

**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

**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT
OF
INTERSTATE GAS SUPPLY, INC.**

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DECEMBER 17, 2021

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**APPLICATION FOR REHEARING OF
INTERSTATE GAS SUPPLY, INC.**

Under R.C. 4903.10 and Rule 4901-1-35 of the Ohio Administrative Code, Interstate Gas Supply, Inc. (“IGS”) submits this Application for Rehearing of the Opinion and Order for Ohio Power Company issued by the Public Utilities Commission of Ohio on November 17, 2021, for the following reasons:

- 1. The Opinion and Order is unlawful and unreasonable because the finding that there is no basis upon which to conclude that Ohio Power’s distribution rates include known, quantifiable costs that should be allocated to the Retail Reconciliation Rider is not supported by the uncontroverted evidence that Ohio Power recovers known and quantifiable costs to provide default service in its distribution rates, a violation of R.C. 4903.09.**
- 2. The Opinion and Order is unlawful because it finds that an analysis of known and quantifiable costs to provide default service and the customer choice program was incomplete because the analysis did not factor choice program costs as to the Retail Reconciliation Rider and the SSO Credit Rider when the record does not support that finding, in violation of R.C. 4903.09.**

3. **The Opinion and Order is unlawful and unreasonable because it authorizes Ohio Power to recover costs that Ohio Power incurs to supply a competitive product or service in distribution rates in violation of R.C. 4909.15, 4928.02, and 4928.05.**
4. **The Opinion and Order is unlawful and unreasonable because it failed to address the arguments showing that approving a provision of the stipulation leaving the rates of the Retail Reconciliation Rider and the SSO Credit Rider at zero was unlawful and unreasonable and deferred population of the riders to a future case, all in violation of R.C. 4903.09.**
5. **The Opinion and Order is unlawful and unreasonable because the decision authorizing the continuation of a discriminatory switching fee for which there is no evidence of cost and that penalizes competitive suppliers and their customers is without a reasoned explanation in violation of R.C. 4903.09.**
6. **The Opinion and Order is unlawful and unreasonable because it fails to remove a provision requiring Ohio Power to provide aggregate billing data that violates important regulatory practices or principles.**
7. **The Opinion and Order is unlawful because the Commission decision finding that the provision that requires Ohio Power to provide aggregate billing data to OCC does not violate an important regulatory practice or principle represents a break with Commission precedent that is without a reasoned explanation.**
8. **The Opinion and Order is unlawful and unreasonable because it permits Ohio Power to recover in distribution rates the costs it incurs to market customer-sited generation in violation of R.C. 4928.47 and R.C. 4903.09.**

As discussed in the Memorandum in Support, the Opinion and Order are unlawful and unreasonable, and the Commission should grant this Application for Rehearing.

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MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING OF INTERSTATE GAS SUPPLY, INC.

I. Introduction

In this case, Ohio Power Company (“Ohio Power”) filed an application to increase base distribution rates. To resolve the issues presented by the application, Ohio Power, several intervenors, and the Staff of the Public Utilities Commission of Ohio (“Commission”) filed a joint stipulation. Although Ohio Power and the other supporting parties asserted that the Stipulation met the three-part test upon which the Commission judges the lawfulness and reasonableness of a stipulation, Interstate Gas Supply, Inc. (“IGS”) and others demonstrated that there were significant legal deficiencies with its terms. Nonetheless, the Commission found that the Stipulation without modification satisfied the Commission’s three-part test and approved it in an Opinion and Order.¹

On rehearing, the Commission should reverse approval of four substantive results in the Opinion and Order.

First, the decision to approve rates without populating the Retail Reconciliation Rider and the SSO Credit Rider to remove \$64 million from distribution rates is not supported by the record and authorizes the recovery in distribution rates of costs for the provision of a competitive electric service in violation of Ohio law. Further, that decision fails to consider the merits of several issues presented to the Commission in violation of

¹ Under the three-part test, the Commission reviews whether the settlement is the product of serious bargaining among capable and knowledgeable parties, whether the settlement as a package benefits ratepayers and the public interest, and whether the settlement package violates any important regulatory principle or practice. *Industrial Energy Consumers of Ohio Power Co. v. Pub. Utils. Comm’n of Ohio*, 68 Ohio St. 3d 559 (1994).

the requirements of R.C. 4903.09. Separately and together, these errors warrant a reversal of the decision on rehearing and a new order populating the riders.

Second, the failure to remove unlawful switching fees for which there is no cost-basis in evidence permits the continuation of a discriminatory rate or charge in violation of Ohio law and the state energy policy. On rehearing, the Commission should direct Ohio Power to file a new tariff sheet removing the switching fee.

Third, the decision to approve the collection and transfer of manipulated and incomplete billing data to the Ohio Consumers' Counsel is unreasonable and a break with Commission precedent without a reasoned explanation. On rehearing, the Commission should reverse its approval of this provision and modify the Stipulation by striking this provision.

Fourth, the decision to permit Ohio Power to recover in distribution rates the costs of Ohio Power's marketing of customer-sited generation is unlawful and unreasonable because it permits Ohio Power to violate the requirements of R.C. 4928.47. On rehearing, the Commission should require Ohio Power to identify the costs it incurred to market customer-sited generation projects so that the costs can be removed from distribution rates.

II. Approval of a provision of the Stipulation setting the Retail Reconciliation Rider and SSO Credit Rider at zero was unlawful and unreasonable

In Ohio Power's ESP IV Order, the Commission approved two riders, the Retail Reconciliation Rider and the SSO Credit Rider. In re Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, Case Nos. 16-1852-EL-SSO, et al., Opinion and Order ¶ 214

(Apr. 25, 2018) (“ESP IV Order”). The purpose of the riders is to remove the cost of providing the standard service offer from distribution rates and assign that cost to the cost-causers, default service customers. To identify those costs, the Commission directed Ohio Power to “analyze, as part of the rate case, its actual costs of providing SSO generation service” and “its actual costs associated with the choice program.” Id., ¶ 215. Ohio Power identified both direct and indirect cost associated with the provision of default service and supplied them with its application. IGS Ex. 3 at 11-12 and Ex. DMR-2. Although Ohio Power submitted testimony in its rate application in this case in which it identified and quantified direct costs associated with the provision of both services, the analysis was incomplete. Staff Ex. 1 at 31. In particular, Ohio Power did not attempt to quantify or allocate indirect costs it identified. IGS Ex. 3 and Ex. DMR-2. Additionally, the analysis was too narrow, leaving out substantial cost categories. IGS/Direct Ex. 2 at 50. In any case, however, Ohio Power then brokered a term of the Stipulation providing that the Retail Reconciliation Rider and SSO Credit Rider be set at zero. Joint Ex. 1 at 9.

