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

OHIO POWER COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING OF INTERSTATE GAS SUPPLY, INC. AND NATIONWIDE ENERGY PARTNERS, LLC

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TABLE OF CONTENTS

I. INTRODUCTION .....

II RESPONSE TO IGS APPLICATION FOR REHEARING.....

A. The retention of placeholder values for the Retail Reconciliation Rider and SSO Credit Rider does not violate any important regulatory principles or practices .....

B. The continuation of the Company's switching fee does not violate any important regulatory principles or practices.....

C. Adoption of the Stipulation's "shadow billing" provision does not violate any important regulatory principles or practices .....

D. It was lawful and reasonable for the Commission to find that any costs associated with preliminary discussions with mercantile customers under R.C. 4928.47 are not properly considered project costs .....

III. RESPONSE TO NEP APPLICATION FOR REHEARING .....

A. NEP's Arguments Fundamentally Misinterpret the Three-Prong Test and Controlling Law Applicable to the Review of Stipulations Before the Commission……

B. The Commission Properly Approved the Stipulation as a Package and Rejected NEP's Requests to Implement a Low-Load Factor Rate Because NEP's Analysis Inadequately Assessed the Impacts……..

IV. CONCLUSION.....

CERTIFICATE OF SERVICE

OHIO POWER COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING OF INTERSTATE GAS SUPPLY, INC. AND NATIONWIDE ENERGY PARTNERS, LLC

I. INTRODUCTION

The Public Utilities Commission of Ohio (Commission) should deny the Application for Rehearing (AFR) of Interstate Gas Supply, Inc. (IGS) and the AFR of Nationwide Energy Partners, LLC (NEP).

Regarding the IGS AFR, four meritless challenges are raised. Even though the retention of placeholder values for the Retail Reconciliation Rider and SSO Credit Rider does not violate any important regulatory principles or practices and was adequately explained in the decision after evaluating the evidence, IGS continues the latest installment of its statewide campaign to raise SSO rates and create more headroom for its own generation offer rates. Similarly, IGS continues a campaign launched with multiple electric distribution utility (EDU) rates to challenge the continuation of the Company's switching fee – even though it does not violate any important regulatory principle or practice and was not an issue in this case to begin with. Next, IGS attempts to manufacture a false conflict between prior Commission decisions to reject an unfunded mandate to create shadow billing with the Commission's current adoption of the Stipulation's voluntary "shadow billing" provision that does not affect competitive retail electric service (CRES) or shopping customers. Finally, IGS wrongly attempts to force the Commission to investigate a misguided claim raised by IGS in discovery even though costs associated with preliminary discussions with mercantile customers under R.C. 4928.47 are not properly

considered project costs and there is no record basis to conclude that AEP Ohio's new distribution rates reflect such project costs.

After a thorough combing of the repetitive and redundant arguments offered by Nationwide Energy Partners ("NEP"), NEP's eight assignments of error can be boiled down to two: (1) the Commission acted unreasonably and unlawfully by refusing to adopt the low-load factor rate design proposed by NEP witness Eric Rehberg;[1] and (2) the Commission acted unreasonably and unlawfully by not adopting a low-load factor pilot program for up to one thousand customers. Both of these assignments of error fail for multiple reasons. First, NEP misapplies the long-standing three-prong test under which Stipulations are analyzed and evaluated. Second, the Commission properly rejected NEP's proposed low-load factor rate design because there was no reliable evidence upon which to establish the holistic impacts to low-load factor customers, other customers, and AEP Ohio. Finally, for the same reasons that the Commission properly rejected NEP's proposed low-load factor rate design, the Commission properly rejected NEP's calls for an unjustified low-load factor pilot program.

II. RESPONSE TO IGS APPLICATION FOR REHEARING

A. The Retention of Placeholder Values for the Retail Reconciliation Rider and SSO Credit Rider does not Violate any Important Regulatory Principles or Practices.

IGS challenges the Commission's finding that the Stipulation's continuation of placeholder values for the Retail Reconciliation Rider (RRR) and SSO Credit Rider (SSOCR) is supported by the record and does not violate any important regulatory principle or practice. IGS's rehearing arguments do not raise anything new, but the Commission has an opportunity on

[1] On May 5, 2021, NEP filed a Notice whereby NEP Witness Rehberg adopted the Direct Testimony of Susanne Buckley filed in the docket on April 20, 2021.

rehearing to bolster a challenge under R.C. 4903.09 by IGS in this regard – there are four primary record-based reasons that support the Commission's decision. First, the Commission's conclusion (Opinion and Order at ¶ 184), that an insufficient basis exists to find that there are known, quantifiable costs reflected in the Company's distribution rates that should be allocated to the RRR and SSOCR, was supported by the record and adequately explained in compliance with R.C. 4903.09. Second, it was reasonable and lawful for the Commission to reject the flawed analysis of IGS/Direct witness Lacey and R.C. 4903.09 does not require an exhaustive explanation of cumulative reasons why the testimony should be rejected. Third, IGS fails to establish the existence of an unlawful subsidy of a competitive product or service in AEP Ohio's distribution rates. Fourth, through recycling the same arguments and misapplying a recent decision of the Supreme Court, *In re Suvon*, 2021-Ohio-3630 (Ohio Sup. Ct. Oct. 14, 2021), IGS again fails to establish the Opinion and Order violates R.C. 4903.09

1. The Commission's conclusion (Opinion and Order at ¶ 184), that an insufficient basis exists to find that there are known, quantifiable costs reflected in the Company's distribution rates that should be allocated to the RRR and SSOCR, was supported by the record and adequately explained in compliance with R.C. 4903.09.

IGS initially challenges the Commission's finding that "there is no basis upon which to conclude that AEP Ohio's distribution rates include known, quantifiable costs that should be allocated to the RRR."[2] IGS effectively quibbles with the phrase "no basis" because it asserts that there was evidence in the record that could have been relied upon to support such a finding. Regardless of the wording used, the Commission had good reasons to support that finding and the obvious intent and effect was simply to reject the finding proposed by IGS and that result is manifestly lawful and reasonable. IGS contests the finding, in essence, because the Opinion and

[2] IGS AFR at 11 (quoting Opinion and Order at ¶ 184).

Order did not explain its finding in a way that persuaded IGS (which of course is an inadequate basis for rehearing). In cobbling together its counterpoint proposition that "at a minimum" there is an "uncontroverted record" supporting a subsidy in distribution rates of $3.5 million,[3] IGS disingenuously extrapolates from points made in the Company's initial testimony (that were strongly contested by multiple parties including IGS) and cite cross examination of Staff and OCC witnesses on a related but distinct topic.[4] IGS ultimately alleges in this regard that the Commission violated R.C. 4903.09 in rejecting the subsidy finding.[5] Contrary to IGS's disgruntled perspective on the matter, however, the Opinion and Order objectively set forth multiple bases upon which to support the finding.

As a threshold matter, IGS's reliance (AFR at 11) on AEP Ohio witness Roush's original attempt to quantify costs associated with offering the SSO product is misplaced. While Mr. Roush generally affirmed his original analysis as being a reasonable attempt to evaluate the unbundling issue, the Company did not offer Mr. Roush's Application testimony in support of the Stipulation. And Mr. Roush testified that his original view was reflected in the Application but that all the other parties disagreed.[6] While the Company complied with the Commission's directive to try and quantify costs associated with offering the SSO product, Staff and other parties pointed out shortcomings in the analysis because separating indirect, back office costs between SSO and CRES customers is not feasible. Those parties ultimately concluded that the attempted analysis did not satisfy the standard of proof set forth in prior Commission orders on this point. Without offering suggestions on how to improve the original analysis, IGS and Direct

[3] Mr. Roush's original analysis suggested a net quantified cost of $3.5 million, after deducting $1.2 million of quantified costs associated with facilitating customer choice (or "open access"). *See* AEP Ohio Ex. 4A.
[4] IGS AFR at 12-13.
[5] *Id*. at 10-13.
[6] Tr. I at 50.

unequivocally disagreed with Mr. Roush and, among other things, criticized the analysis as "anything but thorough," "woefully inadequate," "not the right answer," "not the right way to do it" and "improper."[7] Put simply, the Company complied with the Commission's directive in good faith, but Staff and the Signatory Parties ultimately persuaded the Company that the analysis was not sufficient to justify populating the placeholder riders with costs. The Company is not required to maintain a position advanced in its filing and the whole premise of a Stipulation is compromise and common ground; more to the point, the Commission certainly is not bound by a single piece of strongly-contested evidence in reaching its decision.

Therefore, it would be procedurally improper for the Commission to make a critical factual finding that relies upon Mr. Roush's initial Application testimony (as IGS asks the Commission to do on rehearing) that was not offered into evidence, not to mention creating a chilling effect for settlement and negotiation through the employment of such tactics. As a related matter, it is unfair to use the Application testimony against the Company or the Signatory Parties as proving a key factual matter in this case just because Mr. Roush discharged the Company's mandatory obligation from *ESP IV*[8] to do an SSO unbundling analysis. Staff and all of the intervenors rejected Roush's analysis through their litigation positions. Further, IGS/Direct witness Lacey flatly rejected Mr. Roush's position.[9] Moreover, Mr. Roush did not even sponsor the position as his testimony in this proceeding.

Because IGS now shamelessly relies on the very same analysis as a critical part of their litigation position (after repeatedly and emphatically rejecting it), the Commission should reject

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[7] Direct Br. at 12; Tr. V at 1098-1100; IGS Br. at 8.
[8] *In the Matter of the Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, *et al.*
[9] Tr. V at 1098-1100.

the bait-and-switch tactic as disingenuous gamesmanship that is lacking in credibility. Moreover, as further discussed below, the Commission has said all along that the customer choice costs must be evaluated as an integral part of the SSO unbundling exercise. Any claim of an undisputed micro-subsidy of $3.5 million by IGS/Direct is significantly overstated at best and incomplete at worst.

