

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
CAMPBELL SUPPLY SOUP SUPPLY  
COMPANY L.L.C. FOR THE APPROVAL OF  
A REASONABLE ARRANGEMENT FOR ITS  
NAPOLEON, OHIO PLANT.

CASE NO. 21-1047-EL-AEC

## OPINION AND ORDER

Entered in the Journal on June 1, 2022

### I. SUMMARY

{¶ 1} The Commission adopts and approves the stipulation authorizing a unique arrangement between Campbell Soup Supply Company L.L.C. and the Toledo Edison Company.

### II. HISTORY OF THE PROCEEDING

{¶ 2} R.C. 4905.31 authorizes the Commission to approve reasonable electric services arrangements between an electric utility and a mercantile customer or group of mercantile customers. R.C. 4928.01(A)(19) defines "mercantile customer" to mean a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year for nonresidential use, or the customer is part of a national account involving multiple facilities in one or more states. Ohio Adm.Code 4901:1-38-05 provides rules for the filing of applications, pursuant to R.C. 4905.31, for approval of unique arrangements that further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} The Toledo Edison Company (Toledo Edison) is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission. Campbell Soup Supply Company L.L.C. (Campbell Supply or Applicant) is a mercantile customer as defined by R.C. 4928.01(A)(19).

{¶ 4} On October 8, 2021, Campbell Supply filed an application for approval of a unique arrangement with Toledo Edison pursuant to Ohio Adm.Code Chapter 4901:1-38-05 (Arrangement).

{¶ 5} Among other terms under the proposed Arrangement, Campbell Supply will participate in Toledo Edison's Non-Market Based Services (Rider NMB) Opt-Out Pilot Program (Pilot Program), commencing with the next monthly billing cycle upon approval of the Arrangement. The proposed Arrangement provides for participation of two meters at Campbell Supply's plant in Napoleon, Ohio, operating under Campbell Supply's one account with Toledo Edison. The term of the proposed Arrangement shall continue for the duration of the Pilot Program. Applicant seeks participation in the Pilot Program under the same terms and conditions applicable to customers already participating pursuant to the Stipulations approved by the Commission. *See In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP IV Stipulation Case*), Fifth Entry on Rehearing (Oct. 12, 2016) at ¶ 309; *see also FirstEnergy ESP IV Stipulation Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 97. Campbell Supply will be authorized to continue to shop for generation from a competitive retail electric supplier and nothing in the proposed Arrangement will preclude Campbell Supply from participating in any other PJM demand response program.

{¶ 6} On October 28, 2021, the Ohio Consumers' Counsel (OCC) filed a motion to intervene and objections to the application. After the filing of a memorandum contra and reply, the motion to intervene was granted on December 10, 2021.

{¶ 7} On December 9, 2021, Campbell Supply filed a joint stipulation and recommendation (Stipulation) signed by Campbell Supply and Staff. Further, counsel contacted the attorney examiners by email stating that OCC requested additional time to review the Stipulation and file testimony.

{¶ 8} On December 10, 2021, the attorney examiner rescheduled the evidentiary hearing for January 5, 2022. On January 3, 2022, the hearing was rescheduled again to January 20, 2022.

{¶ 9} The evidentiary hearing was held on January 20, 2022. Doug Monnin and John Seryak testified on behalf of Campbell Supply. Michael P. Haugh presented testimony on behalf of OCC.

{¶ 10} Post hearing briefs were submitted on February 10, 2022, by Campbell Supply, OCC, and Staff. Reply briefs were filed on February 24, 2022, by Campbell Supply, OCC, and Staff.

### III. SUMMARY OF THE STIPULATION

{¶ 11} As noted above, on December 21, 2022, Campbell Supply and Staff filed a Stipulation that, if adopted, would resolve all of the issues in the case. The Stipulation<sup>1</sup> provides, *inter alia*:

- (1) Campbell Supply shall participate in the Pilot Program under the same terms and conditions applicable to customers already participating pursuant to the Stipulations approved by the Commission in the *ESP IV Case*.
- (2) Campbell Supply shall opt out of Rider NMB in the next monthly billing cycle upon approval of the reasonable arrangement.

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<sup>1</sup> The above summary of the Stipulation is a summary only and is not intended to supersede or replace the Stipulation.

- (3) Participation will include Campbell Supply's two meters at the Napoleon site, operating under Campbell Supply's one account with Toledo Edison.
- (4) The term of the unique arrangement shall continue for the duration of the existence of the Pilot Program.
- (5) Campbell Supply's participation in this unique arrangement shall not preclude Campbell Supply from participating in any other PJM demand response program.
- (6) Campbell Supply shall be authorized to continue to shop for its energy supply from a third-party competitive retail electric supplier.

(Joint Ex. 1 at 7.)