In the Opinion and Order, the Commission did not modify the provision setting the Retail Reconciliation Rider and SSO Credit Rider at zero based on testimony supporting the Stipulation from Ohio Power, Staff, and the Ohio Consumers’ Counsel (“OCC”). It also found “that there is no basis upon which to conclude that [Ohio Power’s] distribution rates include known, quantifiable cost that should be allocated to the [Retail Reconciliation Rider].” Opinion and Order, ¶ 184. It justified the conclusion that there was no basis to assign and allocate some costs to the riders on a critique of IGS’s witness, who the Commission found “made no attempt to factor choice program costs into his recommendation as to the RRR and SSOCR.” Id., ¶ 184. While the Commission

apparently agreed that Ohio Power's response was less than complete, it concluded that this response was not a violation of its order because of Ohio Power's "lack of granular data sufficient to permit a more thorough analysis." *Id.*, ¶ 185.

The Commission erred in three material ways. First, the decision that the record did not demonstrate known and quantifiable costs incurred by Ohio Power to provide default service does not address the uncontroverted record that Ohio Power is and will recover known and quantifiable costs to provide default service in its distribution rates. Second, authorizing rates that permit Ohio Power to collect these known and quantifiable costs of a competitive service in distribution rates violates Ohio law. Third, the failure of the Commission to address the arguments and evidence and properly set reasonable rates in this case also violates Ohio law.

A. The Opinion and Order is unlawful and unreasonable because the finding that there is no basis upon which to conclude that Ohio Power's distribution rates include known, quantifiable costs that should be allocated to the Retail Reconciliation Rider is not supported by the uncontroverted evidence that Ohio Power recovers known and quantifiable costs to provide default service in its distribution rates, a violation of R.C. 4903.09

"In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." R.C. 4903.09. This statutory requirement imposes on the Commission an obligation to "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence." *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, ¶ 30 (2011).

As previously noted, the Commission approved the provision recommending that the Retail Reconciliation Rider and SSO Credit Rider remain at zero based on the Staff Report recommendation and supporting testimony provided by Ohio Power, the Staff, and OCC. Opinion and Order, ¶ 183. In support of that decision, it found that there was no basis on which to conclude that Ohio Power's distribution rates include known and quantifiable costs that should be allocated to the Retail Reconciliation Rider. Id., ¶ 184. That critical finding is unsupported by the record because Ohio Power itself demonstrated that there were known and quantifiable direct costs being collected and all interested parties agree that the rates proposed in this case would recover costs associated with the provision of default service if the riders are not populated.

In response to the ESP IV Order, Ohio Power provided testimony identifying direct and indirect costs associated with the provision of default service and later agreed on cross-examination that the incurred costs would be collected in distribution rates. IGS/Direct Ex. 3, Attachment DMR-2; Tr. at 36, 49-53, and 158-59. That analysis, though incomplete, demonstrated that Ohio Power incurred at least \$4.7 million in costs directly attributable to default service. Although the information was incomplete, the Commission nonetheless concluded that Ohio Power did not violate the Commission's order to conduct an analysis of the costs to support default and competitive supply services. Opinion and Order, ¶ 185. If that is so, then there is credible evidence of \$4.7 million in costs collected in rates that are directly assignable to the provision of default service.

Staff and OCC also agreed that Ohio Power is collecting costs of providing generation-related services in distribution rates. On cross-examination, both the Staff and

OCC conceded that costs to provide default service were collected in distribution rates that would be approved in this case. Tr. at 291-92 and 346-49.

The only challenge raised by Staff and OCC regarding these costs does not go to whether the costs are generation-related or that they are being collected in rates. Instead, both assert that the costs should be characterized as distribution costs on the theory (discussed further below) that the relabeling of generation costs converts them into distribution costs. Tr. at 291-92 and 346-49. This relabeling, however, does not change the fact that costs to provide competitive generation services are being collected in distribution rates.

Likewise, Mr. Lacey, on behalf of IGS and Direct, identified both direct and indirect costs that are being recovered in rates. IGS/Direct Ex. 2. See, also, IGS Exs. 13 and 14. Although the Commission did not accept the analysis of IGS and Direct that much more should be assigned and allocated to the riders,² this critique does not change the fact that Ohio Power is recovering at least the direct costs identified by Ohio Power that it and everyone else agreed are recovered in rates.

At a minimum, therefore, it is uncontested that Ohio Power incurs and recovers in distribution rates \$4.7 million in costs directly attributable to the provision of default service. These costs are both known and quantified. Likewise, Ohio Power incurs \$1.2 million in direct costs directly attributable to the support of competitive supply. IGS Ex. 3

² According to the Commission, Mr. Lacey did not follow the Commission's direction in the ESP IV Order because he did not factor choice program costs into his recommendation. Opinion and Order, ¶ 184. Mr. Lacey concluded the costs of supporting competitive suppliers are monopoly costs of the utility and a distribution service. IGS/Direct Ex. 2 at 44. The reason is important: if these costs concern distribution service, netting them from the costs associated with the provision of competitive supply is improper. *Id.* Thus, Mr. Lacey did not fail to factor choice costs into his recommendation because there was nothing to factor.

at Ex. DMR-2. Again, these costs are both known and quantified. In the case of the latter, the only dispute is whether they should be netted against the amount to support default service. IGS/Direct Ex. 2 at 44 (arguing that it is improper to net costs to support competitive suppliers from the costs to support default service). Even if that offset is proper, there remains \$3.5 million of known and quantifiable costs that should be removed from distribution rates and collected and refunded under the Retail Reconciliation Rider and SSO Credit Rider. Thus, the finding that “there is no basis upon which to conclude that [Ohio Power’s] distribution rates include known, quantifiable costs that should be allocated to the [Retail Reconciliation Rider]” is not supported the uncontroverted record. Due to this error, the Opinion and Order violates the requirements of R.C. 4903.09, and the Commission should grant rehearing and properly populate the Retail Reconciliation Rider and SSO Credit Rider.³

B. The Opinion and Order is unreasonable because it finds that an analysis of known and quantifiable costs to provide default service and the customer choice program was incomplete because the analysis did not factor choice program costs as to the Retail Reconciliation Rider and the SSO Credit Rider when the record does not support that finding, in violation of R.C. 4903.09

In addition to the estimate of the costs to provide default and choice service provided by Ohio Power, the Commission also had a separate estimate provided by IGS and Direct. The IGS/Direct estimate showed that those costs were in excess of \$64 million. IGS/Direct Ex. 2. The Commission rejected that recommendation on the ground that it was incomplete because the supporting witness did not offset choice program costs against the costs Ohio Power incurred to provide default service. Opinion and Order, ¶

³ It is also uncontroverted that Ohio Power will collect in distribution rates costs such as call center costs that should be allocated to the Retail Reconciliation Rider. IGS Ex. 3 at Ex.DMR-2. On rehearing, the Commission should require Ohio Power to provide an estimate of those allocable costs.