In any case, the "no basis" finding in ¶ 184 of the Opinion and Order that the record evidence did not meet the standard of proof established in the *ESP IV Cases* is justified because the unbundling analysis in Mr. Roush's Application testimony does not support a definitive conclusion or basis for a finding of subsidy by the Commission for two related reasons: (1) prior rulings of the Commission have made it clear that a robust netting of costs associated with offering the SSO product and open access product is required before any final conclusions can be reached, and (2) Mr. Roush encountered difficulty quantifying several categories of cost and could not reach a definitive level of cost for either the SSO product or open access product functions.[10] A prime example of this point is costs associated with the AEP Ohio Call Center. As Company witness Roush explained, AEP Ohio did not differentiate between call center-related expenses associated with the SSO product and open access product because there is no basis to do so.[11] Calls are not tracked based on Choice or Non-Choice, and it would be difficult to categorize calls in that manner.[12] When a "customer calls about a bill, * * * whether it's a CRES bill or an SSO bill, they are calling about the bill."[13] Moreover, the Company does not maintain call center records based upon a customer's shopping status.[14]

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[10] Tr. I at 34-36.
[11] *Id.* at 45-46.
[12] *Id.* at 46-47.
[13] *Id.* at 47.
[14] *Id.*

The same circumstance exists with respect to other back office business functions that could be characterized as indirectly supporting the SSO product. There is no factual basis to conclude that separation of business activities, separate accounting, cost tracking or separation of any kind has been implemented by the Company relative to overhead and common costs associated with offering the SSO product to customers. And the Commission has never imposed such a requirement in the context of any SSO, corporate separation or rate proceeding directive. Indeed, the Staff Report found that "the Company did not examine all cost causation factors" but Staff "maintains that SSO is a default service, available to all customers and required by electric distribution companies to provide."[15] Thus, there is no factual basis to support IGS's position on rehearing that there is an "uncontroverted" subsidy in this case. The record simply does not support a showing that meets the Commission's established standard of proof for establishing an SSO adder.

Contrary to IGS's claim that the Commission did not adequately explain its "no basis" finding, the Opinion and Order explicitly cited and explained in detail that IGS simply failed to address (let alone meet) the standard of proof previously established for the SSOCR as part of ¶ 184:

> We find, however, that Mr. Lacey's recommendation should not be adopted, as the witness did not comply with the Commission's directive in the *ESP 4 Case*, which required an analysis of known, quantifiable costs that are collected from customers through distribution rates and that are clearly incurred by AEP Ohio to support the SSO, as well as costs reflected in distribution rates that are distinctly ascribed to the customer choice program. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶¶ 214-215. Despite this directive, Mr. Lacey opined, from a purported business and policy perspective, that it does not "make sense to reduce the allocation of costs to [the] SSO because costs are incurred to run the choice program" (IGS/Direct Ex. 2 at 44). Mr. Lacey, therefore, admitted that he made no attempt to factor choice program costs into his recommendation as to the RRR and SSOCR. In the absence of a complete analysis that fully encapsulates costs

[15] Staff Ex. 1 at 31.

> clearly and directly attributed to the SSO and to the customer choice program, there is no record support for the respective claims of IGS and Direct Energy that the Stipulation runs afoul of R.C. 4928.02(H), R.C. 4928.03, R.C. 4928.17, any other statutory provision, or any important regulatory principle or practice.[16]

Thus, IGS's own witness knowingly and stubbornly refused to even attempt to address the previously established standard of proof. As IGS is well aware, the Commission also noted that it had previously "reached the same conclusion in addressing similar proposals offered by IGS and other intervenors in recent cases involving Duke Energy Ohio, Inc. and The Dayton Power and Light Company. *In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) at ¶ 231, Second Entry on Rehearing (June 27, 2019) at ¶ 32; *In re The Dayton Power & Light Co.*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at ¶ 28."[17] IGS was involved in each of those proceedings and fully understands the Commission's consistent findings across the cases.

Thus, having been repeatedly and explicitly informed of the proper way to meet the Commission's standard of proof, IGS could certainly have avoided the "no basis" finding through its own action – but instead chose to ignore the Commission's pre-established standard of proof and narrowly address the issues it wanted to address. This hardly constitutes legal error on the Commission's part and the reality is that IGS refused to address the factors previously established by the Commission and now simply disagrees with the Commission's resulting finding, which is not a valid basis for rehearing. Thus, the Commission was fully justified in finding "no basis" existed to support a subsidy when IGS acknowledged but stubbornly decided not to complete the required analysis or present evidence to meet the established standard.

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[16] Opinion and Order at ¶ 184 (footnote omitted).
[17] *Id*.

In sum, IGS's attempts to rely on an undisputed subsidy (that only relates to part of the required analysis) to make its case is misguided and flawed. As the Commission found in ¶¶ 183-186 of the Opinion and Order, it is simply not known what conclusion the full netting analysis would yield. Of course, a fully completed netting analysis could yield a total offset or a net adder for shopping customers, which would negate any subsidy conclusion. Hence, there is "no basis" to support the subsidy exists that supports a non-zero value in the SSOCR and RRR. Regardless, maintaining the riders at zero does not mean it will always stay there if future cases prove the necessary factual predicate for resetting the riders. If IGS/Direct or another interested party proves a subsidy in the future, perhaps rates can be adjusted or re-designed – as the Commission pointed out in ¶ 185 of the Opinion and Order. Alternatively, the Commission could further examine this issue in a generic or industry proceeding – since this is not an AEP Ohio-specific issue and necessarily involves a discussion of statewide policy issues.

With regard to the R.C. 4903.09 portion of IGS's argument, the Supreme Court of Ohio has held that, as long as there is a basic rationale and record supporting the Order, no violation of §4903.09, Ohio Rev. Code, exists.[18] The "no basis" finding easily satisfies the R.C. 4903.09 standard of providing a record-based explanation for its decision. Specifically, the Opinion and Order affirmatively explained its finding was based on precedent and the evidentiary record that:

- The placeholder value for the riders is supported by the testimony of AEP Ohio witness Roush, Staff witness Smith and OCC witness Willis.[19]
- Consistent with its prior orders, it is not counter to state policy to maintain the RRR and SSOCR as placeholder riders set at zero.[20]

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[18] *Indus. Energy Users-Ohio v. Pub. Util. Comm., 117 Ohio St. 3d 486, 493 (Ohio 2008 990 ¶ 30)* quoting *MCI Telecommunications Corp. v. Pub. Util. Comm*. (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337; *Tongren v. Pub. Util. Comm*. (1999), 85 Ohio St. 3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St. 3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372.
[19] Opinion and Order at ¶ 183 (citing Co. Ex. 4 at 3-4; Staff Ex. 3 at 6-11; OCC Ex. 1 at 9-10; Staff Ex. 1 at 31; Joint Ex. 1 at 9).
[20] *Id.* (citing *ESP 4 Case*, Second Entry on Rehearing (Aug. 1, 2018) at ¶ 89).

- IGS's witness made no attempt to comprehensively address the previously established standard of proof because he thought it "does not make sense" to offset SSO cost allocation with choice program costs.[21]

- While the Company fulfilled its obligation to present an analysis of the SSO cost allocation, Staff witness Smith explained the flaws in the Company's analysis most notably being a lack of granular cost of service information in the Company's internal systems that precludes an accurate and verifiable accounting.[22]

- The Commission clarified that its finding does not prevent the parties from attempting to make a more definitive showing in the future that meets the established standard of proof.[23]

There can be no question that the Opinion and Order more than satisfies R.C. 4903.09's requirement for a basic rationale and record supporting its "no basis" finding.

2. It was reasonable and lawful for the Commission to reject the flawed analysis of IGS/Direct witness Lacey and R.C. 4903.09 does not require an exhaustive explanation of cumulative reasons why the testimony should be rejected.

IGS next complains that the Commission, after rejecting the analysis of IGS/Direct witness Lacey as incomplete, did not proceed to further evaluate or critique the merits of the testimony.[24] IGS goes on to assert that "[t]he 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/Direct witness, Mr. Lacey, identified direct and indirect costs to be assigned and allocated for recovery through the Retail Reconciliation Rider."[25] As AEP Ohio fully demonstrated through its post-hearing briefs, IGS/Direct witness Lacey's analysis should not be relied upon because it is riddled with errors and flaws.[26] Legally, it was sufficient for the Commission to give one

[21] *Id*. at ¶ 184 (citing IGS/Direct Ex. 2 at 44).
[22] *Id*. at ¶ 185 (citing Staff Ex. 3 at 6, 10; Staff Ex. 1 at 31).
[23] *Id*. at ¶ 186.
[24] IGS AFR at 13-14.
[25] *Id*. at 14.
[26] AEP Ohio Initial Br. at 27-44; AEP Ohio Reply Br. at 18-40.

dispositive reason why Lacey's $64 million recommendation "should not be adopted" (*i.e.*, that the analysis was not "complete" since it failed to address the required standard of proof).[27] But to the extent the Commission needs to further explain its rejection of witness Lacey's analysis to ensure compliance with R.C. 4903.09, it has abundant record-based material upon which to expand its rationale on rehearing for rejecting witness Lacey's analysis.

At the heart of Mr. Lacey's cost analysis in Lacey Appendix 1 are the factors he uses to allocate common costs to the SSO. Specifically, he uses three allocation factors in combination to allocate the pool of costs he claims are common to distribution and SSO services: the revenue allocator (R allocator), the customer allocator (C allocator) and the actual allocator (A allocator).[28] All of the allocators are based on unproven cost relationship assumptions that do not relate to direct costs and are otherwise flawed. When these flaws are combined with the misguided assumption that the Company operates a separate "SSO business" and the fact that there are costs associated with AEP Ohio's legal obligations to provide both SSO service and open access service through promoting customer choice operations, the entire analysis in Lacey Appendix 1 is unreliable and unusable.

Regarding the R allocator (generation revenue), Mr. Lacey acknowledged that general plant such as a distribution center buildings are included – even though he understands that such buildings are used for the "pure distribution business" and do not support the SSO.[29] Further, regarding the numerator for the R allocator (SSO revenue), Mr. Lacey admitted on cross examination that SSO revenue can be volatile and cause the allocated cost level to fluctuate

[27] Opinion and Order at ¶ 184.
[28] Tr. V at 1131-1132.
[29] *Id.* at 1133-1134.

significantly – even though the underlying costs don't necessarily change.[30] For example, Exhibit FPL-8 shows that the R allocator (if calculated annually instead of over the entire 2 ½ year period) would have varied by 50%.[31] And because most of the direct costs are pass through costs associated with the SSO auctions (generation revenues used to create the R allocator), it makes no sense to allocate the "generation revenue" proportion of common costs to the SSO. In short, the R allocator should not be used because it is arbitrary and reflects no relationship whatsoever between general plant and SSO service.

Similarly, regarding the C allocator, Mr. Lacey assigned over 20% of his $64 million position based on the cost of employee salaries (Account 920).[32] Through this assumption, Mr. Lacey assumes that everyone from the CEO to the line worker spends a significant amount of time on the SSO – separate and apart from anything related to the distribution service. Upon cross examination, he admitted that he has no direct evidence to support that assumption.[33] And as discussed below, Mr. Lacey was not even aware of the direct costs associated with the SSO being recovered through the Auction Cost Reconciliation Rider (ACRR).[34]

Finally, regarding the A allocator, he admitted that it should really be considered a direct cost assignment – even though he had emphatically cautioned against confusing the two concepts.[35] More to the point, Mr. Lacey assigned 100% of the advertisement costs in Account 930 to the SSO – but failed to examine any specific ads or line item costs, even though a three-

[30] *Id.* at 1134-1135.
[31] IGS/Direct Ex. 2 at FPL-8 (33% allocator using 2018 data and 22% using 2020 data).
[32] Tr. V at 1139.
[33] *Id.* at 1140.
[34] *Id*. at 1092-94.
[35] *Id*. at 1140, 1097.

month sample of actual ads and costs were included in Part 15 of the Company's Application per the standard filing requirements.[36]

Instead of reviewing any of the test year advertising (with actual costs) presented as part of the Application in this case, Mr. Lacey simply *assumed* across the board that AEP Ohio was solely trying to attract SSO customers through all of its advertising, as he asserted during cross examination:

> Well, you're seeking to attract customers, I would assume. You don't need to attract distribution customers because you own a monopoly on that service. So the other service that you would attract with this ad is SSO. So to the extent it's meant to attract customers, which is what most ads do, then it's an SSO ad because it doesn't mention distribution and there is no need to advertise for distribution services.

Id. at 1144-45. Thus, his entire allocation is based on a baseless assumption. As is evident from an examination of AEP Ohio Ex. 1 (Part 15), none of the ads refer to the SSO and all refer to safety, reliability/outage communications, community philanthropy, customer blog posts and newsletters regarding smart grid, billing and other general issues, and customer relationship/Company image messages (all of which relate to distribution service and none of which relate to the SSO).

Nonetheless, Mr. Lacey tried to defend this *post facto* position by explaining that his definition of advertising related to the SSO is any advertising that doesn't mention distribution service.[37] Even that extemporaneous attempt to justify his 100% "allocation" (aka direct assignment) is, however, obviously flawed because: (1) Mr. Lacey admitted that he did not review the test year advertising and costs presented in the Application and he saw it for the first

[36] *Id*. at 1141-1143.
[37] *Id*. at 1145-46.

time on the stand; and (2) none of the advertising mentions or refers to the SSO.[38] Of course, it is baseless and completely illogical to claim that advertisement is designed to promote something that is not mentioned or referenced at all. In sum, none of the allocators used in Lacey Appendix 1's unbundling analysis bear any logical or actual relationship to the SSO incurring common costs – rendering the analysis unreliable and useless. Again, to the extent the Commission needs to further explain the flaws in IGS/Direct witness Lacey's testimony as a means of satisfying R.C. 4903.09, there is abundant material and explanation in the record to do so.

Finally, as part of its rehearing claim that the Commission improperly rejected witness Lacey's analysis, IGS also reargues the point that witness Lacey's analysis was correct in ignoring consideration of choice costs because "they are not properly offset against the costs that should be recovered through the Retail Reconciliation Rider."[39] In support of this assertion, IGS argues that AEP Ohio is the sole provider of choice services while SSO services are competitive.[40] Of course, this position merely begs the question of what costs are properly allocable to the SSO and also amounts to an untimely challenge to the Commission's prior rulings on this point in the *ESP IV Cases*. These points are also related to IGS's next rehearing argument that is further addressed below.[41]

In sum, IGS's rehearing argument in this regard improperly attempts to force the Commission to take the fundamentally flawed testimony of IGS/Direct witness Lacey more seriously, second-guesses the Commission's judgment as arbiter of facts and evidence, and to reweigh the evidence in a way that the Commission already rejected. Of course, disagreeing

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[38] *Id*. at 1141-42, 114; AEP Ohio Ex. 1 (Part 15).
[39] IGS AFR at 15.
[40] *Id*.
[41] See Section II.A.3, *infra*.

with a Commission decision is not a proper basis for rehearing. As such, this rehearing argument should also be rejected.

3. IGS fails to establish the existence of an unlawful subsidy of a competitive product or service in AEP Ohio's distribution rates.

IGS next complains that the Opinion and Order allows AEP Ohio to recover costs that the Company incurs to supply a competitive product or service in distribution rates in violation of R.C. 4909.15, 4928.02, and 4928.05.[42] IGS initially glosses over – but seems to acknowledge – the significant problem (pointed out by Staff and AEP Ohio) that its approach would simply end up raising rates for both shopping and non-shopping customers.[43] But rather than setting forth its argument in detail and specificity as required by R.C. 4903.10, IGS supports its argument by attempting to incorporate by reference[44] the full explanation made through its Initial Brief; that short-cut approach is procedurally suspect.

The Supreme Court has repeatedly held that when an appellant's grounds for rehearing fail to specifically explain each claim that the Commission's order was unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360 (2007). *See also Marion v. Pub. Util. Comm.*, 161 Ohio St. 276, 278–279 (1954); *Cincinnati v. Pub. Util. Comm.*, 151 Ohio St. 353, 378 (1949); *Conneaut Tel. Co. v. Pub. Util. Comm.*, 10 Ohio St.2d 269, 270 (1967). Further, the Court has strictly construed the specificity test set forth in R.C. 4903.10. *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d at 248 (1994). By using the language set forth in R.C. 4903.10, "the General Assembly indicated clearly its intention to deny the right to raise a question on appeal

[42] IGS AFR at 15-18.
[43] *Id*. at 15.
[44] IGS AFR at 17

where the appellant's application for rehearing used a shotgun instead of a rifle to hit that question." *Id.*, quoting *Cincinnati v. Pub. Util. Comm.*, 151 Ohio St. at 378 (1984). IGS's attempt to incorporate by reference fails the specificity test for R.C. 4903.10 and the Commission should only consider the points directly included in IGS's Application for Rehearing.

In any case, IGS asserts without citation that the Commission has an independent duty "to 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."[45] IGS goes on to mischaracterize the Staff and Company position as improperly "relabeling" generation costs as distribution costs.[46] It then attacks the Opinion and Order as accepting an unlawful authorization to permit AEP Ohio to collect non-distribution costs through distribution rates.[47] As the Company previously demonstrated on brief, these IGS positions are misguided and conflict with the record evidence. In order to soundly dispel IGS's claim under R.C. 4903.09, the Commission can further explain on rehearing all of the reasons for concluding that the subsidy claim is flawed and lacks merit.

For example, IGS is wrong in claiming that the Opinion and Order accepted the premise that the underlying costs are not distribution costs. IGS provides no citation for that claim and there is no basis in the Opinion and Order to back it up. In reality, the Opinion and Order categorically found as follows:

> In the absence of a complete analysis that fully encapsulates costs clearly and directly attributed to the SSO and to the customer choice program, there is no record support for the respective claims of IGS and Direct Energy that the

[45] IGS AFR at 17.
[46] *Id*. at 15-16.
[47] *Id*. at 16.

> Stipulation runs afoul of R.C. 4928.02(H), R.C. 4928.03, R.C. 4928.17, any other statutory provision, or any important regulatory principle or practice.[48]

Thus, the Commission simply rejected IGS's claim that an unlawful subsidy exists because (as discussed in Section II.A.1, supra) IGS failed to address the proper standard of review.

Regardless, AEP Ohio does agree with IGS that the outcome of IGS's claim under R.C. 4928.02(H) should not turn on labeling or terminology wordplay. The issue does not get resolved by whether one labels the functions underlying the costs as "distribution costs" or simply "costs that must be incurred by an electric distribution utility." The more important substantive matter is that the functions being discharged are imposed on an electric distribution utility as a matter of law and benefit all customers.

Consistent with the Staff Report, Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there's an equal amount of CRES costs and there's no reason to differentiate the two.[49] Stated differently, Staff witness Smith explained:

> An electric distribution utility in Ohio as part of its distribution function must both interact and transact with transmission and generation providers whether as CRES or as providers of last resort. The costs associated with employees in the companies call center, the servers in the IT billing department, and other incidental equipment and expenses used by the Companies personnel are not generation related. These are distribution facilities and employees required of a distribution company to facilitate both a CRES market and a provider of last resort. These are costs to the distribution company regardless of the generation provider. Staff believes that the identified CRES costs are distribution costs required of the Company to interact, transact, and function as an electric distribution utility with a competitive generation market. The Company is required to operate and function as a distribution company with a competitive generation market which means that the Company will have expenses and capital that is solely for the purpose of interacting with CRES providers and their customers.

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[48] Opinion and Order at ¶ 184.
[49] Tr. II at 366-367.

