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**

SECOND ENTRY ON REHEARING

Entered in the Journal on February 8, 2023

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing filed by Nationwide Energy Partners, LLC and Interstate Gas Supply, Inc.

II. DISCUSSION

A. Procedural Background

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric light company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} In Case No. 16-1852-EL-SSO, et al., the Commission modified and approved a stipulation and recommendation filed by AEP Ohio, Staff, and numerous other signatory parties, which authorized the Company to implement a standard service offer (SSO), in the form of an electric security plan (ESP), for the period of June 1, 2018, through May 31, 2024. Among other commitments, AEP Ohio agreed to file a base distribution rate case by June 1, 2020. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al. (*ESP 4 Case*), Opinion and Order (Apr. 25, 2018) at ¶ 45.

{¶ 4} On June 8, 2020, AEP Ohio filed an application to increase its rates pursuant to R.C. 4909.18.[1]

{¶ 5} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to the application. On November 18, 2020, as corrected on November 25, 2020, Staff filed a written report of its investigation (Staff Report).

{¶ 6} The following entities were granted intervention in these proceedings: Ohio Energy Group (OEG); Ohio Consumers' Counsel (OCC); Ohio Manufacturers' Association Energy Group (OMAEG); The Kroger Co. (Kroger); Interstate Gas Supply, Inc. (IGS); Natural Resources Defense Council; Industrial Energy Users-Ohio (IEU-Ohio); Ohio Partners for Affordable Energy; Environmental Law & Policy Center; Walmart Inc. (Walmart); Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy or Direct); Ohio Hospital Association (OHA); ChargePoint, Inc. (ChargePoint); Nationwide Energy Partners, LLC (NEP); Armada Power, LLC; Constellation NewEnergy, Inc.; Clean Fuels Ohio (CFO); Citizens' Utility Board of Ohio (CUB-Ohio);[2] Zeco Systems, Inc. d/b/a Greenlots; Ohio Environmental Council; One Energy Enterprises LLC (One Energy); Ohio Cable Telecommunications Association (OCTA); and EVgo Services LLC (EVgo).

{¶ 7} Objections to the Staff Report were filed by various parties on December 18, 2020.

{¶ 8} On March 4, 2021, an evidentiary hearing was convened via Webex and continued to provide additional time for settlement negotiations among the parties.

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[1] Due to the closure of the Commission's offices from June 1, 2020, through June 5, 2020, the application for a rate increase, which was submitted by AEP Ohio on June 1, 2020, was accepted for filing on June 8, 2020, and deemed timely filed in accordance with R.C. 1.14 and Ohio Adm.Code 4901-1-07 and 4901-1-13. *In re the Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 20-1132-AU-UNC, Entry (June 8, 2020).

[2] On April 30, 2021, CUB-Ohio filed notice of its withdrawal as a party to these proceedings.

{¶ 9} On March 12, 2021, a joint stipulation and recommendation (Stipulation) was filed by AEP Ohio, Staff, Kroger, OCC, OEG, IEU-Ohio, OMAEG, CFO, EVgo, OHA, Walmart, One Energy, ChargePoint, and OCTA.

{¶ 10} The evidentiary hearing reconvened via Webex on May 12, 2021, and concluded on May 18, 2021.

{¶ 11} Initial and reply briefs were filed by the parties on June 14, 2021, and July 6, 2021, respectively.

{¶ 12} By Opinion and Order dated November 17, 2021, the Commission approved and adopted the Stipulation.

{¶ 13} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 14} On December 17, 2021, NEP and IGS filed applications for rehearing with respect to the Commission's Opinion and Order.

{¶ 15} On December 20, 2021, AEP Ohio filed a motion for a three-day extension of the deadline for memoranda in opposition to the applications for rehearing of NEP and IGS, along with a request for an expedited ruling. Pursuant to Ohio Adm.Code 4901-1-12(C), the attorney examiner granted the motion on December 21, 2021, such that the deadline for memoranda contra the applications for rehearing was extended to December 30, 2021.

{¶ 16} AEP Ohio, OCC, and Kroger filed memoranda contra the applications for rehearing on December 30, 2021.

{¶ 17} By Entry on Rehearing dated January 12, 2022, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing filed by NEP and IGS.

{¶ 18} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing filed by NEP and IGS. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Applications for Rehearing

1. LOW-LOAD FACTOR GENERAL SERVICE TARIFF AND PILOT

{¶ 19} In its application for rehearing, NEP alleges that the Commission acted unreasonably, unlawfully, or against the manifest weight of the evidence in its approval of the Stipulation that did not include a low-load factor tariff or pilot. NEP argues that the Commission erred by (1) not considering low-load factor ratepayers when assessing the Stipulation, (2) determining that the Stipulation, rather than a proposed modification, benefits ratepayers, (3) not requiring a proposed low-load factor tariff based on determinations that the tariff's impact was "unknown" and that NEP's analysis in support of the tariff was "very limited," and, (4) not implementing a low-load factor tariff pilot, including the determination that the pilot's impact on customer bills was "unknown" and that analysis of the pilot was "very limited."

{¶ 20} In its first argument, NEP submits that the Commission unreasonably and unlawfully failed to consider low-load factor customers in its determination that the Stipulation, as a package, benefits ratepayers and the public interest. NEP argues the Commission failed to conduct any analysis of how the proposed General Service (GS) demand-based rate schedule would impact low-load customers. NEP notes that the Commission has previously acknowledged low-load factor customers as a unique group in other rulings but failed to consider the Stipulation's impact on low-load customers in its

evaluation of the Stipulation in this case. *In re the Application of Columbus S. Power Co. and Ohio Power Co. for Authority to Establish a Std. Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Elec. Security Plan* (*ESP 2 Case*), Case No. 11-346-EL-SSO et al., Opinion and Order (Dec. 14, 2011), Entry on Rehearing (Feb. 23, 2012) ¶ 19 [Stipulation modified for the ESP to be more favorable in the aggregate than a market rate offer; subsequently, the Commission determined provision of the stipulated rider did not promote rate certainty and would not benefit ratepayers and the public interest].

{¶ 21} NEP contends that the Commission did not consider the analysis introduced by NEP witness Rehberg, a professional engineer with rate analysis experience, even though it was the only such testimony offered on the purported impact of the Stipulation on low-load GS customers. Instead of finding NEP's analysis "very limited," NEP argues the Commission should have considered the math that supports NEP's claims that the Stipulation will have a disproportionate adverse impact on low-load factor customers when evaluating whether the Stipulation benefits ratepayers and the public interest. Accordingly, NEP submits the Commission's decision approving the Stipulation was unreasonable and unlawful. NEP asks that the Commission reverse its ruling on rehearing and consider the impact to low-load factor customers.

{¶ 22} AEP Ohio reiterates its briefing arguments regarding (1) NEP witness Rehberg's lack of experience and training on rate impacts, rate design issues, ratemaking or cost of service analysis and (2) the inadequacies of NEP's low load factor analysis. The Company emphasizes that NEP's analysis is unreasonably limited to only four master-metered NEP accounts, without any of the needed analysis, including analysis of: (1) the associated submetered accounts or inclusion of any other types of accounts, (2) actual or estimated load factors to determine the number of customers that would qualify for the proposed low-load factor tariff or pilot, and (3) load profile and demand characteristics of low load customers to estimate demand revenue and energy usage characteristics of low-load factor customers or to estimate energy revenue generated on a low-load factor rate

schedule. Accordingly, AEP Ohio concludes that NEP's analysis was not conducted in an objectively verifiable manner, reliably implemented or likely to yield an accurate result.

{¶ 23} Kroger points out that all of NEP's eight assignments of error are essentially the same argument, repackaging the same claims that the Commission considered and rejected in its Opinion and Order. Kroger submits that NEP again argues for a low-load factor tariff or pilot without presenting any thorough analysis of how the proposals will impact other customers or AEP Ohio or how such proposals are justified. Kroger notes that the Opinion and Order includes an analysis of NEP's proposals and other parties' arguments regarding the evidentiary record presented on this issue. Opinion and Order at ¶¶ 135 - 140. Finally, Kroger adds that the Commission specifically offered its reasons for denying NEP's proposals, consistent with the requirements of R. C. 4903.09.

{¶ 24} As to NEP's cite to AEP Ohio's *ESP 2 Case*, Kroger and AEP Ohio submit that the circumstances and facts in this case and the *ESP 2 Case* are different. Kroger explains that in AEP Ohio's ESP 2 proceeding, the Commission determined on rehearing that the signatory parties failed to demonstrate that a settlement benefited customers and was in the public interest after customers filed their bills in the case record and the customer bills were substantially higher than the bill estimates presented by the utility in support of the Stipulation. *ESP 2 Case*, Entry on Rehearing (Feb. 23, 2012) at ¶ 19. Kroger reasons that in the *ESP 2 Case*, the Commission was acting on the unique evidentiary record before it and determined that the new information changed the weight it should afford the prior evidence; in contrast, in this case there is no new evidence to evaluate regarding low-load factor proposals or customers. AEP Ohio and Kroger offer that considering that the Commission has already evaluated the evidence in support of NEP's proposals and concluded that the record evidence did not support NEP's conclusions, there is no need for the Commission to revisit its evaluation of NEP's low-load factor proposals when the evidentiary record remains the same as when the Commission issued its Opinion and Order.