184. That finding misstates the record: in fact, the witness explained in detail why offsetting those costs was incorrect. The Commission, thus, erred in its factual finding and improperly failed to address the merits of the analysis. Accordingly, the Commission should grant rehearing, correct its determination regarding the analysis, and find that Ohio Power incurs at \$64 million in known and quantified costs that are illegally recovered in distribution rates.

Under R.C. 4903.09, the Commission must base its findings on the record. The record in this case provides a detailed explanation as to why the costs that Ohio Power incurs to provide default service is \$64 million. IGS and Direct's witness, Mr. Lacey, identified direct and indirect costs to be assigned and allocated for recovery through the Retail Reconciliation Rider. These costs were drawn from Customer Accounts captured in FERC Accounts 901-905, Customer Service and Information captured in Accounts 906-910, Administrative and General Costs captured in Accounts 920-931, and Depreciation and Amortization costs captured in Account 403. IGS/Direct Ex. 2 at 36. This resulted in a "pool of resources" of \$190 million to be assigned and allocated. Applying allocators based on direct assignment, revenue, and customer count, Mr. Lacey concluded that \$64.3 million should be charged to SSO customers through the Retail Reconciliation Rider and distributed back to all customers through the SSO Credit Rider. *Id.* at 37 and Appx 1. At current shopping rates, standard service offer customers would incur a bypassable charge of \$0.0057/kWh, and all customers would receive a credit of \$0.0015/kWh. *Id.*

Without discussion of the merits of the costs that were identified, the Opinion and Order finds instead that the whole analysis can be ignored on the basis that the IGS

witness did not factor in choice costs. Opinion and Order, ¶ 184. The claim that IGS fails to acknowledge costs to serve choice customers, however, is patently wrong: IGS recognized that there were such costs, but they are not properly offset against the costs that should be recovered through the Retail Reconciliation Rider. IGS/Direct Ex. 2 at 42-43. The reason why offsetting the costs of providing choice service is incorrect is equally obvious: The services, which competitive suppliers pay for through multiple fees, are instances in which Ohio Power is acting as the sole provider of those services. For instance, competitive suppliers can receive metering information from only Ohio Power. Similarly, only Ohio Power can effectuate a change in generation supplier. Unlike the costs associated with the standard service offer, which are declared a competitive service by Ohio law, therefore, the services for supporting choice remain monopoly services regulated by R.C. Chapter 4909 and paid for by competitive suppliers.

On the record before the Commission, the Commission erred when it concluded that the analysis offered by IGS and Direct was incomplete. To correct the error, the Commission should grant rehearing, correct its determination regarding the analysis, and find that Ohio Power incurs \$64 million in known and quantified costs that are illegally recovered in distribution rates.

C. The Opinion and Order is unlawful and unreasonable because it authorizes Ohio Power to recover costs that Ohio Power incurs to supply a competitive product or service in distribution rates in violation of R.C. 4909.15, 4928.02, and 4928.05

The Staff, Ohio Power, and OCC agreed that Ohio Power is collecting costs to support its default service in distribution rates. At hearing, the Staff attempted to relabel

these costs as distribution costs. Staff Ex. 3 at 9. They clearly are not.⁴ Alternatively, the Staff and, belatedly, Ohio Power stated that these costs should be socialized, and OCC joined the argument by noting that the Stipulation would protect non-shopping customers from paying more for generation service. Staff Ex. 1 at 31 and Staff Ex. 3 at 9-11; Ohio Power Ex. 4 at 3-4 and Initial Post-Hearing Brief of Ohio Power in Support of the Joint Stipulation and Recommendation at 31 (June 14, 2021) (“Ohio Power Initial Brief”); Initial Brief by Office of the Ohio Consumers’ Counsel at 9 (June 14, 2021) (“OCC Initial Brief”). Without addressing any of these claims, the Opinion and Order appears to agree that these costs are not distribution costs, but nonetheless permits Ohio Power to avoid the legal outcome of that finding by permitting Ohio Power to continue to collect these costs in distribution rates. That authorization is unlawful.

In 1999, S.B. 3 “restructured Ohio’s electric-utility industry to foster retail competition in the generation component of electric service.” *Industrial Energy Users-Ohio*, 117 Ohio St.3d 486, 487 (2008). The foundation for competition was established by requiring “the three components of electric service — generation, transmission, and distribution — to be separated.” *Id.* Initially in a transition step, S.B. 3 required the monopoly electric utilities to separate their business lines by function, i.e., distribution, transmission, and generation, and adopt corporate separation plans to prevent cross-subsidies across those functions. R.C. 4928.31(A). “In short, each service component was required to stand on its own.” *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 452-53 (2004). Consequently, the Commission is under a legal requirement to

⁴ The Commission correctly did not fall for this relabeling. That decision was correct because a finding relabeling generation costs as distribution costs would constitute reversible error. *Industrial Energy Users-Ohio v. Pub. Utils. Comm’n of Ohio*, 117 Ohio St. 3d 486, 490-91 (2008).

properly assign the collection of costs of the provision of a competitive service such as default generation service to the customers that use that service, not distribution customers generally. R.C. 4909.15, 4928.05, and 4928.31. See Initial Brief of Interstate Gas Supply, Inc. at 12-18 (June 14, 2021) (“IGS Initial Brief”) (legal authority and related discussion incorporated by reference).

As the uncontroverted evidence demonstrates, Ohio Power collects \$4.7 million in known and quantified costs to provide default service, but those amounts are and will continue to be collected in distribution rates. IGS Ex. 3, 13, and 14; Tr. at 36, 49-53, 158-59; Tr. at 290-92; and Tr. at 346-49. Two riders to properly assign those costs exist, but remain unused because of Ohio Power’s decision to bargain a resolution of this case on a term that leaves the riders at zero. Under Ohio law, that bargain cannot stand because it rests on an unlawful assignment of costs to distribution rates. *Monongahela Power Co. v. Pub. Utils. Comm’n of Ohio*, 104 Ohio St. 3d 517 ¶ 26 (2004) (Commission cannot approve terms of a settlement that are contrary to law).

Further, state policy directs the Commission to ensure that competitive electric services are not subsidized by noncompetitive services. R.C. 4928.02(H). The Opinion and Order, however, permits unlawful “socialization” of costs to continue, thereby resulting in a default service price that does not cover its costs. This artificially low price leads to two unreasonable outcomes. First, the price signals provided by the standard service offer that the Commission relies on to promote customer choice are wrong. Second, the socialization of the costs of providing the standard service offer is a cross-subsidy that could have long-term effects on the rollout of other competitive services by delaying or preventing entry and curtailing active presence in the market. IGS Initial Brief

at 16-18 (discussion incorporated by reference). Thus, the authorization for Ohio Power to set the Retail Reconciliation Rider and SSO Credit Rider at zero is unreasonable as well as illegal.

Because the Opinion and Order permitting the recovery of costs to provide a competitive product is illegal and unreasonable, the Commission should grant rehearing and populate the rider based on the record, as noted previously.

D. The Opinion and Order is unlawful and unreasonable because it failed to address the arguments showing that approving a provision of the stipulation leaving the rates of the Retail Reconciliation Rider and the SSO Credit Rider at zero was unlawful and unreasonable and deferred population of the riders to a future case, all in violation of R.C. 4903.09

The Opinion and Order found that the provision leaving the Retail Reconciliation Rider and SSO Credit Rider at zero does not violate any important regulatory principle or practice based on the Staff Report recommendation and testimony supporting the Stipulation. Opinion and Order, ¶ 183. The remainder of the discussion of this provision of the Stipulation consisted of (1) a paragraph in which the Commission found that there was no known and quantifiable costs of default service collected in rates and in which the Commission rejected the results of Mr. Lacey's analysis that Ohio Power is collecting \$64 million in known and quantifiable costs of providing the standard service offer in distribution rates and (2) a paragraph excusing Ohio Power's inadequate job of measuring those costs. Id., ¶ 184 and 185. The Opinion and Order then concludes its decision to set the riders at zero with a recommendation that interested parties can try again in another rate proceeding or file a complaint. Id., ¶ 186.

The Commission's approval of the provision of the Stipulation setting the Retail Reconciliation Rider and SSO Credit Rider at zero presents a variation on a theme that

the Ohio Supreme Court has already rejected. In re *Suvon*, LLC, 2021-Ohio-3630 (Ohio Sup. Ct. Oct. 14, 2021). In the *Suvon* case, the Commission issued an order providing FirstEnergy Advisors with a competitive supplier certificate. It based that decision on a Staff report, which summarized the assertions of applicants, but failed to address the detailed objections concerning corporate separation presented by the OCC and competitive suppliers. On appeal, the Court reversed the Commission's order because it violated R.C. 4903.09.

In reversing the Commission's order, the Court explained that R.C. 4903.09 requires the Commission to issue findings of fact and a written opinion setting forth the reasons for its decisions based on the findings of fact. In performing this duty, the Commission must make "independent findings" that satisfy the applicable statutory requirements. *Id.*, ¶ 25. "Of course, PUCO can adopt reports prepared by its staff and incorporate them into its order, but these reports must satisfy the requirements of the statute; that is, they must contain sufficient factual findings and conclusions of law." *Id.*, ¶ 22. Separately, the Court also found that deferring the issues that were required to be addressed in the certification proceeding to another proceeding violated the Commission's duty to make the statutory determination required to approve an application for a certificate to provide competitive energy services. *Id.*, ¶ 33.

Like the decision in *Suvon*, the Commission relies on a Staff Report that is far from complete. The Staff Report presented two findings. The first finding was that Ohio Power did not examine all cost factors and therefore "Staff cannot recommend a charge that is not just and reasonable." Staff Ex. 1 at 31. The second had nothing to do with the Staff investigation of Ohio Power's application; instead, the Staff inserted a policy conclusion

that the standard service offer is a default service available to all customers. Id. (This statement apparently served as the basis for the Staff position that these costs should be socialized. Staff Ex. 3 at 9.)

The hearing developed the investigation that went into the Staff Report. At hearing, the Staff witnesses who described the Staff's investigation of Ohio Power's response to the Commission order in the ESP IV Order stated that the investigation consisted of three interrogatories that indicated that Ohio Power's efforts were incomplete. Upon receipt of those responses, the Staff undertook no further investigation even though it is common for the Staff to issue additional data requests when it determines they are necessary. Tr. at 356-57 and 416-17; IGS Exs. 13, 14, 15, and 16. Staff also assumed that the costs Ohio Power incurred to provide default service should be socialized through distribution rates, but did not address the legal requirements governing distribution rates. Staff Ex. 3 at 9.

The testimony provided by OCC and Ohio Power does not fill in the missing pieces left by the Staff Report. OCC supported setting the riders at zero because it would keep the default service rate low. OCC Ex. 1 at 9-10. It provides no insight into what costs are recovered and whether those costs are recovered legally in distribution rates, and it ignores the fact that residential customers receiving generation service are paying too much. The testimony offered by Ohio Power likewise offers little in the way of substantive support for the provision setting the riders at zero. In defending the provision, the witness for Ohio Power in support of the Stipulation offered it was a negotiated position and that there might be some basis for socializing these costs. Ohio Power Ex. 4 at 4. This less than rousing endorsement does not negate the fact that there are known and quantifiable

costs that Ohio Power is recovering for the provision of distribution service or provide any basis to find that the recovery is consistent with the requirements of Ohio law.

The burden thus fell to competitive suppliers to demonstrate the costs Ohio Power was recovering in distribution rates for the provision of default generation service. Based on the suppliers' efforts, the record shows agreement from Staff, Ohio Power, and OCC that known and quantifiable costs are being incurred to support default service; that these costs are generation-related costs, and that these costs are being recovered in distribution rates. IGS Ex. 3, 13, and 14; Tr. at 36, 49-53, 158-59; Tr. at 290-92; Tr. at 346-49.

Besides showing that Ohio Power is collecting generation-related service costs in distribution rates, IGS also showed that authorization of the recovery of those costs in distribution rates was beyond the legal authority of the Commission and that such recovery promoted adverse economic effects on consumers, competitors, and competition in the generation service market by permitting a utility to collect generation costs in monopoly distribution rates. See IGS Initial Brief at 12-22 and Joint Reply Brief of Interstate Gas Supply, Inc. and Direct Energy Business, LLC and Direct Energy Services, LLC at 3-19 (July 6, 2021) ("IGS/Direct Reply Brief"); IGS/Direct Ex. 2. Although IGS raised these issues through its testimony and briefs, the Commission does not address any of the legal or economic consequences of approval of the provision setting the riders at zero in its decision.

In substance, then, the Opinion and Order's decision to leave the riders at zero is based on (1) a factual finding that the record does not support a determination of known and quantifiable costs that no party supported; (2) agreement with a Staff Report that

effectively excuses Ohio Power's indifference to the Commission's prior order and advances a policy claim wholly at odds with the requirements of Ohio law and based on a relabeling of generation costs as distribution costs, (3) ignoring the legal and economic problems that the provision setting the riders at zero presents, and (4) kicking the determination that was supposed to be made in this case that distribution rates are just and reasonable to some future case, or switching the burden of proof to the competitors to show that distribution rates are unreasonable.

Thus, the decision setting the riders at zero presents the same kinds of problems the Court found sufficient to reverse and remand the Commission's decision in *Suvon*.

First, the decision fails to address many of the material issues the Commission must decide. These include the legal impediments to such recovery and the economic fallout that will result.

Second, the Staff Report on which the Commission relies falls short of showing why costs that the parties agree are incurred to support default service should be recovered in distribution rates. This failure occurred because the Staff did not proceed beyond the fact that Ohio Power's efforts to address the prior Commission order to identify the costs to provide default service and support competitive suppliers was incomplete. Nonetheless, there is no disagreement that Ohio Power is recovering some known and quantifiable costs of generation supply in distribution rates. The question is not whether these costs are collected, but the degree to which they remain embedded in distribution rates. On that question, the Staff investigation stopped short. If Ohio Power's response was incomplete, then the efforts of the Commission and its Staff should be directed at reversing that failure, not excusing it. Yet, the incomplete report and investigation have

become the basis for a finding that known and quantifiable costs that parties agree are being recovered through distribution rates cannot be properly assigned for recovery in the riders.

Third, any reliance on the Staff's characterization (and the other parties' reliance on Staff's characterization) that these costs are distribution related or should be socialized is misdirected. A Staff recommendation cannot alter the law that requires functionalization of distribution, transmission, and generation costs and prohibits the recovery of generation costs in distribution rates. *Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio*, 117 Ohio St. 3d 486, 490-91 (2008) and *Wingo v. Nationwide Energy Partners*, 2020-Ohio-5583 (Ohio Sup. Ct. 2020) (Commission cannot impose policy determination that would violate Ohio law).

Finally, the suggestion that this wrong can be righted by a future case or by complaint confirms the error of the Opinion and Order because the Commission, under R.C. 4909.15(E), must determine that the approved rates are just and reasonable in this case.⁵ *Suvon*, ¶ 33.

In summary, the decision to leave the riders at zero follows the same path that the Court rejected in *Suvon*. By relying on a Staff Report that is contradicted by the record that known and quantifiable costs of a competitive service are recovered in distribution rates, failing to address the detailed legal and economic problems with the recommendation to leave the riders at zero, and kicking a determination of the

⁵ Additionally, the recommendation that parties seek reasonable rates through a complaint case unfairly shifts the burden of demonstrating that rates are reasonable from Ohio Power to the complainant. Compare R.C. 4928.18 (burden to show that rates are reasonable is on the applicant) and R.C. 4905.26 (burden to show that rate or practice is unreasonable is on the complainant).

reasonableness of rates to another proceeding, the Commission violates the requirement of R.C. 4903.09. Based on this error, the Commission should grant rehearing.

Further, there is sufficient evidence in the record to support setting the riders at initial levels to begin to bring rates into compliance with Ohio law. Accordingly, the Commission should direct Ohio Power to file tariff changes that populate the riders in amounts that are demonstrated to be currently collected in distribution rates for the support of default service.

III. The Opinion and Order is unlawful and unreasonable because the decision authorizing the continuation of a discriminatory switching fee for which there is no evidence of cost and that penalizes competitive suppliers and their customers is without a reasoned explanation in violation of R.C. 4903.09

Over the objection of IGS, the Commission found that a fee assessed by Ohio Power when a customer switches to a competitive supplier but not to itself when a customer returns to default service did not violate an important regulatory principle. Opinion and Order, ¶¶ 187-90. This determination should be reversed on rehearing because the record demonstrates that the factual findings on which it is based are unsupported by the record. As a result, the Commission failed to exercise the independent judgment required by R.C. 4903.09.

Generally, electric distribution customers have the option of taking competitive electric generation service from either a competitive supplier or Ohio Power, and they can switch providers to the extent permitted by their contracts.⁶ As demonstrated at the hearing, the underlying factual circumstances of a service change from a competitive

⁶ Under Ohio law, a customer may be returned to default service because of a supplier default as well. R.C. 4928.14.

supplier to default service are no different from those applicable to a change from default service to service from a competitive supplier or switches from one competitive supplier to another. The financial consequences to suppliers and Ohio Power, however, are materially different. Under its tariff, Ohio Power charges a \$5 switching fee for customer switches from default service to a competitive supplier (after the first such switch) or from supplier to supplier. However, the tariff provides that Ohio Power does not charge that fee to itself when a customer elects to return to default service or is returned to default service. Tr. at 337-44. The record is devoid of any credible support for the cost differences.

In fact, Ohio Power did not provide any evidence that the fee is cost-justified. Instead, it argued that the fee was reasonable because it had been previously approved. Ohio Power Initial Brief at 51-54. Likewise, the Staff did not investigate the costs underlying switching. See discussion below.

Given that the burden of showing that charges are reasonable rests with Ohio Power, it was error to find that the continuation of the charge is reasonable without some evidence to justify the cost is not lawful. R.C. 4903.09 and 4909.18.⁷

Moreover, given that the record demonstrates that switches back to default service are identical to the alternatives, the tariff discriminates against switches to competitive suppliers without any reasonable justification.

There is no apparent disagreement as to the important regulatory principle that is presented by the discriminatory switching fee. Under R.C. 4905.35, “[n]o public utility shall

⁷ IGS is aware that the Commission has permitted other utilities to continue these fees over the objections of intervenors. Those decisions, however, are incorrect because they permit, over objections properly before the Commission, an electric distribution utility to evade the requirement to justify its rate levels. R.C. 4909.18 and 4909.19.

make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.” Separating similarly situated customers into two classes and providing a price reduction for only one class constitutes an “undue or unreasonable preference’ prohibited by R.C. 4905.35.” *Ameritech Ohio v. Pub. Util. Comm.*, 86 Ohio St.3d 78, 81 (1999). Likewise, it is the state policy to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, *nondiscriminatory*, and reasonably priced retail electric service.” R.C. 4928.02 (emphasis added).

Although there is apparent agreement on the applicable principle, the Commission rests its finding permitting disparate treatment of customers returning to default service from those choosing a competitive supplier on an allegation by a Staff witness that a switch in service from the standard service offer to a competitive supplier is not a comparable process or cost to a switch in service from a competitive supplier to the default service. Opinion and Order at ¶ 190.⁸

Reliance on that statement is not a sound basis for the Commission’s determination that the discriminatory switching fee does not violate an important regulatory principle.

⁸ In its summary of the parties’ positions, the Commission notes that Ohio Power contended in its reply brief that there was a difference between a customer that elects to return and one that returns due to a supplier default. Opinion and Order, ¶ 188. The Commission, however, does not offer that statement in Ohio Power’s reply brief as the basis for its decision, and for good reason. The argument advanced by Ohio Power addresses customers that default to default service; it ignores that other customers elect default service but avoid the charge. Reply Brief of Ohio Power Company in Support of the Joint Stipulation and Recommendation at 55-59 (July 6, 2021) (“Ohio Power Reply Brief”). The treatment of customers that elect and those that default to the standard service offer, however, is identical. Thus, Ohio Power’s brief ignores the testimony of the Staff witness who agreed that a customer can elect to return to default service and returns under the same terms and conditions that would be applicable to a switch to a competitive supplier. Tr. at 338-40. Given that Ohio Power offered no cost support for the fee, eliminating it is reasonable.

First, the record demonstrates that the circumstances and process of moving a customer to or from a competitive supplier and returning a customer to default service are identical. As with a move to a competitive supplier, a customer can return to default service because of a supplier default or can elect to return to default service. Tr. at 337-39. In either case, the customer change is conducted under the same terms and conditions applicable to an enrollment with a competitive supplier. Tr. at 340. Further, the customer electing to return to default service is afforded the same rescission rights that the customer has when moving to a competitive supplier. Compare Tr. at 344 to Rule 4901:1-21-06, Ohio Admin. Code.

Second, the record demonstrates there was not any investigation whether cost differences justified the disparate treatment. The Staff did not investigate the costs of switching as part of its investigation. Tr. at 335 (Staff investigation was limited to the treatment of the revenue from supplier charges). Indeed, Staff did not investigate whether any cost exists at all to switch a customer in any direction. Instead, Staff assumed there was an underlying cost associated with the fees imposed on competitive suppliers. Tr. at 391. Likewise, Ohio Power did not submit evidence, nor did Staff seek evidence, to address the discriminatory application of the switching fee. IGS/Direct Ex. 2 at 46-47; Tr. at 393. More generally, Ohio Power confirmed that “[e]xcept as identified in Exhibit DMR-2, the Company is not aware of differences in cost of providing distribution service to shopping and non-shopping customers.” IGS Ex. 14, Response to N. In summary, the only evidence supporting the Commission’s decision to permit the discrimination to continue is the Staff’s uninvestigated assertion that differences in the switches justifies the discriminatory switching fee, and that assertion is directly contradicted by the record.

Basing a finding on an unsupported assumption is not a lawful application of the Commission's authority. In a contested matter, "the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." R.C. 4903.09. As discussed previously, this statutory requirement imposes on the Commission an obligation to "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence." *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, ¶ 30 (2011). In particular, R.C. 4903.09 requires more than a faith that the Staff "got it right." As noted previously, the Commission "can adopt reports prepared by its staff and incorporate them into its order, but these reports must satisfy the requirements of the statute; that is, they must contain sufficient factual findings and conclusions of law." *In re Application of Suvon, LLC*, 2021 Ohio 3630 ¶ 22 (Ohio Sup. Ct. 2021).

The decision to leave the switching fee in the tariff does not meet the requirements of R.C. 4903.09. The Commission based its finding on a Staff witness assertion that there are differences between a switch back to default service and a switch to a competitive supplier. Opinion and Order, ¶ 190. That assertion, however, is not supported by the evidence. The record demonstrates that the Staff did not address switching costs in its investigation but assumed that differences justified the discriminatory fee. Moreover, the Staff witness on which the Commission rests its decision admits that the circumstances and processes for handling a change in which a customer elects to return to default electric service are exactly the same to those for handling a switch to a competitive supplier, right down to recission rights. Ohio Power offers nothing to suggest otherwise.

Thus, the finding that differences in the switching processes justify the discriminatory fee is not supported by the facts in the record of this case.

Because the Commission erred when it refused to remove the discriminatory switching fees applicable to competitive suppliers, it should grant rehearing and reverse its determination that the Stipulation does not violate an important regulatory principle. Further, the Commission should order Ohio Power to amend its tariff to remove the unlawful switching fee since there is no cost-based justification for the unduly discriminatory charge.

IV. The finding that a shadow billing proposal did not violate any important regulatory principle or practice was unlawful and unreasonable

The Stipulation provides that Ohio Power will give to OCC aggregate data concerning residential sales of competitive suppliers relative to what consumers would have paid had they taken default service. The provision is inconsistent with the Commission's repeated decision refusing to implement various forms of shadow billing. Additionally, the data provided by Ohio Power will be heavily manipulated. By Ohio Power's own estimate, the calculations would be subject to about eighty potential exclusions. Tr. at 144-157; IGS Ex. 6.

Despite these issues, the Commission found that the provision did not violate any important regulatory principle or practice and was not "insufficiently clear." Opinion and Order, ¶ 198. Avoiding the import of its repeated orders that rejected requiring various forms of shadow billing, the Commission also explained that a company could agree to engage in shadow billing. Id.

The finding that the shadow billing provision does not violate the third prong of the review standard for stipulations should be reversed on rehearing because (1) the proposal before the Commission is unreasonable, and (2) the decision fails to address the sound reasons for refusing to require shadow billing in prior orders.

A. The Opinion and Order is unlawful and unreasonable because it fails to remove a provision requiring Ohio Power to provide aggregate billing data that violates important regulatory practices or principles

The provision of the Stipulation regarding shadow billing provides that Ohio Power will provide aggregate calculations of the relative gains or losses of shopping customers relative to the standard service offer. Joint Ex. 1 at 11. While the data will be summarized in a form similar to a form attached to the Stipulation, the real details of what would be provided were identified in discovery and provided to parties as IGS Ex. 6. That exhibit details numerous adjustments to exclude those customers that are dual billed or in the consolidated supplier billing pilot, rate ready accounts, and customers that are on any form of a fixed bill such as a customer that receives budget billing. In all, the data would be subject to about eighty items that may be adjusted.

Further, the only criterion considered is price. By limiting the comparison to price differences, the manipulated summary Ohio Power will provide fails to account for other attributes available in the retail market, like renewable energy, fixed prices, and other value-added services.

Moreover, the adjustments only remove “certain types of charges *that are not in line with the cost per kWh.*” Ohio Power Ex. 6 at 18 (emphasis added); Tr. at 152-153. Thus, a cost per kWh renewable product would only be removed from the analysis if it is labeled as such in the line item description provided to Ohio Power from the CRES

provider. See *id.* at 155. Notably, there is not a requirement for the CRES provider to include this description in the Commission rules, which certainly raises concerns regarding the number of customers' bills that will not be excluded from the analysis and further corrupt the data. (To fix the problem created by the inarticulate definition used for adjustments, the cost to provide information to trigger the appropriate exclusions would fall on competitive suppliers, a cost that the parties supporting the Stipulation ignore.)

The Commission is bound to base its decision on the record before it and explain its rationale based on that record. R.C. 4903.09. To support a finding that the Stipulation does not violate any important regulatory rule or practice, the Commission must find some credible evidence to support the claim that the shadow billing does not violate an important regulatory practice or principle. The only finding by the Commission on the merits of the proposal acknowledges "we do not here address the value of such information." Opinion and Order, ¶ 198. Yet if the information is of little or no value, as the record demonstrates, then its collection or dissemination is nothing more than a form of disinformation.

The Commission itself has an interest in the provision of accurate and truthful information. Yet the Opinion and Order approves the spreading of valueless information or misinformation. This result does not and cannot comport with the conclusion that the Stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission should grant rehearing, reverse its finding that the shadow billing provision requiring Ohio Power to provide aggregate data to OCC does not violate any important regulatory practice or principle, and modify the Stipulation to remove the provision.

B. The Opinion and Order is unlawful because the Commission decision finding that the provision that requires Ohio Power to provide aggregate billing data to OCC does not violate an important regulatory practice or principle represents a break with Commission precedent that is without a reasoned explanation

As an administrative entity, the Commission is governed by Title 49 and guided by its precedents addressing the issues presented to it. “Although the Commission should be willing to change its position when the need therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.” *Cleveland Elec. Illuminating Co. v. Pub. Utils. Comm’n of Ohio*, 42 Ohio St. 2d 403, 431 (1975). The failure to follow its prior orders without adequate justification constitutes an abuse of discretion. *Office of Consumers’ Counsel v. Pub. Utils. Comm’n of Ohio*, 10 Ohio St. 3d 49, 50 (1984).

The Commission’s prior decisions concerning various forms of shadow billing have uniformly rejected an industrywide requirement for the practice. In three separate decisions issued in 2021 alone, the Commission rejected rule proposals from OCC to require the utilities to conduct shadow-billing analyses because better resources already exist. 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, Entry on Rehearing at ¶ 35 (Jan. 27, 2021) (emphasis added) (also rejecting OCC’s request to make shadow billing publicly available); In the Matter of the Commission’s Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code, Case No. 19-1429-GA-ORD, Finding and Order at ¶ 89 (Feb. 24, 2021) and *id.*, Entry on Rehearing at ¶ 20 (Apr. 21, 2021). The list of other cases in which the Commission rejected other shadow-billing proposals for

similar reasons is long. See, e.g., In re Application of Ohio Power Company to Initiate Phase 2 of its gridSMART Project and to Establish the gridSMART Phase 2 Rider, Case No. 13-1939-EL-RDR, Opinion and Order at ¶ 79 (Feb. 1, 2017) (rejecting Ohio Partners for Affordable Energy's request for shadow billing) and In re the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc., Case No. 18-218-GA-GCR, et al., Opinion and Order at ¶ 54 (Dec. 18, 2019) (rejecting OCC's shadow billing recommendation which the Commission had also previously rejected in Duke's 2015 audit case regarding its GCR rider).

Apart from the consistent line of cases rejecting shadow billing, the reasons for doing so remain unchanged. In contrast to aggregate shadow billing data, and especially the heavily manipulated data that Ohio Power has promised to provide, tools such as the Commission's Energy Choice Ohio website benefit customers by providing a forward-looking comparison of the current product offerings for an individual customer. IGS/Direct Ex. 2 at 54.

Wholly absent from the Opinion and Order is any suggestion that the Commission's prior decisions were in error or that what Ohio Power has promised to provide is of any value. In fact, the Commission itself states it is not considering the value of the information to be provided. Opinion and Order, ¶ 198.

In fact, the only apparent consideration the Opinion and Order gives to the Commission's prior decisions is a statement that it previously approved an agreement to engage in shadow billing. *Id.* An agreement in another case, however, cannot justify the

change from precedent since it provides no evidence that the subsequent decisions rejecting shadow billing, including three decisions issued in 2021, are in error.⁹

Finally, given the long history of decisions and rulemaking orders rejecting the provision of shadow billing data, the Order will encourage parties to use stipulations to circumvent precedent and the Commission's rulemaking process. In addition to subverting the efficiency of the Commission's administrative processes, such a result will lead to continual re-litigation of issues.

Accordingly, the Commission should grant rehearing, reverse its finding that the shadow billing provision requiring Ohio Power to provide aggregate data to OCC does not violate any important regulatory practice or principle, and modify the Stipulation consistently with that decision.

V. The Opinion and Order is unlawful and unreasonable because it permits Ohio Power to recover in distribution rates the costs it incurs to market customer-sited generation in violation of R.C. 4928.47 and R.C. 4903.09

The Opinion and Order treats costs to conduct marketing of customer-sited generation, in an amount as yet unknown because the Staff did not investigate it and Ohio Power claims these costs are distribution-related, as "part of [Ohio Power's] functions as an electric distribution utility." Opinion and Order, ¶ 194. Relabeling costs to support the marketing of generation projects to customers as distribution costs does not make them so. Because this relabeling results in unlawful and unreasonable rates, the Commission

⁹ The decision cited by the Commission in the Opinion and Order approved a stipulation, a term of which provided that a decision accepting a settlement shall not be interpreted or otherwise relied upon as authority for utilizing the process as a template for stipulations in other proceedings. In re Columbia Gas of Ohio, Inc., 12-2637-GA-EXM, Joint Motion to Modify Orders Granting Exemption and Motion for Bifurcation of Capacity and Balancing Issues on an Expedited Basis, Joint Ex. 1 at 14 (Oct. 4, 2021). Thus, reliance on this stipulation term regarding shadow billing places the Commission in the awkward position of violating its own order approving a term of the stipulation.

should grant rehearing, determine the amount Ohio Power included in test year expenses for the marketing of customer-sited generation projects, and adjust rates to remove the effects of those amounts.

It is not debated that Ohio Power is not permitted to bill and collect costs related to customer-sited generation projects in distribution rates. While an EDU may enter into an agreement with a mercantile customer for the purpose of constructing a customer-sited renewable energy resource, subject to Commission approval, “any direct or indirect costs” associated with the project shall be paid for solely by the EDU and the mercantile customer. R.C. 4928.47(A) and (B). “At no point shall the commission authorize the utility to collect, nor shall the utility ever collect, any of those costs from any customer other than the mercantile customer or group of mercantile customers.” R.C. 4928.47(B).

The record in this case establishes that Ohio Power, through its customer representatives, marketed customer-sited generation projects to mercantile customers during the test period. Tr. at 978-79 and 983-84; IGS/Direct Ex. 2 at 55, *citing* IGS Ex. 19. Ohio Power made no attempt to identify the costs associated with these efforts, alleging that engaging customers with competitive retail electric service opportunities is part of Ohio Power’s “normal customer service work.” Tr. at 971-72. In a manner that should be familiar to the Commission, Ohio Power relabels these marketing costs as “incidental” to distribution service. IGS Ex. 19.

Although it would parrot Ohio Power’s relabeling of the costs as incidental, Staff did not investigate the number of discussions or meetings held by Ohio Power regarding these efforts, the number of Ohio Power employees in the discussions, the hours and corresponding wages of the employees involved, or any other costs such as

administrative or support staff involved in the meetings. Staff Ex. 3 at 14; Tr. at 328 and 330-31.

Citing Staff's uninvestigated claim, the Commission treated the costs as "traditional customer service." Opinion and Order, ¶ 194, citing Staff Ex. 3 at 14.

The relabeling of generation-related costs as something they are not is reminiscent of the Commission decision to allow cost recovery for the research and development costs of an integrated gas combined cycle plant from distribution customers. *Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio*, 117 Ohio St. 3d 486 (2008). In that case, the Commission sought to defend its decision to allow recovery by recasting the costs to develop the plant as an ancillary service subject to the Commission's authority. *Id.* at 490. The Ohio Supreme Court rejected that recharacterization, stating:

The statutory definition of ancillary service, set forth in R.C. 4928.01(A)(1), contains examples of services that involve the control and regulation of the flow of electricity, not the planning and construction of generation facilities. Because R.C. 4928.03 explicitly declares electric generation to be competitive retail electric service and R.C. 4928.05 expressly provides that electric generation is no longer subject to the commission's regulation, the classification of AEP's proposed electric-generation facility as a distribution-ancillary service is contrary to law.

Id. at 490-91.

Similar reasoning applies here. Selling customers on the benefits of working with Ohio Power to develop customer-sited generation projects is not the provision of distribution service. Rather it is a cost associated with the development of customer-sited generation. Under R.C. 4909.15 and 4928.05, there is no authority to allow Ohio Power to recover customer-sited generation costs in distribution rates. Any authorization must be through a customer-specific recovery mechanism approved under R.C. 4928.47.

Accordingly, permitting these costs to be recovered in distribution rates is a legal error the Commission should address on rehearing.

Further, reliance on the Staff's uninvestigated conclusion that the costs are incidental violates the directive of R.C. 4903.09 that requires the Commission to base its finding on its independent judgement. Reliance on an uninvestigated claim does not meet that requirement. *Suvon*, ¶¶ 22 and 25.

If left unchanged, moreover, the Commission's error will harm the competitive electric generation market. Because the Commission has signed off on the collection of these costs to market customer-sited generation in distribution rates, Ohio Power's efforts are being subsidized by distribution ratepayers to the detriment of other vendors that cannot leverage the legal monopoly over distribution service that Ohio Power holds. IGS/Direct Ex. 2 at 24. Thus, the failure to properly segregate the marketing costs violates the state policy encouraging the Commission to prevent subsidies and abuse of market power and harms both competitors and competition in the renewable generation market. R.C. 4928.02.

Because the Commission has erred when it permitted costs associated with marketing customer-sited generation to be collected in rates, the immediate remedy is to require Ohio Power to identify these costs. Once identified, the next step will be to require Ohio Power to file revised rates to remove the effects of inclusion of these costs.

VI. Conclusion

The Commission is required to authorize rates that are just and reasonable based on findings of fact supported by the record. The findings and related decisions identified in this memorandum are instances in which the Opinion and Order fails to satisfy those

legal requirements. The findings and decisions, therefore, should be reversed and corrected on rehearing.

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I hereby certify that a true copy of this document was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on December 17, 2021. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

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in

Case No(s). 20-0585-EL-AIR, 20-0586-EL-ATA, 20-0587-EL-AAM

Summary: App for Rehearing Application for Rehearing of Interstate Gas Supply,
Inc. electronically filed by Regan Donoughe on behalf of Interstate Gas Supply, Inc.