Staff Ex. 3 at 7; *see also id*. at 9 ("Electric distribution utilities are required to provide SSO service or default service as electric distribution utilities. No other entity provides default service. The distribution utilities cost and unwanted risk to provide SSO service is a distribution function in Ohio and should be socialized within base rates."). Similarly, AEP Ohio witness Roush explained that:

> Staff and a number of intervenors did not concur with the Company's [non-zero analysis and] proposal and Staff maintained in its report that "SSO is a default service, available to all customers and required by the electric distribution companies to provide" (Report at 31). One conceptual underpinning of that position is that SSO service is available to all customers and SSO-related costs should be viewed as universal. The Stipulation's continuation of the Riders at zero is reasonable.[50]

As a related matter, Staff witness Smith explained in his testimony why Staff believes that unbundling costs of Open Access Service (also referred to by Staff as CRES functionality or CRES costs) under current circumstances would actually be contrary to policy and past practice:

> Staff believes that distribution customers whether shopping or on default service receive similar if not identical service from their electric distribution utility. Likewise, Staff believes that distribution customers whether shopping or on default service should pay similar if not identical costs for their distribution service. To only apply cost causation to CRES related functionality is not supported by Staff's experiences with customer choice. The CRES costs identified by the Company were for interactions and functionality not caused by CRES customers but to improve efficiency and functionality of the electric distribution utility regarding CRES providers to further the Ohio competitive market. The Company has since the beginning of the competitive market needed to invest in processes, people, and plant to create the functionality to operate in a competitive generation market. These investments were socialized in rates amongst both shopping and non-shopping customers. Staff believes to now add costs to customers without any clear service differentiation because the Company is furthering State policy is contrary to past regulatory practices.[51]

[50] AEP Ohio Ex. 4 at 3-4.
[51] Staff Ex. 3 at 7-8.

As he further explained on cross examination, even though in theory IT, physical plant, legal, accounting and regulatory costs relating to the SSO are possible costs embedded in distribution rates,[52] Staff's policy position is that indirect costs associated with both the SSO obligation and the CRES functionalization should be socialized because all customers benefit from both, there's an equal amount of CRES costs and there's no reason to differentiate the two.[53] Of course, the Commission itself has previously reached the same conclusion in addressing similar proposals offered by IGS and other intervenors in recent cases involving Duke Energy Ohio, Inc. and The Dayton Power and Light Company.[54]

Ironically, IGS/Direct witness Lacey advances an identical argument to support the notion that open access service costs should remain in distribution rates, in response to Mr. Roush's analysis in Ex. DMR-2 that netted certain choice costs:

> This is an incorrect analysis as the choice-related costs benefit all customers, not just those who choose an alternative supplier. As discussed in more detail below, these are not competitive costs. The costs relate to service that only AEP can provide and they benefit all customers. As such, they should be classified as regulated distribution service costs.[55]

Indeed, Mr. Lacey admitted during cross examination that he did not analyze discrete costs associated with shopping customers and did not allocate any costs to shopping customers, because those costs are costs of operating a market that should be borne by all customers.[56]

Of course, this same description fits SSO costs. And Mr. Lacey acknowledged during cross examination that the utility must offer the SSO to any customer in its service territory; that

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[52] Tr. II at 347-348, 370
[53] *Id*. at 366-367.
[54] *In re Duke Energy Ohio, Inc*., Case No. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) at ¶ 231, Second Entry on Rehearing (June 27, 2019) at ¶ 32; *In re The Dayton Power & Light Co*., Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at ¶ 28.
[55] IGS/Direct Ex. 2 at 8; *see also id*. at 43 ("the clear answer is to charge all customers for the costs of the choice program, for all customers benefit from the choice program").
[56] Tr. V at 1042-1043.

the utility must serve customers that default from a CRES supplier or otherwise return to the SSO by choice; and that the SSO benefits both shopping and non-shopping customers.[57] Yet, Mr. Lacey stubbornly and illogically maintains that customer choice activities are a distribution function, while the SSO is not a distribution function.[58] And he acknowledged that under his proposal, a shopping customer would always get a net credit and an SSO customer would always pay a charge.[59] He also agreed that his volumetric rate design would mean that residential customers bear four times as much of the costs being allocated than non-residential customers.[60]

By contrast, the Staff Report and Stipulation positions – that neither SSO nor open access costs need to be unbundled at this time – make more sense than Mr. Lacey's conflicting and lopsided views. Shopping and non-shopping customers are not a static group. On the contrary, Mr. Lacey agreed that due to migration "today's shopping customer might be tomorrow's SSO customer and vice versa."[61] Mr. Lacey also acknowledged that both shopping and non-shopping residential customers are in the residential customer class.[62] In this same vein, it is evident that there is no separate customer class or distinct set of beneficiaries or users of SSO or open access service.

Moreover, IGS's position ignores important undisputed facts that completely undermine its claim of an anti-competitive subsidy that exists in the Company's distribution rates. AEP Ohio does not provide any capacity or energy used to supply the SSO product and none of the resulting SSO product revenue goes to AEP Ohio or its affiliate, there cannot be an anti-

[57] *Id.* at 1087-1088.
[58] *Id.* at 1090.
[59] *Id.* at 1058-1059.
[60] *Id.* at 1069-1070.
[61] *Id.* at 1088.
[62] *Id.* at 1089.

competitive subsidy in violation of R.C. 4928.02(H) or nondiscriminatory service under R.C. 4928.03 (or an undue preference or advantage conveyed to AEP Ohio or any affiliate in violation of R.C. 4928.17). AEP Ohio does not directly supply the SSO product to customers; it merely procures it externally, in accordance with competitive bidding procedures established in *ESP IV*. The SSO auction process is run by an independent auction manager, whose costs (along with the labor costs for AEP Ohio's employee who oversees the process) are billed through the bypassable ACRR. And AEP Ohio *does not keep a single dollar* of the SSO revenue received; it all gets passed through to the auction suppliers. Thus, it is literally not possible that the procurement of the SSO product involves an anti-competitive subsidy or an undue preference or advantage to AEP Ohio or its affiliates.

As a related matter, the nature of the SSO obligation being strictly on the EDU is a related point that undermines the idea of being discriminatory or creating an anti-competitive subsidy or undue advantage. IGS/Direct witness Mr. Lacey acknowledged during cross examination that the utility must offer the SSO product to any customer in its service territory; that the utility must serve customers that default from a CRES supplier or otherwise return to the SSO product by choice; and that the SSO product benefits both shopping and non-shopping customers.[63] Yet, Mr. Lacey illogically maintains that customer choice activities are a distribution function, while the SSO is not a distribution function.[64]

In any case, the Commission and the Supreme Court of Ohio have recognized the unique status of the EDU-specific obligations, including the SSO and Provider of Last Resort obligations, in permitting non-bypassable recovery of costs indirectly related to competitive

[63] *Id.* at 1087-1088.
[64] *Id.* at 1090.

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

The discrimination claim under R.C. 4928.03 also suffers from another major defect: shopping and non-shopping customers are not a static group, so there cannot be a subsidy among services or classes. On the contrary, Mr. Lacey agreed that due to migration "today's shopping customer might be tomorrow's SSO customer and vice versa."[65] Mr. Lacey also acknowledged that both shopping and non-shopping residential customers are in the residential customer class.

[65] *Id*. at 1088.

(*Id.* at 1089.) Thus, it is evident that there is no separate customer class or distinct set of beneficiaries or users of SSO or open access service.

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

Further, given that the law requires an EDU and not an affiliate or separate entity to procure the SSO product, the anticompetitive subsidy statute only encompasses actual or direct costs as generation costs. Stated differently, a "generation-related cost" under R.C. 4928.02(H)

does not include allocated cost, especially overhead distribution costs (like here) that have not been proven to be specifically related to the SSO product. Moreover, since customer choice functions fall into the same category and description with costs that should be similarly treated, this outcome also is fair and just. Until those issues are fully developed and analyzed, it is premature to establish a non-zero value for the RRR and SSOCR.

In reality, the allocation of costs and design of the SSO rates is more akin to a discretionary rate design issue, not a mandatory legal requirement. The Supreme Court has frequently acknowledged that decisions about how rates are designed—including which customers pay and under what circumstances—are matters within the Commission's discretion. *Green Cove Resort Owners' Ass'n. v. Pub. Util. Comm*., 103 Ohio St.3d 125, 2004-Ohio-4774, 814 N.E.2d 829, ¶ 1 (recognizing the Commission's "unique rate-design expertise"); *Citywide Coalition for Util. Reform v. Pub. Util. Comm*., 67 Ohio St.3d 531, 533, 620 N.E.2d 832 (1993) (affording the Commission "considerable discretion" in matters of rate design); *see also Consumers' Counsel*, 32 Ohio St.3d at 268 (ratemaking involves extensive hearings, voluminous testimony, and technical questions which must be resolved on the basis of complex and often disputed evidence; the Court's function is not to weigh the evidence or choose between debatable rate structures). Just like rate design debates, Mr. Lacey enthusiastically asserted that allocation of costs "is definitely an art" when asked about whether there was more than one way to do the SSO cost study.[66]

In sum, while IGS disagrees with the Commission's record-based conclusions and exercise of its discretion in ratemaking matters in this case, IGS fails to establish the existence of an unlawful subsidy.

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[66] Tr. V at 1098.

4. Through recycling the same arguments and misapplying a recent decision of the Supreme Court, *In re Suvon*, 2021-Ohio-3630 (Ohio Sup. Ct. Oct. 14, 2021), IGS again fails to establish the Opinion and Order violates R.C. 4903.09.

Finally regarding the SSO adder charge, IGS recycles the same flawed reasoning and claims to argue that a recent decision of the Supreme Court of Ohio, *In re Suvon*, 2021-Ohio-3630 (Ohio Sup. Ct. Oct. 14, 2021), requires the Commission to reverse itself on rehearing.[67] IGS generally claims in this regard that the Opinion and Order presents "a variation on a theme that the Ohio Supreme Court has already rejected" – being to (1) summarily rely on a Staff Report without evaluating the objections in detail and making "independent findings" as part of the decision, and (2) deferring issues for another proceeding that were required by statute to be made in this case.[68] These claims and the analogy to *Suvon* are inapt. IGS's argument on these points recycles the same underlying points and amounts to improperly second-guessing the Staff and the Commission.