{¶ 25} AEP Ohio further rebuts NEP's claim that the Commission erred by considering the Stipulation as a package, instead of NEP's proposed modification, in assessing the benefits to ratepayers and the public interest. AEP Ohio argues that NEP's reliance on the Commission's decision in Case No. 09-1089-EL-POR et al. as support for alleged Commission error is misconstrued. *In re the Applications of Columbus S. Power Co. and Ohio Power Co. for Approval of Program Portfolio Plans and Requests for Expedited Consideration*, Case Nos. 09-1089-EL-POR et al. (*Energy Efficiency Case*), Opinion and Order (May 13, 2010) at 26. AEP Ohio argues that in the *Energy Efficiency Case*, the Commission approved changes to a stipulation provision only after first determining that the record did not factually support the stipulation as presented. On appeal, the Supreme Court of Ohio affirmed the Commission's decision because it was supported by analysis of the record. Here, the Commission's record analysis determined that the Stipulation is beneficial to ratepayers. Accordingly, there is no further duty on the Commission to consider whether the Stipulation can be made more beneficial to ratepayers. *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, 950 N.E.2d 164, ¶¶ 18-19.

{¶ 26} NEP emphasizes its witness' experience, NEP's analysis in support of its proposed low-load factor pilot and tariff and argues that the Commission failed to consider the impact of the Stipulation on low-load factor customers despite that NEP presented the only opposing testimony regarding the impact of the Stipulation on low load factor customers. We disagree with every aspect of NEP's argument. The Commission recognizes that while the testimony of NEP's witness is the only testimony regarding the purported impact of the Stipulation on low-load GS customers, NEP witness' testimony, expertise, and analysis was challenged on cross-examination and opposed by certain Signatory Parties in their respective briefs. Opinion and Order at ¶¶ 137-139. As specifically stated in the Opinion and Order, the Commission found the analysis on which NEP based its proposed tariff and pilot proposals very limited, developed from four selected, master meter accounts, without any consideration as to the submetered accounts underlying the master-metered accounts selected, and unrepresentative of the types of low-load factor accounts in AEP

Ohio's service territory. NEP admits that its analysis is extrapolated from the four accounts selected to create a value for demand kilowatt-hours to represent all low-load factor customers (Tr. IV at 765-766). Further, the Commission concludes that NEP did not adequately consider the potential impact of its proposals on non-low load factor GS customers, other AEP Ohio customers or AEP Ohio (Tr. IV at 798-799; NEP Ex. 34 at 3-4, 8, 11-12). Contrary to NEP's arguments, as a part of its overall review of the Stipulation, the Commission considered the impact of the Stipulation on GS customers, which includes commercial and industrial low-load factor customers. While the Commission's consideration of the impact of the Stipulation may not have specifically designated segments of the GS class as proposed by NEP, the impact of the Stipulation on GS customers was considered. We recognize that the benefits and impacts of the Stipulation may not be equally distributed amongst all customers and customer classes (Co. Ex. 4 at Ex. DMR-S2). The Commission also thoroughly evaluated NEP's testimony, analysis, and the low-load tariff and pilot proposals. Opinion and Order at ¶¶ 135 -137. The Commission found the Stipulation, as a package, to include benefits for ratepayers and the public interest in numerous respects and, on that basis, found the modification of the Stipulation to incorporate either the proposed low-load factor tariff or pilot unnecessary. Opinion and Order at ¶¶ 140, 150 -151. The Commission's conclusion as to part two of the three-part test is not inconsistent with the Commission's decision in the *ESP 2 Case* as NEP asserts. On rehearing in the *ESP 2 Case*, the Commission found the bills submitted by GS customers demonstrated that the actual impact of the stipulation vastly exceeded the expected impact as represented by AEP Ohio and the signatory parties. Considering the actual total bill impacts and the Commission's determination that the bill impacts could not be adequately addressed via shopping credits, the Commission concluded that certain provisions of the stipulation in that case failed to meet statutory requirements and the signatory parties had failed to comply with the three-part test used to evaluate stipulations. *ESP 2 Case,* Entry on Rehearing (Feb. 23, 2012) at ¶ 19. Further, we clarify, as discussed in the Order, the scope of part-two of the three-part test, in addition to expressing our concerns with the low-load

factor analysis presented and the potential impacts of NEP's proposals. (Co. Ex. 6 at 17-19; Co. Ex. 4 at 7-8; Tr. Vol. IV at 730-731, 743-747, 759-761, 763, 766, 793-794). With that clarification, we affirm the Opinion and Order and deny NEP's application for rehearing on its first assignment of error.

{¶ 27} In its second assignment of error, NEP notes that the Opinion and Order repeatedly states that part two of the three-part test is not whether there are different or additional provisions that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. NEP argues this approach ignores evidence of different or additional provisions as well as the directive of the Supreme Court of Ohio that the Commission "may place substantial weight on the terms of a stipulation" but "must determine, from the evidence, what is just and reasonable." *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, 950 N.E.2d 164 ¶ 19 (emphasis in original), quoting *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d (1992). NEP also argues the Commission is required to consider evidence outside of the Stipulation package, which includes alternatives and modifications, noting that the Commission has previously modified a stipulation to further the public interest in other proceedings in addition to the *ESP 2 Case*. *See Energy Efficiency Case*, Opinion and Order at 26 (May 13, 2010); *ESP 2 Case*, Opinion and Order at 30-32, 38, 41-42, 50, 54-55, 59, 61, 63-65 (Dec. 14, 2011); Entry on Rehearing at ¶ 19 (Feb. 23, 2012); Entry (Mar. 7, 2012); and *In re the Application Seeking Approval of Ohio Power Co.'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. (*PPA Case*), Opinion and Order (Mar. 31, 2016) at 81-92, 106; Second Entry on Rehearing (Nov. 3, 2016) at ¶ 103. However, in this case, NEP asserts that the Commission unreasonably and unlawfully limited its analysis exclusively to whether the Stipulation, as a package, benefits ratepayers and the public interest without regard to other evidence, alternatives, or modifications to the Stipulation.

{¶ 28} In reply, AEP Ohio states that while the Commission is certainly vested with the authority to modify a stipulation based on the record evidence, the Commission is not duty bound to make amendments to the Stipulation merely because some evidence was admitted into the record. To justify an amendment to the Stipulation, AEP Ohio contends, the Commission must find that the Stipulation, as a package, would not benefit the public in the absence of such a change. To support its position, AEP Ohio asserts that NEP cites to several inapposite decisions by the Commission and the Supreme Court of Ohio. Contrary to the assertions of NEP, the Company avers none of the examples cited by NEP considered alternatives and modifications to the stipulation under consideration merely because parties provided some evidence that allegedly established some level of incremental benefits. AEP Ohio argues in this case the Commission properly found the Stipulation, as a package, met the requirements of the three-part test and, therefore, the Commission was not required to modify the Stipulation to incorporate NEP's proposal.

{¶ 29} Similarly, Kroger also encourages the Commission to deny NEP's request for rehearing to modify the Stipulation to include NEP's low-load tariff or pilot. Kroger notes the Opinion and Order includes an analysis of the evidentiary record, including NEP's proposals and the arguments of the parties regarding NEP's proposals. After a full analysis of the record, Kroger reasons that the Commission ultimately concluded that: (1) NEP failed to properly address the three-part test for evaluating a stipulation; and (2) that NEP's underlying analysis in support of its low-load factor proposals was very limited and inadequate, based on only four accounts, which are not representative of the various types of low-load factor accounts. According to Kroger, the November 17, 2021 Order satisfies the requirements of R.C. 4903.09. In regard to NEP's reference to the *ESP 2 Case*, et al., AEP Ohio and Kroger explain that in the *ESP 2 Case*, in its Entry on Rehearing, the Commission determined that the signatory parties had failed to demonstrate that the settlement benefitted customers and was in the public interest based on actual customer bills filed in the docket that were substantially higher than the bill estimates that the utility provided in support of the stipulation. *ESP 2 Case*, Entry on Rehearing (Feb. 23, 2012) at ¶ 19. AEP Ohio

and Kroger argue that the Commission was acting on the unique evidentiary record before it in the *ESP 2 Case* and the new information presented changed the weight the Commission assigned to prior evidence. Kroger emphasizes that there is no new information or evidence to evaluate regarding the low-load factor proposals or customers and, consequently, no need for the Commission to revisit its evaluation of NEP's low-load factor proposals.

{¶ 30} Further, AEP Ohio offers that in the *Energy Efficiency Case* cited by NEP, the Commission revised the lost distribution revenue component of the stipulation after finding that the record failed to establish what revenue was necessary to provide AEP Ohio with the opportunity to recover its costs and earn a fair and reasonable return. *Energy Efficiency Case*, Opinion and Order (May 13, 2010) at 26. Therefore, AEP Ohio asserts NEP's reference to the Supreme Court of Ohio decision affirming that holding is taken out of context.[3] In fact, AEP Ohio emphasizes the Court held that because parties have entered into a stipulation does not relieve the Commission of "the requirement that its findings be based on record evidence * * *." *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 18. Similarly, as to the *PPA Case*, AEP Ohio responds that 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." *PPA Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 103; *See also*, Opinion and Order (Mar. 31, 2016) at 87.

{¶ 31} In its memorandum contra, OCC notes that while OCC did not take a position on NEP's low-load proposals previously, the low-load factor proposals are not a part of the Stipulation as presented by the Signatory Parties and the Commission appropriately rejected them in favor of the settlement package. As such, OCC advocates that the Commission deny NEP's application for rehearing and avoid placing the consumer protections in the Stipulation at risk. In addition, OCC notes that NEP references the Commission's denial of Armada's request to direct AEP Ohio to adopt a water heater

[3] *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 19.

control pilot. Opinion and Order at ¶ 134. OCC argues that NEP's reference to the Armada water heater controller pilot does not satisfy the requirements of Ohio Adm.Code 4901-1-35(A) and, therefore, should be denied.