#### IV. DISCUSSION

{¶ 12} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 13} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec.*

*Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 14} The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 15} In its post-hearing brief, Campbell Supply asserts that it has met its burden of proof to demonstrate the reasonableness of the proposed arrangement; thus, Campbell Supply recommends that the Commission adopt the proposed Stipulation. Campbell Supply initially notes that it is not eligible for either an energy efficiency arrangement or an economic development arrangement. Here, Campbell Supply claims that it is not seeking a subsidy or committing to a new energy efficiency project. Instead, it is seeking to take transmission service from its CRES provider in order to only pay for the transmission costs that it incurs so that it may more fully realize the benefits from its existing energy efficiency investments. Campbell Supply also claims that it is excluded from an economic

development or energy efficiency arrangement, as it is unable to make specific staffing or investment commitments at this time. Campbell Supply explains that the Napoleon site's employee level is partially determined by Campbell Supply and such employee commitments may erode the site's competitive profile within the Campbell network of manufacturing facilities. Additionally, Campbell Supply cannot enter into an energy efficiency arrangement, as it is not investing in a new energy efficiency production facility or expanding an existing one. Lastly, Applicant notes that neither an energy efficiency nor economic development arrangement is applicable here because such agreements must be for a set term. Campbell Supply explains that for this Arrangement, the proposed arrangement will last for the duration of the Pilot Program or other similar program or tariff that would allow it to take transmission service from its CRES provider.

*A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?*

{¶ 16} Campbell Supply maintains that the Stipulation is the product of serious bargaining among capable knowledgeable parties, while noting that nowhere in the Commission's analysis does it say that OCC's signature must be obtained to determine its reasonableness. Further, Campbell Supply noted that all of the parties to this case participated in a number of settlement meetings regarding the Application and Arrangement, while being represented by "experienced and knowledgeable regulatory counsel." (Campbell Supply Ex. 4 at 3). Campbell Supply also noted that the parties shared data and performed expert analysis regarding the proposed arrangement's impacts in a good-faith, serious bargaining process. Campbell Supply observes that OCC chose not to participate in the settlement but was involved with negotiations and bargaining that produced the Stipulation. The Applicant argues that, while OCC did not sign the Stipulation, this had no bearing on the fact that all parties proceeded in good-faith, serious bargaining that produced the Stipulation.

{¶ 17} Staff contends that the Stipulation is a product of serious bargaining among capable knowledgeable parties, in which Campbell Supply's witness, Mr. Seryak testified to this matter (*id.* at 3-4). Further, Staff states that the Stipulation is a comprehensive settlement of every issue raised by the parties.

{¶ 18} OCC claims that the Stipulation lacks both diversity and serious bargaining among parties. OCC states that the Stipulation is a misuse of the Commission settlement standard because it does not benefit consumers or the public interest. OCC contends that in former Commission decisions, diversity of signatory parties has been an indicator of serious bargaining for the first prong of the test, but OCC claims that, when there are very few signatory parties to a settlement, the Commission says that a lack of diversity is irrelevant for this analysis. OCC emphasizes that when a settlement lacks diversity, the Commission should closely evaluate the potential prejudice to any opposing parties. OCC thus asserts that the Stipulation fails the first prong due to a lack of diversity and serious bargaining related to its drafting.

{¶ 19} Campbell Supply claims, in its reply brief, that OCC misstates the legal standard for serious bargaining and contends that there is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory, in order for the settlement to satisfy the first prong of the three-part test. The Applicant emphasizes that the Commission has determined diversity may be a consideration, but is not a requirement, to fulfill the first prong. Additionally, the Applicant states that there is no requirement that a stipulation must modify an application in order to be the result of serious bargaining. Campbell Supply emphasizes that the Supreme Court of Ohio has held that the Commission cannot rely solely on the Stipulation's provisions and terms, but it must determine whether there was evidence that the Stipulation was a product of a serious bargaining process. The Applicant asserts that there is ample record evidence regarding the bargaining process amongst parties.

{¶ 20} In its reply brief, Staff contends that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. Staff responds to OCC's concerns that only two parties, Campbell Supply and Staff, signed the Stipulation. Staff argues that acceptance of OCC's argument, where it must be a signatory party before adoption, would preclude approval of any settlement whenever there are three parties, and one does not join the settlement. Here, Staff notes that this approach would be contrary to settlement precedent, and it would grant one party a veto over settlement terms. Lastly, Staff claims that OCC's criticism that the Stipulation recommends adoption of Campbell Supply's Application without modification is inapplicable, as there is no requirement for applications to be modified by a stipulation.

{¶ 21} OCC replies that the Commission should reject the Stipulation because it lacks diversity of signatories and serious bargaining amongst parties and is a misuse of the settlement standards. OCC contends that the Stipulation lacks serious bargaining since it adopts the application exactly as it was filed, which shows that the Stipulation was not adopted to compromise but to gain a litigation advantage from the Commission's settlement standards that favor stipulations. Finally, OCC objects to Campbell Supply's premise that no single party be afforded veto power under the first part of the Commission's three-prong test. Here, OCC says that a settlement signed by the utility and Staff in a case with opposition by OCC should be a non-starter and unfeasible for adoption.