An initial flaw in this analogy is the notion that the Commission "must decide" all aspects of IGS's claims in this proceeding in order to satisfy legal requirements and it is not permitted to defer the issues to a future proceeding.[69] Unlike the issues presented in the *Suvon* case, where the Commission was explicitly required by law to confirm Suvon's managerial, financial and technical qualifications prior to certifying Suvon as a competitive retail provider, full and final disposition of IGS's arguments here is simply not required for a disposition of the case under R.C. 4909.18.[70] Here, the Commission was not required to make findings on each argument and claim presented by IGS as a matter of law in this case. On the contrary, as IGS

[67] IGS AFR at 18-24.
[68] *Id.* at 18-19.
[69] IGS AFR at 22.
[70] *In re Suvon*, 2021-Ohio-3630 at ¶ 23.

acknowledges elsewhere, however, the Commission is merely required to find that rates in this proceeding are just and reasonable.[71] The reference in ¶ 186 of the Opinion and Order to IGS being able to raise and prove its factual claim in a future proceeding was just a clarification that the decision here was based on the record evidence and does not preclude a different finding in the future based on a different record. It was not – as IGS's Application for Rehearing wrongly suggests (at 22-23) – a decision to kick the justness and reasonableness of AEP Ohio's distribution rates to another proceeding.

IGS's misplaced reliance on *Suvon* should also be rejected because it otherwise bootstraps the flawed premises already separately discussed[72] that known and quantifiable generation costs are being recovered in distribution rates. Similarly, IGS argues that 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."[73] Of course, that claim merely begs the question of whether AEP Ohio's distribution rates reflect generation costs – which is not the case as also fully addressed above.[74] Finally in this regard, IGS redundantly claims[75] that the Opinion and Order summarily relied "on the Staff's characterization that these costs are distribution related or should be socialized" which is also discussed above.[76]

In sum, while IGS misapplies the *Suvon* decision and the Opinion and Order discharged the Commission's obligation under R.C. 4903.09, the Commission does have an opportunity on

[71] IGS AFR at 23.
[72] *See* Section II.A.1, *supra*.
[73] IGS AFR at 23 (citations omitted).
[74] *See* Section II.A.3, *supra*.
[75] IGS AFR at 23.
[76] *See* Section II.A.3, *supra*.

rehearing to further explain and document the rationale supporting its decision – and there is an abundant record basis for that additional explanation as already discussed above.

B. Continuation of the Company's Switching Fee does not Violate any Important Regulatory Principles or Practices and the Opinion and Order Complies with R.C. 4903.09 in this Regard.

In its Application for Rehearing, IGS challenges the Company's long-standing switching fee assessed when a customer moves its service to a competitive supplier as unlawful and unreasonable.[77] IGS maintains that there is no record evidence of any cost and such action is essentially a discriminatory penalty to competitive suppliers.[78] Finally, IGS claims that the Commission's decision in this proceeding to allow the switching fee to remain in the Company's tariff is a conclusion unsupported by the record and one that contravenes the Commission's obligation to explain its rationale as required by R.C. 4903.09.[79]

As made clear by the Company, the Application did not propose to amend or discontinue nor did the Stipulation mention the switching fee being opposed by IGS.[80] The switching fee being contested by IGS in this instance was previously approved by this Commission and has long been a fixture of the Company's rates and currently resides in the Company's tariff.[81] Although the Stipulation contains no modification to the switching fee, IGS still pleads for the Commission to "order Ohio Power to amend its tariff to remove" the existing switching fee.[82]

In response, the Company spent a significant amount of effort in its Reply Brief referencing and detailing numerous prior case decisions where either IGS or its brethren

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[77] IGS AFR at 24-29.
[78] *Id*. at 24.
[79] *Id*.
[80] AEP Reply Brief at 52.
[81] PUCO No. 20, 6th Revised Sheet No. 103-22, § 27; 3rd Revised Sheet No. 103-27, § 31.4; 6th Revised Sheet No. 103-23D, § 27; 6th Revised Sheet No. 103-28D, § 32.4.
[82] IGS AFR at 29.

competitive suppliers made identical or materially similar arguments requesting that then current switching fees already in existing tariffs be modified or removed due to a failure of the Staff or the Commission to require or otherwise consider certain cost details or seek information regarding updating those existing fees.[83] As described by the Company, in each of the proceedings referenced, this Commission held that then current-tariffed switching fees that were a result of a prior fully adjudicated proceeding and not modified cannot otherwise be relitigated in the later proceeding.[84]

IGS originally argued that assessing a switching fee to a competitive supplier but not to a customer who defaults to the Company's Standard Service Offer is discriminatory and constitutes a violation of R.C. 4905.35.[85] IGS maintains that any switch from a competitive supplier to the Company or vice versa is essentially a mirror transaction containing an identical elective trigger with the same process and costs.[86] Following its review of the various parties' arguments and the record in this case, the Commission rationally determined that the switching fee should remain in place and stand unaltered.[87] Dissatisfied with the reasoned determination of the Commission, IGS now maintains that the Commission's ruling to allow the switching fee to stand was made in error, devoid of any factual support in the record and without the exercise of necessary independent judgment required of the Commission by R.C. 4903.09.[88]

As previously referenced herein, the Supreme Court of Ohio has made it clear that the requirements of R.C. 4903.09 will be satisfied if there is a basic rationale and record supporting

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[83] AEP Ohio Reply Br. at 52-54.
[84] *Id.*
[85] IGS Br. at 33-34.
[86] IGS AFR at 24-25.
[87] Opinion and Order ¶ 190.
[88] IGS AFR at 24.

the Order.[89] In rendering its determination regarding switching fees here, the Commission references the fact that it had reviewed the record regarding the process necessary for and costs of switching fees both to and from a CRES participant.[90] Specifically, the Commission reviewed and accepted the testimony of Staff witness Smith that determined the switch in service from a SSO to a CRES provider is not comparable in process or cost to a switch in service from a CRES provider to the SSO.[91]

Although intervenors dismiss Staff's opinion that the process and cost of switching to and from CRES providers are not comparable and ignore Staff witness Smith's cogent explanation supporting that opinion,[92] the simple fact is that often the two scenarios do not involve the same circumstances and conditions. As Mr. Smith explained at hearing, when a customer switches to or between CRES providers, that customer makes an affirmative choice to do so. When a customer switches to the SSO, whether as a result of a CRES provider's contract termination, default, or otherwise, the customer often has no choice in the matter.[93] Customers are often defaulted to the SSO.[94] The Company's Commission-approved practice of not charging a switching fee to a customer when the customer has not affirmatively chosen to switch also is consistent with the Commission's aggregation rules.[95] Customers participating in a governmental aggregation, like customers returned from CRES service to the SSO, are often switched by inaction by the customer.[96] Customers switched to or from the SSO without an

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[89] *E.g., Indus. Energy Users-Ohio v. Pub. Util. Comm.,* 117 Ohio St. 3d 486, 493 (2008-Ohio-990 at ¶ 30)
[90] Opinion and Order at ¶ 190.
[91] Staff Ex. 3 at 13.
[92] Tr. II at 337-340
[93] *See, e.g.,* Tr. II at 337-339.
[94] *Id.* at 338.
[95] *See* Ohio Adm. Code 4901:1-10-32(D) (providing that a switching fee shall not be assessed in connection with governmental aggregation).
[96] *See* Tr. II at 337-338.

affirmative choice are not receiving retail electric service under "substantially the same circumstances" as customers who affirmatively elect to switch to or between CRES providers. *Accord Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184, ¶23-24. AEP Ohio's switching fee therefore represents a reasonable difference in rates and charges based upon actual service differences does not violate R.C. 4905.35.

Further, pursuant to the requirements or R.C. 4928.141 and unlike a CRES provider, the Company is lawfully required to provide its default generation service to any customer who otherwise is not actively under contract with a CRES supplier. That requirement benefits all customers within the Company's service territory, not just those customers then currently taking SSO service. Such a requirement protects and serves the entire marketplace by ensuring the ongoing stable availability of generation service to any customer irrespective of the users' reasons for needing such supply or the making of an affirmative election prior to being eligible to receive it. The content of Staff witness Smith's testimony as placed in the record directly contradicts the assertion of IGS that there is no difference in which direction a service supply switch occurs. The detail in the record showing the reasons for a customer to switch back to SSO service are not substantially similar to those employed in making an affirmative choice in selecting a CRES Supplier, and the evidence that the Commission reviewed and adopted the substance of Staff witness Smith's testimony emphasize the fact that the Commission relied directly upon the record in arriving at its rationale in determining that switching fees are acceptable.

Such process and result shows that this Commission was thoughtful and reasonable in its determination that the existing switching fees as listed in the Company's tariff should continue as

previously existing without change or modification. The conclusion of the Commission in this proceeding to approve and retain the Company's switching fees fully satisfies the requirements of R.C. 4903.09 and does not violate any important regulatory principle or practice.

C. Adoption of the Stipulation's "Shadow Billing" Provisions does not Violate any Important Regulatory Principles or Practices.

The claims IGS makes in its Application for Rehearing positing that the Commission's approval and acceptance of the shadow billing proposal contained in the Stipulation somehow violates an important regulatory principle or practice and fails to follow Commission precedent are not only misguided and incorrect, but also reflect a feeble attempt at misdirection.[97]

For clarity and focus, it is worth repeating here exactly what is contained in the shadow billing requirements of the Stipulation as approved by the Commission. The Stipulation includes a two-part commitment for the Company to pursue billing transparency and promote consumer education related to shopping: (1) provide Staff and OCC with a Shadow Billing Report at least once a year, and (2) work with OCC to amend the Company's application in Case No. 20-1408-EL-UNC.[98] The intent is to have the Company, provide at least annually, information directly, and only to, OCC and Staff. Notably, the data will not be used by individual shopping customers or otherwise directly affect the competitive market.

The purpose of the provision of such information to the OCC and Staff, as clearly stated in the Company's Reply Brief, is to provide, "aggregated data for consideration by Staff, OCC and other policy constituents interested in evaluating the retail choice market" and that "individual consumers will not receive the data or use it in making shopping decisions."[99]

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[97] IGS AFR at 29-34.
[98] Jt. Ex. 1 at 11 (¶ III.E.11).
[99] AEP Reply Brief at 45.

Additionally, the Company provided further clarity in its Initial Post Hearing Brief concerning the purpose and use of the shadow billing information by highlighting specific testimony from Company witness Moore and OCC witness Willis.[100] Ms. Moore's testimony succinctly communicated that the Shadow Billing Report is intended to provide "additional transparency for the residential class"[101] and Mr. Willis explained that the OCC has no current plans for the Shadow Billing Report but believes it is informative and provides transparency.[102]

Further, the amendment and update of the Company's application in Case No. 20-1408-EL-UNC to incorporate additional specifics regarding billing format and customer data, will not only provide the Commission with an opportunity to "thoroughly review" the information, but also allow all participating parties, including IGS, "the opportunity for input and comment."[103] As an intervening and participating party in the 20-1408 case, IGS will be provided the reasonable opportunity to be heard and the ability to fully participate in that open and transparent process. Thus, satisfying the requisite regulatory principle and practice of providing interested and affected parties with both a place at the regulatory table and a voice in the discussion and outcome.

In its Application for Rehearing, IGS claims that the Commission failed to find any credible evidence to support the claim that shadow billing does not violate an important regulatory practice or principle and should therefore not provide for shadow billing in its Opinion and Order.[104] Conversely, IGS fails to provide any meaningful explanation as to exactly

[100] AEP Initial Brief at 46-47.
[101] AEP Ohio Ex. 6 at 18
[102] Tr. II at 301-302.
[103] Opinion and Order at ¶ 199.
[104] IGS AFR at 31.

how the Commission's reliance on the actual record in this proceeding lacks the necessary credibility to reach the conclusion that shadow billing is acceptable in this instance.

IGS claims that that the aggregate shadow billing data provided to OCC and Staff by the Company will rely on information concerning price only and will be heavily manipulated by the Company.[105] The Commission, following its review of the record, clearly feels that the detail provided regarding the shadow billing process by the Company and OCC is not "insufficiently clear."[106] IGS fully acknowledges that fact, but in its Application for Rehearing attempts to misdirect the reader from the recognition that the Commission believed the type of information to be collected by AEP Ohio and provided to OCC and Staff was satisfactorily clear.[107] IGS twists the Commission's plain statement "we do not here address the value of such information"[108] regarding the specific values of the provided data, but not the type of information provided, into a tortured claim that the Commission is likely taking the position that any such shadow billing information "is of little of no value" and "its collection or dissemination is nothing more than a form of disinformation."[109] That is in no way what the Commission communicated, intended to communicate, or even inferred. IGS further doubles down in its alluded contortion of the reasoned decision of this Commission by maintaining that although the Commission "has an interest in the provision of accurate and truthful information" through its allowance of shadow billing in this instance, it "approves the spreading of valueless information or misinformation."[110] In truth, the Commission, in its unwillingness to address the value of the

[105] *Id*. at 29.
[106] Opinion and Order ¶ 198.
[107] IGS AFR at 31.
[108] Opinion and Order at ¶ 198.
[109] IGS AFR at 31.
[110] *Id.*

data to be collected, is not questioning the mere collection and existence of the shadow billing data itself, but rather refusing to opine regarding exactly how such shadow billing information may be interpreted and for what specific purposes the information may be used. IGS attempts to convince us that the Commission is promoting the collection and use of data that itself may not be credible or reliable. That inference goes beyond exaggeration. In its Opinion and Order, the Commission never questions the reliability or veracity of the shadow billing data to be collected. The fact that the Commission has determined it appropriate, in this instance to allow the collection of shadow billing information by the Company to be disseminated to the OCC and Staff is in no way unlawful, unreasonable, or a violation of any important regulatory principle or practice.

IGS additionally maintains that the shadow billing proposal before the Commission is unreasonable on its terms and that the Commission further failed to follow its own prior orders that IGS alleges refused to require shadow billing.[111] In its Application for Rehearing, IGS provides reference to several prior PUCO proceedings where the Commission either rejected or failed to approve various forms of shadow billing.[112] What is ignored by IGS in this instance is that Company and the OCC are, through the Stipulation, both agreeing to move forward with shadow billing data collection and further define and refine the specifics of that data collection in Case No. 20-1408-EL-UNC. In this circumstance, there is an agreement between stakeholders regarding shadow billing, not a request or attempt made unilaterally by another party to force a regulated utility to participate in a shadow billing program. Ironically, in its Application for Rehearing, IGS recognizes then when providing its references detailing several other

[111] *Id*. at 30.
[112] *Id*. at 32-33.

proceedings where the Commission did not approve shadow billing.[113] References such as "OCC's request," "Ohio Partners for Affordable Energy request," and "OCC's shadow billing recommendation" all highlight the fact that in each of those instances there was only a unilateral recommendation, not an agreement between parties for shadow billing.[114] In those cases, the Commission simply refused to force an unwilling utility to engage in shadow billing, with considerations such as imposing unfunded mandates that have some level of cost. Here, unlike in those other proceedings, the Commission has determined that when there is agreement among participating stakeholders, it is acceptable and not unreasonable for a utility company to elect to engage in shadow billing by agreement. Finally, as the Commission pointed out in its Opinion and Order, although IGS may disagree with the concept of shadow billing, even by agreement, parties other than Company and the OCC have already previously expressed their acceptance of the process including IGS Reply Brief partner Direct Energy.[115]

In its Application for Rehearing, IGS fails to satisfy the need for a rehearing and is unable to prove its claim alleging that the Commission's approval of the shadow billing proposal provided for in the Stipulation and accepted in the Opinion and Order violates an important regulatory principle or practice. Besides mischaracterizing the Commission's intent regarding the "value" of shadow billing in the Stipulation, IGS simply rehashes arguments it made previously and fails to provide any new information or specific material evidence that illustrates how this Commission might have exercised its administrative judgment in an unlawful or unreasonable manner in violation of any important regulatory principle or practice. Nothing in the argument promulgated by IGS regarding shadow billing would cause even a cynical or jaded

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[113] *Id*. at 32 -33.
[114] *Id*.
[115] Opinion and Order ¶ 198.

reviewer to believe that this Commission, following its review of the record evidence presented, violated any regulatory rule or principle or otherwise failed in its requisite duty to reach a reasonable and responsible conclusion by allowing shadow billing to remain in the Stipulation. The IGS claims regarding shadow billing fall flat.

D. It was Lawful and Reasonable for the Commission to Find that any Costs Associated with Preliminary Discussions with Mercantile Customers Under R.C. 4928.47 are not Properly Considered Project Costs.

IGS advances the outlandish claim that, just because it raised questions in discovery about the Company's practices in connection with R.C. 4928.47 (which permits customer-sited renewable projects sponsored by the Company subject to Commission approval of the projects), the Commission is blocked from issuing an order in this case without fully investigating the unfounded allegation – even though Staff reviewed the issue and found no concerns and IGS can point to no legal basis for such a claim.[116] IGS alone advances this position, but it is wrong in thinking the Staff and Commission should merely ask "how high" every time IGS shouts "jump" – instead of considering and rejecting a claim that lacks merit. IGS again argues that the Company and the Commission are improperly relabeling costs as distribution costs,[117] even though there is no record basis to conclude that any such project costs are reflected in the new distribution rates.

In response to a general IGS interrogatory about how AEP Ohio would track costs if there were a customer-sited renewable project under R.C. 4928.47, the Company stated "[i]f the Company has a project a separate work order would be created to track all costs associated with the project. The costs would be tracked and recovered as part of the agreement between the

[116] IGS AFR at 34-37.
[117] *Id*. at 34.

Company and mercantile customer(s)."[118] After an additional interrogatory asking about details of any solicitation activity, the Company objected for lack of relevance and indicated that only preliminary conversations had occurred with interested customers, which were incidental and did not constitute project costs.[119]

AEP Ohio witness Williams confirmed the same things on the stand.[120] He also explained that no customer-sited projects ever materialized beyond the preliminary conversations, which would have triggered any project cost tracking.[121] During cross examination, Staff witness Smith agreed with the Company that preliminary negotiations or discussions with customers interested in customer-sited renewable energy resources are incidental and often involve interconnection arrangements with the utility anyway.[122]

IGS relies on *Industrial Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486 (2008) but that decision is inapt.[123] It involved the classification of at least $23,700,000, which is a significant cost that was discretely tracked and accounted for, and a projected final tally that could exceed $2 billion.[124] Classifying such project costs according to the proper statutory requirements was extremely substantive and impactful. The current case involves nothing of the sort. As the Opinion and Order explained:

> [T]here is no evidence in the record that establishes that AEP Ohio has sought to collect such costs through its distribution rates. We agree with Staff's position that preliminary conversations about a potential project, which occurred between AEP Ohio employees and interested customers in the context of traditional customer service, are part of the Company's functions as an electric distribution utility (Staff Ex. 3 at 14; IGS Ex. 19). As to IGS's belief that it is necessary for the Commission to direct AEP Ohio to track project costs, the evidence reflects

[118] IGS Ex. 18.
[119] IGS Ex. 19.
[120] Tr. V at 979, 984.
[121] *Id.* at 985.
[122] Tr. II at 328-329.
[123] IGS AFR at 36.
[124] *IEU*, 117 Ohio St.3d at 487-488.

> that the Company already has a process in place – specifically, creating separate work orders that would be used to track and recover project costs as part of the agreement between the Company and the mercantile customer (IGS Ex. 18).[125]

The Opinion and Order findings on this point are consistent with the evidentiary record and consistent with the statute, which requires that "direct or indirect costs, including costs for infrastructure development or generation, associated with the in-state customer-sited renewable energy resource shall be paid for solely by the utility and the mercantile customer or group of mercantile customers."[126] Of course, IGS opposed the enactment of this statutory provision and continues to oppose it. As a result, IGS seeks to have the provision applied in a way that defeats the intended purpose and effect of the provision by tracking and excluding from rates general, preliminary costs that are neither discrete nor incremental. Nothing in the statutory language requires a burdensome process like the one sought by IGS and doing so would create a chilling effect for the utility pursuing such preliminary conversations (to the delight of IGS but without the opportunity to serve customer interests that was envisioned by enactment of the provision).

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

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[125] Opinion and Order at ¶ 194.
[126] R.C. 4928.47.

IGS has submitted no evidence of any cost or the existence of any subsidy to back up its claim, so it should again be rejected on rehearing.

III. RESPONSE TO NEP APPLICATION FOR REHEARING

A. NEP's Arguments Fundamentally Misinterpret the Three-Prong Test and Controlling Law Applicable to the Review of Stipulations before the Commission.

The Commission properly analyzed the Stipulation in this matter by refusing to employ a modified version of the three-part test as seemingly suggested by NEP. NEP takes issue with the Commission analyzing the Stipulation as a package; specifically, NEP seeks to require the Commission to extend its review beyond the stipulation package.[127] The long-standing standard of review for stipulations filed before the PUCO, however, is "[1] whether the settlement is a product of serious bargaining among capable, knowledgeable parties; [2] whether the settlement, ***as a package,*** benefits ratepayers and the public interest; and [3] whether the settlement package violates any important regulatory principles or practices."[128] NEP effectively seeks to amend the second prong so that the Commission would determine whether there are any additional provisions that could be added to the Stipulation to benefit certain groups of customers, irrespective of whether they were part of the bargained-for exchange.[129] Consistent with its own precedent, the Commission correctly found that the analysis under the three-part test "is not whether there are other or additional mechanisms or provisions that would better benefit

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[127] Application for Rehearing of Nationwide Energy Partners, LLC ("NEP AFR) at pp. 9-11 (Dec. 17, 2021) (stating "The Commission acted unreasonably and unlawfully by finding that its analysis of the stipulation is limited to whether the stipulation as a package benefits ratepayers and the public interest, and not whether a proposed modification benefits ratepayers and the public interest").
[128] *Ohio Consumers' Counsel v. Pub. Util. Comm*., 110 Ohio St.3d 394, 397, 2006-Ohio-4706 (emphasis added).
[129] NEP AFR at 10 (arguing "the Commission was required to consider the evidence before it – which included evidence outside the Stipulation package and included alternatives and modifications").

ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest."[130]

While the Commission certainly has the ability to modify a stipulation based upon the evidence in the record, the Commission is not duty-bound to make such amendments simply because some evidence was placed in the record. To justify such an amendment, the Commission must first find that the Stipulation, as a package, would not benefit the public interest in the absence of such a change. To support the notion of adding provisions beyond the Stipulation package, NEP cites numerous inapposite decisions from the Commission and Supreme Court of Ohio.

In the 2009 energy efficiency case cited by NEP, the Commission made changes to the lost distribution revenues component of the Stipulation only after first finding that "the record fail[ed] to establish what revenue is necessary to provide AEP-Ohio with the opportunity to recover its costs and to earn a fair and reasonable return."[131] Thus, NEP's cite to the Supreme Court's decision affirming that very holding is taken out of context.[132] The Court did not hold that the Commission should consider whether a stipulation package can be made more beneficial to ratepayers; it held that the fact that parties have entered into a stipulation does not relieve the Commission of "the requirement that its findings be based on record evidence * * *."[133] In AEP Ohio's *ESP II*, the Commission found that the rate design in the stipulation package did not benefit the public interest because "the evidence in the record inadvertently failed to present a

[130] Opinion and Order at ¶ 146.
[131] *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Program Portfolio Plans and Requests for Expedited Consideration*, Case Nos. 09-1089-EL-POR *et al*, Opinion and Order at 26 (May 13, 2010).
[132] NEP AFR at 9-11 (citing *In re Columbus S. Power Co.*, 129 Ohio St. 3d 46, 2011-Ohio-2383, ¶ 19).
[133] *In re Columbus S. Power Co.*, 2011-Ohio-2383, ¶ 18.

full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand."[134] The same can be said of the low-load factor rate design proposals set forth by NEP. Finally, as set forth in the language quoted by NEP – the Commission only amended the Stipulation in the power purchase agreement case because the changes were "necessary to enable [the Commission] to determine that the stipulation, as modified, meets the three-part test."[135]

None of the examples cited by NEP considered "alternatives and modifications"[136] to the stipulation simply because parties provided some evidence, irrespective of its probative value, that allegedly established some level of *incremental* benefits. As more fully explained in sub-section B, the Commission properly found that the Stipulation, as a package, benefitted the public interest and did not violate regulatory principles. Because the Stipulation met the three prongs, the Commission was not required to modify it to incorporate NEP's proposal.

B. The Commission Properly Approved the Stipulation as a Package and Rejected NEP's Requests to Implement a Low-Load Factor Rate Because NEP's Analysis Inadequately Assessed the Impacts.

The Commission appropriately evaluated the Stipulation as a package, and also evaluated NEP's attempt to raise concerns about the impact to low-load factor customers. NEP repeatedly takes issue with the Commission's finding that NEP's proposed low-load factor tariff would result in "unknown impacts" due to the "very limited" information provided by NEP.[137] To support its arguments, NEP misrepresents that the Commission disregarded the low-load factor

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[134] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO *et al.*, Entry on Rehearing at ¶ 19 (Feb. 23, 2012).
[135] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR *et al.*, Second Entry on Rehearing at ¶ 103 (Nov. 3, 2016); *see also*, Opinion and Order at 87 (Mar. 31, 2016).
[136] *See*, NEP AFR at 7, 8-10.
[137] *See generally*, NEP AFR at 11-20, 22-27.

proposals "solely because the NEP witness used load and demand information from four multi-family accounts." In addition to pointing out that there is no obligation to determine whether there are additional or better mechanisms outside the Stipulation package, the Commission also rejected the low-load factor proposals due to "unknown impact[s]" because the "proposal is very limited **and** the four accounts selected do not represent a broad base of the types of low-load factor accounts."[138] And despite NEP's claims that the low-load factor was not disputed by the Signatory Parties,[139] in its Opinion and Order, the Commission provided a recitation of the parties' identification of other pitfalls in addition to NEP's failure to identify types of accounts – Mr. Rehberg was not a credible or qualified witness;[140] the low-load factor rates could cause AEP Ohio to experience under-collection beyond those calculated by NEP;[141] and the rates in the Stipulation are adequately supported by the testimony.[142] Thus, while the Commission met its obligation of providing the basic rationale for rejecting NEP's proposal,[143] there are additional reasons in the record that support the Commission's ruling.

1. The Commission correctly rejected NEP's proposed low-load factor tariff because it was not supported by credible evidence and left many unknowns.

As AEP Ohio pointed out in its Initial Brief, NEP's witness, Mr. Rehberg, is not an expert in rate impact or rate design issues. He admitted that he has no formal training in ratemaking or cost of service analysis, has never prepared a cost of service analysis, and has not testified as an expert witness regarding cost-of-service, class cost allocation, or customer rate

[138] Opinion and Order at ¶ 140.
[139] NEP AFR at 7, 20.
[140] Opinion and Order at ¶¶ 137-138.
[141] Opinion and Order at ¶ 139.
[142] Opinion and Order at ¶ 139.
[143] *See*, *Indus. Energy Users-Ohio v. Pub. Util. Comm.,* 117 Ohio St. 3d 486, 493 (2008-Ohio-990 at ¶ 30)

impacts.[144] Nor does Mr. Rehberg hold himself out as such an expert outside of the hearing in this case.[145] Moreover, Mr. Rehberg demonstrated little knowledge about basic rate design elements such as the differences between fixed and volumetric distribution costs.[146]

More importantly, the analysis that Mr. Rehberg sponsored – the only analysis to which NEP refers – is woefully inadequate and in no way qualifies as a cost of service study. According to NEP, the proposed low-load factor demand rate was designed to benefit low-load factor customers. NEP alleges that after calculating the impact of the desired demand charges for low-load factor customers, Mr. Rehberg then backed into an energy charge, allegedly similar to the Pilot Plug-In Vehicle Schedule.[147] But Mr. Rehberg did not provide such an explanation in his testimony.[148] Moreover, Mr. Rehberg testified that the analysis considered only four master-metered NEP accounts and did not analyze any of the submetered accounts behind the four master-metered NEP accounts.[149] Indeed, Mr. Rehberg does not even verify the existence of any actual low-load customers – only that they "***can*** consist of multi-family housing, restaurants, and in some cases warehouses."[150] Mr. Rehberg did not know the type of loads behind the master-meters, much less whether they would be low-load factor customers.[151] Mr. Rehberg also failed to consider any other types of low-load factor customers, including single shift manufacturers, churches, schools, small medical, or commercial offices.[152] NEP's analysis was not conducted in a way that was objectively verifiable, reliably implemented, or likely to

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[144] AEP Ohio Brief at 15; Tr. IV at 658-659.
[145] AEP Ohio Brief at 15; Tr. IV at 657, 665-666, 668-669; Kroger Ex. 1, 2.
[146] AEP Ohio Brief at 15; Tr. IV at 729.
[147] NEP AFR at 12-14.
[148] *See*, NEP Ex. 34 at 10.
[149] AEP Ohio Brief at 15; Tr. IV at 760-761.
[150] NEP Ex. 34 at 3 (emphasis added).
[151] AEP Ohio Brief at 15; Tr. IV at 793.
[152] AEP Ohio Brief at 15; Tr. IV at 745, 747.

yield an accurate result. Thus, while NEP claims that that the Commission erred by finding that the four demonstrative accounts do not "represent a broad base of the types of low-load factor accounts,"[153] there is no evidence in the record, much less from Mr. Rehberg, that the four examples are representative of AEP Ohio's GS class customer base.

NEP makes much ado about the type of customer being unnecessary for the Commission to adopt the mathematical calculations. According to NEP, "[t]he type of customer in the analysis is irrelevant – rather, the customer's load factor drives demand costs under the proposed tariff in the Stipulation."[154] But type of customer can be instrumental in estimating and predicting load factors. Nevertheless, NEP attempts to rehabilitate the reliability of Mr. Rehberg's analysis by repeatedly arguing that the bills impacts are just simply "mathematics," and that the type of account does not matter.[155] But NEP's math is only as good as its mathematical inputs, which lack many of the variables one would expect to be analyzed in order to predict the impacts of the low-low factor rates with any degree of confidence. NEP made no attempt to estimate any of the following inputs to support it basic mathematics exercise:

- Actual and/or estimated load factors to determine the number of customers that would qualify for the low-load factor rate;
- Load profile and demand characteristics of low-load factor customers to estimate demand revenue that will be generated under a low-load factor rate; and
- Energy usage characteristics of low-load factor customers to estimate energy revenue that will be generated under a low-load factor rate.

[153] NEP AFR at 16; Opinion and Order at ¶ 140.
[154] NEP AFR at 5; *see also id.* at 6, 9, 17-19.
[155] NEP AFR at 14, 16-19.

NEP even concedes load factors are what drive the tariff calculation.[156] But NEP did not determine or calculate the existence of any specific load factors beyond the four examples let alone something that could be extrapolated to determine the applicability to all GS customers.

Despite these pitfalls, NEP somehow boldly asserts, repeatedly, that the low-load factor tariff it proposes "would not shift costs to other classes of customers or lower revenues," and was designed to be "revenue neutral."[157] But a low-load tariff that offers opportunities for cost controls for certain customers, as NEP's is admittedly designed to do,[158] will either result in reduced revenues for the Company or cost-shifting to other customers. In other words, rates cannot be designed to reduce costs for low-load factor customers while simultaneously making the EDU whole and also ensuring that no other customers pay more. Even Mr. Rehberg contradicted himself on this issue, acknowledging that NEP's proposal could result in a revenue shortfall.[159]

Yet, Mr. Rehberg did not address the impact on AEP Ohio's services that could result from a revenue shortfall under NEP's proposal; instead, he simply opined that "[a]ny risk of over- or under-collection for the low-load factor customer rate schedule I propose would be similar to the risk that AEP Ohio faces with any class of customer which can either control demand or reduce kWh."[160] Nor did NEP's analysis consider the impact of NEP's proposal on non-low-load factor customers if AEP Ohio were to charge those customers more to make up for

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[156] NEP AFR at 5 (stating "[t]he type of customer in the analysis is irrelevant – rather, the customer's load factor drives demand costs under the proposed tariff in the Stipulation").
[157] NEP AFR at 12, 14-15, 22, 25, 26.
[158] NEP AFR at 13 (stating "The above rate structure will maintain the revenue requirement but split the stipulated cost increase between demand and energy for low-load factor customers, providing an appropriate balance of interests between a cost increase guarantee for AEP Ohio and some amount of cost control for low-load factor customers")
[159] NEP Ex. 34 at 11.
[160] NEP Ex. 34 at 11; Tr. IV at 798-799.

a revenue reduction caused by implementing his proposal.[161] Limiting the analysis to "simple math" for four customers, with complete disregard as to the number of customers that will qualify for the low-load factor rate, the amount of revenue that will be produced from those customers, and the amount of revenue that will be produced by the rest of AEP Ohio's customers renders NEP's analysis utterly useless. Implementing NEP's proposal without a proper analysis of its potential impacts could have catastrophic consequences for customers and the Company. Thus, while NEP's asserts that the low-load factor proposals were "designed to be revenue neutral,"[162] the Commission was correct to find that the low-load factor analysis was "very limited" and would have "unknown impact[s]."[163]

Unlike Mr. Rehberg, Company witness Roush was qualified to provide expert testimony regarding rate design and cost allocation issues.[164] And also unlike Mr. Rehberg, Mr. Roush performed a reliable analysis of the Stipulation's rate impacts on all customers, using a well-accepted and clearly defined format for doing so.[165] This included a "Proposed Bill" analysis pursuant to clearly defined filing requirements set forth in Ohio Adm.Code 4901-7-01 and used consistently both in Ohio and other jurisdictions.[166] Based on his expert qualifications and reliable analysis, Mr. Roush demonstrated that the agreed-upon revenue requirement allocation and rate mitigation measures set forth in section III.F of the Stipulation provided a reasonable transition to the combined rate zones for all classes.[167] Mr. Roush also confirmed that the Stipulation results in reasonable rates that continue to reflect the principles of cost causation

[161] Tr. IV at 799.
[162] NEP AFR at 15.
[163] Opinion and Order at ¶ 140.
[164] *See* AEP Ohio Ex. 4 at 2.
[165] AEP Ohio Ex. 4A; Tr. I at 82.
[166] Exhibit DMR-S2.
[167] AEP Ohio Ex. 4 at 6.

while avoiding undue customer bill impacts.[168] In evaluating Mr. Roush's testimony, the Commission gave due consideration to the impact on all customers, low-load factor alike.[169]

NEP also asserts that Mr. Rehberg proposed the low-load factor schedule to address those low-load factor customers that cannot manage monthly peak demand effectively "under a demand only based rate schedule," such that low-load factor customers would have an opportunity to implement energy efficiency measures and manage their energy demand.[170] This concept is fraught with numerous flaws. First, there is no demand-only based rate for any customers, let alone GS customers. As conceded by NEP, "[t]he monthly bill for customers under the new GS schedule includes a demand charge ($/kW), an excess reactive demand charge ($/kVA) and a flat, non-volumetric monthly customer charge ($)."[171] Nor does an increased demand rate in any way limit customers' ability to implement energy efficiency measures to manage demand. NEP's argument is built upon the false presumption, "once a low-load factor customer, always a low-load factor customer." To the contrary, low-load factor customers will be further incentivized to monitor their demand, which will serve to reduce stress on the distribution system. This is consistent with one of the goals of rate design – to assign costs to cost-causers.[172] Finally, and perhaps most importantly, Mr. Rehberg offered no opinion or evidence that any specific customers lack the ability to control their load or lack the ability to implement energy efficiency and peak demand measures.

2. NEP's proposed low-load factor pilot program suffers from the same unknowns and is not sufficiently limited to reduce impacts to AEP Ohio or other customers.

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[168] AEP Ohio Ex. 4 at 8.
[169] Opinion and Order at ¶ 138.
[170] NEP AFR at 12.
[171] NEP AFR at 12.
[172] Tr. I at 39.

NEP's complaint about the Commission's failure to adopt the alternative low-load factor pilot[173] suffers from the same pitfalls as the full adjustment to the demand rates because it is the same rate and construct, just limited to a certain number of customers.[174] It is worth noting, however, that the proposed pilot was far from limited – proposing to cap participant levels at a whopping 1,000 customers.[175] Depending on the load and usage characteristics of those 1,000 customers, the impacts of such a pilot program could be massive. NEP flippantly assures the Commission that the estimated impact may be $1.2 million.[176] The $1.2 million estimate assumes an average customer consumption of 100,000 kWh and 20% energy efficiency reduction.[177] But NEP points to no study or analysis establishing that these assumptions are reasonable in any way. Nor is there any analysis regarding the assumed demand and energy usage characteristics of those 1,000 customers that would be necessary to determine the projected delta revenues. More importantly, however, while NEP argues that the pilot will allow an opportunity to evaluate the low-load factor rates without any additional costs to AEP Ohio's customers, NEP transparently states that AEP Ohio will have to bear the risk, which will not be shifted to other customers.[178] Yet, Mr. Rehberg's testimony does not address the impact on AEP Ohio's services that could result from a revenue shortfall under NEP's proposal.[179]

NEP provides an incomplete and impractical solution to limit the risk to AEP Ohio, such that AEP Ohio could lower the number of participants below the 1,000-customer cap if any

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[173] NEP AFR at 20-28.
[174] NEP Ex. 34 at 11.
[175] NEP AFR at 21, 23 (citing to the PEV Pilot as a similar example)NEP fails to mention that the PEV pilot was limited to half the number of customers. *See*, Opinion and Order at ¶ 77.
[176] NEP AFR at 23.
[177] NEP Ex. 34 at 11; Tr. IV at 741 (admitting that the analysis "include a lot of hypotheticals").
[178] NEP AFR at 22-23.
[179] Tr. IV at 798-799.

under-collection amount reaches $1.2 million in any given year.[180] But reducing the number of eligible customers is not the same as capping the amount of risk. After all, a class of customer built upon a ratio of demand to energy usage will not remain static. And despite claiming to have provided the Commission all of the details on how the pilot would be implemented,[181] NEP provides no details on the process or how many customers will be removed from the low-load factor rate if the pilot results in a reduction to AEP Ohio's revenues by more than $1.2 million per year. The purpose of this case was to set just and reasonable base rates for AEP Ohio. The seemingly unrestrained pilot creates even more unknown risk for AEP Ohio and its customers that may not result in just and reasonable rates, which does not benefit the public interest and could violate regulatory principles.

For these reasons, it was not unreasonable for the Commission to be "greatly concerned about the unknown impact of the low-load factor tariff and pilot proposals on customer bills."[182] Thus, the Commission was not unreasonable in approving the Stipulation without any adjustments for the low-load factor as recommended by NEP.

[180] NEP AFR at 23.
[181] NEP AFR at 26.
[182] Opinion and Order at ¶ 140.

III. CONCLUSION

For the foregoing reasons, the applications for rehearing of IGS and NEP should be denied in their entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 27th day of December, 2021.

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