{¶ 32} In this case, the Commission found that the Stipulation package, as presented by the Signatory Parties, fulfilled the requirements of the three-part test used to evaluate stipulations. Opinion and Order at ¶¶ 107-108, 150-151, 206. As clarified above regarding NEP's first assignment of error, the Commission considered the impact of the Stipulation on GS customers and ultimately determined that the Stipulation, as a package, complied with the three-part test without modification to include either the low-load factor tariff or pilot proposal. Opinion and Order at ¶¶ 107-108, 150-151, 206. The Commission reiterates that we found NEP's analysis, on which the low load-factor tariff and pilot are based over-simplified, extrapolating from four selected NEP accounts without sufficient analyses or consideration for the number of potential low-load factor customer participants, and the scope of the possible impacts of the proposals on the bills of other AEP Ohio customers and AEP Ohio unknown, as stated in the Opinion and Order. Opinion and Order at ¶ 140. We note the purpose of the proposals, as NEP admits, is to afford low-load customers a tool to reduce their energy demand. Accordingly, it is only reasonable that the Commission have sufficient analysis of the proposal to determine potential impacts on AEP Ohio's other customers and AEP Ohio. NEP fails to present, in this request for rehearing, any new reason that persuades the Commission to reverse its decision as set forth in the Opinion and Order. Accordingly, we deny NEP's second assignment of error.

a. NEP's Low-load Factor Tariff Proposal

{¶ 33} In assignments of error numbers three through five, NEP argues that the Commission erred in finding that (1) customer bill impacts from the proposed low-load factor tariff were "unknown," (2) analysis of the proposed tariff was "very limited," and (3) the proposed tariff was not required to be added to the adopted Stipulation. NEP claims that it's expert testimony in support of the proposed tariff is unrefuted such that the

Commission's failure to adopt the tariff cannot be legally supported. Further, NEP argues that the tariff proposal incentivizes low-load customer energy efficiency measures, which does not occur as a result of the Stipulation. NEP reasons that its low-load factor tariff proposal uses the same approach and advances the same policies as the Plug-In Electric Vehicle (PEV) rate schedule that was adopted via the Stipulation, and that the disparity in treatment of the two rate factors is against public policy.

{¶ 34} AEP Ohio submits that the Commission appropriately evaluated the Stipulation, as a package, as well as evaluated the concerns raised by NEP regarding the impact to low-load factor customers. Opinion and Order at ¶ 140. AEP Ohio stresses that the Commission is not obligated to determine whether there are additional or better mechanisms beyond the Stipulation package and that the Commission reasonably determined that the low-load factor proposal was of "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." Opinion and Order at ¶ 140. Further, AEP Ohio and Kroger note that despite NEP's claims to the contrary, as reflected in the Order, the Signatory Parties challenged NEP's witness' (1) experience and training, (2) sample size and method analysis, and (3) lack of analysis of the proposals' impact on non-low load customers and AEP Ohio. Opinion and Order at ¶¶ 137-139; (Tr. at IV at 656 – 684, 737, 742, 743-744, 760; Kroger Ex. 1; Kroger Ex. 2). AEP Ohio submits that the Commission met its obligation to present its rationale for rejecting NEP's proposal. See, *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 493 (2008-Ohio-990 at ¶ 30). Moreover, AEP Ohio states there are additional reasons in the record that support the Commission's ruling. AEP Ohio argues that NEP's analysis is woefully inadequate and does not qualify as a cost-of-service study, with a proposed low-load factor demand rate designed to benefit low-load factor customers. While NEP alleges in its application for rehearing that its proposal analysis "backed into an energy charge similar to the PEV schedule" AEP Ohio argues that no such explanation was provided in its witness' testimony. AEP Ohio reiterates that NEP witness Rehberg testified that the analysis considered only four master-metered NEP

accounts, without any analysis of the submetered accounts behind the four master-metered NEP accounts, did not verify the existence of any actual low-load factor customers--only that they "can consist of multi-family housing, restaurants, and in some cases warehouses" and failed to consider any other types of low-load factor customers. AEP Ohio contends, there is no evidence in the record that the four examples NEP used are representative of AEP Ohio's GS class customer base. Thus, AEP Ohio contends that NEP's analysis was not conducted in a way that was objectively verifiable, reliably implemented, or likely to yield an accurate result. (Tr. at IV at 745, 747, 760-761, Co. Br. at 15.)

{¶ 35} As to NEP's assertion that the type of customer is irrelevant to its analysis, AEP Ohio submits that the type of customer can be instrumental to estimating and predicting load factors. According to AEP Ohio, NEP's analysis did not include many of the variables one would expect to be analyzed to predict the impacts of the low-load factor rates with any degree of confidence including: (1) actual and/or estimated load factors to determine the number of customers that would qualify for the proposed low-load factor tariff rate; (2) load profile and demand characteristics of low-load customers to estimate demand revenue; and (3) energy usage characteristics to estimate energy revenue. AEP Ohio notes that while NEP concedes that load factors drive the demand costs, NEP did not determine or calculate the existence of any specific load factors except for the four NEP accounts, let alone something that could be extrapolated to determine applicability to all AEP Ohio GS customers. AEP Ohio declares that the low-load factor tariff, which NEP purportedly designed to afford low-load factor GS customers the ability to better manage their cost, will either result in cost-shifting to other customers or reduced revenues for AEP Ohio, aspects which NEP's analysis did not address. (NEP Ex. 34 at 11; Tr. IV at 798-799). Thus, AEP Ohio endorses the Commission finding that the low-load factor analysis was "very limited" and "would have unknown impacts" as concluded in the Opinion and Order. Opinion and Order at ¶ 140.

{¶ 36} Further, AEP Ohio submits, in contrast, Company witness Roush is a qualified expert in rate design and cost allocation. AEP Ohio witness Roush performed a reliable analysis of the rate impacts of the Stipulation, including a proposed bill analysis, pursuant to the requirements of Ohio Adm.Code 4901-7-01, as well as demonstrated that the revenue requirement allocation and rate mitigation measures in the Stipulation provide a reasonable transition to the combined rate zones for all classes and reasonable rates that incorporate the principles of cost causation while avoiding undue customer bill impacts (Co. Ex. 4A; Tr. I at 82; Co. Ex. 4A, Ex. DMR-S2; Co. Ex. 4 at 6, 8.) Finally, AEP Ohio submits that perhaps most importantly, NEP 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.

{¶ 37} NEP requests that the Commission specifically address the unique needs and circumstances of low-load factor commercial customers. In its Order, as clarified above, the Commission considered the effect of the Stipulation on GS customers' bills, which includes low-load factor customers. The Commission evaluates the benefits of a stipulation to ratepayers on a variety of factors, not just rates. *Energy Efficiency Case*, Opinion and Order at 22-23. NEP has not presented any additional evidence not already considered by the Commission which persuades the Commission to reconsider its rationale and reverse its ruling as presented in its Opinion and Order as clarified in this Second Entry on Rehearing. Further, R. C. 4903.09 merely requires that the Commission state the rationale for its decision based on the record evidence. After considering NEP's proposals and the opposing arguments, the Opinion and Order clearly presents the reasons for the Commission's refusal to amend the Stipulation to include either of NEP's low-load proposals, as clarified by this Second Entry on Rehearing. Finally, the Commission notes that if the goal of the low-load tariff and pilot is to facilitate an opportunity for low-load factor GS customers to manage, or in other words reduce, their costs, the Commission must expect that at least a minimal level of cost will be shifted to other customers or AEP Ohio; a consideration which NEP did not adequately consider (NEP Ex. 34 at 11; Tr. at Vol. 798-799). For these reasons, in addition

to the reasons and clarifications provided as to NEP's other arguments on rehearing, we deny NEP's third, fourth, and fifth assignments of error.

b. NEP's Low-load Tariff Pilot Proposal

{¶ 38} In its assignments of error number six through eight, NEP argues the Commission unreasonably, unlawfully, and against the manifest weight of the evidence failed to adopt NEP's low-load factor pilot proposal. More specifically, in its sixth assignment of error, NEP argues the Commission unreasonably and unlawfully concluded that the proposed low-load factor pilot posed an unknown impact on customer bills. NEP states the Commission's conclusion is erroneous and against the manifest weight of the evidence. As proposed by NEP, the pilot would be limited to the first 1,000 low-load customers on a first-come, first-serve basis, with the participation level subject to decrease if the impact to AEP Ohio is greater than $1.2 million in any given year. NEP acknowledges that, hypothetically, there is an unlikely scenario of an under-collection of the revenue requirement and where AEP Ohio would not seek to recover that reduction in revenue due to energy efficiencies achieved in the program. NEP proposes to address the risk of an under-collection by permitting AEP Ohio to reduce the number of pilot participants. NEP contends there is also an inverse risk of over-collection under the pilot because of weather and economic behavior (Tr. IV at 852-853). Thus, NEP concludes that the evidence establishes that the proposed pilot would not have an impact on other customers, the impact to AEP Ohio would be minimal, and the number of participants, who must opt-in, limited. Therefore, NEP contends, the Commission finding of unknown impacts in regard to the proposed NEP pilot is not supported by the record. NEP adds that the purpose of the pilot would be to afford the Commission and AEP Ohio the opportunity to evaluate a low-load factor rate schedule (Tr. IV at 740-741; NEP Ex. 34 at 12.) Accordingly, NEP requests that the Commission grant its application for rehearing and implement the low-load tariff pilot.