***B. Does the settlement, as a package, benefit ratepayers and the public interest?***

{¶ 22} Campbell Supply claims that the Stipulation as a package, benefits ratepayers and the public interest. Campbell Supply emphasizes that the Stipulation will benefit the public by incentivizing the Applicant to reduce energy consumption on peak energy days and at other times at the Napoleon site. The Applicant notes this would enable it to remain competitive while maintaining its positive economic and charitable impact. Campbell Supply emphasizes that a reduction in its consumption accordingly reduces consumption on the transmission grid. Campbell Supply notes that OCC's witness, Haugh,



agreed to this point that a reduced consumption and congestion on the grid “benefits everybody” (Tr. at 230). Campbell Supply also refers to its witness, Mr. Seryak, who claimed that the benefits Campbell Supply would experience from this Stipulation would flow through to other ratepayers and the grid (Campbell Supply Ex. 3 at 6). Campbell Supply emphasizes that the proposed arrangement will help ensure the above-mentioned system benefits by giving Campbell Supply a financial incentive to use existing tools to manage its transmission network peak load (NSPL). Campbell Supply notes that various NSPL reduction tools are “performance based,” which means there will be no peak reduction unless Campbell Supply proactively uses such tools. (*Id.* at 10.) Here, Campbell Supply asserts that, if it does not realize corresponding reductions in transmission costs due to its NSPL reduction, Campbell Supply has no financial incentive to proactively manage its NSPL. Campbell Supply asserts that the result of fully recognizing the full financial benefits of its NSPL reduction, the proposed arrangement will allow Campbell Supply to consider further investments.

{¶ 23} Furthermore, Campbell Supply concludes that the Arrangement is in the public’s interest by 1) signaling to other consumers that the State of Ohio is receptive to investments in NSPL reduction; 2) benefitting the public by enabling Campbell Supply to remain competitive and maintain its level of investments in Ohio; 3) not significantly impacting other Toledo Edison customers; and 4) not producing any delta revenue.

{¶ 24} Campbell Supply claims that the Arrangement may incentivize other customers to make similar investments, in which this precedent would signal to these consumers that the State of Ohio is receptive to investments in NSPL reduction.

{¶ 25} Moreover, Campbell Supply asserts that the Arrangement will benefit the public by enabling the Applicant to remain competitive, allowing it to continue its positive economic and charitable impact in Ohio. Campbell Supply states that it employs approximately 1,343 employees at its Napoleon site, supports about 350 jobs from third-party suppliers and service providers, and pays approximately \$5.6 million in Ohio state

and local property, unemployment, and income taxes annually. The Applicant also notes that witness Monnin claimed the proposed arrangement will assist Campbell Supply with offsetting additional costs that are invested in employees and its efforts to add 250 full-time equivalent positions at the Napoleon site, instead of its seasonal hires. Further, Campbell Supply emphasizes that the Arrangement would help the Applicant continue its economic and charitable investment in Ohio, as the Napoleon site must remain cost-competitive to ensure continuing operations while facing several market challenges.

{¶ 26} Further, Campbell Supply maintains that the Arrangement will not have a significant impact on other Toledo Edison customers. The Applicant cites its witness Seryak's explanation that the Arrangement will not result in cost-shifting. Further, Mr. Seryak analyzed that Campbell Supply overpaid its transmission costs, consequently subsidizing other customers, by approximately \$280,000 per year at the Napoleon site. The witness explained that, even if there is an impact on other customers, it would be *de minimis*, because under the Arrangement, the amount of transmission services that Toledo Edison needs to secure and purchase for other customers would not change.

{¶ 27} Lastly, the Applicant asserts that the proposed agreement will not result in the creation of any delta revenue since Campbell Supply will not be paying a lesser amount to Toledo Edison than the applicable rate schedule for transmission services. As such, while Campbell Supply participates in the Pilot Program, it will not take transmission services pursuant to Toledo Edison's NMB Tariff, and Toledo Edison will see a corresponding change in the amount that it is billed for transmission services from American Transmission Systems, Inc, (ATSI).

{¶ 28} Staff asserts that the Stipulation, as a package, benefits ratepayers and the public interest. Here, Staff relies upon Campbell Supply's witness, Mr. Seryak, who testified that the way in which Campbell Supply will be billed for its transmission costs will be more aligned with its "share and true cost of transmission service that it actually uses" (Campbell Supply Ex. 4 at 5). Staff argues that these terms will reduce Campbell Supply's subsidization

of other customers' transmission costs and will allow Campbell Supply to fully realize the full value of an on-site solar generation investment. Staff claims that this will benefit customers throughout the system and can encourage additional investments in peak load reduction. Additionally, Campbell Supply witness Monin testified to the fact that Campbell Supply is making efforts to reduce its energy and consumption costs (Campbell Supply Ex. 2 at 6), but Campbell Supply does not experience the full benefit from its investments because it is currently overpaying for transmission service, whereas approving the arrangement would "correct" this situation.

{¶ 29} OCC claims that the Stipulation does not benefit consumers or the public interest by shifting responsibility for Applicant's payments to FirstEnergy to other customers. OCC states that the Stipulation is not in the public interest because it requests customers to subsidize Campbell Supply's transmission costs. Further, OCC notes that Campbell Supply's witness "testified that its solar project is 'not providing the expected benefits' and in fact is 'cost unfavorable'" (Campbell Supply Ex. 2 at 5-6). OCC contends that Campbell Supply's sole rationale for the Stipulation is that Campbell Supply paid more than its fair share of transmission costs in the past in relation to the solar project. OCC claims that Campbell Supply's mistake in evaluating the financial benefits of a power purchase agreement does not justify requiring other consumers to subsidize its transmission costs. Further, OCC says that it was not reasonable to presume that all of Campbell Supply's transmission costs would be offset under the 2011 power purchase contract.

{¶ 30} Additionally, OCC claims that the Stipulation does not satisfy the Commission's second-prong due to the cost-shifting that it will create once Campbell Supply enters the Pilot Program. Here, OCC witness Haugh testified that "there will be a shortfall for revenue for FirstEnergy and this shortfall will need to be collected from other customers" (OCC Ex. 2 at 7). OCC noted that Campbell Supply's witness Seryak conceded that transmission rates charged to customers would increase if the Stipulation was approved, where the cost shift to consumers would be \$280,000/year (Tr. at 156-157). OCC presents that this impact could be much larger, but the full extent is unknown because an

evaluation of the Pilot Program was not performed. Lastly, OCC notes that Campbell Supply's witness also testified that it is not committing to a specific level of capital investment in the State and nor is it guaranteeing a specific local employee level (Tr. at 56-57, 60). Here, OCC claims that the benefits from the Stipulation will be available whether the Commission adopts it or not.

{¶ 31} In its reply brief, Campbell Supply first claims that OCC misstated the premise of the Application and the proposed reasonable arrangement. The Applicant states that OCC incorrectly implies that Campbell Supply is trying to avoid paying its transmission costs. Campbell Supply clarifies that, under the agreement, it will no longer take transmission services from Toledo Edison; and, therefore, the utility will no longer incur costs associated with Campbell Supply's Napoleon site. The Applicant states that, contrary to OCC's claims, other customers will not pay any costs associated with the Napoleon site's transmission services. Campbell Supply explains that Toledo Edison does not directly pass its transmission charges through to customers and it does not calculate transmission charges billed to customers the same way that ATSI calculates charges incurred by a customer and then bills those charges to Toledo Edison. Rather, Campbell Supply observes that it currently pays Toledo Edison more in transmission charges than what Toledo Edison incurs from ATSI to provide Campbell Supply transmission services, in that Campbell Supply pays for its transmission services, as well as a portion of other customers' transmission services. Here, the Applicant observes that, under the Arrangement, Campbell Supply will continue to pay for its own transmission services and take its transmission services directly from its CRES provider rather than from Toledo Edison. Campbell Supply notes that Toledo Edison's costs will decrease accordingly per the amount of Campbell Supply's transmission costs with Toledo Edison, and therefore, Toledo Edison will pay less to ATSI.

{¶ 32} Campbell Supply rejects OCC's contention that residential and smaller business consumers are asked to subsidize the Applicant's transmissions costs under the agreement. The Applicant emphasizes its point that under the arrangement, Campbell

Supply will be taking transmission services from its CRES provider through the Pilot Program, and Campbell Supply will continue to pay the full amount of its transmission costs incurred by the load-serving entity. Campbell Supply notes that OCC's witness, Haugh, admitted that Toledo Edison will be billed for its transmission costs and the bill for Campbell Supply's portion will be sent to the marketer and not Toledo Edison (Tr. at 222).

{¶ 33} Campbell Supply further contends that OCC misrepresents the proposed agreement's rate impact. The Applicant stated that Campbell Supply will continue to pay for the costs associated with the Napoleon site and that Toledo Edison will no longer be charged for the cost of providing transmission to the site and the arrangement will not result in any cost-shifting. Campbell Supply notes that its witness, Seryak, testified that under the agreement some customers might see a *de minimis* impact, while others may see no impact or their bills will decrease (Tr. at 157). The Applicant observed that OCC's witness Haugh testified that he did not perform any independent analysis of what the cost difference would be (Tr. at 261). Further, Campbell Supply states that OCC makes a conclusory statement that Campbell Supply overpays about \$280,000 per year and residential customers will likely pay more in their future bills, but the Applicant contends that OCC does not provide calculations to support its arguments or conclusions.

{¶ 34} Campbell Supply notes that OCC's conclusions regarding delta revenue differs from Campbell Supply's because OCC witness Haugh used a definition of delta revenue, which differs from the definition used by the Commission in the Ohio Administrative Code. In his testimony, Haugh defined the measurement as "the amount the PUCO may expect other customers to pay to the utility to reimburse it for the reduced utility charges for the benefitting customers" (OCC Ex. 1 at 6; Tr. at 233). According to the Applicant, the Commission defines delta revenue as "the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the [C]ommission." Ohio Adm.Code 4901:1-38-01(C). Campbell Supply notes that its witness Seryak demonstrated that, under the Commission's

definition of delta revenue, that there will not be a resulting delta revenue for Toledo Edison under this proposed arrangement.

{¶ 35} Campbell Supply contends that OCC ignores the “obvious” public interest of the Stipulation. The Applicant emphasizes Staff’s position that the total Stipulation benefits customers and the public interest through helping Campbell Supply realize its transmission savings, incentivizing Campbell Supply to continue its energy management activities, resulting in benefits to ratepayers and the grid. The Applicant also claims that OCC does not provide supporting legal authority for its proposition that the Stipulation is a misuse of Commission standards.

{¶ 36} Lastly, Campbell Supply refutes OCC’s contention that Staff must publicly file a review of the Pilot Program before additional customers enroll. Here, Campbell Supply notes that the Commission, in approving the Pilot Program and authorizing parties to enroll, did not state that Staff had to complete any review of the program before allowing additional customers to enroll. Rather, when the Commission approved the settlement, it directed non-enrolled customers that sought program participation to do so by applying for a unique arrangement pursuant to R.C. 4905.31. Second, Campbell Supply notes that there is no requirement that the review be publicly filed. The Applicant states that OCC witness Haugh acknowledged that there was nothing “directly said” about the Commission directing Staff to publicly file any reports related to the Pilot Program (Tr. at 240, 248-49). Third, Campbell Supply claims that OCC lacks insights as to what Staff has or has not reviewed and, therefore, cannot claim Staff’s analysis on the program is insufficient.

{¶ 37} Staff replies that the Stipulation as a whole package will benefit ratepayers and the public interest. Staff rebuts OCC’s contention that the Stipulation will only benefit Campbell Supply, as Staff states the evidence indicates the Arrangement will benefit all consumers. Here, Staff relies upon Mr. Seryak’s testimony that the Stipulation will benefit consumers and the public interest as Campbell Supply realizes its transmission savings and will be incentivized to continue its energy management activities that will benefit ratepayers

and the electric grid. Mr. Seryak's testimony explained that under the proposed agreement, Campbell Supply's billed transmission costs will be more aligned with its share and true cost of transmission service and will reduce Campbell Supply's subsidization of other customers' transmission costs and allow the Applicant to realize the full value of its on-site solar generation investment. (Campbell Supply 4 at 4-5). Staff asserts this overall effect will benefit customers and reduce consumption and grid congestion.

{¶ 38} In reply, OCC reiterates its contention that the settlement does not benefit consumers or the public interest. Here, OCC posits that even though Applicant's payments will be reduced, FirstEnergy's non-market-based transmission costs will continue, and other customers will have to pay more to make FirstEnergy whole. OCC cites Applicant witness Seryak who testified that Campbell Supply overpaid its transmission costs by approximately, \$280,000 per year and that such charges may be shifted for other customers to pay. OCC maintains that due to the increased number of participants in the Pilot Program, the amount will no longer create a 'de minimis' impact as Applicant argued. OCC contends that, because Campbell Supply cannot make a commitment as to how many additional employees it can take at the site, the Stipulation offers very little benefits to consumers and that the proposed Stipulation would only benefit Campbell Supply.

*C. Does the settlement package violate any important regulatory principle or practice?*

{¶ 39} Campbell Supply asserts that the Stipulation does not violate any regulatory principle or practice. Here, Campbell Supply notes that the Stipulation specifically complies with the Commission's directive for enrolling in the Pilot Program. *See FirstEnergy ESP IV Stipulation Case*, Case No. 14-1297-EL-SSO, Supplemental Stipulation at ¶ 2 (May 28, 2015); Third Supplemental Stipulation at ¶ G(6) (Dec. 1, 2015). Upon the program's approval, the Commission directed non-enrolled customers who sought program participation to do so by applying for a unique arrangement pursuant to R.C. 4905.31. Campbell Supply observes that OCC's witness conceded the Commission did not limit participation in the Pilot

Program to only those customers enrolled in the program at its inception. The Applicant asserts that OCC incorrectly argued that Staff must complete a review of the Pilot Program before allowing additional customers to enroll, as the Commission has not ordered Staff to open a case to investigate the program, nor did it order Staff to publicly file any reports. Further, Campbell Supply maintains that OCC was unable to demonstrate that Staff has not followed through in reviewing the program nor could OCC's witness explain why OCC did not oppose similar applications for arrangements to enroll in the program in previous cases. Campbell Supply asserts there is evidence to the point that Staff has continuously reviewed the Pilot Program as directed by the Commission. Lastly, Campbell Supply maintains arguments, abovementioned, to the point that the Stipulation complies with Ohio policy regarding electric service pursuant to R.C. 4928.02, and accordingly furthers these statutory priorities.

{¶ 40} In addition, Campbell Supply asserts that the proposed agreement is reasonable and does not violate R.C. 4905.33 or R.C. 4905.35. Here, Campbell Supply explains that the Arrangement does not violate either of these provisions, as under this agreement, Campbell Supply would not be receiving service at the Napoleon site "for less than actual cost," since it is currently paying "far more" for the service that it is currently receiving than its actual cost. Under the agreement, Campbell Supply notes that Toledo Edison will not provide any transmission service to the Napoleon site or incur any transmission costs on behalf of the site. The Applicant will pay the "actual cost" for its transmission services to its CRES provider. Further, Campbell Supply states that the proposed service is not discriminatory and nor is it anti-competitive. The Applicant notes that customers are free to pursue similar investments in on-site generation and to seek enrollment in the Pilot Program under agreements as directed by the Commission; Campbell Supply observes that OCC's witness agreed that the Commission permitted participation of additional customers.

{¶ 41} Lastly, Campbell Supply claims that the proposed arrangement furthers the State of Ohio's policy, pursuant to R.C. 4928.02. Here, Campbell Supply concludes that



enabling Campbell Supply to only pay its actual transmission costs at the Napoleon site will ensure reasonably priced retail electric service to Campbell Supply pursuant to R.C. 4928.02(A); recognize the continued development of competitive markets; and ensure the “availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs,” pursuant to R.C. 4928.02(G) and (B). Additionally, as mentioned above, Campbell Supply asserts that the agreement will incentivize Campbell Supply to consider further investments in on-site renewable generation at the Napoleon site, which aligns with policies enumerated under R.C. 4928.02(D), 4928.02(C), 4928.02(K), and 4928.02(M). Finally, Campbell Supply notes that the arrangement would enable Campbell Supply to manage the Napoleon site’s operational costs so as to remain competitive in the food manufacturing industry, pursuant to R.C. 4928.02(N)’s goals to facilitate the state’s effectiveness in the global economy.

{¶ 42} Staff asserts that the Stipulation does not violate any important regulatory principle or practices. Staff relies upon Campbell Supply witness Seryak, who testified that the Stipulation complies with all relevant and important principles and practices (Campbell Supply Ex. 4 at 7). Staff supports Mr. Seryak’s observation that Campbell Supply is not requesting any free service or discount and it will not create prohibited delta revenue as defined by Commission rules. Further, Staff claims that Campbell Supply to pay its transmission costs, will further state policy pursuant to R.C. 4928.02, by allowing Campbell Supply to fully realize the benefit of an on-site solar investment.

{¶ 43} OCC claims that the Stipulation rejects regulatory principles and practices because 1) it is poor regulatory practice to have customers pay Campbell Supply’s transmission costs as a means to insulate Campbell Supply from a miscalculation of financial benefits from the power purchase agreement and 2) neither Staff nor FirstEnergy complied with the Commission’s directive to review the program’s results. OCC asserts that the Commission directed FirstEnergy and Staff to continuously review the Pilot Program and to periodically report their findings to the Commission. OCC claims that as a result, the

Commission retained the right to modify provisions of the Rider NMB based upon these results. OCC contends that the lack of the ordered review and reporting violated regulatory principles and practices because it is not clear whether Staff has performed such an evaluation.

{¶ 44} OCC acknowledges that in various rider proceedings during the last five years, Staff filed reports referencing the Pilot Program. However, OCC claims that none of these reports address Commission criteria to evaluate the merit of the program. OCC states that the Commission's order has not been properly implemented for consumer protection and suggests that if the Commission is considering approving the Stipulation, it should thoroughly examine the Pilot Program by its Staff using the guidelines named in the Commission's 2016 directive.

{¶ 45} Finally, OCC recommends that, if the Commission approves the Stipulation, it should be modified. Here, relying upon witness Haugh, OCC states the Commission should order that any shifted charges (delta charges) be paid to FirstEnergy by customers in Campbell Supply's own customer class and not by smaller businesses and residential customers who cannot opt out of paying Rider NMB.

{¶ 46} In its reply brief, Campbell Supply maintains that it met its burden of proof to demonstrate the proposed arrangement's reasonableness. The Applicant contends that neither an economic development arrangement pursuant to Ohio Adm.Code 4901:1-38-03 nor an application for an energy efficiency arrangement pursuant to Ohio Adm.Code 4901:1-38-04 are applicable under the circumstances. Second, Campbell Supply asserts that it demonstrated the proposed agreement is in the public interest by lowering the Napoleon site's transmission NSPL and maintaining the site's cost-competitiveness. Third, Campbell Supply claims that it demonstrated the proposed arrangement's reasonableness and complied with R.C. 4905.33 and 4905.35. Lastly, Campbell Supply maintains that the proposed arrangement furthers the State of Ohio's policy pursuant to R.C. 4928.02. For all

abovementioned reasons, Campbell Supply recommends that the Stipulation be adopted and that nothing OCC contends contradicts this point.

{¶ 47} Staff argues in its reply brief the settlement package does not violate any important regulatory principle or practice. Staff rejects OCC's argument that Staff must issue a report on the overall results of the Pilot Program, as this would bar approval of any reasonable arrangement until the review is completed and report filed. Staff argues this would deprive all applicants, including Campbell Supply, of realizing the full benefits of investments in energy savings and therefore, discourage further investments. Additionally, Staff notes that the Commission never set a deadline for Staff to complete and file a study on the Pilot Program's results, and moreover, the Commission has never stated that it would not approve applications until such studies were completed. Finally, Staff notes that it will be likely to issue a request for proposals from outside firms to conduct a thorough study on the Pilot Program in the current calendar year.

{¶ 48} OCC responds that the Stipulation violates regulatory principles and practices. OCC contends that there was a lack of reviewing and reporting related to the Pilot Program and therefore, the Commission's settlement standards were violated. OCC claims that none of the Staff Reports within the last five years related to rider proceedings mention the cost data or what the Commission directed in authorizing the Pilot Program. Further, OCC notes that the review of Rider NMB called for under FirstEnergy's electric security plan has not been conducted. OCC concludes that the Stipulation should not be approved until the staff review of the Pilot Program is completed, debated by parties, and resolved by the Commission.

## V. COMMISSION CONCLUSION

{¶ 49} After applying the three-part test for evaluating the reasonableness of a stipulation, the Commission finds that Stipulation should be approved and adopted. First, we find the Stipulation is the product of serious bargaining among capable, knowledgeable parties. The record demonstrates that there were several settlement meetings over two

months (Tr. at 209). Campbell Supply witness Seryak's uncontroverted testimony demonstrates that all parties were provided an opportunity to participate in settlement discussions and that there was bargaining between the parties. We also note that both Staff and Campbell Supply, as well as OCC, are represented by counsel that regularly appear before the Commission in complex proceedings. (Campbell Supply Ex. 4 at 3-4.) OCC witness Haugh, who testified in opposition to the Stipulation, did not participate in the settlement discussions (Tr. at 208-209) and thus had no first-hand knowledge of the bargaining in the settlement discussions.

{¶ 50} We are not persuaded by OCC's argument that there cannot have been serious bargaining among the parties because the Stipulation adopted the Application as filed. The sole relief sought by Campbell Supply in this proceeding was authorization to participate in the Pilot Program. There are no other elements to the proposed Arrangement. The option to participate in the Pilot Program is binary; a customer participates in the Pilot Program or it does not. Certainly, the parties could have bargained over conditions or limits to participation in the Pilot Program, but, in this case, the Stipulation recommended that the Applicant be authorized to participate in the Pilot Program without conditions.

{¶ 51} We are similarly unpersuaded by the OCC claim that the Stipulation should be rejected because the signatory parties do not represent a diversity of parties. The Commission has never held that a Stipulation must necessarily be agreed to by a broad range of diverse interests; rather, the Commission has stated that signatory parties representing a broad range of interests is an indication of good-faith, serious bargaining. Nonetheless, the Commission has also recently stated that, in a case with only three parties in total, a diversity requirement would necessitate a unanimous settlement agreement, but the Commission has long ruled that no single party should be afforded veto power under the first part of the three-part test. *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶ 50 (citing, *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18 ("The Commission will not require OCC's approval of stipulations."); *In re Vectren Energy Delivery*

of *Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9 (“There is no requirement that any particular parties execute stipulations in order for the first prong of the test for stipulations to be met.”); *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, et al., Opinion and Order (Apr. 9, 2008) at 32 (“No one possesses a veto over stipulations, as this Commission has noted many times.”)). Consistent with our prior practice, we once again decline to afford any single party the ability to preclude a settlement simply by withholding its signature. Accordingly, the Commission finds that the first prong of the three-part test has been met in this case.

{¶ 52} The Commission also finds that the second prong of the test is satisfied as the Stipulation would benefit ratepayers and the public interest. The evidence in the record provides that Campbell Supply directly employs approximately 1,343 employees at its Napoleon, Ohio site. Campbell Supply also is working to convert at least 250 seasonal employees to full-time, permanent positions. In addition, the Napoleon plant supports 350 jobs from third-party suppliers and service providers. Moreover, Campbell Supply pays approximately \$5.6 million in state and local taxes. (Campbell Supply 2 at 2.) The record further demonstrates that Campbell Supply has made substantial investments to manage its energy use, including installation of a 9.8 MW solar facility (Campbell Supply 2 at 3-5; Tr. at 161-162; Campbell Supply 3A at 3, 9-10; Campbell Supply 4 at 4-5). The evidence shows that the Arrangement will allow Campbell Supply to remain competitive in the global market because it will allow Campbell Supply to continue to manage its energy costs, which represent a significant cost to Applicant (Campbell Supply 2 at 3; Campbell Supply 4 at 5-6).

{¶ 53} Moreover, the weight of the evidence in the record demonstrates that Campbell Supply is paying more than its share of costs for transmission service at this time. Campbell Supply witness Seryak prepared and presented in his testimony an analysis demonstrating that Campbell Supply pays for a greater amount of the transmission obligation than it incurs and that Toledo Edison procures for them (Campbell Supply Ex. 3 at 7-8, Table 1). This results in Campbell Supply paying for more transmission than it uses,

resulting in significant over-payments for transmission. According to Mr. Seryak, these overpayments do not result in ATSI making more money or in Toledo Edison collecting too much or too little money. Instead, Mr. Seryak concludes that other customers have paid less and that Campbell Supply has been subsidizing other customers' transmission costs. (*Id.* at 8-9, Table 2.). Mr. Seryak's testimony was uncontroverted at the hearing. The testimony was not effectively undermined by cross-examination (Tr. at 149-151, 154-155), and OCC witness Haugh acknowledged that he did not perform any independent analysis regarding potential cost-shifting (Tr. at 261). Accordingly, we find, based upon the facts presented in the record of this case, that Campbell Supply is paying more than its share of costs for transmission service at this time.

{¶ 54} Further, the evidence demonstrates that cost-shifting, if any, will have a minimal impact upon other customers' bills. Mr. Seryak testified that Campbell Supply would have saved an average of \$280,000 in transmission costs, per year, over the last ten years if it had participated in the Pilot Program (Campbell Supply 3A at 3; Tr. at 156-157). Mr. Haugh, on the other hand, did not perform any independent analysis (Tr. at 261). Mr. Haugh did concede that, if Mr. Seryak's estimate is correct, the bill impact upon a residential customer would be roughly 10 cents per month (Tr. at 261-263). Therefore, the Commission finds that this cost will have a minimal impact on customer bills relative to the economic impact of Campbell Supply upon the Napoleon, Ohio community.

{¶ 55} Finally, we reject OCC's recommendation to delay approval of the Stipulation until after Staff completes the review of the Pilot Program. When the Commission authorized mercantile customers to participate in the Pilot Program, we did not state, and it was not our intent, that additional participation in the Pilot Program be subject to completion of the review of the Pilot Program. The plain language of the Commission' order authorizing additional participations in the Pilot Program contains no such requirement:

Customers who may benefit from participation in the Rider NMB pilot program should work with Staff and the Companies to determine if the customers'

participation is appropriate, and the customer may then file an application with the Commission under R.C. 4905.31 for permission to participate in the Rider NMB pilot program, and *the Commission will determine if such participation is in the public interest.*

*FirstEnergy ESP IV Stipulation Case*, Fifth Entry on Rehearing (Oct.12, 2016) at ¶ 309 (emphasis added). Based upon the evidence discussed above, we conclude that the Arrangement is in the public interest.

{¶ 56} Further, the Commission did not state that one of the intended purposes of the review was to determine whether additional participation should be permitted:

This review is necessary for the Commission to determine whether Rider NMB should be continued with the ability for customers to opt out, whether Rider NMB should be continued without the ability for customers to opt out, and whether Rider NMB should be terminated.

*Id.* at ¶ 310.

Moreover, at the hearing, OCC witness Haugh conceded that the Commission did not require that the review of the Pilot Program be completed before any additional mercantile customers be permitted to participate (Tr. at 240).

{¶ 57} In any event, the number of cases where mercantile customers who have been approved to participate in the Pilot Program is not significant. At the hearing, OCC witness Haugh was unable to identify the number of reasonable arrangements that have been approved by the Commission and include an authorization to participate in the Pilot Program. In fact, the Commission has approved three reasonable arrangements, which include authorization to participate in the Pilot Program, in all of the FirstEnergy utilities' service territories in Ohio (Ohio Edison Company, The Cleveland Electric illuminating Company and Toledo Edison). We do not consider three cases to be such a significant number to justify withholding approval of a fourth, otherwise meritorious, Arrangement until the Staff has completed its review.

{¶ 58} Accordingly, the Commission finds that the Stipulation, as a package, benefits ratepayers and the public interest.

{¶ 59} Finally, the Commission finds that that Stipulation does not violate any important regulatory principle or practice. Approval of the proposed unique arrangement is not inconsistent with the Commission's directive that a review be conducted of the Pilot Program. First, when we approved the Pilot Program, the Commission specifically held that additional customers could seek to participate in the Pilot Program through the filing of a reasonable arrangement under R.C. 4905.31. *FirstEnergy ESP IV Stipulation Case*, Fifth Entry on Rehearing at ¶ 309. The Commission provided no deadline for the review, simply that the review be completed prior to the end of the FirstEnergy's fourth ESP, which ends on May 31, 2024. *Id.* at ¶ 310; *FirstEnergy ESP IV Stipulation Case*, Opinion and Order (Mar. 31, 2016) at 20. Moreover, Staff has initiated the review of the Pilot Program. *In re the Review of the Non-Market-Based Services Rider Pilot Program*, Case No. 22-391-EL-RDR, Entry (Apr. 20, 2022). We are not persuaded by OCC's arguments that approval of the Campbell Supply proposed unique arrangement, while the review of the Pilot Program is being undertaken, violates any important regulatory principle or practice.

{¶ 60} Further, we find that the Stipulation is consistent with the state policy to ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs (Campbell Supply Ex. 4 at 7-8). R.C. 4928.02(B). Campbell Supply witness Seryak testified that the Stipulation will allow Campbell Supply to realize the full value of its on-site solar investment, which will provide an incentive to Campbell Supply to consider further investments in on-site renewable generation, consistent with state policy to facilitate development of distributed and small generation facilities and encourage innovation and market access for cost-effective supply- and demand-side retail electric service (Campbell Supply Ex. 4 at 8). R.C. 4928.02(C) and (D). The Stipulation also will facilitate job growth and enhance Ohio's effectiveness in the global economy, consistent



with state policy (Campbell Supply Ex. 4 at 8-9). R.C. 4928.02(N); see also, *FirstEnergy ESP IV Stipulation Case*, Opinion and Order (Mar. 31, 2016) at 94.

{¶ 61} Accordingly, the Commission finds that the Stipulation, as proposed, is reasonable and should be adopted.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 62} Campbell Supply is a mercantile customer, as defined by R.C. 4928.02(A)(19).

{¶ 63} Toledo Edison is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 64} On October 8, 2021, Campbell Supply filed an application seeking approval of a unique arrangement for its facility in Napoleon, Ohio.

{¶ 65} On December 9, 2021, a joint stipulation was filed by Campbell Supply and Staff that proposing to resolve all of the issues in the case.

{¶ 66} An evidentiary hearing was held on January 20, 2022.

{¶ 67} The Stipulation submitted by Campbell Supply and Staff meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted, and the proposed unique arrangement between Campbell Supply and Toledo Edison should be approved.

## VII. ORDER

{¶ 68} It is, therefore,

{¶ 69} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 70} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 71} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GAP/IMM/hac

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Summary: Opinion & Order adopting and approving the stipulation authorizing a unique arrangement between Campbell Soup Supply Company L.L.C. and the Toledo Edison Company electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio