission to ignore years of precedent and modify the three-prong test that has been consistently used to evaluate the reasonableness of settlements[6] (presumably, because they are aware that their arguments will not succeed under existing precedent). Specifically, the Environmental Groups argued that "the Commission needs to address flaws in the Stipulation process that lead to unjust outcomes" because "[a]s it stands, the Commission merely evaluates a stipulation from the perspective of the parties that made the deal, even though those parties made a deal that benefits their own interests."[7] This characterization of the three-prong test, the settlement process, and the Commission's evaluation of such is simply inaccurate.

While it is expected that parties to a settlement will advance positions that support their respective interests,[8] the evidentiary record in a case must also support the settlement and the settlement must be just and reasonable. In the instant case, the Signatory Parties have provided substantial evidence that the Settlement supports the Signatory Parties' interests, but that it also benefits customers who chose not to intervene in this proceeding and the public interest.[9] public

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6 Environmental Groups' Initial Post-Hearing Brief at 1.

7 *Id.*

8 *See* OMAEG's Initial Post-Hearing Brief at 11 (citing *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468- GA-ALT, Opinion and Order at ¶ 44 (December 30, 2020) ("The Commission expects that parties to settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation. Furthermore, the Commission believes that parties themselves are best positioned to determine their own best interests and whether any potential benefits outweigh any potential costs.").

9 *See, e.g.*, AEP's Initial Post-Hearing Brief at 5-18.

interest. Moreover, these non-intervening customers and public as a whole receive significant benefits from the Settlement without having expended any time or financial resources to negotiate and litigate the numerous complex issues that the Settlement resolves. For example, in its Initial Post-Hearing Brief, AEP explained that the Settlement reduces AEP's annual revenue requirement by $111 million from AEP's initial proposal of $1.066 billion.[10] AEP also demonstrated that the Settlement benefits ratepayers and the public interest by, among other provisions: reducing the cost of capital, the Distribution Investment Rider (DIR) spend, and the Enhanced Service Reliability Rider (ESRR) spend; eliminating AEP's decoupling mechanism; and continuing and expanding the Basic Transmission Cost Rider (BTCR) Pilot Program.[11] AEP's customers and the greater public collectively benefit from these provisions and other benefits that the Settlement secured.[12] Thus, it is disingenuous for the Environmental Groups to state or otherwise imply that the Settlement only benefits the Signatory Parties.[13]

Furthermore, the Environmental Groups incorrectly claimed that the Commission only evaluates a settlement from the perspective of the signatories.[14] All parties to a proceeding, whether they have joined a settlement or not, are able to present evidence and cross examine witnesses to support or challenge a settlement to assist the Commission in evaluating the settlement

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[10] AEP's Initial Post-Hearing Brief at 2-3.

[11] *Id.* at 5-13.

[12] *See e.g.*, id. at 13 (discussing how the expansion of the BTCR pilot program further aligns transmission costs with PJM's charges and allows the Company "to analyze how that participation lowers the overall transmission revenue requirement") (citing AEP Exhibit 6, Direct Testimony of Andrea E. Moore (Moore Testimony at 18) (April 29, 2021)).

[13] Environmental Groups' Initial Post-Hearing Brief at 1.

[14] *Id.*

under the three-prong test, as was the case in the evidentiary hearing in the above-captioned proceeding that commenced on May 12, 2021 and concluded on May 18, 2021.[15]

In fact, the three-prong test itself requires the Commission to consider a range of perspectives and the potential impact of the Settlement on non-signatory parties and Ohio's regulatory scheme. Under the first-prong, the Commission will not approve a settlement where an entire customer class was intentionally excluded from the settlement negotiations.[16] The second-prong requires the Commission to consider a settlement in relation to the potential effects on all ratepayers and the public interest, *not* whether the Settlement will provide the Signatory Parties benefits.[17] The third-prong assesses whether the Settlement comports with Ohio's legal precedent and regulatory principles.[18] Clearly, the legal standard for evaluating settlements does not merely account for the perspectives of the Signatory Parties.

In addition to misconstruing the three-prong test, the Environmental Groups failed to provide any substantive recommendations on how the three-prong should be modified. The Supreme Court of Ohio has already endorsed the three-prong test as an economical method for utilities and customers to resolve litigation[19] and stated "[t]he Commission is obligated to follow its precedent."[20] Accordingly, the Commission should reject the Environmental Groups'

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[15] *See, e.g.*, IGS Exhibit 1, Haugen Testimony at 8-9 (IGS, a party opposing the Settlement, offering pre-filed testimony referencing the three-prong test).

[16] *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 27 (July 18, 2012) (citing *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 2004-Ohio-6767, ¶ 17, 104 Ohio St. 3d 530, 534, 820 N.E.2d 885, 889).

[17] *Office of Consumers' Counsel*, 64 Ohio St. 3d 123 at 126.

[18] *Id.*

[19] *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 126, 592 N.E.2d 1370 (1992).

[20] *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-

contention that the three-prong test and the Commission's proceedings are one-sided and somehow need to be modified or reinvented.

B. Through serious bargaining, the Signatory Parties resolved the distribution rate case as a package.

The Signatory Parties have more than met their burden in demonstrating that the Settlement passes the first-prong of the three-prong test as the Settlement was reached through serious bargaining among capable, knowledgeable parties.[21] However, after negotiations that spanned over two months and a multi-day evidentiary hearing,[22] Environmental Groups, wrongly, raise for the first time in their Initial Post-Hearing Brief that the Settlement purportedly is not a product of serious bargaining and fails the first-prong.[23] This claim is meritless and should be rejected as it is contradictory to the evidentiary record and inconsistent with Commission precedent and Ohio laws and regulations.

The Environmental Groups noted in their Initial Post-Hearing Brief no less than twelve times that the Settlement is not unanimous.[24] However, there is no unanimity requirement in the three-prong test or in Ohio law. In fact, the Commission has specifically "rejected the notion that [a settlement] was not the result of compromise merely because of the number of participants in the case, or the fact that [signatory parties] negotiated matters in a manner favorable to their

468-GA-ALT, Opinion and Order at ¶ 79 (December 30, 2020) (citing *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975).

21 OCC's Initial Post-Hearing Brief at 4-5 (explaining how the Settlement negotiations lasted nearly three months, the Settlement Conferences were inclusive, and all parties had the opportunity to negotiate).

22 OMAEG's Initial Post-Hearing Brief at 2.

23 Environmental Groups' Initial Post-Hearing Brief at 5.

24 *See, e.g.*, *id.* at 3.

respective interests."[25] The Environmental Groups' remaining arguments regarding the first-prong of the test are equally deficient.

The Environmental Groups inaccurately stated that AEP witness Andrea E. Moore "provides no evidence to support that the negotiations were inclusive in terms of parties' positions actually mattering."[26] To the contrary, witness Moore testified that each party had the opportunity to negotiate each provision in the Settlement and that no party was excluded from the numerous settlement conferences that occurred.[27] Witness Moore further testified, "the Stipulation differs in several respects from the proposal submitted in the Application because it reflects an overall compromise involving a balance of competing positions from multiple parties and incorporates many of the recommendations offered by Staff and interveners."[28] While the Environmental Groups may not like that their positions and proposals ultimately were not adopted and incorporated into the Settlement, it is indisputable that they had a seat at the table and their voices were heard and positions considered. Moreover, witness Moore (and other Signatory Parties witnesses)[29] provided evidence demonstrating that the Settlement is the product of serious bargaining. Neither the Environmental Groups nor other Opposing Parties have presented any evidence for the Commission's consideration refuting that the Settlement is the product of serious bargaining and passes the first-prong of the three-prong test. As OCC noted: "Notably, no party opposing the Settlement presented witness testimony to refute the testimony of OCC witness

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[25] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution Grid*, Case No. 18-1875-EL-GRD, Opinion and Order at ¶ 47(June 16, 2021).

[26] Environmental Groups' Initial Post-Hearing Brief at 5.

[27] *See* AEP Ohio Exhibit 6, Direct Testimony of Andrea E. Moore (Moore Testimony) at 16 (April 9, 2021).

[28] *See* OMAEG's Initial Post-Hearing Brief at 10-11 (citing AEP Ohio Exhibit 6, Moore Testimony at 16).

[29] *See* Staff Exhibit 6, Direct Testimony of David M. Lipthratt (Lipthratt Testimony) at 3 (April 9, 2021); OCC Exhibit 1, Direct Testimony of Wm. Ross Willis at 5 (April 9, 2021) (Willis Testimony).

Willis, AEP Ohio witness Moore, and PUCO Staff witness Lipthratt that the Settlement is the product of serious negotiations amongst knowledgeable, capable parties."[30]

The Environmental Groups also claimed that "the Signatory Parties and the Attorney Examiners blocked *all opportunities* for Non-Signatory Parties to discuss the bargaining process during the evidentiary hearing,"[31] which prejudiced them. However, the record demonstrates that this claim is greatly exaggerated, if not outright false. In reality, ELPC asked AEP witness Moore a series of, questions, which at times were insufficiently or inartfully worded, and therefore properly objected to, but the majority of which Ms. Moore answered nonetheless. For example, on cross-examination ELPC asked: "is it accurate to say that AEP changed some positions that benefited some parties but not other parties?"[32] While AEP objected to the question on evidentiary grounds, the Attorney Examiners directed witness Moore to answer the question, which she did.[33] Then ELPC asked witness Moore whether AEP prioritized getting the Commission Staff or OCC to join the Settlement.[34] AEP objected to these questions due to lack of relevancy and the Attorney Examiners sustained the objection.[35] Subsequently, ELPC asked witness Moore whether she was aware of ELPC's position in this docket but re-phrased the question to ask whether "is it fair to say ELPC supported the demand side management proposal that was in the original application?"[36] Witness Moore responded in the affirmative.[37] Thereafter, ELPC asked witness Moore whether

[30] *See* OCC's Initial Post-Hearing Brief at 5.

[31] *See* Environmental Groups' Initial Post-Hearing Brief at 6 (emphasis added).

[32] *See* Tr. Vl II at 244.

[33] *Id.* at 244-247.

[34] *Id.* at 248-250.

[35] *Id.*

[36] *Id.* at 250-252.

[37] *Id.* at 252.

ELPC did not sign the Stipulation because of the removal of the Demand Side Management (DSM) proposal and the Attorney Examiners sustained Signatory Parties' objections because the question called for speculation.[38] Finally, ELPC asked witness Moore if AEP discussed withdrawing its DSM proposal from the proceeding with ELPC. Although the question called for the disclosure of confidential settlement discussions, witness Moore responded that she could not remember if "there was a separate conversation with ELPC or those conversations were had with all parties."[39]

Nothing prevented ELPC or any other Opposing Party from rephrasing the portion of its questions that were deemed deficient or inquiring further into the negotiation process and seriousness of the bargaining. While the Attorney Examiners properly sustained objections on the grounds of relevancy, speculation, and privilege, "the commission is not bound by strict rules of evidence in its proceedings."[40] Consequently, the Commission should not give any credence to the argument that Opposing Parties did not have opportunities to explore the bargaining process during the evidentiary hearing or through pre-filed testimony. The fact remains that the Environmental Groups and other Opposing Parties did not provide sufficient evidence (either through their own witnesses or through cross-examination) to demonstrate that the Settlement failed the first prong of the Commission's three-part test.

C. The Commission should adopt the Settlement in its entirety and without modification.

OMAEG and other Signatory Parties have demonstrated in detail in their Initial-Post Hearing Briefs that the Settlement is an economic and equitable resolution of several complex issues concerning AEP's distribution service and its customers. The Signatory Parties have also

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38 *Id.*

39 *Id.* at 255.

40 *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 14 Ohio St. 3d 49, 50, 471 N.E.2d 475 (1984) (quoting *Greater Cleveland Welfare Rights Org., Inc. v. Pub. Util. Comm.*, 2 Ohio St.3d 62, 68, 442 N.E.2d 1288 (1982)).

shown that the Settlement satisfies the Commission's three-prong test as the Settlement is the product of serious bargaining among capable, knowledgeable parties, benefits ratepayers and the public interest, and does not violate any important regulatory principle or practice. So as to not repeat its arguments raised in its Initial PostHearing Brief, OMAEG hereby incorporates the arguments and evidence presented in its Initial Post-Hearing Brief, demonstrating the reasonableness of the Settlement and how it satisfies the last two prongs of the Commission's three-prong test, herein.

Rather than properly addressing the three-prong test, Opposing Parties expended a substantial portion of their Initial Post-Hearing Briefs discussing various proposals that they would like to add to the Settlement or ways to modify the Settlement. Through the bargaining settlement process, no party typically secures all of its wish list. That is why it is a bargained for settlement—there is give and take and concessions are made to resolve the case as a package. Opposing Parties seem to forget this fundamental principal of a negotiated Settlement.

Notably, the Environmental Groups and OPAE urged the Commission to adopt a withdrawn DSM proposal that is no longer part of the proceeding.[41] And Armada argued that the Settlement should be modified to include a self-serving pilot program using its propriety technology,[42] while NEP advocated that the Commission should adopt an entirely new rate schedule for low-load factor customers or a $3 million low-load factor pilot program, both of which were based on a severely flawed study.[43] Lastly, OPAE argued, without conducting any analysis, that various Commission-approved riders should be modified from fixed charges to volumetric

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[41] Environmental Groups' Initial Post-Hearing Brief at 9-18; OPAE's Initial Post-Hearing Brief at 15-16.

[42] Armada's Initial Post-Hearing Brief at 9-28.

[43] NEP's Initial Post-Hearing Brief at 17-27.

charges.[44] The Commission should reject these proposals because they fail to address the proper legal standard, lack adequate analyses, and/or should be addressed in a more appropriate forum, rather than the distribution rate case of one utility.

As OMAEG explained in detail in its Initial Post-Hearing Brief, in answering the second-prong of the three-prong test, "[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."[45] Opposing Parties ignored this long-standing precedent and nonetheless attempted to supplement the Settlement with "other mechanisms." In its Initial Post-Hearing Brief, Armada stated, "[a]ltogether, *additional value* is warranted for the ratepayers and the public interest. The Stipulation is not in the public interest in its current form and must not be approved without the Commission also approving Armada Power's proposed pilot." [46] However, at the evidentiary hearing, Armada admitted that it took no issue with the substantive portions of the Settlement and that its sole objection was the lack of the pilot program using Armada's proprietary technology that would financially benefit Armada.[47] Clearly, Armada has not considered the Settlement *as a package* and is improperly trying to add additional purported benefits to the Settlement package for its own pecuniary gain. In fact, evidence in the record demonstrates that Armada's self-serving pilot program, if adopted,could even harmcustomers.[48]

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[44] OPAE's Initial Post-Hearing Brief at 9-14.

[45] *See* OMAEG's Initial Post-Hearing Brief at 15 (quoting *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020)).

[46] Armada's Initial Post-Hearing Brief at 3.

[47] *See* OMAEG's Initial Post-Hearing Brief at 17 (citing Tr. Vol. IV at 812 and 813-814).

[48] *See id.* at 21-22 (discussing cybersecurity, cost, compatibility, and public policy issues associated with Armanda's proposal).

Similarly, OPAE asserted that certain customers would be better served if several AEP riders were converted from fixed charges to volumetric charges including: the Economic Development Rider (EDR); the gridSMART Phase 2 Rider; the DIR; the ESRR, and the Storm Damage Recovery Rider (SDRR).[49] But at the same time, OPAE conceded that AEP witness Roush's testimony demonstrates that low-use customers experience a greater percentage reduction in their monthly bill impact than high-use customers upon implementation of the Settlement.[50] Thus, OPAE's proposal attempts to provide, what OPAE perceives to be, additional benefits to ratepayers while ignoring the actual benefits for ratepayers that the Settlement secures. Accordingly, the Commission should reject the Opposing Parties' proposals in their entirety as they attempt to add provisions to the Settlement for their own benefit. For similar reasons, the Commission should reject the Environmental Groups' proposal that AEP be required to offer a DSM program with cost recovery for such programs from all customers through AEP's distribution rates. The Environmental Groups erroneously stated, "AEP Ohio wiped away significant energy efficiency benefits when it signed on to the Stipulation even after proposing and originally supporting a DSM plan."[51] However, as the Environmental Groups testified, AEP is not currently offering a DSM program[52] and the Settlement expressly preserves all Signatory Parties' rights to take any position on DSM matters as they see fit in all future proceedings.[53] Again, the Environmental Groups' attempt to modify the Settlement must fail because they are not addressing the Settlement before the Commission as a package. Instead, they are attempting to unilaterally

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49 *See* OPAE's Initial Post-Hearing Brief at 9-14.

50 *Id.* at 458-459.

51 Environmental Group's Initial Post-Hearing Brief at 18.

52 OMAEG Initial Post-Hearing Brief at 16 (citing OEC Exhibit 1, Direct Testimony of Brendon J. Baatz (Baatz Testimony) at 4 (April 20, 2021).

53 *Id.* at 17 (citing Tr. Vol. III at 512).

add additional provisions to the Settlement that the Signatory Parties' already considered and rejected through the settlement process.

Furthermore, many of Opposing Parties' proposals, if adopted, would violate the third-prong of the test as they conflict with important regulatory practices and principles. When determining whether a settlement violates any regulatory principle or practice, the Commission tends to consider its own precedent, and favors settlements that follow that precedent.[54] For example, OPAE actually argued in its Initial Post-Hearing Brief that "DSM programs are not optional under Ohio law" and that the Commission is statutorily required to mandate that AEP offer DSM programs pursuant to R.C. 4905.70.[55] However, in Case Nos. 16-574-EL-POR, et al., the Commission already rejected a similar claim raised in that proceeding.[56] The Commission stated:

> Upon review, it is clear that the General Assembly envisioned significant adjustments to Ohio's energy efficiency requirements when it passed H.B. 6 into law, and it is our duty, as the administrative agency overseeing the implementation of energy efficiency standards, to comport with, and effectuate, the General Assembly's desired intent. ***After careful consideration of the language of the statute and the responsive comments submitted by interested stakeholders, we note that there is very little, if any, ambiguity in regard to the ultimate objectives of the General Assembly's passage of this legislation.*** The amendments in H.B. 6 to both the renewable portfolio standards (RPS) and the energy efficiency provisions demonstrate the intent of the General Assembly to reduce the costs of these provisions to customers in order to facilitate the state's effectiveness in the

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[54] *See, e.g., In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (Dec. 30, 2020) (Where the stipulating parties had "presented adequate justification for the Commission to uphold the precedent" and "no argument presented by opposing Intervenors [convinced] the Commission to change or revise this practice," the Commission adopted the stipulation.).

[55] OPAE's Initial Post-Hearing Brief at 16.

[56] *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2020*, Case Nos. 16-574-EL-POR, et al., Finding and Order at 4 (February 26, 2020) (("AEE avers that the Commission may continue the EE/PDR portfolio plans though R.C. 4905.70 and 4928.143(B)(2)(i) regardless of the amendments to R.C. 4928.66, stating that nothing in H.B. 6 provides, or even suggests, that the Commission should abandon utility energy efficiency programs altogether.").

> global economy. R.C. 4928.02(N). Notably, H.B. 6 reduces the RPS standards, excludes certain mercantile customers from the RPS standards, allows all mercantile customer to opt-out of energy efficiency programs and requires that ***all energy efficiency programs terminate no later than December 31, 2020***.[57]

Because the Commission is a creature of statute,[58] it cannot resurrect energy efficiency mandates that no longer exist in Ohio. For similar reasons, OPAE's, as well as the Environmental Groups,' proposals to require AEP to offer a DSM program must fail.[59] As OMAEG previously explained, there is no legal authority, which would allow an electric distribution utility to voluntarily offer energy efficiency programs with mandatory cost recovery from its customers.[60] However, even if there was such an authority (which there is not), OPAE's and the Environmental Groups' proposals would still be impermissible under Ohio law. AEP has already voluntarily withdrawn its DSM plan in this proceeding as part of the Settlement.[61] Modifying the Settlement and forcing AEP to offer DSM programs that it no longer is proposing in this proceeding effectively amounts to mandating energy efficiency programs, which clearly contravenes the Commission's prior orders and the legislature's intent as expressed through Am. Sub. House Bill 6 (H.B. 6).

Finally, Opposing Parties' proposals lack evidentiary support and should be rejected on their face. For instance, OPAE's proposal to convert certain "fixed" charges to volumetric charges is premised on the notion that customers "must pay a fix charge regardless of the amount of energy consumed or (or generated)" and "[t]hus, fixed charges undermine the ability of customers to lower

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[57] *Id.* at ¶ 42 (emphasis added).

[58] *Penn Central Transportation Co. v. Pub. Util. Comm.*, 35 Ohio St.2d 97, 298 N.E.2d 97 (1973) ("The Public Utilities Commission of Ohio is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute.") (Citations omitted).

[59] Environmental Groups' Initial Post-Hearing Brief at 9-18.

[60] OMAEG's Initial Post-Hearing Brief at 26.

[61] *See* AEP's Initial Post-Hearing Brief at 20 (citing Joint Exhibit 1, the Settlement at Section III.G.; AEP Exhibit 6, Moore Testimony at 15, 19).

bills through reducing usage."[62] However, OPAE incorrectly stated that certain AEP riders, such as the DIR, ESRR, and EDR, are fixed charges.[63] While it is true that these riders are a fixed percentage, the riders are based on customers' distribution usage and charges.[64] Given that the distribution charge is based on a fixed customer charge and a variable energy charge, these riders are not simply fixed charges.[65] As OPAE conceded at the evidentiary hearing, these riders are a function of consumption to an extent.[66] In addition to presenting conflicting testimony, OPAE's sole support for its proposal is anecdotal evidence.[67] There is no indication that OPAE knows based on empirical evidence how converting the various riders to pure volumetric charges would impact customers or AEP and its electric services.[68] Accordingly, OPAE's unsubstantiated proposal should be rejected in its entirety.

Similarly, NEP's low-load factor customer proposals also suffer from major deficiencies. In advancing the proposals, NEP stated "[t]he reason Mr. Rehberg's testimony is so important is because he was the only witness in this proceeding to analyze the actual rate impact of the Stipulation on GS-2 and GS-3 low-load factor customers."[69] While NEP witness Rehberg presented testimony that he adopted from another witness regarding what NEP defines as low-load factor customers,[70] that alone does not warrant the implementation of a new rate schedule or a $3

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[62] OPAE Exhibit 1, Direct Testimony of David C. Rinebolt (Rinebolt Testimony) at 7 (April 20, 2021)

[63] *See* OPAE's Initial Post-Hearing Brief at 20

[64] Tr. Vl. II at 461.

[65] *Id.* at 459-461.

[66] *Id.* at 461.

[67] Tr. Vol. II at 452 (Mr. Rinebolt admitting that that his opinions on usage patterns of AEP's low-use customers are informed by inferences from the data collected from his clients in all types of housing in Ohio and not specifically AEP customers).

[68] *See, e.g*., AEP's Initial Post-Hearing Brief at 25.

[69] NEP's Initial Post-Hearing Brief at 17.

[70] NEP Exhibit 35, Notice of Witness Substitution at 12 (May 5, 2021).

million pilot program. As articulated in the Initial Post-Hearing Briefs of OMAEG and other Signatory Parties, the analysis Mr. Rehberg adopted suffers from many flaws, including being based on an unrepresentative sample of just four accounts of the same type of customer.[71] AEP explained how NEP witness Rehberg presented conflicting testimony on which types of charges were included in the analysis and that Mr. Rehberg could not identify a single AEP rider that the analysis excluded, making it unclear which costs are actually reflected in the low-load factor customer analysis that was presented.[72] Moreover, Mr. Rehberg had no part in selecting the accounts used in the sample,[73] did not have access to the original data set,[74] was not even aware of the original analysis until late April of 2021,[75] and lacks a professional background in rate design and analysis to make any such conclusions.[76]

In sum, the Commission should adopt the Settlement in its entirety and without modification. OMAEG urges the Commission to exclude Opposing Parties' various proposals from the Settlement as the Settlement package already secures numerous concrete benefits for ratepayers and is just and reasonable and in the public interest. Contrastingly, Opposing Parties presented proposals that tout speculative benefits, are based on unsound analyses, are not supported by record evidence, and/or violate Ohio law.

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[71] *See* OMAEG's Initial Post-Hearing Brief at 22; AEP's Initial Post-Hearing Brief at 14-16; Kroger's Initial Post-Hearing Brief at 7-8; Wal-Mart's Initial Post-Hearing Brief at 2-3.

[72] AEP's Initial Post-Hearing Brief at 16 (citing Tr. IV at 837-839).

[73] *See Tr.* IV at 760.

[74] *Id.* at 744.

[75] *Id.* at 673.

[76] *Id.* at 657-659.

III. CONCLUSION

OMAEG's Initial Post-Hearing Brief filed June 14, 2021 and this Reply Brief demonstrate that the Settlement is just and reasonable and passes the Commission's three-part test for evaluating stipulations. By resolving a variety of complex issues involving AEP's base distribution rates, the Signatory Parties have secured a just, reasonable, and expeditious outcome that obtains major benefits for customers and is in the public interest. In order to fully provide these benefits to customers, the Commission should adopt the Settlement in its entirety and without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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