{¶ 39} In its seventh assignment of error, NEP contends that the Commission erred in its finding that NEP's analysis of the proposed low-load factor pilot was "very limited."

Opinion and Order at ¶ 140. NEP argues that the evidence includes the details of how the pilot would operate. NEP submits that the low-load tariff proposal provides an appropriate balance of interest between a cost increase for AEP Ohio and some aspect of cost control for low-load factor customers. On that basis, according to NEP, the Commission's Order contradicts the record, is unreasonable and unlawful and, therefore, the Commission should grant rehearing and implement the proposed low-load factor pilot.

{¶ 40} Lastly, in its eighth assignment of error, NEP declares that the Commission acted unreasonably and unlawfully by not approving the low-load factor pilot. NEP reiterates the details of how the low-load factor pilot was designed, the purported benefits of the tariff pilot as a cost management tool for eligible participating customers and as an opportunity for the Commission to evaluate the proposed low-load factor tariff. NEP also compares its low-load factor pilot to the PEV pilot approved by the Commission as part of the Stipulation. NEP argues the Commission did not perform an in-depth analysis of the proposed pilot, based its decision on vague conclusory statements without any citations to the record evidence, and unreasonably declined to adopt NEP's pilot proposal.

{¶ 41} AEP Ohio and Kroger contend that NEP's alternative low-load factor pilot suffers from the same issues raised by the Signatory Parties, given that the tariff and pilot are based on the same analysis, proposed rate and construct, with the only difference that NEP proposed to cap the number of customers who could participate, at 1,000 customers (NEP Ex. 34 at 11). Kroger states that NEP's application on rehearing is merely a repackaging of the same arguments the Commission considered and rejected in its Order. Just as with its opposition to the low-load tariff, Kroger ask the Commission to deny NEP's request for rehearing to modify the Stipulation to include a low-load tariff pilot. Kroger notes that the Opinion and Order includes an analysis of the evidentiary record, including NEP's pilot proposal and the arguments of the parties regarding the proposals. After a full analysis of the record, Kroger reasons that the Commission ultimately concluded that: (1) NEP failed to properly address the three-part test for evaluating a stipulation; and (2) that

NEP's underlying analysis in support of its low-load factor tariff, and in the alternative, a low-load factor pilot, was very limited and deficient. Further, Kroger reasons that the Commission explained the reasoning and factual grounds for its decision not to modify the Stipulation to include the low-load factor tariff or pilot as required by R.C. 4903.09, followed established precedent regarding the modification of a stipulation and correctly applied the three-part test used to evaluate stipulations. Accordingly, Kroger ask that NEP's application for rehearing regarding its low-load factor pilot proposal, like the tariff, be denied.

{¶ 42} AEP Ohio states that depending on the load and usage characteristics of 1,000 customers, the impacts of the pilot, as proposed by NEP, could be massive. While NEP estimates an impact of possibly $1.2 million, AEP Ohio retorts that such a revenue impact assumes an average customer consumption of 100,000 kWh and 20 percent energy efficiency reduction, without any study or analysis that the assumption NEP makes are reasonable, lacks analysis that demand and energy usage characteristics of the 1,000 customer pilot participants necessary to determine the projected delta revenue, and would require AEP Ohio to bear the risk, as according to NEP the cost of the pilot will not be shifted to AEP Ohio's other customers. Kroger and AEP Ohio assert that NEP's witness testimony fails to address the impact on AEP Ohio services that could result from a revenue shortfall with the implementation of NEP's proposal, the impact other AEP Ohio customers or how the NEP proposals are justified. (Tr. IV at 798-799). Further, NEP offers that AEP Ohio could reduce the number of participants in the pilot below the 1,000 cap if the under-collection amount reaches $1.2 million in any given year. AEP Ohio argues the cap reduction is an incomplete and impractical solution, which is not equivalent to capping the amount of risk. Furthermore, AEP Ohio argues despite NEP's assertion that all the details necessary on how the pilot would be implemented were presented, AEP Ohio submits 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 Company revenues of more than $1.2 million per year. AEP Ohio also asserts this pilot creates even more unknown risks 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. Accordingly, AEP Ohio argues it was not unreasonable for the Commission to approve the Stipulation without any modification to include either low-load factor proposal as proposed by NEP. (NEP Ex. 34 at 11; Tr. IV at 741.)

{¶ 43} As previously noted in the Opinion and Order, the Commission determined that the Stipulation, as a package, met the requirements of the three-part test for evaluating stipulations without incorporating either the proposed low-load factor tariff or pilot. Opinion and Order at ¶¶ 150-151. Further, we found, as clarified in this Second Entry on Rehearing, the analysis which formed the bases for the low-load tariff and pilot proposals limited. As NEP acknowledges, low-load factor customers may include single shift manufacturers, big-box retailers, churches, and grocery stores as well as other types of customers (NEP Ex. 34 at 3; NEP Reply Br. at 7). We note that NEP proclaims that the proposed tariff and pilot are to afford low-load factor GS customers who, according to NEP, cannot easily manage their monthly peak demand, the opportunity to implement energy efficiency measures and manage their energy demand to lower monthly costs (NEP Ex. 34 at 8-9, 12). First, low-load customers may and are indeed encouraged to implement energy efficiency measures; while adoption of the Stipulation may increase the payback period for the GS customer, such measures are nonetheless beneficial to controlling one's energy cost. Second, in light of NEP's stated purpose for the tariff and pilot proposals, the Commission must consider the potential impact the tariff or pilot would have on not only participating customers but also other AEP Ohio customers and AEP Ohio although NEP states the tariff and pilot were designed to be revenue neutral. We note that NEP witness Rehberg estimated a $1.2 million under-collection as a worst-case scenario if customers on its proposed low-load tariff or pilot maximized their energy efficiency at about 15 percent (Tr. IV at 740). The risk mechanism proposed by NEP, if AEP Ohio incurs a $1.2 million under-collection, then AEP Ohio may reduce the customer participation level, is an after-the-fact risk-mechanism that cannot be immediately implemented. Finally, the Commission notes that while NEP compares its proposed low-load factor pilot to the PEV pilot, the PEV pilot

advances the state policy of the use of innovation, and the public purchase and use of electric vehicles, broad-based benefits appealing to individuals, businesses, and society. NEP's tariff and pilot proposals do not advance a state policy provision nor offer a similar broad-based benefit. Opinion and Order at ¶ 114. For these reasons, in addition to those discussed above as to the tariff proposal, the Commission denies NEP's sixth, seventh, and eighth assignments of error. (NEP Ex. 34 at 11; Tr. at Vol. 798-799.)

2. RETAIL RECONCILIATION RIDER AND SSO CREDIT RIDER

{¶ 44} In its first ground for rehearing, IGS asserts that the Commission erred in finding that there is no basis upon which to conclude that AEP Ohio's distribution rates include known and quantifiable costs that should be allocated to the Retail Reconciliation Rider (RRR). IGS contends that there is uncontroverted evidence that AEP Ohio recovers known and quantifiable costs to provide default service in its distribution rates and, therefore, the Opinion and Order is unlawful, unreasonable, and contrary to R.C. 4903.09. According to IGS, AEP Ohio's own analysis indicates that it incurred at least $4.7 million in costs that would be collected in distribution rates and that are directly assignable to the provision of default service, while both Staff and IGS agreed that the Company collects costs incurred in the provision of generation-related services in its distribution rates. IGS also notes that AEP Ohio's analysis shows that the Company incurs $1.2 million in known and quantified costs that are directly attributable to the support of competitive supply. (IGS Ex. 3 at Ex. DMR-2; Tr. Vol. II at 291-292, 346-349.) Although IGS questions whether it is proper to net costs to support competitive suppliers from the costs to support default service, IGS concludes that, regardless, there are at least $3.5 million in known and quantifiable costs that should be removed from distribution rates, collected from SSO customers under the RRR, and refunded to all customers through the SSO Credit Rider (SSOCR).

{¶ 45} AEP Ohio responds that the Commission lawfully and reasonably concluded that there is an insufficient basis to find that there are known, quantifiable costs reflected in the Company's distribution rates that should be allocated to the RRR and SSOCR. AEP

Ohio asserts that the Commission's conclusion was supported by the record and adequately explained in compliance with R.C. 4903.09. AEP Ohio contends that IGS's position that, at a minimum, there is an uncontroverted record reflecting a subsidy in distribution rates of $3.5 million is disingenuously extrapolated from Company witness Roush's initial testimony supporting the application in which Mr. Roush attempted to comply with the Commission's directive in the *ESP 4 Case* to quantify costs associated with offering the SSO product. AEP Ohio emphasizes that the analysis provided in Mr. Roush's initial testimony was strongly contested and criticized by multiple parties, including IGS, and was not offered in support of the Stipulation. According to AEP Ohio, it would be procedurally improper and have a chilling effect on future settlement negotiations for the Commission to make a critical factual finding based upon this testimony that was initially provided to discharge the Company's obligation from the *ESP 4 Case* but that was not ultimately offered into evidence by the Company, given the Stipulation and the rejection of the analysis by Staff and the intervenors, as well as IGS/Direct witness Lacey.

{¶ 46} AEP Ohio argues that the Commission essentially concluded that the record evidence does not satisfy the standard of proof established in the *ESP 4 Case*. AEP Ohio further argues that this conclusion is justified for two related reasons: the Commission has made it clear that a robust netting of costs associated with offering the SSO product and the open access product is required; and, although Mr. Roush tried to conduct the analysis contemplated by the Commission, Mr. Roush encountered difficulty in quantifying several categories of costs and could not reach a definitive level of costs for either the SSO product or open access product functions. AEP Ohio concludes that, contrary to IGS's claim that the Commission did not adequately explain its decision, the Opinion and Order explicitly cited and explained in detail that IGS simply failed to satisfy or even address the standard of proof previously established for the RRR and SSOCR in the *ESP 4 Case,* as Mr. Lacey knowingly refused to complete the required analysis or present evidence to meet the established standard.

{¶ 47} In response to the first ground for rehearing raised by IGS, OCC argues that the Opinion and Order does not violate R.C. 4903.09, as the Commission fully explained the basis for its decision to approve the provision in the Stipulation that maintains the RRR and SSOCR as placeholder riders set at zero. More specifically, OCC states that the Commission relied on evidence offered by AEP Ohio, Staff, and OCC, while also noting the reasons for its decision to discount Mr. Lacey's testimony. According to OCC, the Commission should reject IGS's request for a minimum reallocation of $4.7 million in costs through the RRR and SSOCR, as there is no evidence regarding AEP Ohio's costs associated with the choice program.

{¶ 48} The Commission finds no merit in IGS's arguments on this issue, as the Opinion and Order is fully consistent with R.C. 4903.09, which requires the Commission to set forth the reasons prompting its decision, based upon findings of fact. In applying the statute, the Ohio Supreme Court has found that, although strict compliance with the terms of R.C. 4903.09 is not required, an order of the Commission must contain sufficient detail for the Court to determine the factual basis and reasoning relied on by the Commission. *In re Complaint of Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc.*, 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425, ¶ 19; *see also Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 90, 706 N.E.2d 1255 (1999); *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 163, 166, 666 N.E.2d 1372 (1996); *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 32. The Opinion and Order issued by the Commission in the present proceedings fully sets forth the basis for the decision to maintain the RRR and SSOCR as placeholder riders set at zero and cites the evidence of record in support of that decision. 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). The Opinion and Order also provides a full response to the contrary position offered by IGS through the testimony of IGS/Direct witness Lacey. Opinion and Order at ¶¶ 184-186.

{¶ 49} In its application for rehearing, IGS makes much of 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." Opinion and Order at ¶ 184. IGS contends that this finding is unsupported by the record, because AEP Ohio's own testimony reflects that the Company incurs and recovers in distribution rates $4.7 million in known costs directly attributable to the provision of default service, while also incurring $1.2 million in known costs directly attributable to the support of competitive supply. IGS claims that AEP Ohio's recovery of the $4.7 million through its distribution rates is uncontested and that the only dispute among the parties is whether the two categories of costs should be offset. We find that IGS has mischaracterized both the Commission's Opinion and Order and the positions of the other parties on this issue. When considered in the context of the entire paragraph, the Commission's "no basis" finding was clearly rendered with respect to IGS/Direct witness Lacey's testimony. We fully explained the basis for our decision to reject Mr. Lacey's recommendation that $64.4 million in SSO-related costs should be reapportioned and collected through the RRR. Specifically, Mr. Lacey admitted that he did not attempt to factor choice program costs into his recommendation. We concluded that Mr. Lacey did not perform the complete analysis ordered by the Commission in the *ESP 4 Case*. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶¶ 214-215. For that reason, we declined to adopt his recommendation. Opinion and Order at ¶ 184.

{¶ 50} On rehearing, IGS shifts its focus from Mr. Lacey's recommendation to the cost analysis provided by AEP Ohio with its application and argues that, based on the Company's initial position, the record supports a finding that $4.7 million ($3.5 million if an offset is required) in known and quantifiable costs should be removed from distribution rates and collected and refunded under the RRR and SSOCR. However, Staff witness Smith, in his testimony, recommended, consistent with the Staff Report, that the RRR and SSOCR "rates remain at zero due to the limited identified costs in the application and the lack of granular data regarding costs and services between shopping and default customers." Mr.

Smith also explained that "Staff could not differentiate costs or service to net to establish a just and reasonable rate for either rider." (Staff Ex. 3 at 6; Staff Ex. 1 at 31.) In his testimony supporting the Stipulation, AEP Ohio witness Roush acknowledged that "Staff and a number of intervenors did not concur with the Company's proposal," while noting that there are "different perspectives on the potential quantification and allocation of costs between SSO and shopping customers" (Co. Ex. 4 at 3-4). The Commission is not bound by R.C. 4903.09 to adopt AEP Ohio's cost analysis, particularly where it was not actually sponsored by Mr. Roush as part of his testimony and was the subject of criticism by Staff and the intervenors, including IGS, as noted by IGS/Direct witness Lacey (Tr. Vol. V at 1098-1100). Without the complete evaluation of SSO and shopping costs as contemplated by the Commission in the *ESP 4 Case*, neither AEP Ohio's initial analysis nor the analysis provided by Mr. Lacey provides a sufficient basis for the Commission to approve the population of the RRR and SSOCR. As AEP Ohio notes, a fully completed netting analysis could yield a total offset or a net adder for shopping customers, which would negate the need to set a rate for the riders. Accordingly, we disagree with IGS's characterization of the record and the parties' viewpoints, reject its untimely attempt to overhaul its litigation position, and find that its first ground for rehearing should be denied.

{¶ 51} In its second ground for rehearing, IGS contends that the Commission erred in finding that the analysis offered by IGS and Direct Energy was incomplete, as it did not account for choice program costs. IGS states that IGS/Direct witness Lacey provided a detailed analysis showing that AEP Ohio incurs $64 million in costs to provide default service and explaining that it is incorrect to offset choice program costs against the Company's costs to provide default service. Although Mr. Lacey acknowledged that there are costs to serve choice customers, IGS emphasizes that he also explained that such costs are not properly offset against the costs that should be recovered through the RRR. (IGS/Direct Ex. 2 at 37, 42-43.) IGS, therefore, asserts that, contrary to R.C. 4903.09, the Commission misstated the record and improperly failed to address the merits of Mr. Lacey's analysis.

{¶ 52} AEP Ohio responds that it was sufficient for the Commission to provide a single dispositive reason for why Mr. Lacey's analysis and recommendations should not be adopted. As discussed above, AEP Ohio notes that the Commission reasonably concluded that the analysis was not complete, as it did not address the required standard of proof set forth in the *ESP 4 Case*. Nonetheless, AEP Ohio contends that the record reflects that there are additional reasons to reject Mr. Lacey's analysis. According to AEP Ohio, the three allocation factors used by Mr. Lacey are based on unproven cost relationship assumptions that do not relate to direct costs and are otherwise flawed, as described in the Company's memorandum contra IGS's application for rehearing. AEP Ohio adds that, when these flaws are considered in tandem with the misguided assumption that the Company operates a separate "SSO business," and given the fact that there are costs associated with the Company's legal obligations to provide both the SSO and open access service, Mr. Lacey's analysis is unreliable and unusable. Finally, as to IGS's argument that choice costs are not properly offset against the costs that should be recovered through the RRR, AEP Ohio responds that the argument merely begs the question of what costs are properly allocable to the SSO and constitutes untimely opposition to the Commission's prior rulings on this issue in the *ESP 4 Case*.

{¶ 53} OCC asserts that IGS's second ground for rehearing should be rejected for the reasons noted above with respect to the first ground for rehearing. OCC contends that the Opinion and Order is not contrary to R.C. 4903.09, as the Commission explained why it was not persuaded by Mr. Lacey's testimony.

{¶ 54} The Commission finds that IGS has again mischaracterized the Commission's Opinion and Order, in claiming that the Commission rejected IGS/Direct witness Lacey's analysis as merely "incomplete." As we found in the Opinion and Order, Mr. Lacey admitted that he made no attempt to factor choice program costs into his recommendation as to the RRR and SSOCR, which is not consistent with the Commission's directive in the *ESP 4 Case*. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶¶ 214-215. Instead, Mr. Lacey

testified 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). Because Mr. Lacey's cost analysis does not comply with the requirements set forth by the Commission in the *ESP 4 Case*, we declined to adopt his recommendation. Opinion and Order at ¶ 184. Our findings on this issue are based on the record – specifically, Mr. Lacey's admission that he did not conduct the full analysis required by the Commission – and, thus, are consistent with R.C. 4903.09.

{¶ 55} Further, no portion of the Commission's conclusion on this issue misstates the record, as IGS claims. We acknowledge that Mr. Lacey explained why, in his view, it is inappropriate to consider customer choice program costs as part of the analysis required by the Commission in the *ESP 4 Case* (IGS/Direct Ex. 2 at 41-44). The fact remains that the Commission ordered that it was necessary to conduct an analysis of both AEP Ohio's actual costs of providing SSO generation service and its actual costs associated with the choice program, in order to enable the Commission to determine whether it is necessary to reallocate costs between shopping and non-shopping customers to ensure that the Company's rates are fair and reasonable for all customers. *ESP 4 Case* at ¶ 215. The Commission's directive was affirmed on rehearing in the *ESP 4 Case*. *ESP 4 Case*, Second Entry on Rehearing (Aug. 1, 2018) at ¶¶ 86-89. As Mr. Lacey's position on this issue is not consistent with the Commission's prior directive regarding the scope of the analysis to be conducted, we are not obligated to further consider his limited analysis, which is fundamentally flawed, and IGS's ongoing objection as to this issue constitutes an untimely attempt to challenge our prior rulings in the *ESP 4 Case*. We, therefore, find that IGS's second ground for rehearing is without merit and should be denied.

{¶ 56} In its third ground for rehearing, IGS maintains that the Opinion and Order is unlawful and unreasonable, because it authorizes AEP Ohio to recover costs that it incurs to supply a competitive product or service in distribution rates, in violation of R.C. 4909.15, 4928.02, and 4928.05. IGS notes that, although AEP Ohio, Staff, and OCC agreed that the

Company is collecting costs to support its default service in distribution rates, the Commission nonetheless unlawfully authorized the Company to continue to collect these costs in distribution rates. According to IGS, the Commission is required, pursuant to R.C. 4909.15, 4928.05, and 4928.31, to properly assign the collection of costs for the provision of a competitive service such as default generation service to the customers that use that service rather than to distribution customers generally. IGS adds that AEP Ohio cannot bargain itself out of an unlawful assignment of costs to distribution rates. IGS also claims that, because R.C. 4928.02(H) directs the Commission to ensure that competitive electric services are not subsidized by noncompetitive services, the Opinion and Order unreasonably permits unlawful socialization of costs to continue, contrary to state policy.

{¶ 57} As an initial matter, AEP Ohio contends that, in violation of the specificity requirement in R.C. 4903.10, IGS has improperly attempted to incorporate by reference its position on this issue as set forth in its initial brief and that the Commission should, therefore, only consider the arguments directly raised by IGS in its application for rehearing. Additionally, AEP Ohio asserts that, contrary to IGS's characterization of the Opinion and Order as accepting of the premise of IGS's position, the Commission merely rejected IGS's claim that an unlawful subsidy exists because IGS failed to address the standard of review set forth by the Commission in the *ESP 4 Case*. AEP Ohio also emphasizes that Staff's position is that indirect costs associated with both the SSO obligation and competitive retail electric service (CRES) functionalization should be socialized because all customers benefit from both, there is an equal amount of CRES costs, and there is no reason to differentiate the two. AEP Ohio adds that the Commission reached the same conclusion in 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 (July 17, 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. Additionally, AEP Ohio asserts that, because the Company does not provide any capacity or energy used to supply the SSO product and none of the resulting SSO product revenue goes to the

Company or an affiliate, there can be no possible violation of R.C. 4928.02(H), 4928.03, or 4928.17. AEP Ohio notes that the Commission and the Supreme Court of Ohio have previously recognized the unique status of an electric distribution utility's SSO and provider of last resort obligations, in permitting non-bypassable recovery of costs indirectly related to competitive services. Further, AEP Ohio contends that, because both shopping and non-shopping customers are in the residential customer class, there cannot be a subsidy among services or classes and, therefore, there is no discrimination under R.C. 4928.03. According to AEP Ohio, the Commission has repeatedly rejected discrimination claims in instances where all customers are receiving benefits from an SSO-related activity or charge. AEP Ohio maintains that, because the electric distribution utility and not an affiliate or separate entity is required by law to procure the SSO product, R.C. 4928.02(H) only encompasses actual or direct costs as generation-related costs and does not include allocated costs like overhead distribution costs that have not been proven to be specifically related to the SSO product. AEP Ohio concludes that the allocation of costs and design of SSO rates should be regarded as a rate design matter within the Commission's discretion.

{¶ 58} With respect to IGS's third ground for rehearing, OCC contends that the Opinion and Order does not violate R.C. 4909.15, 4928.02, or 4928.05. OCC notes that the Commission rejected similar arguments raised by IGS in Case No. 17-1263-EL-SSO, et al., because all consumers benefit from the SSO's ability to serve them at any time. *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Second Entry on Rehearing (July 17, 2019) at ¶¶ 30-32. Because all consumers benefit from the SSO, OCC concludes that all consumers should pay for its costs.

{¶ 59} The Commission finds no merit in IGS's argument that AEP Ohio has been authorized to recover costs incurred to supply a competitive product or service in distribution rates.[4] As we found in the Opinion and Order, without a complete analysis of

[4] The Commission agrees with AEP Ohio's position that IGS has impermissibly attempted to incorporate by reference the portion of its initial brief that addresses this issue. Consistent with R.C. 4903.10, we, therefore, consider only the arguments directly raised by IGS in its application for rehearing.

costs that are clearly and directly attributed to the SSO and to the customer choice program in the record, there is no evidentiary support for IGS's alleged statutory violations. Opinion and Order at ¶ 184. For the reasons noted above with respect to IGS's first ground for rehearing, we again reject IGS's contention that AEP Ohio's initial cost analysis justifies a finding that $4.7 million ($3.5 million if an offset is required) in known and quantifiable costs to provide default service should be removed from distribution rates and collected and refunded under the RRR and SSOCR. As also noted above, Mr. Lacey's analysis is likewise insufficient to support a finding that the riders should be populated at this time. In the absence of a proper evidentiary basis, IGS has not established any violation of R.C. 4909.15, 4928.02, 4928.05, or any other statute.

{¶ 60} With respect to IGS's contention that the Opinion and Order appears to agree that AEP Ohio incurs certain costs to support default service that are not distribution costs but are nonetheless collected through distribution rates, we find that IGS, once again, has mischaracterized the Commission's Opinion and Order. Instead, we merely determined, based on the Staff Report and the testimony of AEP Ohio witness Roush, Staff witness Smith, and OCC witness Willis, and in the absence of a full cost analysis as contemplated in the *ESP 4 Case*, that the Stipulation's recommendation to maintain, for the time being, the RRR and SSOCR as placeholder riders is a reasonable resolution that does not violate any statute or important regulatory principle or practice. Opinion and Order at ¶¶ 183-186 (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). Accordingly, IGS's third ground for rehearing should be denied.

{¶ 61} In its fourth ground for rehearing, IGS claims that, in violation of R.C. 4903.09, the Commission deferred population of the RRR and the SSOCR to a future case and failed to address the argument that the Stipulation's retention of the rider rates at zero was unlawful and unreasonable. Specifically, IGS asserts that the Commission's approval of this provision of the Stipulation is based on an approach that the Ohio Supreme Court recently rejected. *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec.*

Serv. Power Broker & Aggregator, 166 Ohio St.3d 519, 2021-Ohio-3630, 188 N.E.3d 140. IGS contends that the Commission has relied on an incomplete report of investigation by Staff that failed to show why costs that the parties agree are incurred to support default service should be recovered in distribution rates. IGS adds that the Opinion and Order did not address any of the legal or economic consequences of the Commission's approval of the provision maintaining the RRR and SSOCR at zero. Further, IGS claims that the Commission cannot resolve the issue as it attempted to do, in stating that interested stakeholders can raise this issue again in another rate proceeding or in a complaint. IGS asserts that the Commission must determine, in the current proceedings, that AEP Ohio's approved rates are just and reasonable under R.C. 4909.15(E). IGS concludes that the Commission should grant rehearing and direct AEP Ohio to populate the RRR and SSOCR in amounts that are demonstrated to be currently collected in distribution rates for the support of default service.

{¶ 62} In response to IGS's fourth ground for rehearing, AEP Ohio responds that IGS's reliance on *FirstEnergy Advisors* is inapt and recycles the same flawed claims asserted with respect to its first three grounds for rehearing. AEP Ohio contends that, unlike the situation in *FirstEnergy Advisors*, full and final disposition of IGS's arguments by the Commission is not necessary for a disposition of these proceedings under R.C. 4909.18, which merely requires a finding that the Company's distribution rates are just and reasonable. AEP Ohio concludes that IGS's misplaced analogy to *FirstEnergy Advisors* should be rejected.

{¶ 63} OCC argues that the Opinion and Order is consistent with R.C. 4903.09 for the reasons noted above. OCC also contends that IGS's citation to *FirstEnergy Advisors* is misplaced, because there was no discovery, testimony, or hearing in that case upon which the Commission could base its decision unlike the present proceedings.

{¶ 64} The Commission finds that IGS's arguments as to the Court's decision in *FirstEnergy Advisors* and R.C. 4903.09 are without merit. As addressed above, the Opinion

and Order issued in these proceedings fully explains the basis for the Commission's decision to maintain the RRR and SSOCR as placeholder riders set at zero, as proposed in the Stipulation, and references the supporting evidence of record. 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). Contrary to IGS's position on rehearing, we relied upon the testimony of AEP Ohio witness Roush, Staff witness Smith, and OCC witness Willis, as well as the Staff Report, in reaching our determination to adopt the Stipulation's recommendation that the RRR and SSOCR remain as placeholder riders. (Co. Ex. 4 at 3-4; Staff Ex. 3 at 6-11; OCC Ex. 1 at 9-10; Staff Ex. 1 at 31). While Mr. Roush and Mr. Willis testified that the Stipulation's continuation of the RRR and SSOCR at zero is a reasonable outcome, particularly in light of the Staff Report's recommendation, Staff witness Smith explained, in detail, Staff's position and testified, among other things, that the riders should remain as placeholders "due to the limited identified costs in the application and the lack of granular data regarding costs and services between shopping and default customers" (Co. Ex. 4 at 3-4; OCC Ex. 1 at 9-10; Staff Ex. 3 at 6-11). We also provided, in the Opinion and Order, a thorough explanation as to why we were not persuaded by IGS's arguments in its briefs or by the testimony of its witness, Mr. Lacey. Opinion and Order at ¶¶ 184-186. To the extent that the Commission did not address each and every argument of IGS, we note that it was not necessary to do so, in the absence of a full cost analysis as contemplated in the *ESP 4 Case* and given that there is an insufficient evidentiary basis to conclude that the RRR and SSOCR should be populated at this time.

{¶ 65} Further, we find no error in having noted that IGS is not precluded from asserting in a future case that the RRR and SSOCR should be populated, provided that a proper cost analysis has been conducted as contemplated by the Commission in the *ESP 4 Case*, or, alternatively, from initiating a complaint under R.C. 4905.26. Opinion and Order at ¶ 186. The Commission's reason for making this point was not to delay the determination of the reasonableness of AEP Ohio's rates to a future proceeding, as IGS claims, but was instead to merely note that, because the Stipulation retains the RRR and SSOCR as placeholder riders, IGS or any other interested stakeholder is not foreclosed from seeking

to populate the riders in a future case. Despite IGS's contrary reading of the Opinion and Order, the Commission did, in fact, determine that the Stipulation's proposed rates are just and reasonable and made all necessary findings under R.C. 4909.15. Opinion and Order at ¶¶ 207-208, 221-226, 229. We, therefore, find that IGS's fourth ground for rehearing should be denied.

3. CRES PROVIDER FEES

{¶ 66} In its fifth ground for rehearing, IGS argues that the Commission's authorization of the continuation of a discriminatory switching fee that is not supported by evidence of cost and that penalizes CRES suppliers and their customers lacks a reasoned explanation, in violation of R.C. 4903.09, 4909.18, and 4905.35. IGS notes that AEP Ohio, under its tariff, charges a $5.00 switching fee for customer switches from default service to a competitive supplier (after the first such switch) or from supplier to supplier, but does not charge that fee to itself when a customer elects to return to default service or is returned to default service. IGS emphasizes that AEP Ohio did not provide any evidence justifying this difference or supporting the amount of the charge. Further, IGS asserts that the record demonstrates that the circumstances and process of moving a customer to or from a competitive supplier and returning a customer to default service are identical and that Staff did not investigate whether there are cost differences that justify the discriminatory application of the switching fee. According to IGS, the only evidence supporting the Commission's decision to permit the switching fee to continue is Staff's uninvestigated assertion that there are differences between a switch back to default service and a switch to a competitive supplier that justify the fee, which is directly contradicted by other evidence in the record. IGS requests that the Commission grant rehearing and direct AEP Ohio to amend its tariff to remove the switching fee.

{¶ 67} AEP Ohio responds that the Commission's approval and retention of the Company's switching fee fully satisfies the requirements of R.C. 4903.09 and does not violate any important regulatory principle or practice. Initially, AEP Ohio emphasizes that

neither the application nor the Stipulation proposed to amend the switching fee, which was previously approved by the Commission and has long been reflected in the Company's rates and tariffs. AEP Ohio also notes that there are numerous instances where the Commission has rejected attempts by IGS or other CRES providers to relitigate previously approved switching fees. As to IGS's claim that there is no support in the record for the Commission's decision to retain AEP Ohio's current switching fee, the Company notes that the Opinion and Order is clear that the Commission accepted Staff witness Smith's testimony that a switch in service from the SSO to a CRES provider is not comparable in process or cost to a switch in service from a CRES provider to the SSO. AEP Ohio further notes that customers switched to or from the SSO without an affirmative choice are not receiving retail electric service under substantially the same circumstances as customers who affirmatively elect to switch to or between CRES providers and, therefore, there is no violation of R.C. 4905.35. AEP Ohio adds that all customers benefit from the Company's obligation under R.C. 4928.141 to provide default generation service.

{¶ 68} The Commission fully considered IGS's arguments on this issue in the Opinion and Order. As an initial matter, we noted that neither AEP Ohio's application nor the Stipulation proposed that any of the Company's supplier fees, as previously approved by the Commission, should be modified at this time and, therefore, the tariff provisions in question were not the subject of review in these proceedings. Further, we rejected the argument that AEP Ohio's switching fee is discriminatory and contrary to the third part of the Commission's settlement test. We concluded, consistent with Staff witness Smith's testimony, that a switch in service from the SSO to a CRES provider is not comparable in process or cost to a switch in service from a CRES provider to the SSO. Opinion and Order at ¶ 190 (citing Staff Ex. 3 at 13).

{¶ 69} As IGS/Direct witness Lacey acknowledged, the Commission has previously authorized AEP Ohio under its current supplier tariff to charge a $5.00 switching fee where the customer requests the change in provider (IGS/Direct Ex. 2 at 46). *In re Columbus*

Southern Power Co. and Ohio Power Co., Case No. 11-346-EL-SSO, et al., Entry on Rehearing (Jan. 30, 2013) at 43 (finding that the Company's switching fee should be reduced from $10.00 to $5.00). On rehearing, IGS contends that AEP Ohio should be directed to amend its Commission-approved tariff to remove the switching fee. In essence, IGS seeks to modify a final and lawful order of the Commission. However, as IGS is aware, the Commission's authority to modify prior orders is not unlimited. The Ohio Supreme Court has found that, when the Commission has made a lawful order, the Commission is bound by certain institutional constraints to provide an explanation before such order may be changed or modified. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984). Although Mr. Lacey asserted in his testimony that AEP Ohio's switching fee is discriminatory (IGS/Direct Ex. 2 at 47), the witness provided no evidence showing that circumstances in the retail market have changed in a way that sufficiently warrants a change in the switching fee. Rather, Mr. Lacey emphasized, just as IGS does in its application for rehearing, that AEP Ohio did not provide a cost justification for the switching fee and that Staff did not raise the issue in the Staff Report (IGS/Direct Ex. 2 at 45, 47). As we found in the Opinion and Order, however, the switching fee previously approved by the Commission was not a matter for review in these proceedings, given that neither AEP Ohio's application nor the Stipulation recommended that it be modified. Opinion and Order at ¶ 190. Further, in rejecting similar arguments in prior proceedings, the Commission has stated that, under such circumstances, the burden falls to the objecting intervenor to produce evidence in support of its objection. *See, e.g.*, *In re The Dayton Power and Light Co.*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at ¶ 43. Here, we find that IGS has not cited evidence that supports a modification of our prior approval of AEP Ohio's switching fee. Although IGS underscores that AEP Ohio has the burden to establish that its charges are reasonable under R.C. 4909.18, we note that the statute requires the Company to support the rate changes proposed in its application. Again, AEP Ohio did not propose any modification to the current switching fee.

{¶ 70} With respect to IGS's contention that the Commission failed to offer a reasoned explanation for its decision in violation of R.C. 4903.09, we disagree, as the full basis for the decision was provided in the Opinion and Order, including rejection of the argument that the switching fee constitutes an undue or unreasonable preference under R.C. 4905.35 or discriminatory service that is contrary to R.C. 4928.02. Opinion and Order at ¶ 190. In testifying that the process and cost of switching to and from CRES providers are not comparable to customers who have defaulted to the SSO, Staff witness Smith explained that customers generally switch to the SSO, not at their initiation, but because they are dropped by a CRES provider, such as when a governmental aggregation ends, a CRES contract is not renewed, or a CRES provider defaults. Mr. Smith added that, at the time of the customer's switch to the SSO, AEP Ohio does not receive an explanation for the change. (Staff Ex. 3 at 13; Tr. Vol. II at 337-340.) For these reasons, we find that IGS's arguments on this issue lack merit and that its request for rehearing should, accordingly, be denied.

4. SHADOW BILLING

{¶ 71} In its sixth ground for rehearing, IGS asserts that the Opinion and Order is unlawful and unreasonable, because it failed to remove the Stipulation's provision requiring AEP Ohio to provide aggregate billing data that is contrary to important regulatory practices or principles. IGS argues that the shadow-billing data will be heavily manipulated through numerous adjustments and will fail to account for attributes other than price. IGS contends that R.C. 4903.09 requires the Commission to base its decision on some credible evidence to support the claim that the shadow-billing provision in the Stipulation does not violate any important regulatory practice or principle. IGS concludes that, contrary to this requirement, the Commission has authorized AEP Ohio's dissemination of valueless, misleading information to OCC.

{¶ 72} In response, AEP Ohio asserts that IGS has failed to provide any meaningful explanation as to how the Commission's reliance on the record in these proceedings lacks

the necessary credibility to reach the conclusion that shadow billing is acceptable in this instance. AEP Ohio contends that IGS has mischaracterized the Commission's findings on this issue and that, contrary to IGS's claims, the Commission did not question the reliability or veracity of the shadow-billing data to be collected. AEP Ohio concludes that there is nothing unlawful, unreasonable, or in violation of any important regulatory principle or practice in the Commission's decision, in this instance, to approve the shadow-billing provision in the Stipulation.

{¶ 73} In response to IGS's sixth ground for rehearing, OCC asserts that, contrary to IGS's claim that the Opinion and Order is not consistent with R.C. 4903.09, the Commission explained how the shadow-billing provision is not unreasonable, that it is part of a larger settlement package that benefits consumers and the public interest, and that each provision of the Stipulation is not required to provide a direct and immediate benefit to ratepayers. OCC contends that IGS's position that aggregate shadow billing is inaccurate or misleading is contrary to AEP Ohio's commitment to provide the information to OCC and Staff based on objective calculations, subject to the terms identified in Attachment D to the Stipulation.

{¶ 74} The Commission is not persuaded by IGS's position on this issue. IGS maintains that, consistent with R.C. 4903.09, the Commission must base its decision on the record before it, but here failed to cite evidence in support of its conclusion that the shadow-billing provision does not violate any important regulatory principle or practice. On the contrary, we cited the testimony of AEP Ohio witness Moore, Staff witness Lipthratt, and OCC witness Willis in support of our conclusion that the Stipulation does not violate any important regulatory principle or practice. Opinion and Order at ¶ 206 (citing Co. Ex. 6 at 18-20; Staff Ex. 6 at 5; OCC Ex. 1 at 10). IGS also emphasizes that the Commission noted that it was not addressing the value of the shadow-billing data in the Opinion and Order, which IGS interprets as the Commission's approval of the spreading of valueless information or misinformation. Opinion and Order at ¶ 198. This characterization of the Opinion and Order misses the mark, as the Commission did not state that the shadow-

billing data lacks any value. Rather, we merely found that it was unnecessary to address, at this time, the value of the data to be provided to OCC and Staff. Further, as we explained elsewhere in the Opinion and Order, the shadow-billing report may serve to confirm information otherwise available about the competitive market or highlight issues for further review and analysis. At the same time, however, we cautioned that our decision should not be construed as a predetermination regarding the relevancy of the shadow-billing report in any future proceeding or as to the outcome in AEP Ohio's pending bill format case. Opinion and Order at ¶¶ 131, 199. For these reasons, the Commission finds that IGS's sixth ground for rehearing lacks merit and should be denied.

{¶ 75} In its seventh ground for rehearing, IGS argues that the Commission's finding that the Stipulation's provision requiring AEP Ohio to provide aggregate shadow-billing data does not violate any important regulatory practice or principle is a departure from Commission precedent that is without a reasoned explanation. According to IGS, nothing in the Opinion and Order suggests that the Commission's prior decisions rejecting shadow-billing proposals were in error or that the data that AEP Ohio has agreed to provide is of any value. IGS adds that the Opinion and Order will encourage parties to use stipulations to circumvent precedent and the Commission's rulemaking process and will lead to continual relitigation of issues.

{¶ 76} AEP Ohio asserts that IGS ignores the fact that the Company, OCC, and other stakeholders have agreed to the shadow-billing provision in the Stipulation, which is unlike the cases cited by IGS involving unilateral attempts to impose shadow-billing requirements on the Company or other public utilities. According to AEP Ohio, IGS has not shown that the Commission's acceptance of shadow billing by agreement between the utility and other participating stakeholders violates any important regulatory principle or practice.

{¶ 77} Addressing IGS's assertion that the Commission's approval of the shadow-bill provision departs from past precedent, OCC replies that the Commission explained that

nothing prevents an individual utility from agreeing to provide shadow-billing data to OCC.

{¶ 78} We find that IGS's seventh ground for rehearing should be denied. IGS contends that the Commission's adoption of the Stipulation's shadow-billing provision is a departure from precedent that lacks a reasoned explanation. Although the Commission has previously declined to adopt shadow-billing proposals offered by OCC, none of the cases cited by IGS involved a stipulated resolution with the agreement of the utility company to provide shadow-billing data, as is the case here between AEP Ohio, OCC, and the other signatory parties to the Stipulation. As stated previously by the Commission and reiterated again in the Opinion and Order, nothing precludes AEP Ohio or any other utility company from voluntarily agreeing to engage in shadow billing as part of a stipulation. Opinion and Order at ¶¶ 198-199; *In re 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 (Feb. 26, 2020) at ¶ 160; *In re Columbia Gas of Ohio, Inc.*, Case No. 12-2637-GA-EXM (*Columbia Case*), Opinion and Order (Jan. 9, 2013).[5] We, therefore, find that our approval of the shadow-billing provision in the Stipulation is consistent with our prior precedent involving shadow billing resulting from settlement agreements.

5. CUSTOMER-SITED GENERATION PROJECTS

{¶ 79} In its eighth ground for rehearing, IGS contends that the Opinion and Order is unlawful and unreasonable, as it permits AEP Ohio, in violation of R.C. 4928.47 and R.C. 4903.09, to recover in distribution rates the costs that it incurs to market customer-sited

[5] IGS notes that the stipulation in the *Columbia Case* states that the Commission's approval of the stipulation shall not be interpreted or otherwise relied upon as authority for utilizing the process in that case as a template for stipulations in other proceedings. IGS claims that reliance on the stipulation in the *Columbia Case*, therefore, places the Commission in the awkward position of violating its own order approving the stipulation. As we have previously noted, stipulation provisions that purport to bind the Commission in the manner in which it conducts its business, handles its dockets, or renders its decisions, including provisions attempting to restrict the Commission's citation of a stipulation as precedent, remain within the Commission's discretion. *PPA Case*, Opinion and Order (Mar. 31, 2016) at 91-92.

generation. IGS claims that, although it is not debated that AEP Ohio cannot collect costs related to customer-sited generation projects through its distribution rates, the record reflects that the Company's customer representatives marketed customer-sited generation projects to mercantile customers during the test period. According to IGS, the Commission erred in relying on Staff's uninvestigated claim that the costs should be deemed part of traditional customer service, as there is no authority under R.C. 4909.15 or R.C. 4928.05 to permit AEP Ohio to recover customer-sited generation costs in distribution rates. IGS adds that the failure to properly segregate the marketing costs violates the state policy in R.C. 4928.02 to prevent subsidies and abuse of market power and harms both competitors and competition in the renewable generation market by enabling AEP Ohio to subsidize its marketing efforts through distribution rates. IGS urges the Commission to grant rehearing, determine the amount that AEP Ohio included in test year expenses for the marketing of customer-sited generation projects, and adjust rates to remove the effects of those amounts.

{¶ 80} AEP Ohio replies that 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 customer-sited renewable project costs. AEP Ohio states that the record reflects that there were no customer-sited projects that developed beyond preliminary discussions and, therefore, there was no cost tracking, although, if there had been a project, the costs would have been tracked to ensure that all direct and indirect costs were treated consistent with the statute. AEP Ohio contends that IGS has not provided any evidence or shown that a preliminary conversation should trigger an administratively burdensome cost-tracking procedure that is not required by R.C. 4928.47 or any other statute or regulation.

{¶ 81} In the Opinion and Order, the Commission noted that R.C. 4928.47(B) prohibits an electric distribution utility from collecting any direct or indirect costs associated with an in-state customer-sited renewable energy resource that provides a mercantile customer with a material portion of its electricity requirements from any customer other

than the mercantile customer. Upon consideration of the record, the Commission found that there is no evidence that AEP Ohio has attempted to collect such costs through its distribution rates. Consistent with Staff's position in its testimony, the Commission specifically found that preliminary conversations about a potential project occurring 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). The Commission also found it unnecessary to direct AEP Ohio to track project costs, given that the Company already has a process in place to create separate work orders for use in tracking and recovering project costs as part of any agreement between the Company and the mercantile customer (IGS Ex. 18). Opinion and Order at ¶ 194.

{¶ 82} In its application for rehearing, IGS argues that the Opinion and Order is contrary to R.C. 4928.47 and R.C. 4903.09. As to R.C. 4928.47, IGS contends that the record shows that AEP Ohio's customer representatives marketed customer-sited generation projects to mercantile customers during the test period for these proceedings and that the Company made no attempt to identify the costs associated with these efforts. However, the evidence cited by IGS reflects that AEP Ohio "had preliminary conversations with interested customers in the context of traditional customer service about providing potential renewable solutions to meet their needs" (IGS Ex. 19) and that these incidental discussions have occurred when mercantile customers have expressed interest in such projects (Tr. Vol. V at 978-979, 983-984). The Commission is not persuaded by IGS's argument that the hours and wages associated with preliminary discussions occurring in the context of AEP Ohio's customer service function are contrary to R.C. 4928.47 or that the Commission has mischaracterized generation-related costs as costs associated with distribution service. As explained in the Opinion and Order, we agree with Staff's position that "these preliminary conversations with interested customers are incidental to the utility's customer service function and are not project costs prohibited from recovery in rates" (Staff Ex. 3 at 14). IGS has raised no convincing argument explaining how preliminary discussions arising in a

traditional customer service context constitute costs to conduct marketing of a customer-sited renewable energy resource.

{¶ 83} Neither do we find any merit in IGS's claim that the Opinion and Order is counter to the requirements in R.C. 4903.09 or, more specifically, that the Commission erred in citing Staff's testimony based on IGS's reading of the statute and the Court's decision in *FirstEnergy Advisors*. R.C. 4903.09 requires that the Commission set forth sufficient detail to permit the Ohio Supreme Court to determine the basis of the Commission's reasoning. *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994). As the Court stated in *FirstEnergy Advisors*, the Commission's order "must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the [Commission] in reaching its conclusions." *FirstEnergy Advisors* at ¶ 22 (quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312, 513 N.E.2d 337 (1987)). In the Opinion and Order, the Commission addressed the positions put forth by IGS, AEP Ohio, and Staff on this issue and, upon consideration of their arguments, fully explained the basis for the Commission's decision considering the evidence in the record. Opinion and Order at ¶¶ 191-194. Accordingly, we find that IGS's eighth ground for rehearing should be denied.

III. ORDER

{¶ 84} It is, therefore,

{¶ 85} ORDERED, That the applications for rehearing filed by NEP and IGS be denied. It is, further,

{¶ 86} ORDERED, That a copy of this Second Entry on Rehearing be served upon all interested persons and parties of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GNS/dmh

Summary: Entry that the Commission denies the applications for rehearing filed by Nationwide Energy Partners, LLC and Interstate Gas Supply, Inc. electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio