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**In the Matter of the Application of Ohio  
Power Company for an Increase in Electric  
Distribution Rates**

**Case No. 2023-0464**

**PUCO**

**In the Matter of the Application of Ohio  
Power Company for Tariff Approval**

**Appeal from the Public Utilities  
Commission of Ohio**

**In the Matter of the Application of Ohio  
Power Company for Approval to Change  
Accounting Methods**

**Public Utilities Commission Case  
Nos. 20-585-EL-AIR, 20-586-EL-  
ATA, and 20-587-EL-AAM**

**Interstate Gas Supply, LLC,  
Appellant,**

**v.**

**Public Utilities Commission of Ohio,  
Appellee**

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**NOTICE OF APPEAL**

**BY**

**INTERSTATE GAS SUPPLY, LLC**

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**Notice of Appeal of Appellant Interstate Gas Supply, LLC**

Interstate Gas Supply, LLC (IGS), Appellant, hereby gives notice of its appeal, pursuant to R.C. 4903.11 and 4903.13 and Supreme Court Rules of Practice 3.11(B)(2), 3.11(D)(2), and 10.2 to the Supreme Court of Ohio and the Public Utilities Commission of Ohio of the Opinion and Order issued on November 17, 2021 (Opinion and Order) (Attachment A), Entry on Rehearing issued on January 12, 2022 (First Entry on Rehearing) (Attachment B), and Second on Rehearing issued on February 8, 2023 (Second Entry on Rehearing) (Attachment C) (collectively Rate Case Orders) in Public Utilities Case Numbers 20-585-EL-AIR, 20-586-EL-ATA, and 20-587-EL-AAM.

Appellant<sup>1</sup> was and is a party in Case Nos. 20-585-EL-AIR, et al., and timely filed an application for rehearing from the Opinion and Order on December 17, 2021. In the First Entry on Rehearing, Appellee granted rehearing for the purpose of further considering the Application for Rehearing of IGS and another party, but then denied IGS's Application for Rehearing in the Second Entry on Rehearing.

The Rate Case Orders are unlawful and unreasonable for the reasons set out in the following Assignments of Error:

1. In violation of R.C. 4909.15, 4928.02, and 4928.05, the Rate Case Orders unlawfully and unreasonably authorized Ohio Power to recover in distribution rates costs that Ohio Power incurs to supply a competitive product or service. Application for

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<sup>1</sup> In the underlying case, Appellant's corporate name was Interstate Gas Supply, Inc. In the intervening time, IGS was reorganized as a limited liability corporation and is now identified as Interstate Gas Supply, LLC.

Rehearing and Memorandum in Support of Interstate Gas Supply, Inc. at 5 and 15-18 (Dec. 19, 2021).

2. In violation of R.C. 4903.09, the Rate Case Orders found that there is no basis upon which to conclude that Ohio Power's distribution rates include known, quantifiable costs that should be allocated to a rider, identified as the Retail Reconciliation Rider, because this finding was not supported by the uncontroverted evidence that Ohio Power recovers known and quantifiable costs to provide default service in its distribution rates. Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc. at 4 and 10-13 (Dec. 19, 2021).
3. In violation of R.C. 4903.09, the Rate Case Orders found that an analysis of known and quantifiable costs to provide default service and the customer choice program was incomplete because the analysis provided by appellant did not factor choice program costs as to riders identified as the Retail Reconciliation Rider and the SSO Credit Rider when the record does not support that finding. Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc. at 4 and 13-15 (Dec. 19, 2021).
4. In violation of R.C. 4903.09, the Rate Case Orders unlawfully and unreasonably deferred population of riders identified as the Retail Reconciliation Rider and the SSO Credit Rider to a future case. Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc. at 5 and 18-24 (Dec. 19, 2021).

Wherefore, the Rate Case Orders are unlawful, unjust, and unreasonable and should be reversed. Further, the case should be remanded to the Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

/s/ Joseph Olikier

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**Certificate of Filing**

I hereby certify that the Notice of Appeal of Interstate Gas Supply, LLC, has been filed with the Docketing Division of the Public Utilities Commission of Ohio by docketing a copy at the office of the Commission in Columbus, Ohio, and by leaving a copy at the Office of the Chairman on April 7, 2023.

/s/ Evan Betterton

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Evan Betterton

### **Certificate of Service**

I hereby certify that a copy of the foregoing Notice of Appeal of Interstate Gas Supply, LLC, was served on the parties of record in Public Utilities Case Nos. 20-585-EL-AIR, et al., via electronic transmission, hand-delivery, or first-class United States mail, postage prepaid on April 7, 2023.

/s/ Evan Betterton

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**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**

**OPINION AND ORDER**

Entered in the Journal on November 17, 2021

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## I. SUMMARY

{¶ 1} The Commission adopts the joint stipulation and recommendation resolving all issues related to the application filed by Ohio Power Company d/b/a AEP Ohio to increase its distribution rates.

## II. 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} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. R.C. 4909.17, 4909.18, 4909.19, and 4909.43 enumerate the statutory requirements for an application to increase a public utility's rates. The Commission adopted Ohio Adm.Code 4901-7-01 and its appendix (Standard Filing Requirements), pursuant to R.C. 4901.13, 4909.04(C), and 4909.18. The Standard Filing Requirements specify the format for filing all information required in an application for an increase in rates and define the information that the Commission requires, pursuant to R.C. 4909.18(E).

{¶ 4} 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 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.

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies were required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens were urged to heed the advice of the Department of Health regarding this public

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health emergency in order to protect their health and safety. The Executive Order was effective immediately and was to remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 6} On April 29, 2020, in the above-captioned cases, AEP Ohio submitted a pre-filing notice of its intent to file an application for approval of an increase in its electric distribution rates, tariff modifications, and changes in accounting methods, pursuant to R.C. 4909.43(B), and in compliance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I of the Commission's Standard Filing Requirements.

{¶ 7} By Entry issued on May 6, 2020, the Commission granted a motion filed by AEP Ohio on April 9, 2020, for a waiver of certain Standard Filing Requirements. The Commission also approved AEP Ohio's proposed date certain of December 31, 2019, and established a test year of the 12 months ending November 30, 2020.

{¶ 8} On June 8, 2020, AEP Ohio filed its application to increase its rates pursuant to R.C. 4909.18 (Co. Ex. 1).<sup>1</sup> AEP Ohio filed direct testimony in support of its application on June 15, 2020.

{¶ 9} By Entry dated July 29, 2020, the Commission accepted the application for filing as of June 8, 2020, and directed AEP Ohio to publish notice of the application pursuant to R.C. 4909.19.

{¶ 10} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to the application. Staff filed a written report of its investigation (Staff

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<sup>1</sup> 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).

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Report) on November 18, 2020, which was subsequently amended on November 25, 2020, to correct certain schedules (Staff Ex. 1).

{¶ 11} 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 (NRDC); Industrial Energy Users-Ohio (IEU-Ohio); Ohio Partners for Affordable Energy (OPAE); Environmental Law & Policy Center (ELPC); 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 (Armada); Constellation NewEnergy, Inc.; Clean Fuels Ohio (CFO); Citizens' Utility Board of Ohio (CUB-Ohio);<sup>2</sup> Zeco Systems, Inc. d/b/a Greenlots (Greenlots); Ohio Environmental Council (OEC); One Energy Enterprises LLC (One Energy); Ohio Cable Telecommunications Association (OCTA); and EVgo Services LLC (EVgo).

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

{¶ 13} By Entry dated November 23, 2020, the attorney examiner established a procedural schedule. The attorney examiner directed that, due to the continued state of emergency, the local public and evidentiary hearings would be conducted through Webex, which would enable the parties and interested persons to participate by telephone and/or video on the internet. The procedural schedule was subsequently modified or supplemented by Entries issued on December 1, 2020, December 18, 2020, January 14, 2021, January 27, 2021, February 1, 2021, March 17, 2021, April 5, 2021, and April 14, 2021.

{¶ 14} A local public hearing was held via Webex, as scheduled, on February 8, 2021. Notice of the local public hearing was published in accordance with R.C. 4903.083, and proof

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<sup>2</sup> On April 30, 2021, CUB-Ohio filed notice of its withdrawal as a party to these proceedings.

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of such publication was filed on February 22, 2021, by AEP Ohio (Co. Ex. 3). During the local public hearing, nine individuals testified in opposition to AEP Ohio's application for an increase in rates. Numerous public comments were also filed, most of which express opposition to AEP Ohio's request to increase its rates.

{¶ 15} A prehearing conference and technology test session were held on February 11, 2021, via Webex.

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

{¶ 17} 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. If adopted, the Stipulation would resolve all of the issues in these proceedings.

{¶ 18} On March 25, 2021, Greenlots filed correspondence stating that it does not object to the Stipulation.

{¶ 19} A second prehearing conference was held via Webex on March 26, 2021.

{¶ 20} On April 7, 2021, AEP Ohio filed a corrected Schedule C-1, which is part of Attachment A to the Stipulation.

{¶ 21} On April 9, 2021, testimony in support of the Stipulation was filed by Andrea E. Moore (Co. Ex. 6), Adrien M. McKenzie (Co. Ex. 5), and David M. Roush (Co. Ex. 4) on behalf of AEP Ohio; David M. Lipthrott (Staff Ex. 6) on behalf of Staff; Wm. Ross Willis (OCC Ex. 1) on behalf of OCC; Brendan Kelley (CFO Ex. 1) on behalf of CFO; and Sara Rafalson (EVgo Ex. 1) on behalf of EVgo.<sup>3</sup>

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<sup>3</sup> Ms. Rafalson's testimony was revised on May 7, 2021.



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{¶ 22} On April 20, 2021, testimony in opposition to the Stipulation was filed by David C. Rinebolt (OPAE Ex. 1) on behalf of OPAE; Eric Rehberg (Armada Ex. 17) on behalf of Armada; Brendon J. Baatz (OEC Ex. 1) on behalf of OEC; Chris Neme (ELPC Ex. 1) on behalf of ELPC; and Susanne Buckley (NEP Ex. 34)<sup>4</sup> and Teresa Ringenbach (NEP Ex. 33) on behalf of NEP. On April 21, 2021, testimony in opposition to the Stipulation was filed by Joseph Haugen (IGS Ex. 1) on behalf of IGS and Frank Lacey (IGS/Direct Ex. 2) on behalf of IGS and Direct Energy. A motion filed by IGS and Direct Energy on April 21, 2021, seeking leave to file the testimony out of time was granted by Entry dated April 23, 2021.

{¶ 23} On May 3, 2021, AEP Ohio filed corrections to certain exhibits contained within the testimony of Andrea E. Moore and David M. Roush.

{¶ 24} On May 4, 2021, testimony addressing objections to the Staff Report was filed by David M. Lipthrott (Staff Ex. 7), Dorothy Bremer (Staff Ex. 5), Krystina Schaefer (Staff Ex. 4), James G. Zell (Staff Ex. 2), and Craig Smith (Staff Ex. 3) on behalf of Staff.

{¶ 25} On May 10, 2021, AEP Ohio filed corrections to an exhibit contained within the testimony of Andrea E. Moore.

{¶ 26} A third prehearing conference was held via Webex on May 10, 2021.

{¶ 27} On May 11, 2021, AEP Ohio filed an updated version of the Stipulation (Joint Ex. 1) to adjust the spacing within the document and to incorporate corrected Schedule C-1.

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

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

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<sup>4</sup> The direct testimony filed by Ms. Buckley was subsequently adopted and offered during the hearing by Mr. Rehberg.

{¶ 30} On July 7, 2021, AEP Ohio filed revisions to its proposed tariffs, in order to correct certain tariff codes. AEP Ohio represents that the revisions do not result in any rate changes, substantive language changes, or bill impacts.

### III. DISCUSSION

#### A. *Summary of the Application*

{¶ 31} In the application, AEP Ohio states that, with its last distribution rate case having occurred nearly a decade ago, the Company seeks to bring its rates in line with the current investment and costs necessary to provide safe and reliable distribution service to customers and to determine an appropriate return on equity. AEP Ohio further states that the application has been filed for the primary purposes of generating sufficient revenues for the Company to pay its distribution-related operating expenses, to service its debt, and to provide an adequate rate of return on its property used and useful in the rendition of electric distribution service to its customers, as well as to satisfy the commitment made as part of the resolution of the *ESP 4 Case*. AEP Ohio notes that its proposed rate changes, if fully approved by the Commission, would increase gross revenues by \$42.281 million, or 3.5 percent in average annual total revenue for the Company over the test period gross revenues generated from providing electric distribution service to customers. AEP Ohio proposes to establish a rate of return of 7.90 percent, which includes a return on equity of 10.15 percent. Finally, AEP Ohio explains that the application proposes a number of tariff changes, including updated miscellaneous distribution charges, the amendment and continuation of several riders (specifically, the Distribution Investment Rider (DIR), the Pilot Throughput Balancing Adjustment Rider (PTBAR), and the Enhanced Service Reliability Rider (ESRR)), and the amortization and recovery of certain regulatory assets through the Bad Debt Rider (BDR). (Co. Ex. 1 at 3-5.)

#### B. *Summary of the Staff Report*

{¶ 32} In the Staff Report, Staff states that, after accounting for the change in riders impacted by new base rates, the net total revenue deficiency as calculated by AEP Ohio is

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\$42,280,687. Staff notes, however, that AEP Ohio designed its base distribution rates, excluding miscellaneous charges, to increase by \$39,233,971 and that the Company's proposed rate calculations produce a total revenue increase of \$36,187,919, with the inclusion of miscellaneous charges. Staff recommends a revenue requirement in the range of \$901,428,666 to \$921,950,845, which represents an increase between \$237.2 million and \$257.7 million, or 36 percent to 39 percent over test year operating revenue. Staff also recommends a rate of return in the range of 7.15 and 7.70 percent, including a cost of common equity ranging from 8.76 to 9.78 percent. After removing the revenue impact change in riders, Staff's recommendation results in a net decrease between \$122.6 million and \$102.1 million. (Staff Ex. 1 at 7, 24, 26, 38.)

### **C. *Procedural Issues***

#### **1. MOTION TO AMEND EXHIBIT**

{¶ 33} On April 30, 2021, ELPC and OEC filed a joint motion for a hearing subpoena of Jon F. Williams, Managing Director of Customer Experience and Distribution Technology for AEP Ohio. Subsequently, on May 4, 2021, ELPC and OEC filed a joint motion withdrawing their request for a subpoena of Mr. Williams. According to the joint motion to withdraw, ELPC and OEC amicably resolved the issue with AEP Ohio, which agreed to present Mr. Williams at the hearing without the need for a subpoena. Mr. Williams testified at the hearing, as if on cross-examination, on May 18, 2021. At the conclusion of Mr. Williams' testimony, counsel for ELPC sought to have admitted into evidence, as ELPC Ex. 2, a document that was filed in these dockets on June 15, 2020, as the pre-filed direct testimony of Jon F. Williams in support of the Company's application. AEP Ohio and several other parties objected to the admission of ELPC Ex. 2. Rather than admit the document, in its entirety, the attorney examiner directed counsel for AEP Ohio, ELPC, and OEC to work together to highlight the portions of the document discussed in the course of Mr. Williams' cross-examination and present the proposed exhibit, with the highlighted sections clearly designated, for the attorney examiner's consideration. (Tr. Vol. V at 992-1,002, 1,004-1,005.) On May 24, 2021, AEP Ohio, ELPC, and OEC provided, for review by the attorney examiner, their proposed highlighted sections for admission into the record. By Entry dated May 27, 2021, the attorney examiner issued an Entry that admitted

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specified portions of ELPC Ex. 2 into the record, as reflected in the highlighted sections of the exhibit attached to the Entry.

{¶ 34} On June 24, 2021, OEC and ELPC filed a joint motion to amend ELPC Ex. 2, as admitted into the record through the issuance of the May 27, 2021 Entry. Specifically, OEC and ELPC note that the May 27, 2021 Entry failed to admit, as part of ELPC Ex. 2, the entirety of the “Energy DRIPE” section on page 20 of Ex. JFW-1. OEC and ELPC further note that, during the hearing, Mr. Williams was asked to reference this page and to explain what energy DRIPE means and how it is a benefit to AEP Ohio’s customers as proposed in the DSM plan (Tr. Vol. V at 960). Because Mr. Williams was questioned on the “Energy DRIPE” section, OEC and ELPC request that it be deemed part of the admitted portion of ELPC Ex. 2. OEC and ELPC add that AEP Ohio does not oppose their request.

{¶ 35} On July 1, 2021, IEU-Ohio, OMAEG, and Kroger filed a joint memorandum contra the joint motion to amend ELPC Ex. 2. IEU-Ohio, OMAEG, and Kroger assert that the joint motion should be denied for several reasons, including that it would be unreasonable and potentially unprecedented to modify the evidentiary record after initial briefs have been filed, some of the evidence sought to be introduced was not discussed in the course of the cross-examination of Mr. Williams, some of the information sought to be admitted constitutes inadmissible hearsay, and OEC and ELPC failed to preserve the issue as a distinct matter in their initial brief as required by Ohio Adm.Code 4901-1-15(F).

{¶ 36} ELPC and OEC filed a reply on July 8, 2021. Initially, ELPC and OEC argue that no party will be prejudiced by the admission of the “Energy DRIPE” section, because the section was not referenced or relied upon in their briefs. ELPC and OEC also reiterate that AEP Ohio does not object to the amendment of ELPC Ex. 2. Further, ELPC and OEC claim that the “Energy DRIPE” section should not be excluded on hearsay grounds, given that expert witnesses routinely rely on studies and analysis conducted by third parties, and the Commission is able to weigh the relevance and legitimacy of out-of-court statements on issues within its expertise. Finally, ELPC and OEC assert that Ohio Adm.Code 4901-1-15(F) is

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inapplicable under the circumstances, as they were acting under the direction of the attorney examiner.

{¶ 37} Upon review of the joint motion to amend ELPC Ex. 2, the Commission finds that the request to admit the “Energy DRIPE” section is not consistent with the attorney examiner’s ruling that the admitted portions of ELPC Ex. 2 would be limited to those sections that were discussed in the course of the cross-examination of Mr. Williams (Tr. Vol. V at 1,004-1,005). In the May 27, 2021 Entry, the attorney examiner specifically noted that the portions of ELPC Ex. 2, as highlighted and designated for admission into the record, were based on the manner in which the witness was called to testify, the arguments of counsel, and review of the transcript. May 27, 2021 Entry at ¶ 15. Based on the response provided by Mr. Williams to OEC counsel’s question, we find that the “Energy DRIPE” section was not addressed by the witness. Although counsel directed Mr. Williams to the “Energy DRIPE” section, the witness did not discuss it in responding to the question and counsel did not ask any additional questions about it. (Tr. Vol. V at 960-961.) We, therefore, find that the motion to amend ELPC Ex. 2 should be denied.

## **2. MOTION TO REOPEN RECORD**

{¶ 38} On September 21, 2021, NEP filed a motion, pursuant to Ohio Adm.Code 4901-1-34, to reopen the hearing record, along with supplemental testimony that NEP proposes be considered following the issuance of a new procedural schedule. NEP asserts that the supplemental testimony establishes that AEP Ohio has rejected any and all construction requests submitted now and in the future by any customer of NEP. NEP further asserts that additional tariff language is, therefore, required to provide for a systematic process for evaluating construction requests and to avoid undue and possibly systemic customer discrimination by the Company. In support of its motion, NEP argues that AEP Ohio’s recent decision to reject existing requests and preemptively deny any construction request from certain customers is new evidence that was unavailable before the record closed in these proceedings and that should be considered, given that the Company’s construction request process has already been raised by NEP as an issue for resolution. NEP contends that the

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supplemental testimony is intended to lead the Commission to a decision that ensures that the construction process does not allow AEP Ohio to delay projects without explanation and requires the Company to provide detailed information on how far in advance of a project start date work orders should be submitted. NEP adds that the supplemental testimony proposes tariff language that would preclude AEP Ohio from delaying or rejecting work orders in the Company's sole discretion or on the basis of the customer's private arrangements with its contractors. Finally, NEP asserts that the additional evidence could not have been obtained before the record closed on May 18, 2021, because the two incidents on which it is based (i.e., AEP Ohio purged pending requests from its system and communicated its position that future requests would be rejected) occurred after that date.

{¶ 39} On September 24, 2021, AEP Ohio filed a memorandum contra NEP's motion to reopen the record. AEP Ohio avers that the allegations in the supplemental testimony are not relevant to the evaluation of the Stipulation under the three-part test used by the Commission and that the status of specific pending service requests is not a basis to reopen the record. Asserting that NEP has failed to state good cause for its motion, AEP Ohio contends that the occurrence of a conversation between the Company and NEP after the record closed has no bearing on the issues discussed in the record and argued on brief, which relate to the generic timing and process language in the Company's tariffs. AEP Ohio urges the Commission to resolve the issues raised in NEP's motions through a pending complaint proceeding, Case No. 21-990-EL-CSS, that the Company initiated under R.C. 4905.26 for purposes of resolving the dispute between the Company and NEP regarding service to five apartment complexes. AEP Ohio notes that the complaint case will provide the Commission with an opportunity to determine, in light of the Ohio Supreme Court's decision in *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, whether NEP is operating as a public utility and whether the Company can be forced to abandon its customers in the apartment complexes so that they can instead be served by NEP. Finally, AEP Ohio requests that the Commission strike NEP's supplemental testimony, as it is counter to the requirements in Ohio Adm.Code 4901-1-34 and unduly prejudicial.

{¶ 40} On September 27, 2021, OEG filed a memorandum contra NEP's motion. OEG maintains that NEP has failed to support its motion with good cause, as NEP merely seeks to supplement the record with minor facts that can be more appropriately resolved by the Commission in AEP Ohio's pending complaint case.

{¶ 41} On October 1, 2021, and October 4, 2021, NEP filed replies addressing the memoranda contra filed by AEP Ohio and OEG, respectively. In response to AEP Ohio, NEP argues that its proposed supplemental testimony is directly relevant to the tariffs that the Company has asked the Commission to review and approve in these proceedings and that evidence has already been admitted, without objection, regarding the Company's construction request process. According to NEP, the supplemental testimony is also relevant because it identifies additional flaws in that process that were unknown at the time of the evidentiary hearing and contradicts evidence from AEP Ohio that is already in the record. Further, NEP argues that the present proceedings are the appropriate place for the Commission to address NEP's new evidence, as the construction request tariff language is already at issue, and the Commission is being asked to determine whether additional requirements should be added to the tariffs. NEP also notes that any complaint filed by AEP Ohio against NEP regarding equipment purchase requests is unrelated to NEP's arguments seeking modification of the construction request tariff language proposed in these proceedings, which NEP emphasizes is an important matter to both its clients and similarly situated commercial and industrial customers across the Company's service territory. As to OEG's position, NEP asserts that it seeks to supplement the record with more than minor facts; rather, NEP believes that its proposed supplemental testimony would provide the Commission with important evidence that should be considered in determining whether more prescriptive construction request language should be included in AEP Ohio's tariffs.

{¶ 42} The Commission finds that NEP's motion to reopen the record should be denied. Although NEP believes that its concerns are ripe for consideration in the present cases, we find that the apparent dispute between AEP Ohio and NEP is more appropriate for resolution through a separate proceeding. As to the specific issue of whether AEP Ohio's

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construction request tariff language, as proposed in the Stipulation, is reasonable, we find that NEP has not shown good cause to reopen the record for the purpose of presentation of its supplemental testimony. As addressed below with respect to our consideration of the three-part test, we find that the Stipulation's proposed construction request tariff language is a reasonable component of the settlement package as a whole and should be approved. In so finding, however, we note that nothing precludes NEP from bringing a complaint against AEP Ohio for resolution of this issue as it pertains to NEP.

### **3. REQUEST FOR CONSIDERATION OF PRIOR PROCEDURAL RULINGS**

{¶ 43} In its initial brief, IEU-Ohio argues that, pursuant to Ohio Adm.Code 4901-1-15(F), the Commission should reverse the attorney examiner's denial of the motions of IEU-Ohio and other parties, as made during the evidentiary hearing, to strike certain portions of the direct testimony of the ELPC and OEC witnesses on hearsay grounds. In the alternative, IEU-Ohio requests that the Commission give no weight to the testimony. IEU-Ohio asserts that the testimony in question includes hearsay related to portions of the direct testimony of another witness, Jon Williams, that was not admitted into the record, as well as hearsay consisting of third-party studies that were not introduced during the evidentiary hearing. According to IEU-Ohio, the ELPC and OEC witnesses make unsubstantiated claims regarding energy efficiency based upon documents and comments that have not been verified, supported, sponsored, presented, or admitted into the evidentiary record. IEU-Ohio, therefore, requests that the Commission strike the specified portions of the direct testimony of Mr. Baatz and Mr. Neme. (IEU-Ohio Br. at 7-11.)

{¶ 44} ELPC, OEC, and NRDC (collectively, Environmental Advocates) respond that the Commission should uphold the attorney examiner's ruling. Environmental Advocates emphasize that, even if the Commission finds that there is hearsay to some extent, the Commission is not required to strike the cited portions of the testimony, because the Commission is not strictly confined by the Rules of Evidence and hearsay concerns do not apply in the context of its proceedings. Environmental Advocates add that the Commission has the expertise to assess the weight and value of the testimony presented. If the Rules of



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Evidence are strictly applied, Environmental Advocates claim that the specified portions of the testimony are admissible under Rule 703 as facts upon which an expert bases an opinion or under Rule 801 as party-opponent admissions. (Environmental Advocates Reply Br. at 8-10.)

{¶ 45} The Commission finds that the attorney examiner's rulings denying the motions to strike portions of the direct testimony of Mr. Baatz and Mr. Neme should be affirmed. The Commission has considerable discretion with respect to hearsay, as IEU-Ohio acknowledges, and is not strictly confined by the Rules of Evidence. *Greater Cleveland Welfare Rights Org., Inc. v. Pub. Util. Comm.*, 2 Ohio St.3d 62, 68, 442 N.E.2d 1288 (1982). As we have previously noted, the Commission has the administrative expertise to give the appropriate weight to testimony and other evidence, including evidence that might present hearsay concerns in other settings. *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 13. Further, although we decline to strike the testimony offered by Mr. Baatz and Mr. Neme, we have given no weight to the cited portions of their testimony in our resolution of these proceedings.

#### **D. Summary of the Stipulation**

{¶ 46} As previously stated, AEP Ohio, Staff, Kroger, OCC, OEG, IEU-Ohio, OMAEG, CFO, EVgo, OHA, Walmart, One Energy, ChargePoint, and OCTA (Signatory Parties) submitted the Stipulation on March 12, 2021, for the Commission's consideration. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. Below is a summary of the provisions agreed to by the Signatory Parties. This summary is not intended to replace or supersede the Stipulation.

##### **1. APPROVAL OF APPLICATION**

{¶ 47} The Signatory Parties recommend that AEP Ohio's application be approved as modified by the recommendations in the Staff Report, unless otherwise modified in the Stipulation, in order to fully resolve all of the issues raised in these proceedings (Joint Ex. 1 at 3).

**2. RATE BASE, OPERATING INCOME, RATE OF RETURN, AND REVENUE REQUIREMENT**

**{¶ 48}** AEP Ohio's rate base, rate of return, and recommended revenue requirement shall be as set forth in the Stipulated Schedules A-1, B-1, and C-1, which are attached as Attachment A and incorporated by reference. Specifically, the stipulated schedules modify the schedules in the Staff Report in the following respects:

- a. The value of AEP Ohio's property used and useful in the rendition of distribution of electric power (rate base) is \$3,088 million, as shown on Stipulated Schedules A-1 and B-1.
- b. AEP Ohio's total adjusted operating revenues for the test year are \$660.4 million; its total adjusted operating expenses are \$664.7 million; and its net operating income is (\$4.3) million, as shown on Stipulated Schedule C-1.
- c. A net operating income of (\$4.3) million is insufficient to provide AEP Ohio with reasonable compensation for distribution of electric power service rendered to its customers.
- d. A just and reasonable increase in AEP Ohio's revenue requirement is \$295 million, as shown on Stipulated Schedule A-1.
- e. The Signatory Parties agree to an overall rate of return of 7.28 percent, reflecting a cost of long-term debt of 4.4 percent and a return on equity of 9.7 percent. The capital structure of 45.57 percent debt and 54.43 percent equity, as proposed in AEP Ohio's application and adopted in the Staff Report, will be retained.

(Joint Ex. 1 at 3-4.)

**{¶ 49}** The Signatory Parties agree with using the calculations regarding rate base, as set forth in the Staff Report, to establish new distribution rates in these proceedings, except as modified in the Stipulation:

- a. The Signatory Parties agree to the inclusion of \$24.8 million in gross plant in service, representing adjustments from the prior rate case, which are to be included in current base rates. Additionally, the associated reserve for accumulated depreciation of \$4.6 million is recognized as part of net plant in service.
- b. The Signatory Parties agree to the inclusion of \$165.2 million associated with the jurisdictional balance of the prepaid pension asset.

(Joint Ex. 1 at 4.)

**[¶ 50]** The Signatory Parties agree with using the calculations regarding test year operating income, as set forth in the Staff Report, to establish new distribution rates in these proceedings, except as modified in the Stipulation:

- a. The Signatory Parties agree to an increase of \$6.8 million to labor and payroll expenses.
- b. The Signatory Parties agree to an increase of \$1.0 million to operating income to reflect the two-month update as part of the Standard Filing Requirements.
- c. The Signatory Parties agree to increase depreciation and amortization expense by \$5.7 million.
- d. As a compromise for purposes of settlement, AEP Ohio has agreed to reduce the revenue requirement, as set forth above, by \$1.7 million to reflect a reasonable going-forward level of capitalized incentive compensation costs, including depreciation expense. The Signatory Parties agree that AEP Ohio may continue to capitalize incentives and that there will be no rate base reduction for this item or capitalized incentive adjustments in future rider audit cases.

- e. The Signatory Parties agree to an increase of \$4.1 million to operating expenses to reject the Staff Report's recommendation to disallow out-of-period expenses.
- f. The test year adjustment on Schedule C-3.27 in the Staff Report to reflect the decrease in miscellaneous service revenue credit will be a decrease of \$7.4 million, which includes other miscellaneous revenue adjustments. AEP Ohio accepts the other miscellaneous revenue adjustments set forth in the Staff Report.
- g. The Signatory Parties agree that \$23,000 in travel and entertainment expenses should be removed.
- h. The Signatory Parties agree that property tax expense should be increased by \$6.8 million.
- i. The Signatory Parties agree that federal income tax expense should be increased by \$6.5 million to achieve consistency with the Staff Report's calculation of income tax expense based on Staff's flow-through methodology.
- j. The Signatory Parties agree that the billing determinants, including bill counts, reflected in AEP Ohio's application should be used.

(Joint Ex. 1 at 4-6.)

{¶ 51} The gross revenue conversion factor will be 1.28534 (Joint Ex. 1 at 6).

{¶ 52} The calculations in Section III.B.1.a are to facilitate resolution of these proceedings and will not bind any party in any future rate proceeding (Joint Ex. 1 at 6).

### 3. DISTRIBUTION INVESTMENT RIDER

{¶ 53} For 2021, the DIR revenue cap will be \$57 million. For 2022, the base DIR revenue cap will be \$91 million. The 2022 base DIR revenue cap will be increased to \$96 million, if, in 2021, AEP Ohio achieves the 2021 reliability standard set forth below. For 2023, the base DIR revenue cap will be \$116 million. The 2023 base DIR revenue cap will be increased by \$5 million (to \$121 million), if, in both 2021 and 2022, AEP Ohio achieves the applicable annual reliability standards set forth below. The 2023 base DIR revenue cap will be separately increased by an additional \$5 million (to up to \$126 million in total), if, in 2022, AEP Ohio achieves the 2022 reliability standard set forth below. (Joint Ex. 1 at 6.)

{¶ 54} For January 2024 through May 2024, the base DIR revenue cap will be \$51.25 million. The 2024 base DIR revenue cap will be increased by \$2 million (to \$53.25 million), if, in 2023, AEP Ohio achieves the 2023 reliability standard set forth below. The 2024 base DIR revenue cap will be separately increased by \$2 million (to up to \$55.25 million), if, in each of 2021, 2022, and 2023, AEP Ohio achieves the applicable annual reliability standards set forth below. The 2024 base DIR revenue cap will be separately increased by \$2 million (to up to \$57.25 million in total), if, in both 2021 and 2022, AEP Ohio achieves the applicable annual reliability standards set forth below. (Joint Ex. 1 at 6.)

{¶ 55} Accumulated deferred income taxes will continue to be excluded from the DIR annual revenue cap calculation. The Signatory Parties agree that the formula change attached as Attachment B to the Stipulation should be accepted to ensure that AEP Ohio is better able to collect its revenue requirement up to the Commission-approved revenue caps. (Joint Ex. 1 at 7.)

{¶ 56} For purposes of the above paragraphs, the DIR performance-based trigger standards for 2021 through 2023, based on the system average interruption duration index (SAIDI), shall be as follows:

| Year | SAIDI |
|------|-------|
| 2021 | 87.8  |

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|      |      |
|------|------|
| 2022 | 86.8 |
| 2023 | 85.8 |

For each annual period, AEP Ohio will report the prior year's reliability performance on or before March 31. Staff will review and verify the performance results within 20 days. (Joint Ex. 1 at 7.)

{¶ 57} The above standards are consistent with the data presented in AEP Ohio's filing in Case No. 20-1111-EL-ESS, but they are tied to the list of specific outage descriptions set forth in the table below. The DIR performance-based standards agreed upon do not limit any positions that Signatory Parties may take involving the establishment of new distribution reliability performance standards in Case No. 20-1111-EL-ESS or any future case regarding the establishment of reliability performance standards.

| Controllable Causes (Included) |   |
|--------------------------------|---|
| D-Station                      | Distribution Station  |
| D-Line Equip                   | Equipment Failure   |
| Weather                        | Weather - Flood/Slide<br>Weather - High Winds (Exceeding 60 MPH)<br>Weather - Hurricane<br>Weather - Ice (1/2 Inch or > 6" Snow)<br>Weather - Lightning<br>Weather - Tornado<br>Weather - Unknown |
| Remaining Cause                | Animal - Bird<br>Animal - Non-Bird<br>Contamination/Flashover   |

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|                 |                       |
|-----------------|-----------------------|
|                 | Corrosion             |
|                 | Error – Field         |
|                 | Error – Operations    |
|                 | Facilitation of Work  |
|                 | Other                 |
|                 | Overload              |
|                 | Unbalance             |
| Unk (Non-Weath) | Unknown (Non-Weather) |

(Joint Ex. 1 at 7-8.)

{¶ 58} AEP Ohio will continue to file an annual DIR Work Plan. For each project or work order completed under the discretionary programs of the DIR, AEP Ohio also will track and permit Staff, OMAEG, and OCC to review the following information: (a) circuit(s) impacted; (b) number of hours; (c) description of issue(s) being addressed; (d) outage history; (e) work completed; (f) whether equipment is new or replaced; (g) if available, the age and manufacturer of original equipment that is replaced; (h) if new, purpose of install; (i) expected reliability improvement; (j) how improvement will be measured; and (k) circuit design capacity in megawatts (MW), where available. (Joint Ex. 1 at 8.)

{¶ 59} AEP Ohio may petition the Commission for permission to extend the DIR beyond May 30, 2024, and adjust the revenue cap applicable to said extension. In order to make such a petition, AEP Ohio must file a standard service offer (SSO) application on or before May 30, 2023. In the absence of an order authorizing an SSO to commence June 1, 2024, or an order under this provision extending the DIR, the DIR rate shall be set at \$0 beginning June 2, 2024. (Joint Ex. 1 at 8-9.)

#### **4. ENHANCED SERVICE RELIABILITY RIDER**

{¶ 60} A level of \$35 million associated with vegetation management expenses will be included in base rates (Joint Ex. 1 at 9).

{¶ 61} AEP Ohio's total spending for the ESRR during the period January 2021 through May 2024 shall not exceed \$153.75 million. For planning purposes and for setting annual ESRR rates only, the ESRR funding level should be set at \$45 million annually (prorated for 2024). Any spending exceeding the \$45 million will be deferred without carrying charges for recovery through the ESRR, subject to final reconciliation for the total period up to the \$153.75 million cap. The entire vegetation management program, including the danger tree program,<sup>5</sup> will be audited annually (prudence and financial audit) and subject to refund through the ESRR. The stand-alone danger tree program will end at the conclusion of 2023, but AEP Ohio may continue to take prudent actions to address danger trees after 2023 within the funding levels described above as part of its overall vegetation management plan. (Joint Ex. 1 at 9.)

#### **5. RATES AND TARIFFS**

{¶ 62} New base rates approved in these proceedings shall become effective within 14 days after an Opinion and Order approving the Stipulation (Joint Ex. 1 at 9).

{¶ 63} The Retail Reconciliation Rider (RRR) and SSO Credit Rider (SSOCR) will remain at zero based on the Staff Report's recommendation (Joint Ex. 1 at 9).

{¶ 64} The residential customer charge will be set at \$10 per month (Joint Ex. 1 at 9).

{¶ 65} AEP Ohio agrees to terminate the PTBAR effective upon the date new rates become effective in these cases, subject to final reconciliation based on that same termination date. AEP Ohio agrees to waive any reconciliation charge for 2021 that exceeds \$12 million for

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<sup>5</sup> The Stipulation notes that, as defined in the joint stipulation and recommendation approved by the Commission in Case Nos. 17-38-EL-RDR and 18-230-EL-RDR, a danger tree is a tree that is structurally unsound and could strike power lines when it falls. Danger tree characteristics include dead branches or trunks, leaning, uprooting, fungus, signs of disease, and signs of decay. (Joint Ex. 1 at 9.)



the period from February to the date of effective rates in these cases; however, all amounts booked in January 2021 and for prior periods will be fully reconciled. AEP Ohio reserves the right in any future proceeding to advance any proposal based on then-current laws and regulations related to decoupling or other related rate design concepts, including, but not limited to, a proposal within a base distribution rate case or an ESP proceeding. AEP Ohio also reserves the right to advance any such proposal based on a future change of law or regulation, including, but not limited to, any future legal or regulatory obligation related to energy efficiency or demand response. It is expressly understood by the Signatory Parties that this compromise settlement may not be cited or otherwise relied upon as a basis to oppose any such future proposal of the Company. The Signatory Parties also reserve the right to take any position in any future case in which AEP Ohio proposes any form of decoupling charges, charges for lost revenues, or other similar charges. (Joint Ex. 1 at 10.)

{¶ 66} The reconnection charge at the meter will be \$0 and the miscellaneous service revenue credit was reduced accordingly by \$4 million (Joint Ex. 1 at 10).

{¶ 67} The Resale of Energy section of AEP Ohio's Terms and Conditions of Service shall be revised as reflected in Attachment C to the Stipulation (Joint Ex. 1 at 10).<sup>6</sup>

{¶ 68} AEP Ohio's Residential Service tariff sheets will be updated to reflect changes to the metering and billing of separately metered garages, as reflected in Attachment C (Joint Ex. 1 at 10-11).

{¶ 69} AEP Ohio's Pole Attachment tariff rates (Tariff Sheet Nos. 300-1 through 300-3) will be updated in accordance with the Staff Report, as reflected in Attachment C. AEP Ohio and OCTA agree to discuss a means for sharing information with the OCTA members regarding periodic maintenance and inspection of facilities attached to the Company's poles. (Joint Ex. 1 at 11.)

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<sup>6</sup> The Stipulation notes that Attachment C to the Stipulation contains a set of proposed tariffs that reflect all of the terms of the Signatory Parties' tariff-related agreements (Joint Ex. 1 at 10).

{¶ 70} Tariff Sheet No. 103-3 (Inspections) will be updated to eliminate the fee for inspection service, as recommended in the Staff Report and reflected in Attachment C (Joint Ex. 1 at 11).

{¶ 71} AEP Ohio agrees to withdraw its termination language regarding consolidated billing (Joint Ex. 1 at 11).

{¶ 72} For consumer information, AEP Ohio will perform aggregate “shadow billing” calculations for residential customers in the form reflected in Attachment D to the Stipulation and will make such calculations promptly available to OCC and Staff annually or at OCC’s or Staff’s request. AEP Ohio agrees that the aggregate shadow billing information to be provided in the form reflected in Attachment D is not confidential. AEP Ohio and OCC will work to develop a proposal that amends the Company’s application in Case No. 20-1408-EL-UNC to display on customers’ bills additional computations that reflect potential consumer savings or losses as compared to the Company’s SSO.<sup>7</sup> (Joint Ex. 1 at 11.)

{¶ 73} AEP Ohio agrees to make best efforts to respond within 21 days to customer requests to purchase Company facilities on customer premises (Joint Ex. 1 at 11).

{¶ 74} AEP Ohio agrees to modify its tariff language to clarify that a competitive retail electric service (CRES) provider that is a power broker only (not also engaged in other CRES activity) does not need to adhere to the Company’s security requirements (including financial disclosures), enroll in and complete Electronic Data Interchange certification testing, or provide evidence of membership in PJM Interconnection, LLC (PJM). AEP Ohio reserves the right to implement such requirements in the future based on new circumstances, subject to approval by the Commission. (Joint Ex. 1 at 12.)

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<sup>7</sup> The Stipulation notes that Staff takes no position on this provision, including Attachment D (Joint Ex. 1 at 11).

{¶ 75} AEP Ohio agrees to consider all customer requests for less intrusive physical service connection routes on the customer's premises, subject to the customer paying the incremental costs associated with the alternative route (Joint Ex. 1 at 12).

{¶ 76} AEP Ohio agrees to eliminate its existing direct load control tariff (Joint Ex. 1 at 12).

{¶ 77} As reflected in Attachment C, the Signatory Parties agree<sup>8</sup> that AEP Ohio will reflect the following new provisions in its tariffs:

- a. The Signatory Parties agree that AEP Ohio will set rates in Schedule Plug-In Electric Vehicle (PEV) consistent with the *ESP 4 Case*. Schedule PEV will be for distribution service and be made available for residential (single-family and multi-family) applications, taking into account other available time-of-use rates for generation service.
- b. The Signatory Parties agree that AEP Ohio will modify Schedule PEV to add a pilot provision that will allow new separately metered level 2 or direct current fast charging electric vehicle (EV) charging stations to be billed on non-demand metered rates.
- c. AEP Ohio agrees to engage in periodic discussions with interested parties concerning these tariffs, occurring at least once per year starting in 2022, to include consideration of potential adjustment to the cap of 500 customers, rate design parameters, and other related matters, such as revenue impacts of modifications and synchronizing any planned modifications with a future case involving cost recovery. AEP Ohio will, at least one week prior to such discussions, provide interested stakeholders with anonymized information regarding tariff enrollment, metering arrangements and costs

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<sup>8</sup> The Stipulation notes that OCC neither supports nor opposes this provision, and reserves all rights to take any position in future cases regarding changes to Schedule PEV as referenced in this paragraph (Joint Ex. 1 at 12).

(if any), aggregate bill impacts versus the applicable default distribution tariff, and any other available information reasonably requested.

- d. The Signatory Parties agree that AEP Ohio will pay \$100,000 in total shareholder dollars for marketing and education efforts for the tariff after the tariff is approved. As a portion of the \$100,000 shareholder commitment, AEP Ohio agrees to provide up to \$50,000 in total to reimburse CFO for invoices sent to the Company for agreed services provided in support of these marketing and education efforts in combination with an agreed fee for coordinated efforts to utilize CFO data or informational resources such as EV charging tariff education through the Drive Electric Ohio (DEO) program. Such CFO services also include the production and dissemination of information about residential charging tariff options to EV owners and operators through multiple channels, including auto dealerships, EV supply equipment retailers, and the DEO network of individual EV owners.

(Joint Ex. 1 at 12-13.)

{¶ 78} Notwithstanding the provisions of the preceding paragraph, AEP Ohio reserves the right to make any other filings related to Schedule PEV in the future, in addition to the commitments made in the Stipulation (Joint Ex. 1 at 13).

{¶ 79} AEP Ohio will incorporate a distributed generation tariff as agreed to by the Signatory Parties, as reflected in Attachment C. As a result of incorporating this distributed generation tariff, no costs will be shifted to residential customers. Customers installing on-site renewable energy generation as defined in the tariff after the effective date of the tariff may reserve eligibility for participation when they file their interconnection application with AEP Ohio. The on-site renewable energy facility must be operational within one year of the interconnection application being submitted or the customer shall lose its reservation and must refile its interconnection application to qualify for the tariff. AEP Ohio agrees to consider

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expanding the distributed generation tariff to include combined heat and power resources as part of a future proceeding that incorporates recovery of revenue impacts associated with such expansion. (Joint Ex. 1 at 13-14.)

{¶ 80} AEP Ohio's delayed payment charge proposal shall be approved, but its implementation will be delayed until 12 months after the date on which the Stipulation was executed. As recommended in the Staff Report, the delayed payment charge provision will provide for a seven-day grace period from the due date for payments to be credited to the account to avoid a late payment charge, meaning the delayed payment charge will not be applicable until the 22nd day after the issuance date on a customer's bill. (Joint Ex. 1 at 14.)

{¶ 81} The Signatory Parties agree to continue the Tax Savings Credit Rider (TSCR), in order to address, on a single-issue ratemaking basis, any significant changes in the federal tax code that become effective prior to the filing of AEP Ohio's next base distribution rate case under R.C. 4909.18. Unless otherwise ordered by the Commission, a proceeding similar to Case Nos. 18-47-AU-COI, 18-1007-EL-UNC, and 18-1451-EL-ATA would be implemented to capture the incremental impact through the TSCR, which would create a charge if there is a significant increase in the federal tax rate applicable to AEP Ohio. The Signatory Parties reserve their rights to take any position in the future proceeding that is not inconsistent with this paragraph and any revisions to the TSCR shall be approved by the Commission. (Joint Ex. 1 at 14-15.)

{¶ 82} AEP Ohio agrees to continue waiving all Alternate Feed Service (AFS) fees for the members of OHA that currently subscribe to AFS and are currently on "grandfathered" status, subject to termination under this paragraph. AEP Ohio also agrees that any AFS fees being paid by OHA members (i.e., "non-grandfathered" hospital members) will be waived for the same period commencing upon the issuance of an order by the Commission approving the Stipulation or until terminated for individual members under this paragraph. Such waivers for OHA members will continue until AEP Ohio's next base distribution rate case application is approved by the Commission or until terminated for individual OHA members under this

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paragraph. Notwithstanding the foregoing, if additional investment is needed on the alternate feed circuit serving the hospital due to an increase in load of the hospital or other activity caused by the hospital, then that hospital AFS customer would begin paying the AFS tariff rate for hospitals upon completion of such additional circuit investment. The waiver of AFS fees, as set forth in this provision, is not subsidized by, or charged to, residential customers. (Joint Ex. 1 at 15.)

{¶ 83} The credits for the interruptible power program will be fully funded through the Economic Development Rider (EDR) starting in January 2021. The Signatory Parties note that, through 2020, only half of the credits were funded through the EDR and the other half of the credits were funded through the Energy Efficiency and Peak Demand Reduction Rider. (Joint Ex. 1 at 15.)

{¶ 84} Although the BDR will activate on the effective date of new rates in these cases, the rider rate will be adjusted initially to reflect the existing deferral from Case No. 20-602-EL-UNC and subsequently (starting with the first annual update for the rider in 2022) to reflect incurred bad debt costs (Joint Ex. 1 at 15-16).

{¶ 85} Regarding AEP Ohio's Net Metering tariffs, the contested issues pending in Case No. 12-2050-EL-ORD are reserved for future resolution by the Commission in that case (Joint Ex. 1 at 16).

## **6. RATE DESIGN**

{¶ 86} AEP Ohio will allocate 56.77 percent of the revenue requirement to residential customers, 3.38 percent to non-demand metered general service customers, 26.52 percent to secondary demand-metered general service customers, 9.73 percent to primary general service customers, 0.75 percent to sub/transmission voltage general service customers, and 2.85 percent to lighting customers (Joint Ex. 1 at 16).

{¶ 87} In order to mitigate rate impacts and create a transition for merging of the rate zones, the General Service Primary demand rate will be \$6.72, \$6.59, \$6.46, and \$6.33 per

kilowatt (kW) for years one, two, three, and four, respectively, for the Ohio Power Company rate zone. The mitigation rate will be \$5.85, \$6.01, \$6.17, and \$6.33 per kW for years one, two, three, and four, respectively, for the Columbus Southern Power Company rate zone. After this transition, there will no longer be separate rate zones for any purpose. (Joint Ex. 1 at 16.)

{¶ 88} In order to mitigate rate impacts and create a transition for merging of the rate zones, the General Service 1 tariff energy rate will be \$0.0138367, \$0.0160846, \$0.0183324, and \$0.0205802 per kilowatt hour (kWh) in years one, two, three, and four for the Ohio Power Company rate zone. The mitigation rate will be \$0.0279184, \$0.0254723, \$0.0230262, and \$0.0205802 per kWh for years one, two, three, and four for the Columbus Southern Power Company rate zone. After this transition, there will no longer be separate rate zones for any purpose. (Joint Ex. 1 at 16-17.)

{¶ 89} The Basic Transmission Cost Rider (BTCR) pilot will continue and the total participation allotment for OEG, IEU-Ohio, and OMAEG will be increased to 15 slots each, provided they are Signatory Parties. The BTCR pilot participation cap will be increased to 800 MW for 2022, 900 MW for 2023, and 1,000 MW for 2024. New Load<sup>9</sup> participating in the BTCR pilot shall be excluded from the BTCR pilot participation cap for the duration of the pilot. Starting with the 2022 annual registration process for the BTCR pilot program, the sponsoring groups will provide preliminary notice to AEP Ohio of an eligible member's intent to participate in the BTCR pilot by December 15 of each year, including the pertinent account numbers; no additional customers or accounts may be added after that date, but an individual customer whose account that was registered by December 15 may elect to terminate its

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<sup>9</sup> The Stipulation notes that, for purposes of this section, New Load includes any customer account opened after the date of the Stipulation. New Load also includes a customer's demand that is incremental to its demand as of the date of the Stipulation, where such incremental demand is due to a customer expanding its equipment or facilities. New Load must exceed 5 MW in new or expanded load and excludes incremental load due to normal fluctuations in customer demand due to normal operations. New Load must otherwise meet all of the eligibility requirements of the BTCR pilot (e.g., participating through one of the BTCR pilot participation slots and complying with the annual registration process). If a BTCR pilot participating customer has New Load, it is the sponsoring group's obligation to designate in the annual BTCR registration process the portion of the participating customer's demand that qualifies as New Load. Staff will resolve any disputes about New Load status, subject to final resolution by the Commission, if necessary. (Joint Ex. 1 at 17.)

participation for the program year by the following February 15. The individual customer's final, binding election to take service under the BTCR pilot for that program year will be made by the following February 15 with notice provided on behalf of the customer by each sponsoring group. Except as modified in the Stipulation, the BTCR pilot will continue under the terms and conditions approved in the *ESP 4 Case*. Implementation of these increased MW caps and participation slots (and to the extent any reallocation occurs due to over-subscription of the MW caps) as part of the ongoing BTCR pilot program only requires reallocation of costs within the general service customer class and does not increase the residential customer class's allocation of transmission costs.<sup>10</sup> (Joint Ex. 1 at 17-18.)

{¶ 90} AEP Ohio agrees to undertake a collaborative discussion with Staff, OEG, IEU-Ohio, OMAEG, and OCC to explore potential future expansion of the BTCR and other potential retail and wholesale demand response programs for transmission customers (Joint Ex. 1 at 18).

{¶ 91} The non-demand metered general service tariff will continue as a separate schedule. The demand metered general service tariff will include a demand charge for all kW but will not include an energy charge. (Joint Ex. 1 at 18.)

{¶ 92} The customer charge for sub/transmission general service customers of less than 2 MW will be \$825 and for general service customers greater than 2 MW will be \$3,600 (Joint Ex. 1 at 18).

## **7. DEMAND SIDE MANAGEMENT**

{¶ 93} AEP Ohio agrees to withdraw, without prejudice to any future case, the demand side management (DSM) proposal in its application. AEP Ohio reserves the right to advance any proposal related to DSM, energy efficiency, electrification/EV, or similar projects in a future proceeding based on then-current laws and regulations. AEP Ohio also reserves the right to advance any such proposal based on a future change of law or regulation,

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<sup>10</sup> The Stipulation notes that OCC neither supports nor opposes the provisions in this paragraph regarding the BTCR pilot and OCC reserves its rights to take any position in future cases with respect to these provisions (Joint Ex. 1 at 18).



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including, but not limited to, any future legal or regulatory obligation related to energy efficiency, demand response, or EV infrastructure, equipment, or incentives. The Signatory Parties reserve their rights to take any position regarding any future proposals. It is expressly understood by the Signatory Parties that this compromise settlement may not be cited or otherwise relied upon as a basis to oppose any such future proposal of the Company. (Joint Ex. 1 at 18-19.)

**E. Consideration of the Stipulation**

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

{¶ 95} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

- (3) Does the settlement package violate any important regulatory principle or practice?

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

{¶ 97} The Signatory Parties urge the Commission to approve the Stipulation in its entirety. In their briefs, the opposing parties have generally focused on certain objections to the Staff Report by raising arguments regarding the Commission's three-part test for evaluating the reasonableness of the Stipulation. Pursuant to Ohio Adm.Code 4901-1-28(D), an objection to a staff report of investigation in a rate case proceeding is deemed withdrawn if a party fails to address the objection in its initial brief. Accordingly, we will address only briefed objections. The Commission addresses the parties' specific arguments in the context of the three criteria for evaluating the reasonableness of the Stipulation.

**1. IS THE STIPULATION THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?**

***a. Summary of Parties' Positions***

{¶ 98} The Signatory Parties submit that, as AEP Ohio witness Moore testified, the Stipulation meets the first part of the three-part test used by the Commission to evaluate stipulations. Ms. Moore testified that the Stipulation is the result of numerous settlement meetings, where all parties were invited and were afforded the opportunity to negotiate each provision of the Stipulation. No party, according to Ms. Moore, was left out of the opportunity to negotiate. In their respective briefs, IEU-Ohio and Staff note that the Signatory Parties and the opposing parties participated in the settlement process. Additionally, there were also individual stakeholder group negotiation meetings. The Signatory Parties emphasize that the

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Stipulation differs from the application in several respects because it reflects a compromise among the parties and incorporates recommendations advocated by Staff and intervenors that benefit customers, including a reduction in the revenue requirement, rate of return, and DIR revenue caps, the incorporation of a total spending cap on the ESRR, and the elimination of the PTBAR. (Joint Ex. 1 at 6-7, 9, 10; Co. Ex. 6 at 3-4, 16; Staff Ex. 1 at 29-30; Staff Ex. 6 at 3; OCC Ex. 1 at 5, 6; Co. Br. at 4-5; Staff Br. at 6-8; Staff Reply Br. at 3; OEG Br. at 3; OHA Br. at 2-3; IEU-Ohio Br. at 3-4; Kroger Br. at 4-5; Kroger Reply Br. at 3; OCC Br. at 4-5; OMAEG Br. at 9-11.)

{¶ 99} OCC witness Willis testified that, over a span of three months, sometimes with three to four meetings per week, the parties participated in meetings with opportunities to negotiate provisions of the Stipulation. As a former employee of the Commission, now employed by OCC, Mr. Willis states that many of the Signatory Parties have a history of active participation in proceedings before the Commission. Further, the Signatory Parties acknowledge that many of the parties to these proceedings are represented by experienced and competent counsel, most of which have participated in numerous regulatory proceedings before the Commission, along with technical experts familiar with proceedings before the Commission. AEP Ohio witness Moore and OCC witness Willis also note that the Signatory Parties represent a variety of diverse interests, including those of AEP Ohio, a residential consumer advocate, organizations of non-residential customers, an association representing hospitals in Ohio, two of the largest supermarket chains in the country, and companies in the EV and renewable energy industries. (Co. Ex. 6 at 16; OCC Ex. 1 at 5; Staff Ex. 6 at 3; Tr. Vol. II at 299.)

{¶ 100} Environmental Advocates emphasize that the Signatory Parties have the burden to prove that the Stipulation satisfies the three-part test used to evaluate stipulations, including that there was serious bargaining among the parties. Environmental Advocates submit that the record contains no evidence of serious bargaining. Environmental Advocates argue that they had no input regarding the exclusion of the DSM program, which was proposed in AEP Ohio's application but omitted from the Stipulation, and no real opportunity to influence the Signatory Parties' decision. Environmental Advocates allege that AEP Ohio

met with Staff, OCC, and industrial customer groups and decided on a compromise that excluded the energy efficiency programs. Environmental Advocates recommend that the Commission reconsider the implications of the process used to evaluate stipulations. According to Environmental Advocates, the Signatory Parties failed to meet their burden to demonstrate serious bargaining among the parties, as merely inviting the parties to meetings does not constitute serious bargaining. Further, Environmental Advocates contend that the Signatory Parties primarily rely on the testimony of AEP Ohio witness Moore, which consists of conclusory statements. Environmental Advocates charge that the Signatory Parties fail to provide evidence that negotiations were inclusive in terms of the parties' positions being considered. Further, Environmental Advocates assert that, in response to objections by AEP Ohio and other Signatory Parties, the attorney examiners blocked all opportunities for parties opposing the Stipulation to discuss the bargaining process at the evidentiary hearing. As one example, Environmental Advocates state that AEP Ohio objected to a question as to whether the Company prioritized Staff's agreement on the Stipulation, on the basis that the question impermissibly sought to get into the specifics of the compromise and the negotiations. Environmental Advocates submit that Ohio Rule of Evidence 408 provides that offers of settlement are not admissible to prove liability but does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Environmental Advocates state that the Ohio Supreme Court has noted that "[Rule] 408 provides that evidence of settlement may be used for several purposes at trial, making it clear that discovery of settlement terms and agreements is not always impermissible." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 322, 856 N.E.2d 213 (2006). Accordingly, Environmental Advocates argue that the exclusion of details related to settlement discussions was a misapplication of Ohio Rule of Evidence 408. Environmental Advocates declare that, without scrutiny beyond the cursory response the Signatory Parties provided, the first prong of the test to evaluate the Stipulation becomes little more than a hollow pronouncement with no evidentiary value. Environmental Advocates submit that there is very little evidence in the record on which the Commission can base its

decision as to whether the Signatory Parties have satisfied the first part of the three-part test. (Tr. Vol. II at 244-256, 299; Environmental Advocates Br. at 1, 6-7; Environmental Advocates Reply Br. at 1-3.)

{¶ 101} As to OCC's claim that no opposing party presented witness testimony to refute the testimony of OCC witness Willis, AEP Ohio witness Moore, and Staff witness Liphtratt, Environmental Advocates submit that OCC's statement reflects a misunderstanding of the burden of proof, as it is the Signatory Parties that must show that the Stipulation is the result of serious bargaining about the issues raised in the application and not simply the product of a series of discussions. Environmental Advocates declare that the record contains no evidence regarding the seriousness of bargaining. (OCC Br. at 5; Environmental Advocates Reply Br. at 3.)

{¶ 102} In response, the Signatory Parties aver that Environmental Advocates' claims as to the first part of the three-part test used to evaluate the Stipulation are meritless; that the record supports a finding that the Stipulation is the product of serious bargaining among, capable, knowledgeable parties; and that it should be adopted by the Commission without modification. AEP Ohio submits that, while Environmental Advocates question the attorney examiners' evidentiary rulings at the hearing, they have not taken the required steps to formally challenge the rulings. AEP Ohio declares that evidentiary rulings are not a basis for challenging the first part of the three-part test to evaluate the Stipulation. AEP Ohio also notes that, in one instance, the witness was directed to answer the question and did so. The Company avers that reliance on Ohio Rule of Evidence 408 does not support Environmental Advocates' position, as the three-part test used to evaluate stipulations is unique to and applies only to Commission proceedings. According to AEP Ohio, the Commission determines what is relevant under the three-part test and Ohio Rule of Evidence 408 does not transform what might be admissible in civil litigation into a matter that is relevant and admissible evidence in a Commission case. AEP Ohio also states that Environmental Advocates are the sole opponents to this part of the three-part test. AEP Ohio and OMAEG note that Environmental Advocates failed to offer a witness to support their claims regarding a lack of serious

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bargaining, although they were afforded the opportunity to do so, as well as failed to cross-examine witnesses in support of their position. Further, OMAEG asserts that the legal standard for evaluating settlements does not merely account for the perspectives of the Signatory Parties, as the Commission will not approve a settlement where an entire customer class was intentionally excluded from the settlement negotiations. *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 534, 820 N.E.2d 885 (2004). OMAEG points out that all parties to a proceeding are able to present evidence and cross-examine witnesses to support or challenge the settlement provisions to assist the Commission in its evaluation of the stipulation. (Co. Reply Br. at 2-4; OMAEG Reply Br. at 6-7.)

{¶ 103} Staff and OMAEG reason that the first part of the three-part test does not require the Stipulation to be unanimous for it to be the product of serious bargaining. OMAEG states that the Commission has specifically rejected the notion that a settlement was not a compromise merely based on the number of participants in the case. *In re The Dayton Power and Light Co.*, Case No. 18-1875-EL-GRD, Opinion and Order (June 16, 2021) at ¶ 47. Staff submits that Environmental Advocates' focus on what the bargaining actually entailed is misplaced. Staff notes that "bargaining," as defined in Merriam-Webster, means to come to terms; to negotiate over the terms of a purchase, agreement, or contract; to haggle. Staff offers that the Commission expects that the Signatory Parties executed the Stipulation because they receive some benefit as a result of bargaining in support of their respective interests. *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*FirstEnergy 2014 ESP Case*), Opinion and Order (Mar. 31, 2016) at 44. As part of the evaluation, Staff notes that the Commission looks to the experience of counsel for the parties and whether they routinely participate in complex Commission cases. Staff further notes that the Commission has found that changes made during negotiations are indicative of serious, intricate negotiations among the signatory parties. *FirstEnergy 2014 ESP Case* at 43-44. Staff submits that the very significant differences in the terms of the Stipulation as compared to the Company's application and the Staff Report attest to the seriousness of the negotiations. Finally, Staff asserts that Environmental Advocates' reliance on Ohio Rule of Evidence 408 and the Court's decision in *Ohio Consumers' Counsel* is inapplicable. Staff states that the issue in

*Ohio Consumers' Counsel* was whether serious bargaining could occur where an opposing party was denied discovery of an undisclosed side agreement. Staff reasons that the Court's decision in *Ohio Consumers' Counsel* is limited to information sought at the discovery stage. In this instance, Staff states that there is no evidence that Environmental Advocates were denied any information during discovery, either before or after the Stipulation was finalized. Further, Staff points out that the Court specifically noted in *Ohio Consumers' Counsel* that the opposing, non-signatory party was "*not* seeking to discover the communications made during settlement negotiations but, rather, the terms of the [undisclosed] side agreements and the agreements themselves." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 322-323, 856 N.E.2d 213 (2006) (emphasis added). (Staff Reply Br. at 3-6; OMAEG Reply Br. at 8-9.)

{¶ 104} Further, although Direct Energy makes no other arguments as to the first part of the three-part test, Staff avers that Direct Energy's assertion of "backroom dealing" regarding the shadow-billing provision mischaracterizes the facts. According to Staff, shadow billing was a key factor in OCC's execution of the Stipulation. Staff states that there is no evidence in the record that the negotiation process was not open or that the Stipulation is incomplete by its terms. Staff offers that the Stipulation represents a compromise involving a balance of competing positions from multiple parties and incorporates many of the recommendations offered by Staff and intervenors. (Direct Energy Br. at 1; Staff Br. at 7-8; Staff Reply Br. at 6-7.)

{¶ 105} In regard to Environmental Advocates' claim that they were prejudiced by the evidentiary rulings and that intervenors opposing the Stipulation had no real opportunity to challenge the bargaining process, Kroger responds that such claim is inconsistent with the record in this case. Kroger argues that ELPC cross-examined AEP Ohio witness Moore on a variety of issues, including the bargaining process, and that Ms. Moore answered many of the questions posed by ELPC regarding the bargaining process. Kroger notes that no party opposing the Stipulation presented any evidence refuting that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Kroger adds that the Supreme Court of Ohio has held that "the [C]ommission is not bound by strict rules of evidence in its

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proceedings.” *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 14 Ohio St. 3d 49, 50, 471 N.E.2d 475 (1984). (Co. Ex. 6 at 16; Kroger Reply Br. at 4; Staff Ex. 6 at 3; OCC Ex. 1 at 5.)

{¶ 106} In regard to Environmental Advocates’ argument that there are exceptions to Ohio Rule of Evidence 408, IEU-Ohio notes that the rule specifically provides that “evidence of conduct or statements made in compromise negotiations is likewise not admissible.” Ohio R. Evid. 408. Recognizing that there are exceptions, IEU-Ohio points out that Environmental Advocates fail to identify precisely which exception applies here. IEU-Ohio declares that there is no basis in law or practice for Environmental Advocates’ theory that settlement discussions need not remain confidential for purposes of addressing the first part of the three-part test. Further, IEU-Ohio reasons that, if the theory advanced by the Environmental Advocates were adopted, it would require signatory parties to a stipulation to prove the negative about the merits of any settlement offer not incorporated into the final, publicly filed stipulation, as well as to offer evidence in support of the stipulation. (IEU-Ohio Reply Br. at 17-18.)

**b. Commission Conclusion**

{¶ 107} It is undisputed that the Signatory Parties and the non-signatory parties, including counsel for Environmental Advocates, were invited to and afforded the opportunity to participate in settlement negotiations (Co. Ex. 6 at 2-3, 16; OCC Ex. 1 at 5; Staff Ex. 6 at 3). Most of the parties are represented by counsel who are regular and frequent participants in Commission proceedings. Environmental Advocates do not challenge the abilities or experience of any party’s counsel or technical experts or their familiarity with Commission proceedings. The record evidence supports that all parties, both signatory and non-signatory, are represented by capable and knowledgeable counsel familiar with Commission proceedings. Additionally, no class of customers was excluded from settlement negotiations. *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218; *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). In fact, Environmental Advocates are the only parties to present any significant argument opposing the Stipulation under the first part of the three-part test and that opposition is based on the elimination of the DSM program from the Stipulation where a DSM program was initially a



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part of AEP Ohio's application. Environmental Advocates encourage the Commission to closely examine settlement negotiations to determine whether serious bargaining occurred or, in other words, whether they were inclusive in terms of the parties' positions on various provisions (Environmental Advocates Br. at 5). However, that is not an aspect of part one of the three-part test. The Commission notes that there are significant differences between the Company's application and the Stipulation, which the Commission attributes to negotiations and serious bargaining (Co. Ex. 6 at 16; OCC Ex. 1 at 4-5; Tr Vol. II at 299). The Commission cannot conclude from the fact that the Stipulation does not include a specific provision (in this instance, the DSM program) that, as Environmental Advocates suggest, serious bargaining did not take place. It is not indicative of a lack of serious bargaining that a DSM program is not part of the Stipulation, where the Stipulation incorporates numerous other provisions and terms. On the other hand, the Commission may view the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between the parties. *FirstEnergy 2014 ESP Case*, Opinion and Order (Mar. 31, 2016) at 44.

[¶ 108] The Commission finds the fact that the Stipulation incorporates recommendations of the Staff, reflects several amendments to provisions proposed in the Company's application in favor of customers and intervenors, and includes the addition of terms and conditions to the benefit of customers, to be evidence of significant bargaining among the parties. We note that the Stipulation reflects a reduction in the revenue requirement and authorized rate of return, includes reductions in the revenue caps for the DIR and ESRR, incorporates the gradual implementation of tariff rates in the Columbus Southern Power Company rate zone and Ohio Power Company rate zone, recommends a delayed implementation of the late payment charge for residential customers, eliminates the PTBAR, and adopts a shadow-billing provision (Joint Ex. 1 at 6-7, 9, 10; Staff Ex. 1 at 29-30; OCC Ex. 1 at 6). Each party to a case is vested with the responsibility to negotiate in its interest and, based on that interest, to determine whether to sign a proposed stipulation, oppose the stipulation, or do neither. The Commission is not required to evaluate the negotiation process, in the manner advocated by Environmental Advocates, to determine whether serious bargaining occurred. *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d

1218, ¶¶ 45-47. Accordingly, the Commission finds that the record evidence supports a determination that the Stipulation meets the requirements of the first part of the three-part test used to evaluate stipulations (Co. Ex. 6 at 2-3, 16; Staff Ex. 6 at 3; OCC Ex. 1 at 5).

**2. DOES THE STIPULATION, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?**

¶ 109} According to the Signatory Parties, the Stipulation, as a package, is a just and reasonable resolution of the issues raised in these proceedings and incorporates several financial benefits and efficiencies for customers and the public interest as compared to a fully litigated case. AEP Ohio and other Signatory Parties highlight key aspects of the Stipulation that provide benefits to ratepayers and the public interest, including, among other things, the reduced revenue requirement, the lower cost of capital, reductions in the spending level for the DIR and ESRR, the new pilot programs, the expansion of the BTCR pilot program, the revenue allocation and rate mitigation provisions, and the elimination of the PTBAR.

¶ 110} AEP Ohio and other Signatory Parties note that the Stipulation reflects a revenue requirement of \$955.1 million, \$110.8 million lower than the revenue requirement of \$1,066 million requested by the Company in its application. AEP Ohio and other Signatory Parties emphasize that the typical bill comparison demonstrates that the stipulated revenue requirement results in an approximately 2.5 percent decrease for a residential customer using 1,000 kWh per month. (Co. Ex. 4A; Joint Ex. 1 at 24, Attach. A; Co. Ex. 6 at 17; Staff Ex. 6 at 5; OCC Ex. 1 at 6; OEG Br. at 3; IEU-Ohio Br. at 5; OMAEG Br. at 12; Staff Br. at 9.)

¶ 111} The Signatory Parties point out that the overall rate of return is reduced from AEP Ohio's proposed 7.90 percent to 7.28 percent, resulting in a reduction of the annual base distribution revenue paid by customers by approximately \$24.4 million. The stipulated rate of return is below the midpoint of the range recommended by Staff. AEP Ohio testified that the rates agreed to in the Stipulation will ensure the Company's financial wherewithal to provide safe and reliable service, while also providing reasonable rates for customers. (Co. Ex. 5 at 3, 10; Co. Ex. 6 at 17; OCC Ex. 1 at 6; Staff Ex. 6 at 5; Staff Ex. 2 at 3; IEU-Ohio Br. at 5-6; OMAEG Br. at 12.)

{¶ 112} The Signatory Parties recognize limits imposed on two riders, as part of the Stipulation, as beneficial to ratepayers and the public interest. The Stipulation adopts spending caps on the DIR, beginning in 2021 through May 2024, at a substantially lower rate than proposed by AEP Ohio in its application. This aspect of the Stipulation limits what customers ultimately pay under the rider, saving customers over \$100 million, while the spending caps can only be increased by limited amounts contingent upon AEP Ohio's compliance with more stringent reliability standards. (Joint Ex. 1 at 8; Co. Ex. 6 at 17; OCC Ex. 1 at 7; Co. Br. at 7; IEU-Ohio Br. at 6; OMAEG Br. at 12-13; Staff Br. at 11.)

{¶ 113} The Signatory Parties emphasize that the Stipulation also caps the ESRR at \$153.75 million for the period January 2021 through May 2024 and at an annual funding cap amount of \$45 million, with 2024 prorated. Any spending by AEP Ohio above the annual cap will be deferred for later collection from customers without financing charges, whereas AEP Ohio did not propose a cap in its application. (Co. Ex. 6 at 17; OCC Ex. 1 at 7; OMAEG Br. at 13-14; Staff Br. at 11.)

{¶ 114} AEP Ohio and other Signatory Parties endorse the adoption of two new pilots as part of the Stipulation, the PEV pilot and the distributed generation pilot. AEP Ohio states that the pilots will allow the Company to gather data regarding the impacts of new technologies on the distribution system. AEP Ohio and Staff believe that the pilots will incentivize public and residential EV charging stations to charge off peak and incentivize renewable resources to operate during peak times to help reduce the overall six coincident peaks (CP). Further, AEP Ohio has agreed to commit \$100,000 in shareholder funds to marketing and education to support the PEV tariff provisions. CFO and EVgo endorse the PEV provisions of the Stipulation, including the non-demand charge rate design, because they offer appropriate incentives to facilitate the development of charging infrastructure, can help increase the efficiency of the grid, and potentially reduce peak load, which reduces costs to all customers. AEP Ohio points out that, because the rate design encourages off-peak charging, it does not result in other residential customers paying more than they otherwise would without the pilot. Key to the distribution system benefits of the PEV provisions is customer education

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and enrollment in the pilots; thus, CFO and AEP Ohio have committed resources and services to support the marketing and education efforts regarding the PEV tariff across a broad spectrum of stakeholders. EVgo advocates that the PEV pilot will facilitate the development of EV charging infrastructure, encourage adoption of EV use, and, as a result of reduced emissions, provide a cleaner environment and lower healthcare costs. (Joint Ex. 1 at 12-13; Tr. Vol. I at 93-94; Co. Ex. 6 at 10-11, 19; Co. Ex. 4 at 5; CFO Ex. 1 at 3-4; EVgo Ex. 1 at 4-5; CFO Br. at 5, 7; Staff Br. at 13.)

{¶ 115} The Signatory Parties note that the Stipulation establishes a distributed generation tariff for eligible customers installing on-site renewable generation to provide an opportunity for demand savings for those customers that can reduce demand during the Company's seasonal peak periods. The distributed generation tariff, which is limited to 50 MW, encourages customers who own distributed generation to operate their system during the summer and winter peaks, with the demand charge based on the customer's six CP. The intent of the distributed generation tariff is to reduce the overall six CP for the distribution system as a whole. (Joint Ex. 1 at 13-14; Co. Ex. 4 at 5; Co. Ex. 6 at 18-19; Staff Ex. 6 at 5; OMAEG Br. at 14; Staff Br. at 13.)

{¶ 116} According to AEP Ohio, the PEV and distributed generation pilot programs will allow the Company to determine the impact of emerging technologies on its distribution system, while also benefiting participating ratepayers and the public interest by adding load, socializing the Company's cost of service, and protecting non-participating customers from increased costs. Accordingly, AEP Ohio submits that the pilot provisions support a finding that the Stipulation benefits customers and the public interest. (Co. Br. at 8-11.)

{¶ 117} The Signatory Parties also state that the Stipulation continues and expands the BTCR pilot, by allowing 15-16 additional participation slots for OMAEG, OEG, and IEU-Ohio members and increasing the cap to 800 MW for 2022, 900 MW for 2023, and 1,000 MW for 2024; excluding new customer loads. AEP Ohio cites the testimony of IGS witness Joseph Haugen as to the benefits of the BTCR pilot. Although opposed to aspects of the current and proposed

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BTCR pilot, IGS witness Haugen admitted that the BTCR pilot provides benefits to participating customers and is a better transmission cost allocation policy than not having it at all. Mr. Haugen opined that the expansion of the BTCR pilot could reduce investments in transmission and could reduce costs for AEP Ohio consumers. AEP Ohio, IEU-Ohio, OMAEG, and OEG submit that the continuation and expansion of the BTCR pilot facilitates the alignment of participating customers' transmission charges with PJM costs, which, in turn, allows the customers to lower their contribution to the one CP. OMAEG argues that the BTCR pilot is particularly important as transmission costs continue to increase. OEG and IEU-Ohio offer that this provision in the Stipulation helps Ohio manufacturers to remain competitive, encourages new businesses to locate in Ohio, and encourages existing businesses to expand operations in Ohio. AEP Ohio, OMAEG, and IEU-Ohio contend that better utilization of existing transmission resources will potentially produce cost savings for all AEP Ohio customers. This provision of the Stipulation also allows the Company to analyze how participation in the pilot lowers the overall transmission revenue requirement. Accordingly, the Signatory Parties aver that this provision of the Stipulation meets the requirements of part two of the three-part test to evaluate stipulations. (Joint Ex. 1 at 17-18; Tr. Vol. V at 1016-1017, 1026, 1030; Co. Br. at 11-13; Co. Ex. 6 at 14, 18; IGS Ex. 1 at 4-5, 7; OEG Br. at 4; IEU-Ohio Br. at 6-7; OMAEG Br. at 14-15; Staff Br. at 12.)

[¶ 118] The Signatory Parties also highlight the revenue allocation and rate mitigation provisions of the Stipulation package, noting that certain provisions of the agreement are intended to mitigate the potential bill impact for certain customer classes associated with the merging of the Columbus Southern Power Company and Ohio Power Company rate zones (Joint Ex. 1 at 16-17; Co. Ex. 4 at 6-7; Co. Br. at 14; OMAEG Br. at 14).

[¶ 119] Certain of the Signatory Parties state that the Stipulation results in a reasonable allocation of the revenue requirement for all customer classes. OCC and Staff note that residential customers will be responsible for a smaller percentage of AEP Ohio's revenue requirement, 56.77 percent as compared to 58.86 percent, saving residential consumers approximately \$20 million per year in avoided base distribution charges. The Signatory Parties

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aver that residential customers will also avoid approximately \$10 million in ESRR and DIR charges per year as part of the Stipulation, which also incorporates reliability performance incentives. (OCC Ex. 1 at 6; Co. Ex. 4 at 3, Ex. DMR-S2; Co. Ex. 4A; OCC Br. at 2, 6-7; Co. Br. at 17-18; IEU-Ohio Br. at 5; Staff Br. at 10.)

{¶ 120} Another benefit of the Stipulation cited by the Signatory Parties is the limitation of PTBAR charges for 2021 and the subsequent phase-out and elimination of the PTBAR, as of the date on which rates become effective, subject to final reconciliation. AEP Ohio has agreed to waive any reconciliation charge for 2021 that exceeds \$12 million. (Joint Ex. 1 at 10; Co. Ex. 4 at 4; Co. Ex. 4A; Co. Ex. 6 at 8; OCC Ex. 1 at 8; Staff Ex. 6 at 5; Tr. Vol. I at 87; OEG Br. at 3; OMAEG Br. at 13; Staff Br. at 10.)

{¶ 121} Certain of the Signatory Parties emphasize the other benefits negotiated as part of the Stipulation and the savings which will accrue to residential customers. OCC notes that the charge for reconnecting the service of residential customers at the meter will be reduced to zero. The stipulated residential customer charge of \$10 per month is lower than the \$14 requested by AEP Ohio in its application. The late payment fee will not be charged to a customer's bill until the 22nd day after the issuance date of the customer's bill, which is a full week later than the current tariff, and will not be imposed for 12 months after the execution of the Stipulation. (Joint Ex. 1 at 14; Co. Ex. 4 at 4, 6; Staff Ex. 6 at 5; OCC Ex. 1 at 8-9; OMAEG Br. at 12; Staff Br. at 9.)

{¶ 122} Further, OCC specifically notes as a benefit of the Stipulation for residential ratepayers that AEP Ohio has agreed to perform shadow billing to offer residential customers transparency for the cost of electricity and provide the information to Staff and OCC. In addition, OCC notes that, as a part of the Stipulation, AEP Ohio has agreed to amend its application in its pending bill format case, Case No. 20-1408-EL-UNC, to provide additional information on residential customer bills regarding potential savings or losses from electricity marketers compared to AEP Ohio's SSO. (Joint Ex. 1 at 11; Co. Ex. 6 at 18; OCC Ex. 1 at 8-9; Staff Br. at 9; OCC Br. at 8-9.)

{¶ 123} The Signatory Parties also recognize as a benefit of the Stipulation that AEP Ohio customers will not be charged the RRR or the SSOCR, saving SSO customers from additional charges. OHA states that hospitals provide an essential public benefit to the communities they serve and require reliable electric service. While AEP Ohio had proposed to implement AFS tariff rates in its application, the AFS fees for members of OHA, through the Stipulation, are grandfathered and waived, with some exceptions, until the Company's next base rate case. OHA declares that this provision of the Stipulation saves member hospitals additional charges. (Joint Ex. 1 at 15, Attach. C; OCC Ex. 1 at 9-10; Staff Ex. 1 at 31; Co. Br. at 18-19; Co. Ex. 4 at 5; Co. Ex. 6 at 17; OHA Br. at 4; OCC Br. at 9; Staff Br. at 12-13.)

{¶ 124} In light of the aforementioned aspects of the Stipulation, the Signatory Parties proclaim that the Stipulation, as a package, substantially benefits ratepayers and the public interest and, therefore, the Stipulation satisfies the second part of the three-part test used to evaluate stipulations (Co. Br. at 5-19; Tr. Vol. II at 424; Staff Br. at 9-14; OCC Br. at 6-10; OHA Br. at 3, 4; OEG Br. at 3-5; IEU-Ohio Br. at 5-7; Kroger Br. at 3, 5-6; OMAEG Br. at 5-8, 11).

{¶ 125} The parties opposing the Stipulation challenge various provisions of the settlement agreement and, therefore, recommend that the Commission reject the Stipulation in its entirety or advocate that the Commission amend the Stipulation to include additional benefits for ratepayers and the public interest.

*a. DSM Program*

{¶ 126} Environmental Advocates strongly encourage the Commission to modify the Stipulation to include AEP Ohio's original DSM program or a modified program, asserting that the process leading to the Stipulation fails to meet the three-part test and touting the many benefits of DSM. In the alternative, Environmental Advocates request that, even if the Commission determines that the Stipulation meets the requirements of the three-part test, the Commission revise the Stipulation to include a DSM program to ensure that AEP Ohio customers have access to just and reasonable rates through the cost savings afforded with

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energy efficiency. OPAE also supports the adoption of a DSM program, particularly for low-income customers. (Environmental Advocates Br. at 18-20; OPAE Br. at 15-16.)

{¶ 127} AEP Ohio submits that the Signatory Parties agreed that the Company's voluntary inclusion of a DSM plan would not be part of the Stipulation, without prejudice to any party. AEP Ohio reasons that there is no legal requirement for a DSM program to be included in a base rate case. AEP Ohio also asserts that, given the state of energy efficiency in Ohio, it is logical not to include a DSM provision in the Stipulation. The Company notes that it is not foreclosed, under the Stipulation, from filing a DSM plan in the future. (Co. Ex. 6 at 15, 19; Co. Br. at 20.)

{¶ 128} Importantly, the Commission recognizes that R.C. 4928.66(G) terminated Ohio's annual energy efficiency savings requirements as of December 31, 2020, and reduced the total cumulative energy savings requirement to a statewide collective benchmark of 17.5 percent. If cumulative energy savings, as determined by the Commission as prescribed in the statute, are at least 17.5 percent of the baseline average of the total kWh sold by all electric distribution utilities in the state for calendar years 2018, 2019, and 2020, full compliance with the energy efficiency program required by the statute has been achieved. On February 26, 2020, the Commission determined, pursuant to R.C. 4928.66, that the termination of all energy efficiency/peak demand reduction (EE/PDR) programs must occur by December 31, 2020, and ordered a wind-down of the statutorily required EE/PDR programs to commence on September 30, 2020. *In re Ohio Power Co.*, Case No. 16-574-EL-POR, et al. (*AEP Ohio EE/PDR Case*), Finding and Order (Feb. 26, 2020) at ¶ 44. Most recently, electric distribution utilities, like AEP Ohio, were directed, pursuant to R.C. 4928.661, to file amended plans to re-establish low-income customer energy efficiency programs, which will remain in effect through December 31, 2021. *AEP Ohio EE/PDR Case*, Entry (June 14, 2021) at ¶¶ 11-12. On July 13, 2021, AEP Ohio filed its amended energy efficiency plan for low-income customers, which, pursuant to the statutory directive, will terminate after December 31, 2021. Further, as we have previously stated, the future of energy efficiency programs in this state, in light of Am. Sub. H.B. 6, will be best served by reliance on market-based approaches such as those available



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through PJM and CRES providers. *In re Duke Energy Ohio, Inc.*, Case No. 20-1013-EL-POR, Entry (June 17, 2020) at ¶ 9. Accordingly, the Commission finds that the Stipulation need not be amended to incorporate a DSM program to comply with part two of the test used to evaluate stipulations.

**b. Shadow Billing**

[¶ 129] Direct Energy and IGS oppose the shadow-billing provisions of the Stipulation and contend that they provide no benefit to ratepayers and the public interest. IGS asserts that the shadow-billing data will be based only on a subset of residential shopping customers and that the data will be heavily manipulated and misleading. IGS notes that the backward-looking data for an unknown number of customers in a fluctuating market is not indicative of future pricing or any specific product in the market. Further, IGS notes that the shadow-billing data would exclude numerous shopping customer bills and that, ultimately, the data would be meaningless. IGS adds that the Commission has consistently declined to order various forms of shadow billing as unnecessary because better resources already exist. *In re Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order (Feb. 24, 2021) at ¶ 89. As part of the Stipulation, OCC and AEP Ohio have also agreed to work together to propose an amendment to AEP Ohio's pending bill format case, Case No. 20-1408-EL-UNC. Direct Energy and IGS declare that the agreement to offer a potential proposal in Case No. 20-1408-EL-UNC, a separate and unrelated proceeding, has no bearing on the present cases and should not be considered or endorsed by the Commission. Further, IGS submits that the shadow-billing provisions perpetuate the mistaken belief that a lower rate is the only benefit that customers receive from competition. IGS notes that the Commission has revised the price-to-compare statement on customer bills to recognize that "[p]rice represents one feature of any offer; there may be other features which you consider of value." *In re Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order (Feb. 24, 2021) at ¶ 69. IGS and Direct Energy also contend that the Signatory Parties have not demonstrated how the shadow-billing commitments are of benefit.

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For these reasons, IGS and Direct Energy argue that the shadow-billing provisions of the Stipulation are unnecessary and request that the Commission remove these provisions from the Stipulation. Finally, IGS and Direct Energy claim that the provisions at issue are too indefinite to enforce. (Tr. Vol. I at 144-157; IGS Ex. 6; IGS/Direct Ex. 2 at 53-54; Joint Ex. 1 at 11; IGS Br. at 37-40; Direct Energy Br. at 10-11; IGS/Direct Reply Br. at 22-26.)

{¶ 130} OCC replies that the Commission should conclude that there are benefits to customers through the provision of the shadow-billing report. OCC submits that the Commission has recognized for years the value of the price to compare for customers to use to evaluate market offers. OCC notes that, while IGS asserts that shadow billing is inaccurate and misleading, IGS provides no support for its claims. AEP Ohio and OCC emphasize that, pursuant to the Stipulation, the shadow-billing information will only be provided to OCC and Staff, which OCC argues are more than capable of understanding the information without being misled. AEP Ohio adds that the aggregate shadow-billing report will not be provided to individual customers and is intended to promote transparency and consumer education related to shopping. The Company notes that its commitment to amend its application in Case No. 20-1408-EL-UNC will not result in a final action in the case; instead, the Stipulation will lead to an updated proposal that is subject to stakeholder comment and consideration by the Commission and, therefore, the opposing CRES providers will not be prejudiced. Furthermore, OCC asserts that shadow billing is just one component of the Stipulation, as a package, and that the opposing intervenors have not presented any basis to reject the shadow-billing provisions in isolation from the Stipulation package. (Co. Br. at 45-47; Co. Reply Br. at 45-49; OCC Reply Br. at 11-13.)

{¶ 131} The Commission finds that no valid reason has been presented to justify elimination of the shadow-billing provisions from the Stipulation pursuant to part two of the test to evaluate stipulations. We emphasize that the Commission must evaluate the benefits of the Stipulation as a package and each provision of the Stipulation need not provide a direct and immediate benefit to ratepayers and the public interest. Nonetheless, in this instance, we find that, while OCC indicates that it has no current plans for the shadow-billing report, the

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report may serve to confirm information otherwise available about the competitive market or highlight issues for further review and analysis. The Commission reiterates, however, that customers may choose an energy provider for various reasons. Price is only one attribute of any offer available in the competitive market; there may be other features of the offer that are of value to customers. *In re Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order (Feb. 24, 2021) at ¶ 69. As for the commitment of AEP Ohio and OCC to work on a proposal to submit for comment and review in the pending bill format case, the Commission finds this aspect of the Stipulation to be of no adverse consequence to the opposing parties or the retail market. The intervenors in that case will be afforded an opportunity for input and comment on the amended application. The Commission will, at that point, fully consider the amended application and the comments before any decision is reached in that case. We, therefore, decline to eliminate either of the shadow-billing provisions from the Stipulation. 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 the bill format case.

**c. Water Heater Controller Pilot**

[¶ 132] Armada emphasizes that it has created a water heater controller with a revenue-grade meter that, when combined with Armada's proprietary software platform, can turn thousands of connected water heaters into a flexible energy storage-type device for the power grid, while minimizing the comfort impact to the water heater user. Armada proposes that the Commission amend the Stipulation to include a water heater controller pilot, with cost recovery incorporated into the DIR, in order to facilitate exploration of the benefits of this grid reliability technology. Indeed, Armada asserts that the Stipulation is not in the public interest in its current form and must not be approved without the proposed water heater controller pilot for the benefit of AEP Ohio ratepayers. Armada notes that the Stipulation does not presently include any provision directly related to grid reliability. Armada states that the technology, which is designed to serve the utility grid, would allow AEP Ohio to defer replacement and investment in additional equipment to upgrade transformers or conductors

on capacity constrained circuits; reduce the amount of battery storage needed while being more cost effective; re-energize circuits faster with less risk of tripping out upstream protections, thus reducing restoration times after sustained outages; absorb unpredictable renewable generation output; reduce system load to avoid higher generation fuel costs; and extend the life of grid-scale batteries by reducing the number of quick discharge cycles along with several other available options. Armada notes that the technology is currently in use in Hawaii and Arizona and that there are approximately 2,000 units installed within PJM territory in Ohio and Virginia, with other pilots throughout the country. Armada contends that the pilot would facilitate the ability of customers to control their water heater with a smart phone application and provide customers with maintenance alerts for the water heater, without any upfront cost for the controller by the customer. As the pilot is proposed, the controller would be utility owned and could be installed on standard resistive electric tank water heaters of participating customers, which would include rental dwellings and traditionally underserved communities, including shopping and non-shopping customers. Armada proposes that 4,000 controllers be installed annually over a five-year period at a cost of approximately \$8 million, excluding installation of the controller units and integration into the AEP Ohio system. Armada contends that it would be unreasonable and not in the public interest to adopt the Stipulation without the benefits of this pilot for all customer classes, within the context of the DIR, and the numerous grid reliability features. (Armada Ex. 17 at 2-4, 6-9, 10; Tr. Vol. IV at 709-710, 818, 819, 823; Armada Br. at 3, 8-10; Armada Reply Br. at 3.)

[¶ 133] AEP Ohio contends that the fact that the Stipulation does not include Armada's proposed pilot is not a basis for rejecting the Stipulation. OMAEG notes that Armada witness Rehberg testified that he did not oppose any of the substantive components of the Stipulation. AEP Ohio reasons that merely repeating one's litigation position is not an appropriate basis for contesting a settlement agreement. *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 144 Ohio St.3d 265, 2015-Ohio-3627, 42 N.E.3d 707, ¶ 32 (holding that "[t]he fact that [a] stipulation did not resolve all of [an intervenor's] opposition arguments does not mean that the [C]ommission's approval of the stipulation was unlawful"). AEP Ohio also notes that Armada acknowledges that the Stipulation should be amended to include the pilot as an

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additional value for ratepayers and the public interest. OMAEG and AEP Ohio posit that Armada's claims do not adequately address the second part of the three-part test. AEP Ohio argues that "[t]he question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest." *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63 (stating that "the Commission's task in evaluating a settlement agreement under the three-part test is not to determine whether it reflects the best possible result or outcome for customers"). Consequently, AEP Ohio reasons that Armada has failed to establish that excluding the pilot violates the three-part test used by the Commission to evaluate stipulations. (Tr. Vol. IV at 812-814; Co. Br. at 53; Co. Reply Br. 56-57, 64-65; OMAEG Br. at 17.)

{¶ 134} Armada advocates the adoption of a pilot program that would require AEP Ohio and its customers to purchase and install Armada's water heater controllers. In doing so, Armada attempts to fit its arguments within the framework of the Commission's three-part test by asserting that the Stipulation does not include a sufficient grid reliability benefit. The Commission finds no such benefit is required under part two of the three-part test. The Commission reiterates that the question before us under the second part of the test is not whether there are additional or better mechanisms or provisions that would benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. The three-part test, as recognized by the Supreme Court of Ohio, does not require a stipulation to include any particular type of benefit to meet the requirements of the second part of the test, as Armada suggests. Accordingly, the Commission finds that the record does not provide a basis on which to modify the Stipulation to include the proposed pilot.

*d. Low-Load Factor General Service Tariff or Pilot*

{¶ 135} NEP proposes that the Commission require AEP Ohio to adopt a new low-load factor general service tariff to allow such customers to manage their energy usage to lower their distribution costs. NEP analyzed four existing general service accounts in multi-family developments (two high-load factor customers and two low-load factor customers) and conducted a bill impact analysis of the stipulated rates. Based on its analysis, NEP reasons that, as a result of a number of factors, including the combination of the general service rate classes, increased costs, the allocation of costs, and the demand-only rate structure of the general service tariffs, the Stipulation will unfairly and significantly increase the bills of the general service rate class over what the same customers currently pay. Further, NEP concludes that the Stipulation will result in a disproportionately greater rate increase for low-load factor general service customers than for other customers and that the rate increase will grow even larger in magnitude with the expected increases in AEP Ohio's rider charges, such as the DIR. NEP notes that low-load factor commercial customers can include restaurants, apartment complexes, small medical and commercial offices, single-shift manufacturers, churches, and schools. NEP believes that the demand-based rate design in the general service tariffs will negatively affect the low-load factor general service customers. NEP asserts that, excluding generation, transmission, and usage-based non-distribution riders, commercial customers will see, under the Stipulation, an approximately 33 percent to 40 percent increase in distribution costs, with medium-consuming customers experiencing on average a cost increase of \$1,652 per year and larger-consuming customers experiencing on average a cost increase of \$11,348 (based on a DIR of 5 percent). For these reasons, according to NEP, the general service tariff incorporated in the Stipulation is not in the public interest. To address the disproportionate impact to general service customers, NEP recommends a new rate schedule with energy and demand components for customers with a load factor equal to or less than 40 percent (based on the prior 12-month average load factor). The demand charge, as proposed by NEP, would be based on no more than 25 percent of the Stipulation's proposed demand charges for General Service Secondary and General Service Primary customers, with the remaining amount to be collected through an energy charge equal to the amount expected to be collected by the

Stipulation, assuming no usage reduction, and using the same general service revenue requirement. Accordingly, for General Service Secondary low-load factor customers, NEP proposes a demand charge of \$5.04 per kW and an energy charge of \$0.0067 per kWh and, for General Service Primary low-load factor customers, a demand charge of \$3.98 per kW and an energy charge of \$0.0064 per kWh. NEP states that its proposed General Service rate schedule would afford customers better tools to be able to manage their costs, maintain the revenue requirement, split the stipulated cost increase between demand and energy components, and provide balance between a cost increase guarantee for AEP Ohio and some measure of cost control for low-load factor customers. According to NEP, its general service rate schedule would avoid the decoupling effect of the Stipulation on low-load factor customers; would allow such customers to lower their distribution charges through energy efficiency measures and behavior-based changes; would avoid the customer bill shock likely to occur as a result of the increased demand charge; and is revenue neutral like the proposed Schedule PEV, which AEP Ohio advocates will not result in customers on other rate schedules incurring more costs. (Tr. Vol. I at 93-94; Tr. Vol. IV at 726-729, 734, 743, 745, 748, 760, 764, 766, 796; NEP Ex. 34 at 2-3, 5-12, Ex. A; Joint Ex. 1 at Attach. C; NEP Br. at 18.)

[¶ 136] If the Commission elects not to require AEP Ohio to adopt NEP's low-load factor general service tariff schedule, NEP recommends, in the alternative, that the Commission adopt its proposed rate schedule to initiate a small pilot program to evaluate and investigate the benefits of a low-load factor rate schedule in AEP Ohio's service territory. As proposed by NEP, the pilot would be limited to the first 1,000 current General Service 2 and General Service 3 customers who opt to participate, with a low-load factor of 40 percent or less, based on the 12-month average load factor for the preceding year. If the impact to AEP Ohio is greater than \$1.2 million in any given year, AEP Ohio could lower the participation level. According to NEP, the pilot would be beneficial to the Commission, AEP Ohio, and commercial customers, as it would create an incentive for energy efficiency, purportedly without additional cost to AEP Ohio's customers. A low-load factor general service pilot with a demand charge and an energy charge is reasonable, in NEP's opinion, for three reasons. First, NEP asserts that low-load factor customers lack the functional ability to manage their peak

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demand and, therefore, manage their electric bills. As the second reason, NEP argues that the Stipulation affords other non-residential customer groups the ability to manage the rate increase. For example, NEP notes that General Service Primary customers in the Columbus Southern Power Company rate zone will receive a phased-in demand charge increase; General Service 1 commercial customers without demand meters will retain a kWh-based energy only rate; and the Stipulation expands the BICR pilot so that qualifying customers have an even greater opportunity to manage their bills through a different allocation of transmission costs, which is a benefit that the Commission has previously acknowledged. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 145. For its third reason, NEP claims that the rate design for the pilot would not shift costs to other customers. NEP acknowledges, however, a worst case scenario under the pilot, with a \$1.2 million under-collection per year based on the pilot participants' average consumption of 100,000 kWh per month and assuming a 15 percent energy efficiency level, which is high. NEP contends that this collection risk is not a basis to reject the pilot, as AEP Ohio currently faces the same kind of risk with its residential and General Service 1 customers who are charged only volumetric-based rates. NEP avers that the Signatory Parties have not attempted to mitigate that risk as a part of the Stipulation. Further, NEP notes that the under-collection is hypothetical and may not happen. Further, NEP states that the pilot also presents the risk of over-recoveries due to weather and economic behavior and, as proposed, the pilot would permit AEP Ohio to reduce the number of participants below the 1,000 customer cap if the under-collection reaches \$1.2 million in any given year, thus balancing AEP Ohio's interest in cost recovery. (NEP Ex. 34 at 3-4, 8, 11-2; Tr. Vol. IV at 731, 740-742, 852-853; Joint Ex. 1 at 16; NEP Br. at 22-26.)

[¶ 137] In response to the Signatory Parties' challenges to NEP witness Rehberg's testimony, NEP declares that Mr. Rehberg possesses the knowledge and expertise to present NEP's bill impact analysis and to offer his opinions and recommendations as an expert witness. NEP asserts that Mr. Rehberg independently verified the bill impact analysis and that the data used for the analysis is from actual existing customer accounts that will be affected by the Stipulation. According to NEP, any arguments to the contrary should be rejected. (NEP Reply Br. at 18-19.)



{¶ 138} AEP Ohio submits that NEP witness Rehberg, although he offered expert testimony on rate impact and rate design issues, has no formal training in ratemaking or cost-of-service analysis, has never prepared a cost-of-service analysis, and has never testified as an expert witness on cost of service, class cost allocation, or customer rate impact. In contrast, AEP Ohio emphasizes the education and experience of AEP Ohio witness Roush and contends that the rate design, cost allocation, and mitigation measures for all customer classes, as reflected in the Stipulation, are reliable. (Co. Ex. 4 at 2, 6; Tr. Vol. IV at 658-659, 665-666, 668-669; Kroger Ex. 1; Kroger Ex. 2; Co. Br. at 14, 17.)

{¶ 139} AEP Ohio, Kroger, and Walmart comment that NEP's analysis proposing the low-load factor rate schedule is based exclusively on four NEP customer accounts and that NEP did not model or analyze any other type of low-load factor customer accounts in creating its proposed rate schedule. AEP Ohio and Kroger note that the four accounts are NEP multi-family accounts, for which the NEP witness did not select or have access to the original data. AEP Ohio states that Mr. Rehberg did not analyze any of the submetered accounts behind the four master-metered NEP accounts and was unaware of the type of submetered load. AEP Ohio and Kroger contend that NEP's study is flawed, suffers from deficiencies, and is not based on reliable, scientific, technical, or other specialized information as required by Ohio Rule of Evidence 702 for expert testimony. Walmart opines that distribution costs are fixed and should not be recovered via a volumetric charge. Kroger and Walmart emphasize that, by recovering costs through an energy charge, the proposed rate schedule and pilot may cause AEP Ohio to experience an under-collection of up to \$1.2 million per year and shift costs to other AEP Ohio customers. Accordingly, AEP Ohio advocates that the Commission give no weight to NEP's criticism of the Stipulation's impact on low-load factor customers, as the Company contends that the rates, revenue allocation, rate design, and bill impacts presented in the Stipulation are supported by Company witnesses Moore and Roush. For these same reasons, Kroger and Walmart declare that the proposed general service rate schedule and the pilot are unreasonable and recommend that the Commission reject NEP's rate schedule and pilot proposal. (Co. Ex. 6 at 18-19; Co. Ex. 4 at 8; Tr. Vol. IV at 731, 743-747, 760-761, 763, 793; Co. Br. at 14-18; Co. Reply Br. at 63; Walmart Br. at 3, 5; Kroger Br. at 6, 8.)

{¶ 140} The Commission finds that NEP's request to modify the Stipulation to include a low-load factor tariff or pilot should be denied. As with certain other proposals, the Commission reiterates that the question before us under the second part of the three-part test is not whether there are additional or better mechanisms or provisions that would benefit ratepayers and the public interest, but whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. Further, we are greatly concerned about the unknown impact of the low-load factor tariff and pilot proposals on customer bills. The analysis on which the low-load factor tariff and pilot proposals is based is very limited and the four accounts selected do not represent a broad base of the types of low-load factor accounts, as the Signatory Parties emphasize. For these reasons, we decline to adopt NEP's proposed low-load factor tariff or the proposed pilot program.

*e. Equipment Purchase Requests and Construction Requests*

{¶ 141} NEP argues that the Stipulation is deficient and not in the public interest with respect to its provision regarding customer requests to purchase AEP Ohio equipment on the customer's premises. NEP notes that AEP Ohio does not currently have a standardized process or form for customers to use in submitting a request to purchase AEP Ohio facilities, does not have a policy for such purchase requests, and does not have contact information on its website regarding such requests. NEP further notes that Staff did not perform an operations and process review of AEP Ohio's equipment purchase program. NEP asserts that the Stipulation does not require the Company to evaluate a purchase request or engage in negotiations with the customer, but merely requires the Company to respond, even if it does so without a definitive answer. NEP declares that the Stipulation permits AEP Ohio to merely make its best efforts to respond to customer requests to purchase AEP Ohio facilities, without any requirement to go further than an undefined response; in the opinion of NEP, the language is without substance and does not meaningfully benefit the public interest. NEP proposes that customers should be afforded the benefit of a submittal process with a standard form to make

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an equipment purchase request, as well as deadlines for AEP Ohio's meaningful response, and including pricing for equipment that the Company can sell, a list of equipment that it cannot sell, and requirements that AEP Ohio treat all customers fairly and negotiate in good faith. NEP submits that such equitable treatment of all customers advances the public interest and that the provision in the Stipulation does not include any of these critical items. (Tr. Vol. I at 203, 207, 215; Tr. Vol. II at 384; Staff Ex. 3 at 16; NEP Ex. 33 at 3-4, 5; NEP Ex. 11.)

[¶ 142] NEP advocates that the Stipulation be amended to incorporate a formal process for the purchase of AEP Ohio equipment to ensure equal treatment, fairness, and efficiency. NEP notes that AEP Ohio declared, in response to a discovery request, that it received eight requests to reconfigure service to master-meter service in 2020. NEP challenges the response as being very specific to a much broader general inquiry, which was how many requests did AEP Ohio receive in 2020 from customers to purchase AEP Ohio facilities. NEP also submits that reconfigurations are a significant undertaking and there is no evidence that the number of reconfigurations will decrease in subsequent years. Furthermore, NEP argues that all customer requests should be treated as important regardless of the number of requests received, as the equipment purchase is important to the customer making the request. NEP contends that its proposed process is by no means overly burdensome for AEP Ohio and would allow the Company to operate more efficiently and track the status of the request. (NEP Ex. 32; NEP Ex. 33 at 5; NEP Br. at 33-36.)

[¶ 143] AEP Ohio asserts that the provision at issue was intended, along with the other benefits of the Stipulation, to memorialize the Company's pledge to timely respond to individualized customer purchase inquiries. AEP Ohio retorts that NEP's proposal would greatly expand the voluntary commitment that the Company included in the Stipulation without the support of NEP as a signatory party. AEP Ohio avers that NEP fails to acknowledge that the Company received only eight requests to purchase equipment in 2020 and that NEP did not investigate or present any evidence to demonstrate the customer service experience of those eight customers. AEP Ohio argues that NEP finds the language in the Stipulation acceptable but insufficient for NEP's needs. The Company submits that NEP fails

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to show how the existing Stipulation language, without NEP's proposed additions, is not in the public interest. AEP Ohio contends that there is an established process: the customer contacts their account manager, service representative, or engineer; AEP Ohio engages its leadership team in the decision process; and the Company negotiates with the customer in good faith as to the price of the equipment. AEP Ohio declares that NEP has failed to present any argument or analysis as to the alleged deficiencies of the provision of the Stipulation at issue or any information or detail that shows how the language is unreasonable to the point of being contrary to the public interest. (Tr. Vol. I at 207-209, 215-216; Tr. Vol. II at 264; Co. Br. at 50; Co. Reply Br. at 57-60.)

{¶ 144} NEP also submits that AEP Ohio's current system for construction requests is insufficient and frustrating for customers, that the construction request process is not in the public interest, and that the language in the Stipulation is deficient. According to NEP witness Ringenbach, the customer fills out an online form or calls AEP Ohio to make a construction request and then waits for a response, without any confirmation from the Company that it received the construction request. NEP states that, upon contacting AEP Ohio regarding the request, the customer can be transferred from person to person, which inhibits the customer's ability to efficiently plan for a construction project. NEP notes that, while Staff did not evaluate AEP Ohio's operations and process for construction service requests, Staff witness Smith did confirm that it is helpful for customers to know who should be contacted at the utility for a particular request and that the utility's customers benefit when a utility promptly responds to customer requests, including through the use of web portals that allow customers to submit and track their requests. NEP notes that AEP Ohio received 1,726 requests from customers for construction or line extensions in 2020 and that the improvements proposed to its construction process would have widespread benefits for customers and efficiencies for AEP Ohio. NEP proposes that four objectives should be accomplished: accept a customizable form so specific equipment needs for a project can be identified by the customer; develop a web portal; acknowledge the submission of a construction request within seven calendar days and provide a contact person for the project; and provide updates, every 20 calendar days, on the status of the construction request. NEP recommends specific language to be added to Section 10,

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Extension of Local Facilities, in the tariff attached to the Stipulation, in order to address its concerns with AEP Ohio's construction request process. NEP witness Ringenbach testified that NEP's proposal is in the public interest, as the modifications would allow customers to better plan a project, ensure the project can proceed on a predictable schedule, and facilitate AEP Ohio's ability to provide timely and accurate updates. Further, NEP contends that the development of a web portal for construction requests is in the public interest, as it would facilitate the submission and tracking of construction requests, produce efficiencies for the utility without being burdensome, and may result in reduced overall operational costs. NEP notes that Duke Energy Ohio, Inc. has a successful web portal for construction requests. (Staff Ex. 3 at 16; Tr. Vol. I at 213-214; Tr. Vol. II at 385-388; Tr. Vol. IV at 897-898; NEP Ex. 15; NEP Ex. 33 at 1, 6-8.)

{¶ 145} Contrary to the claims of NEP, AEP Ohio replies that there is not ample evidence in the record to warrant concern about the Company's construction or line extension process. AEP Ohio notes that NEP is the only party to these proceedings expressing specific concerns on this issue. The Company surmises that Staff did not evaluate AEP Ohio's operational processes, because Staff perceived no need to do so. AEP Ohio also notes that NEP witness Ringenbach testified that NEP does not oppose the specific language in the Stipulation, although the language does not resolve NEP's specific construction issues. AEP Ohio further notes that NEP's arguments do not extend to the general market but pertain solely to NEP. Further, AEP Ohio states that its tariff must comply with Ohio Adm.Code 4901:1-9-07, as it does today and will continue to do so. Therefore, AEP Ohio reasons that NEP's claims that the construction request and line extension process and the related provision in the Stipulation are inefficient and not in the public interest are misdirected and that no revision of the Stipulation is required. (Tr. Vol. IV at 895; Co. Reply Br. at 61-62.)

{¶ 146} NEP argues that the equipment purchase request and construction request provisions of the Stipulation and proposed tariffs are deficient in detail and formalized process to the point that they are not in the public interest. The Commission disagrees and finds that the Stipulation's provisions and proposed tariff language on these issues should be adopted as

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part of the overall settlement package. While the provisions in the Stipulation or the proposed tariffs could certainly require more customer-friendly notices and access to information, NEP has not shown that its proposed modifications are necessary to meet the requirements of part two of the Commission's test used to evaluate stipulations. The Commission must again emphasize that the second part of the three-part test is not whether there are other or additional mechanisms or provisions that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. Accordingly, the Commission finds that the record does not support adoption of NEP's requested modifications to the Stipulation.

*f. BTCR Pilot*

{¶ 147} In addition to numerous policy arguments that IGS makes in opposition to the BTCR and the BTCR pilot program, IGS also submits that the BTCR provisions in the Stipulation are not in the public interest. IGS states that the BTCR does not align with how transmission costs are actually incurred, which decreases the incentive for customers to track the system peak and reduce load and, thus, the benefit of avoided overall transmission costs and system upgrades for all customers. IGS submits that, as transmission rates increase, it becomes even more important that the Commission promote incentives for customers to manage their contribution to the transmission system peak load. (Joint Ex. 1 at Attach. C; IGS Ex. 1 at 6-7; IGS Br. at 43-45.)

{¶ 148} OMAEG notes that opposition to the continuation and expansion of the BTCR pilot is based on IGS/Direct witness Haugen's belief that more expansive changes to the BTCR would better benefit ratepayers and serve the public interest, although the witness conceded that the Stipulation is an improvement over the status quo. Thus, OMAEG contends that, as IGS appears to acknowledge, gradual improvements to the BTCR pilot constitute benefits to ratepayers and the public interest. (IGS Ex. 1 at 8-9; Tr. Vol. V at 1016-1017; OMAEG Br. at 18.)

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{¶ 149} The Commission finds that the gradual expansion of the BTCR pilot is not, as IGS advocates, contrary to the public interest. Indeed, as AEP Ohio notes, IGS supported the Commission's adoption of the BTCR in 2015 when it was proposed. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015) at 65-66. In concert with the Commission's conclusion below in regard to part three of the test to evaluate stipulations, the Commission finds that the restructuring of the BTCR pilot meets the requirements of part two of the test, despite the fact that IGS believes its proposed modifications may be advantageous to some customers. The current BTCR and the expansion of the BTCR pilot program, as reflected in the Stipulation, clearly benefit ratepayers and the record evidence does not provide any justification to change course at this time from the gradual expansion of the pilot program. As we have repeatedly noted, the three-part test does not require that the Stipulation reflect the best possible provision for ratepayers and the public interest but instead requires consideration of whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. Accordingly, the Commission declines to further revise the BTCR pilot program.

**g. Commission Conclusion**

{¶ 150} The record evidence supports a finding that the Stipulation, as a package, includes numerous benefits for ratepayers and the public interest (Co. Ex. 6 at 17-18; Staff Ex. 6 at 4-5; OCC Ex. 1 at 5-10). The Commission notes that, pursuant to the Commission-approved stipulation in AEP Ohio's fourth ESP, the rationale for requiring the Company to file a rate case by June 1, 2020, was "to help address concerns about some of the distribution riders becoming excessive and to recalibrate the costs being reflected in base rates versus riders." *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 45. We note that the Stipulation in the present proceedings imposes spending caps on the DIR and ESRR. The Stipulation, after a final reconciliation, also eliminates the PTBAR, which, while theoretically could have provided a credit on customer bills, has historically been a charge on customer bills. Additionally, as the

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AEP Ohio, Staff, and OCC witnesses testified, the Stipulation reflects a fair and balanced compromise that is intended to result in reasonable rates for both the Company and its customers. The stipulated revenue increase of \$955.1 million is significantly lower than the \$1,066 million requested by AEP Ohio in its application, while the stipulated rate of return of 7.28 percent has also been sizably reduced from the 7.90 percent rate of return originally proposed by the Company. (Co. Ex. 4 at 8; Co. Ex. 4A; Co. Ex. 6 at 17-18; Co. Ex. 6A; Staff Ex. 6 at 4-5; OCC Ex. 1 at 5-8.) AEP Ohio witness Roush testified that a significant portion of amounts previously collected through the Company's riders, including the DIR and ESRR, will be moved into base rates, resulting in a reduction in the rider rates. When the revenue effect associated with the change in these rider rates is considered as part of the overall rate impact, the revenue increase proposed in the Stipulation is offset to a considerable extent, with some customer groups that are even expected to see a small decrease in their monthly bills. AEP Ohio's typical bill comparison indicates, for example, that a residential customer using 1,000 kWh per month will experience a decrease of 2.57 percent as a result of the Stipulation and the change in rider rates. (Tr. Vol. I at 64-65; Co. Ex. 4A; NEP Ex. 8.) Accordingly, as contemplated by the Commission in the *ESP 4 Case*, the Stipulation recalibrates AEP Ohio's current distribution rates and rider charges, while also implementing a revenue requirement and rate design that are intended to result in new distribution rates that are reasonable and consistent with cost-causation principles. For these reasons, we conclude that the overall settlement package, which is supported by intervenors representing residential, commercial, and industrial customers, benefits ratepayers and the public interest.

{¶ 151} The Commission again must emphasize that the second part 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. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *See, e.g., In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-



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21; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing the issues before the Commission, while also avoiding the considerable time and expense associated with the litigation of a fully contested case. *See, e.g., In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17. We, therefore, reaffirm that the Stipulation offered by the Signatory Parties in these proceedings must be viewed as a whole and, for that reason, as well as the rationale expressed above, deny the opposing intervenors' requests to reject or modify the Stipulation.

**3. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?**

[¶ 152] Addressing the third part of the Commission's three-part test, AEP Ohio witness Moore testified that the Stipulation does not violate any important regulatory principle or practice. In its brief, AEP Ohio argues that, as Ms. Moore explained, the Stipulation provides for mitigation rates for certain customer classes to provide a reasonable transition to the combined rate zones, results in a decrease to the revenue requirement as filed in the Company's application, provides additional time for the implementation of the delayed payment charge, creates additional reliability reporting requirements associated with the DIR, and implements pilot programs to allow the Company to gather information on the impacts of emerging technology. Staff witness Lipthrott also testified that the Stipulation does not violate any important regulatory principle or practice, which Staff reiterated in its brief. (Co. Ex. 6 at 18-20; Co. Br. at 19-20; Staff Ex. 6 at 5; Staff Br. at 14-15.)

[¶ 153] OCC witness Willis also addressed the third part of the Commission's three-part test. In asserting that the Stipulation does not violate any important regulatory principle or practice, Mr. Willis testified that the Stipulation's provisions are the result of traditional rate-setting policies and procedures and are consistent with sound regulatory principles and

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practices. In its brief, OCC also contends that the Stipulation will ensure that customer rates are just and reasonable. In particular, OCC notes that the Stipulation made adjustments to significantly reduce the revenue requirement initially proposed in AEP Ohio's application and to postpone implementation of the delayed payment charge due to the pandemic. OCC adds that the Stipulation's DIR provisions promote service reliability by imposing additional reliability standards and reporting requirements on AEP Ohio. (OCC Ex. 1 at 10; OCC Br. at 10-11.)

[¶ 154] Several of the other Signatory Parties argue in their briefs that the Stipulation fully satisfies the third part of the Commission's three-part test. IEU-Ohio avers that the Stipulation provides a reasonable allocation of the revenue requirement for transmission voltage customers, reflects gradualism in rate increases, addresses the opportunity to participate in a transmission pilot program where the billing methodology mirrors the wholesale billing methodology, and provides an incentive for economic development that could benefit the entire state of Ohio. IEU-Ohio emphasizes that the Stipulation's BTCR pilot program provisions will encourage new or existing businesses to locate or expand their operations in the state. OEG also concludes that the Stipulation advances important policies and principles in R.C. 4928.02, including ensuring the availability to consumers of adequate, reliable, safe, effective, nondiscriminatory, and reasonably priced retail electric service, ensuring the diversity of electricity supplies and suppliers by encouraging the development of distributed generation facilities, ensuring retail electric service consumers protection against unreasonable sales practices, and facilitating the state's effectiveness in the global economy. (IEU-Ohio Br. at 5-7; OEG Br. at 5.)

[¶ 155] OMAEG and Kroger contend that the Stipulation does not include any provision that is contrary to Commission precedent and instead advances important regulatory principles. OMAEG and Kroger note that the Stipulation addresses gradualism by mitigating the rate impacts for certain customer classes resulting from AEP Ohio's consolidation of its separate rate zones by phasing in the rate increase for customers in the Columbus Southern Power Company rate zone over a three-year period. OMAEG and Kroger

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further note that the Stipulation provides additional time for the implementation of the delayed payment charge as customers continue to recover from the economic impact of COVID-19. Additionally, OMAEG maintains that the expansion of the BTCR pilot program furthers cost-causation principles by aligning costs and rates. (OMAEG Br. at 23-25; Kroger Br. at 10.)

{¶ 156} According to CFO, the pilot PEV tariffs will encourage innovation with respect to DSM by testing potential EV charging rate designs, in accordance with R.C. 4928.02(D), while, in the long term, developing programs that effectively encourage off-peak EV charging will ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service by promoting efficient use of the ratepayer-funded distribution system, consistent with R.C. 4928.02(A). OHA, for its part, argues that the Stipulation is consistent with past Commission precedent and does not otherwise violate any important regulatory principle or practice. (CFO Br. at 8; OHA Br. at 3.)

{¶ 157} Several of the parties opposing the Stipulation assert that it fails the third part of the Commission's test in various respects. These parties urge the Commission to reject the Stipulation in its entirety or, at a minimum, modify it substantially as addressed below.

*a. Customer Charge and Rider Rate Design*

{¶ 158} OPAE argues that, consistent with cost-causation principles, the Commission should reject the Stipulation's proposed residential customer charge of \$10.00 and instead adopt a residential customer charge of \$6.01, which is the fixed cost to connect a customer to the distribution system based on Staff's calculation in the Staff Report. In support of its position, OPAE asserts that there is no reason to allocate low-use customers a disproportionate share of distribution system costs, given that such customers place little demand on the system. OPAE adds that volumetric distribution rates send the appropriate price signals to customers and to AEP Ohio in making long-term investments in the distribution infrastructure. Finally, OPAE contends that an artificially high fixed customer charge discriminates against low-use customers, many of whom have low income, and reduces the cost-effectiveness of energy

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efficiency investments, in violation of R.C. 4928.02(L) and (D), respectively. For similar reasons, OPAE argues that the Commission should modify the rate design of a number of AEP Ohio's riders, including the EDR, gridSMART Phase 2 Rider, DIR, ESRR, and Storm Damage Recovery Rider, such that the Company's costs are recovered through volumetric rates rather than fixed charges. (OPAE Br. at 2-6, 9-14; OPAE Reply Br. at 5-8.)

[¶ 159] AEP Ohio replies that the Stipulation's proposed customer charge is a reasonable compromise and that, contrary to OPAE's position, it is inconsistent with cost-causation principles to collect fixed, demand-related costs fully through an energy charge. As to OPAE's requested modification of certain riders, AEP Ohio notes that the fundamental structure and mechanics of the riders are not matters that are raised in the Stipulation for the Commission's consideration in these proceedings. AEP Ohio further notes that the riders were already authorized through May 2024 pursuant to a Commission-approved stipulation in the *ESP 4 Case* that OPAE joined as a signatory party. AEP Ohio argues that it would not be appropriate to modify its ESP through these distribution rate case proceedings. Finally, AEP Ohio points out that the DIR, EDR, and ESRR vary by consumption and, therefore, the premise of OPAE's argument is false. (Co. Reply Br. at 15-16, 65-66.)

[¶ 160] Emphasizing that rate design is a matter within the Commission's discretion and that the Commission has a longstanding practice of permitting recovery of utility costs through fixed charges, Staff responds that there is no evidence that a fixed customer charge causes low-use customers to improperly subsidize higher-use customers. Staff contends that the record supports the stipulated customer charge, which is, in part, intended to better align the collection of fixed costs with the actual cost causer. (Staff Reply Br. at 15-16.)

[¶ 161] Kroger argues that there is no indication that OPAE knows, based on any evidence, how converting the various riders to pure volumetric charges would impact customers or AEP Ohio. Kroger adds that OPAE conceded that AEP Ohio witness Roush's analysis shows that low-use customers would experience a greater percentage reduction in their monthly bill impact than high-use customers upon implementation of the Stipulation.

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OMAEG and OEG note that OPAE's witness conceded during the evidentiary hearing that many of AEP Ohio's riders, including the DIR, ESRR, and EDR, are not truly fixed charges because they are a function of energy consumption to a certain extent. OMAEG and OEG emphasize that OPAE's proposal lacks evidentiary support, particularly as to how converting the various riders to pure volumetric rates would impact AEP Ohio or its customers. Similarly, IEU-Ohio asserts that OPAE has provided no evidence to support its theoretical claims regarding transferring of costs or harm to consumers resulting from riders being based upon fixed charges. IEU-Ohio further asserts that riders created in an ESP proceeding cannot be modified in a distribution rate case to make them volumetric. (Kroger Reply Br. at 8-9; OMAEG Reply Br. at 16-17; OEG Reply Br. at 2; IEU-Ohio Reply Br. at 16-17.)

{¶ 162} The Stipulation recommends a change in the residential customer charge from \$8.40 per month to \$10.00 per month, which is endorsed by numerous parties, including Staff and OCC (OCC Ex. 1 at 8; Staff Ex. 6 at 5; Joint Ex. 1 at 9). The specific customer charge recommended in the Stipulation was supported by the testimony of AEP Ohio witnesses Moore and Roush (Co. Ex. 6 at 18; Co. Ex. 4 at 4) as a way to transition gradually toward the collection of fixed costs from the actual cost causer. In advocating for a lower customer charge, OPAE has not shown that the residential customer charge, as proposed in the Stipulation, is counter to state policy, inconsistent with cost-causation principles, or otherwise unreasonable. To the contrary, the Commission agrees with the Signatory Parties that the proposed customer charge is intended to ensure that fixed costs are recovered from those customers who cause the costs to be incurred. Our decision here is consistent with longstanding precedent finding that fixed costs are appropriately recovered through fixed charges and affirming that the Commission has broad discretion in matters of rate design. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261. As to OPAE's position that the rate design for several of AEP Ohio's riders should be modified, the Commission finds that the request is beyond the scope of these distribution rate case proceedings. The riders were approved, most recently, in the *ESP 4 Case* and they have generally been authorized to continue, in their current form, through May 31, 2024. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018).

*b. Delayed Payment Charge*

{¶ 163} OP&E asserts that the delayed payment charge for residential customers is unjust and unreasonable and should, therefore, not be approved. According to OP&E, a delayed payment charge is not supported by any evidence in the record, would not incent on-time payment or compensate AEP Ohio for any incurred costs, and would do nothing more than penalize low-income customers who are unable to pay their bills. (OP&E Br. at 6-9; OP&E Reply Br. at 8-9.)

{¶ 164} In response to OP&E's position on this issue, AEP Ohio contends that the delayed payment charge is reasonable and does not violate any important regulatory principle or practice. AEP Ohio notes that every other electric distribution utility in Ohio has been authorized to collect residential delayed payment fees. Staff avers that approval of a delayed payment charge would ensure that late payments from residential customers are treated comparably to late payments from the Company's other customer classes, as well as customers of all of the other electric distribution utilities in the state. Noting that the purpose of the charge is to encourage residential customers to pay their bills on time, Staff states that AEP Ohio's data demonstrates that the imposition of a delayed payment charge with respect to commercial customer bills has resulted in an 8.25 percent reduction in late payments. (Co. Reply Br. at 16-17; Staff Reply Br. at 16-17.)

{¶ 165} The Commission finds that OP&E has failed to show that the delayed payment charge provision in the Stipulation is unjust or unreasonable or that it violates any other important regulatory principle or practice. As Staff notes in response to OP&E's arguments, the implementation of the proposed delayed payment charge will ensure consistency with similar charges that are already in effect for the residential customers of the other electric distribution utilities in the state. In fact, late payment charges are specifically recognized, under the Commission's rules, as a component for display on electric customer bills. See Ohio Adm.Code 4901:1-10-22; Ohio Adm.Code 4901:1-10-33. Finally, contrary to OP&E's contention, the proposed delayed payment charge was supported in the record by Staff witness Smith. Mr. Smith testified that it is Staff's position that the charge will incent timely bill

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payment by residential customers. (Staff Ex. 3 at 4-5.) We find that AEP Ohio's proposed 1.5 percent delayed payment charge for residential customers is a reasonable means to encourage timely payments. Further, as described by AEP Ohio witness Moore, the Stipulation appropriately provides for a seven-day grace period from the bill due date, while also providing that the delayed payment charge will not take effect until April 1, 2022 (Co. Ex. 6 at 11-12; Joint Ex. 1 at 14). We, therefore, conclude, based on the evidence, that neither the delayed payment charge itself or the Stipulation's proposed resolution of this issue is unjust or unreasonable, as OPAE claims.

*c. DSM Program*

[¶ 166] OPAE asserts that, by eliminating AEP Ohio's proposed DSM program, the Stipulation violates R.C. 4905.70, which, according to OPAE, requires the Commission to ensure public utilities have programs that encourage the conservation of energy and reduction in the growth rate of consumption. OPAE further asserts that the Stipulation's exclusion of the DSM program fails to satisfy the state policy objectives in R.C. 4928.02 of ensuring the availability of efficient, nondiscriminatory, and reasonably priced rates; encouraging innovation and market access for cost-effective supply- and demand-side retail electric service, including DSM; protecting at-risk populations; encouraging the use of energy efficiency in small businesses; and facilitating the state's effectiveness in the global economy. (OPAE Br. at 15-16; OPAE Reply Br. at 4-5.)

[¶ 167] Like OPAE, Environmental Advocates argue that the Stipulation does not comport with AEP Ohio's obligation to provide just and reasonable service, while also failing to ensure the availability to consumers of efficient and reasonably priced retail electric service and to encourage innovation and market access for DSM, as required by R.C. 4928.02(A) and (D), respectively. Environmental Advocates also contend that R.C. 4905.70 mandates the Commission to initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Environmental Advocates maintain that, although the General Assembly eliminated the specific energy efficiency targets through Am. Sub. H.B.

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6, it clearly did not reject the state's view of the value of DSM. According to Environmental Advocates, current law does not place restrictions on voluntary energy efficiency programs like the DSM plan proposed in AEP Ohio's application. In their reply brief, Environmental Advocates reiterate that the absence of a cost-effective DSM program violates important regulatory principles requiring just and reasonable service because customers will be required to pay for electricity that they do not need. Environmental Advocates request that the Commission either reject the Stipulation or modify it to include the DSM plan proposed in AEP Ohio's application, either at the Company's proposed spending level or greater. Finally, while asserting that a rate case is the optimal forum in which to consider a DSM plan, Environmental Advocates argue again that Am. Sub. H.B. 6 did nothing to change Ohio's underlying policy mandate in favor of energy efficiency, nor did it eliminate the possibility that electric distribution utilities could offer energy efficiency programs. (Environmental Advocates Br. at 7-9; Environmental Advocates Reply Br. at 4-8.)

{¶ 168} AEP Ohio responds that Environmental Advocates failed to cite any precedent or legal requirement to support their claim that the Company's proposed rates, as set forth in the Stipulation, cannot be reasonable without a DSM program. AEP Ohio also asserts that the Stipulation implements a reasonable revenue allocation and rate mitigation provision to ensure reasonable rate impacts for all customer classes and, therefore, results in just and reasonable rates. Further, AEP Ohio argues that R.C. 4909.18 does not require the Company to prove that withdrawing its DSM plan is just and reasonable and, in any event, the withdrawal of the plan, which was within the context of these proceedings only, is reasonable, in light of the Commission's plan to review the state of energy efficiency programs in Ohio. Finally, AEP Ohio notes that the Environmental Advocates made no attempt to analyze the impact on the otherwise just and reasonable rates that would result from modifying the Stipulation to include a DSM plan. AEP Ohio concludes that the Stipulation's withdrawal of the DSM plan, without prejudice, is reasonable and promotes regulatory principles and practices by affording the Commission time to review energy efficiency and DSM in Ohio as a general matter. (Co. Reply Br. at 9-12.)



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[¶ 169] Additionally, AEP Ohio claims that OP&E's arguments misapply the cited law and are otherwise without merit. As to R.C. 4905.70, AEP Ohio contends that the statute does not require the Commission to approve a DSM plan either as part of a utility's application for a rate increase or otherwise. Rather, AEP Ohio reads the statute to direct the Commission to initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, which, according to the Company, is achieved by the Stipulation. AEP Ohio adds that OP&E made similar arguments in other proceedings, which were rejected by the Commission and, on appeal, by the Ohio Supreme Court. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261; *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790, 874 N.E.2d 764. Consistent with this precedent, AEP Ohio urges the Commission to reject OP&E's arguments, in light of the Commission's authority to determine how best to implement the state policy goals in R.C. 4928.02 and 4905.70. AEP Ohio contends that its withdrawal of the DSM plan does not violate any state policy objective and, instead, supports the Commission's continued evaluation of the future of energy efficiency and DSM programs in the state, while the Stipulation ensures the availability of efficient, non-discriminatory, and reasonably priced rates. (Co. Reply Br. at 12-15.)

[¶ 170] Kroger and OMAEG assert that the Commission already rejected, in Case No. 16-574-EL-POR, et al., the contention that R.C. 4905.70 requires the implementation of DSM programs. Kroger and OMAEG add that, because the Commission is a creature of statute, it cannot resurrect energy efficiency mandates that no longer exist in Ohio. According to Kroger and OMAEG, there is no legal authority that would allow AEP Ohio to offer a DSM plan on a voluntary basis, while recovering the associated costs from the Company's customers. Finally, Kroger and OMAEG emphasize that AEP Ohio has already voluntarily withdrawn its DSM plan in these proceedings as part of the Stipulation and that, if the Company is nonetheless required to offer a plan that it is no longer proposing, the Commission will effectively be mandating energy efficiency programs, contrary to its prior orders and the legislative intent of Am. Sub. H.B. 6. (Kroger Reply Br. at 11-12; OMAEG Reply Br. at 15-16.)

[¶ 171] IEU-Ohio argues that there is no basis in Ohio law for the proposition that electric distribution rates are inherently unjust and unreasonable if they do not include a DSM program. IEU-Ohio notes that no part of R.C. 4905.70 requires the Commission to adopt a DSM program in a distribution rate case and, in any event, the Commission has already authorized a number of interruptible load, time-of-use, and other programs for AEP Ohio, consistent with the statute's requirements. Further, IEU-Ohio contends that current legislative policy is clear that prior mandatory energy efficiency programs have been terminated and that any future plans must include an opt-out provision for large customers. (IEU-Ohio Reply Br. at 13-16.)

[¶ 172] As with many of the other Signatory Parties, OCC asserts that, given the end of energy efficiency mandates in Ohio, the Commission cannot now require AEP Ohio to implement and charge consumers for the DSM plan that it previously proposed but chose to withdraw as a settlement compromise. As to R.C. 4928.02(A), OCC contends that requiring customers to pay through their electric distribution rates for a DSM plan that is no longer mandated by Ohio law is not reasonably priced electric service. With respect to R.C. 4928.02(D), OCC notes that the Commission has already determined that the state policy to encourage innovation and market access for cost-effective DSM will be best served by reliance on market-based approaches such as those available through PJM and CRES providers. Addressing R.C. 4905.70, OCC maintains that the statute does not expressly grant the Commission authority to mandate a DSM plan that imposes additional charges on consumers. In addition, OCC avers that any future DSM plan offered by AEP Ohio should be implemented in accordance with uniform standards applicable to all of the electric distribution utilities in the state. (OCC Reply Br. at 14-17.)

[¶ 173] OPAE and the Environmental Advocates have not shown that, by omitting a DSM plan from its provisions, the Stipulation fails to comply with the third part of the three-part test. We agree with the Signatory Parties that there is no basis, under current Ohio law, to conclude that electric distribution rates are inherently unjust or unreasonable if they do not include a DSM component. Contrary to the position of OPAE and Environmental Advocates, no portion of R.C. 4905.70 requires the Commission to mandate the implementation of a DSM

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plan as part of a distribution rate case. Neither does R.C. 4928.02 dictate such an outcome. Further, Environmental Advocates have not supported their contention that the Stipulation will result in customers paying for electricity that they do not need. No part of the Stipulation precludes customers from undertaking energy efficiency measures on their own initiative through market-based products or services. Although we find that OPAE and Environmental Advocates have not sustained their position here, we note that the Commission has announced its intention to hold a series of energy efficiency workshops to solicit the views of interested stakeholders on whether cost-effective energy efficiency programs are an appropriate tool to manage electric generation costs and how such programs fit into Ohio's competitive retail electric and natural gas markets. We, therefore, plan to fully consider these issues in a broader context than the distribution rate case of a single electric distribution utility.

*d. Retail Reconciliation Rider and SSO Credit Rider*

{¶ 174} Noting that the Stipulation provides that the RRR and the SSOCR will remain at zero based on the Staff Report's recommendation, IGS argues that the Commission should reject this provision and instead populate the riders at rates that reflect the costs to provide the SSO. IGS notes that, in response to the Commission's directive in the *ESP 4 Case* that AEP Ohio should analyze its actual costs of providing SSO service, the Company submitted testimony indicating that its proposed distribution rates include \$4.7 million in direct costs that are specific to the provision of the SSO and that are included in the cost of service used to set the distribution revenue requirement. According to IGS, the actual amount is \$64 million, if costs collected in distribution rates are instead properly allocated to the SSO. (IGS Ex. 3 at 11-12, Ex. DMR-2; IGS/Direct Ex. 2 at 37, Appx. 1; Joint Ex. 1 at 9; IGS Br. at 10-12.)

{¶ 175} In support of its position, IGS asserts that Ohio law and state energy policy mandate separation of generation-related costs from distribution rates and, thus, require the Commission to unbundle costs used to supply the SSO from distribution rates and to ensure that such rates do not subsidize a generation service. R.C. 4928.02(A), (B), (H); R.C. 4928.03; R.C. 4928.05(A)(1); R.C. 4928.141. IGS further asserts that sound economic policy supports a decision to unbundle costs used to supply the SSO from distribution rates. According to IGS,

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because the Stipulation fails to properly allocate costs to the SSO, the Stipulation will result in underpricing of the SSO and send an improper price signal, while also making it difficult for CRES providers to enter and remain in the generation supply market, as they will need to compete against a subsidized generation service. (IGS Br. at 12-18.)

{¶ 176} IGS contends that the allocation of generation costs to the SSO is necessary to properly price AEP Ohio's competitive and non-competitive services. IGS claims that, although the parties disagree as to the amount that is being recovered through distribution rates, it is undisputed among the parties that costs to support the provision of the SSO remain in the revenue requirement despite the jurisdictional functionalization performed by AEP Ohio; that these costs will be recovered through distribution rates if the RRR and the SSOCR remain at zero; and that certain cost-allocation principles should be applied to allocate indirect or qualitative costs. IGS emphasizes that, as recommended by IGS/Direct witness Lacey, \$64.3 million should be charged to SSO customers through the RRR and distributed back to all customers through the SSOCR. IGS notes that, at current shopping rates, SSO customers would incur a bypassable charge of \$0.0057/kWh, while all customers would receive a credit of \$0.0015/kWh. (IGS/Direct Ex. 2 at 37, Appx. 1; IGS Br. at 18-22, 29-30.)

{¶ 177} Direct Energy agrees with IGS that the Commission should adopt Mr. Lacey's recommendations or, alternatively, populate the riders as originally proposed in the *ESP 4 Case*. Direct Energy claims that AEP Ohio has recognized since at least 2015 that its distribution rates recover costs incurred to provide generation service, in violation of R.C. 4928.02(H). Direct Energy also asserts that, despite AEP Ohio's commitment in the *ESP 4 Case* to provide an analysis in the present proceedings of its actual costs to provide the SSO, the Company instead concluded that the SSO-related costs in its distribution rates are negligible and should be ignored. Direct Energy argues that AEP Ohio should not be rewarded for its failure to provide sufficient information to determine the proper rates. Direct Energy concludes that the only evidentiary basis for populating the riders is the analysis performed by Mr. Lacey, which shows that approximately \$64 million in costs should be removed from distribution rates and allocated to the SSO. In their joint reply brief, Direct Energy and IGS reiterate that, in

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recommending that the RRR and SSOCR remain at zero, the Stipulation proposes an unlawful outcome by allowing distribution rates to continue to subsidize the SSO and failing to assign costs properly to the customers that caused the costs. Direct Energy and IGS emphasize that the Commission lacks authority to provide compensation for competitive services through distribution rates and that the Commission should take the next step in properly pricing default service. (Direct Energy Br. at 11-13; IGS/Direct Reply Br. at 3-4, 10-12, 19.)

[¶ 178] AEP Ohio responds that the Stipulation's continuation of placeholder values for the RRR and SSOCR does not violate any important regulatory principle or practice. As to the arguments of IGS and Direct Energy, AEP Ohio refutes the notion that the SSO is undisputedly a subsidized product. Although IGS and Direct Energy rely on AEP Ohio witness Roush's analysis for their position, the Company asserts that it did not offer that analysis as evidence to support the Stipulation. AEP Ohio adds that, although the Company originally offered the analysis of Mr. Roush as a good-faith attempt to comply with the Commission's directive to quantify costs associated with offering the SSO product, Staff and other parties to the proceedings subsequently persuaded the Company that the analysis is insufficient to justify population of the riders. Additionally, AEP Ohio states that the Commission has made it clear in prior cases that a robust netting analysis of costs associated with offering the respective SSO and open access products must be completed before an SSO adder will be imposed. AEP Ohio contends that, because Mr. Roush encountered difficulty in quantifying several categories of costs and could not reach a definitive level of costs for either the SSO or open access product functions, the outcome of a full netting analysis is unknown. (Co. Reply Br. at 18-23.)

[¶ 179] Additionally, AEP Ohio maintains that, contrary to IGS's position, the Commission is not legally required under R.C. 4928.02(H), R.C. 4928.17, or R.C. 4928.03 to allocate overhead distribution costs that are generally perceived to indirectly or incidentally support the SSO product. AEP Ohio adds that, because the Company does not provide any capacity or energy used to supply the SSO product and none of the resulting revenue goes to the Company or its affiliate, there cannot be an anticompetitive subsidy in violation of R.C.

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4928.02(H), non-discriminatory service under R.C. 4928.03, or an undue preference or advantage conveyed to the Company or any affiliate in violation of R.C. 4928.17. Further, AEP Ohio emphasizes that the SSO product is unique among all other services in that the electric distribution utility has a statutory obligation to be the default provider for the benefit of all customers, particularly given that procurement of the SSO product is done through competitive external procurement. Finally, AEP Ohio reiterates that costs supporting the SSO product have not been adequately shown in this record to be reflected in base distribution rates. (Co. Reply Br. at 24-32.)

{¶ 180} As additional support for its position, AEP Ohio contends that, even assuming for the sake of argument that the costs identified by Mr. Roush are regarded as SSO-related overhead amounts that are reflected in distribution rates, the total of \$3.5 million is insignificant and cannot be fairly characterized as an anticompetitive subsidy under R.C. 4928.02(H) or an undue preference or advantage under R.C. 4928.17(A)(3). In addition, AEP Ohio argues that Mr. Lacey's proposed allocation methodology is flawed and does not meet the standard of proof established by the Commission in the *ESP 4 Case* and subsequent proceedings involving other electric distribution utilities. According to AEP Ohio, Mr. Lacey made no attempt to show that his allocated costs were actual distribution costs solely related to providing SSO service, as required by the Commission in Case No. 15-1830-EL-AIR, et al. AEP Ohio avers that the actual costs solely related to the SSO product are already reflected in the bypassable price-to-compare riders – not broadly allocated overhead costs that are merely assumed to be loosely related to providing the SSO product. As a final matter, AEP Ohio maintains that, as advanced by Staff, there are strong policy considerations that support the Stipulation's recommendation to retain the zero placeholder rates in the RRR and SSOCR, particularly where a cost basis to support a positive value for the riders is lacking. (Co. Reply Br. at 32-40.)

{¶ 181} Staff argues that Direct Energy has mischaracterized the Commission's directives in the *ESP 4 Case*. According to Staff, AEP Ohio conducted an analysis of its costs, as required by the Commission, and concluded that it was not possible to identify known,

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quantifiable costs that are collected from all customers through distribution rates and that are clearly incurred by the Company to support the SSO. Because customers are able to migrate to and from the SSO on any given day, Staff contends that it would be impractical and illogical to attempt to allocate indirect distribution costs between SSO and CRES customers. Staff also notes that AEP Ohio must stand ready to provide default service to any customer on its system. Further, Staff points out that the direct, incremental costs to serve only the SSO customer group are already recovered through bypassable riders that CRES customers do not pay. Noting that AEP Ohio has no means of determining whether a cost was incurred solely to support SSO service or solely to support CRES service, Staff maintains that the indirect costs of serving both SSO and CRES customers, as distribution customers, are not generation costs and should not be assigned or allocated to one group or the other. Staff concludes that its position is consistent with the Commission's statutory mandate and sound policy. (Staff Reply Br. at 18-22.)

{¶ 182} OCC asserts that the Commission has rejected, in prior cases, similar proposals from CRES providers to artificially increase rates for SSO customers and that the Commission should respect its precedent here. OCC adds that the Commission has previously recognized that the SSO benefits all customers because it is available to serve them at any time, if necessary. OCC avers that, given that all customers benefit from the SSO, all customers should pay for the costs that AEP Ohio incurs to provide the SSO. OCC also claims that Mr. Lacey's proposal would result in unjust and unreasonable rates for residential customers, as it would change the Stipulation's proposed cost allocation between the residential and non-residential customer classes and shift nearly \$31 million in costs from non-residential to residential customers. Finally, OCC urges the Commission to reject Mr. Lacey's proposal because it claims that AEP Ohio incurs \$64.4 million in costs related to the SSO but attributes no costs to the customer choice program, which violates the Commission's precedent requiring that both SSO and choice costs be analyzed before any rate adjustments are made. (OCC Reply Br. at 3-4, 5-6, 7-11.)

{¶ 183} Upon review of the parties' respective positions and the evidence of record, the Commission finds that the Stipulation's proposal to continue the RRR and SSOCR in their

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current form as placeholder riders, based on the Staff Report's recommendation, is a reasonable resolution of this issue and does not violate any important regulatory principle or practice. We find that this provision of the Stipulation is supported in the record by the testimony of AEP Ohio witness Roush, Staff witness Smith, and OCC witness Willis. (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.) Additionally, we note that the Commission has previously rejected the contention that it is counter to state policy to maintain the RRR and SSOCR as placeholder riders set at zero. *ESP 4 Case*, Second Entry on Rehearing (Aug. 1, 2018) at ¶ 89.

{¶ 184} As to the arguments raised by IGS and Direct Energy in these proceedings, the Commission finds 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. In support of their position, IGS and Direct Energy point to the testimony of their witness, Mr. Lacey, who advised that \$64.4 million in SSO-related costs should be reapportioned and collected through the RRR (IGS/Direct Ex. 2 at 10). We find, however, that Mr. Lacey's recommendation should not be adopted, as the witness did not comply with the Commission's directive in the *ESP 4 Case*, which required an analysis of known, quantifiable costs that are collected from customers through distribution rates and that are clearly incurred by AEP Ohio to support the SSO, as well as costs reflected in distribution rates that are distinctly ascribed to the customer choice program.<sup>11</sup> *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶¶ 214-215. Despite this directive, Mr. Lacey opined, from a purported business and policy perspective, that it does not "make sense to reduce the allocation of costs to [the] SSO because costs are incurred to run the choice program" (IGS/Direct Ex. 2 at 44). Mr. Lacey, therefore, admitted that he made no attempt to factor choice program costs into his recommendation as to the RRR and SSOCR. In the absence of a complete analysis that fully encapsulates costs clearly and directly attributed to the SSO and to the customer choice program, there is no record support for the respective claims of IGS

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<sup>11</sup> The Commission has reached the same conclusion in addressing similar proposals offered by IGS and other intervenors in recent cases involving Duke Energy Ohio, Inc. and The Dayton Power and Light Company. *In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) at ¶ 231, Second Entry on Rehearing (June 27, 2019) at ¶ 32; *In re The Dayton Power & Light Co.*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at ¶ 28.



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and Direct Energy that the Stipulation runs afoul of R.C. 4928.02(H), R.C. 4928.03, R.C. 4928.17, any other statutory provision, or any important regulatory principle or practice.

[¶ 185] Further, we are not persuaded by the arguments of IGS and Direct Energy that AEP Ohio has not complied with the Opinion and Order in the *ESP 4 Case*, which required the Company to provide, in these rate case proceedings, an analysis of its distribution costs to identify any known, quantifiable costs to support the SSO, as well as any known, quantifiable costs to promote competition or maintain the choice program. *ESP 4 Case* at ¶¶ 214-215. Mr. Roush testified that, consistent with the Commission's directive in the *ESP 4 Case*, AEP Ohio conducted a quantitative and qualitative analysis of the Company's costs associated with the provision of the SSO that are included in the distribution cost of service, as well as the costs related to shopping that are included in the distribution cost of service. However, according to Mr. Roush, Staff and a number of the intervenors expressed differing views regarding the potential quantification and allocation of costs between SSO and shopping customers and, therefore, disputed AEP Ohio's analysis. (Co. Ex. 4 at 3-4.) The Staff Report and the testimony of Staff witness Smith also confirm that AEP Ohio conducted the analysis, although Staff noted a lack of granular cost of service information in the Company's internal systems that precludes an accurate and verifiable accounting (Staff Ex. 3 at 6, 10; Staff Ex. 1 at 31). AEP Ohio's lack of granular data sufficient to permit a more thorough analysis does not constitute a failure to comply with any directive in the *ESP 4 Case*.

[¶ 186] Finally, the Commission notes that, because the Stipulation maintains the RRR and the SSOCR as placeholder riders, nothing precludes IGS or Direct Energy from asserting in a future case that the riders should be populated, provided that a proper cost analysis has been conducted as contemplated by the Commission in the *ESP 4 Case*. *ESP 4 Case* at ¶¶ 214-215. Alternatively, if IGS or Direct Energy believes that AEP Ohio's distribution rates under the Stipulation are unjust or unreasonable, R.C. 4905.26 permits the filing of a complaint for adjudication by the Commission.

*e. CRES Provider Fees*

{¶ 187} IGS and Direct Energy contend that approval of the Stipulation would violate important regulatory principles by continuing the assessment of non-cost-based fees on CRES providers. IGS notes that, in addition to annual registration fees and fees for access to certain interval data, a CRES provider is generally assessed a \$5 switching fee every time a customer is enrolled with that provider, despite the fact that there is no fee assessed to a customer if the customer switches to the SSO. IGS maintains that AEP Ohio has not identified any support or cost basis for these fees and has, therefore, failed to sustain its burden of proof under R.C. 4909.18 and 4909.19 to show that its proposed rates and charges are just and reasonable. IGS also argues that assessing a switching fee for customers when they move to a CRES provider but not when they move to the SSO is unreasonable and discriminatory under R.C. 4905.35 and 4928.02. Similarly, Direct Energy contends that, contrary to the requirements of R.C. 4909.15, there is no evidentiary support for the CRES provider fees or, more specifically, any evidence that AEP Ohio incurs switching or other CRES-related costs that are not already accounted for in base rates. Direct Energy adds that the switching fee is discriminatory, given that customer switches to the SSO are not accounted for in the cost of rendering SSO and allocated to SSO customers. Finally, Direct Energy asserts that the one-sided nature of the switching fee is contrary to the state policy in R.C. 4928.02(H) and (I). IGS and Direct Energy, in their joint reply brief, contend that the CRES provider fees are related to AEP Ohio's revenue requirement and should have been investigated like any other rate or charge to ensure that they are just and reasonable. (IGS Br. at 30-34; Direct Energy Br. at 3-9; IGS/Direct Reply Br. at 20-22.)

{¶ 188} AEP Ohio responds that it did not propose, either in the application or through the Stipulation, to amend or discontinue its switching, registration, and other fees assessed to CRES providers. Noting that the Commission has previously rejected the arguments of IGS and Direct Energy in rate cases involving Duke Energy Ohio, Inc. (Case No. 17-32-EL-AIR, et al.) and The Dayton Power and Light Company (Case No. 15-1830-EL-AIR, et al.), AEP Ohio asserts that IGS and Direct Energy have again failed to offer any change in circumstances or other evidence that would justify a departure from the Commission's previous decisions

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approving the fees and the Company's tariffs. Further, AEP Ohio contends that, because its switching fee is assessed when a customer makes an affirmative choice to switch providers, which is not the case with a default to the SSO, the fee is reflective of a reasonable difference in rates and charges based upon actual service differences and, therefore, the fee does not violate R.C. 4905.35. (Co. Reply Br. at 51-56.)

{¶ 189} Staff argues that there is no reason to believe that maintaining AEP Ohio's current supplier fees at their current levels does not continue to be justified both by state policy and past Commission precedent. Although Staff agrees with Direct Energy that R.C. 4909.15 requires that rate increases be based on the utility's costs of rendering service, Staff points out that AEP Ohio did not seek to increase its supplier fees in these proceedings. (Staff Reply Br. at 17-18.)

{¶ 190} IGS and Direct Energy have not established that AEP Ohio's switching and other CRES-related fees are unreasonable or unlawful. Neither AEP Ohio's application nor the Stipulation proposes to change any of these supplier fees - all of which were previously approved by the Commission. Consistent with our prior decisions rejecting similar arguments raised by IGS, we again note that, although AEP Ohio bears the burden of proof in these proceedings, IGS and Direct Energy must nonetheless support their objections with evidence. Once again, however, IGS and Direct Energy have argued that the electric distribution utility has not shown that its supplier fees are cost based and justified under the ratemaking statutory scheme. Because AEP Ohio is not seeking to modify its Commission-approved supplier fees, and given that unmodified tariffs are not generally the subject of review in a rate case, we do not agree with the contention that the Company was required to offer a cost basis for these fees at this time. We likewise do not agree that the switching fee is discriminatory, counter to state policy, or otherwise unreasonable. As Staff witness Smith testified, 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 (Staff Ex. 3 at 13).

*f. Customer-Sited Generation Projects*

[¶ 191] IGS contends that, although AEP Ohio's employees have actively engaged with mercantile customers regarding customer-sited renewable energy generation projects, the Company and Staff failed to identify and remove the costs associated with these marketing activities from distribution rates, in violation of R.C. 4928.47(B) and 4928.02(H). IGS recommends that AEP Ohio be directed to track all direct and indirect costs associated with customer-sited renewable energy generation projects, as they occur, for reimbursement to distribution customers. (IGS Br. at 34-37.)

[¶ 192] AEP Ohio replies that there is no provision in the application or Stipulation related to this issue, which was solely addressed by the Company in response to a discovery request from IGS. According to AEP Ohio, the record reflects that there were no customer-sited renewable energy resource projects and, therefore, there were no costs to track. AEP Ohio adds that neither the Company nor Staff agrees with IGS that a preliminary conversation with an interested customer, which could only involve negligible costs, if any, should trigger an administratively burdensome cost-tracking procedure that is not required by R.C. 4928.47 or any other statute or regulation. (Co. Reply Br. at 49-51.)

[¶ 193] Staff contends that there is no evidence in this record that AEP Ohio's marketing activities are being subsidized through distribution rates. Staff further contends that the development of customer-sited generation projects ultimately impacts AEP Ohio's distribution system and that it is not reasonable to deny recovery of costs associated with the due diligence of conducting the Company's ordinary business. (Staff Reply Br. at 23.)

[¶ 194] As IGS notes, 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. However, there is no evidence in the record that establishes that AEP Ohio has sought to collect such costs through its distribution rates. We agree with Staff's position that preliminary conversations about a

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potential project, which occurred between AEP Ohio employees and interested customers in the context of traditional customer service, are part of the Company's functions as an electric distribution utility (Staff Ex. 3 at 14; IGS Ex. 19). As to IGS's belief that it is necessary for the Commission to direct AEP Ohio to track project costs, the evidence reflects that the Company already has a process in place – specifically, creating separate work orders that would be used to track and recover project costs as part of the agreement between the Company and the mercantile customer (IGS Ex. 18). We, therefore, decline to adopt IGS's recommendation at this time.

**g. Shadow Billing**

[¶ 195] IGS argues that the shadow-billing provisions in the Stipulation violate Commission policy and precedent. IGS notes that the Commission has consistently declined to implement various forms of shadow billing as unnecessary due to the availability of better resources. *In re the Commission's Review of Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 09-326-GA-ORD, Finding and Order (July 29, 2010) at 48-49; *In re Duke Energy Ohio, Inc.*, Case No. 19-1593-GE-UNC, Finding and Order (Dec. 18, 2019) at ¶ 35; *In re the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order at (Feb. 26, 2020) at ¶ 162, Entry on Rehearing (Jan. 27, 2021) at ¶ 35; *In re Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order (Feb. 24, 2021) at ¶ 89, Entry on Rehearing (Apr. 21, 2021) at ¶ 20. IGS asserts that these existing resources, such as the Commission's Energy Choice Ohio website, provide a substantial amount of forward-looking information for customers to compare pricing and available offers, whereas shadow-billing calculations are an unnecessary exercise. Direct Energy claims that the shadow-billing provision has no place in the Stipulation, because it has no relation to any issue raised in AEP Ohio's application, the Staff Report, or any of the objections to the Staff Report and is, therefore, nothing more than a side agreement between OCC and the Company. In their joint reply brief, IGS and Direct Energy

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assert that the Stipulation's shadow-billing provisions are too indefinite to enforce and, therefore, are invalid. (IGS Br. at 40; Direct Energy Br. at 9-11; IGS/Direct Reply Br. at 23-26.)

[¶ 196] AEP Ohio contends that the shadow-billing provisions are intended to promote transparency and consumer education related to shopping and that neither of the commitments made by the Company involves any final or prejudicial action affecting IGS, Direct Energy, or retail choice. AEP Ohio notes that the Stipulation's proposed shadow-billing report would merely consist of aggregated data for consideration by Staff, OCC, and other policy constituents interested in evaluating the retail choice market; individual consumers would not receive the data or use it in making shopping decisions. With respect to its commitment to amend the application in Case No. 20-1408-EL-UNC, AEP Ohio states that this portion of the Stipulation would merely result in an updated proposal for further comment by stakeholders and consideration by the Commission. AEP Ohio concludes that the arguments of IGS and Direct Energy are irrelevant to the three-part test. (Co. Reply Br. at 45-49.)

[¶ 197] Similarly, OCC responds that IGS and Direct Energy will not be prejudiced by the Stipulation's shadow-billing provisions, which require only that OCC and AEP Ohio develop a proposal for review by the Commission in another proceeding. As to the Stipulation's requirement that AEP Ohio provide aggregate shadow-billing data to OCC and Staff, OCC asserts that the Company has agreed to present the information based on objective calculations and, therefore, there is no merit in IGS's claims that the data will be inaccurate and misleading. (OCC Reply Br. at 11-13.)

[¶ 198] The Commission finds that IGS and Direct Energy have not shown that the shadow-billing provisions in the Stipulation violate any important regulatory principle or practice. First, the Stipulation requires AEP Ohio to perform aggregate shadow-billing calculations for residential customers and report the information to OCC and Staff (Joint Ex. 1 at 11). Although we do not here address the value of such information, we do not agree that AEP Ohio's mere provision of the calculations to OCC or Staff violates the third part of the three-part test or that the provision must be rejected because it is insufficiently clear. As Direct

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Energy has previously acknowledged, a utility company may, as AEP Ohio has done here, elect to engage in shadow billing by agreement. *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, citing *In re Columbia Gas of Ohio, Inc.*, Case No. 12-2637-GA-EXM, Opinion and Order (Jan. 9, 2013).

{¶ 199} In the Stipulation, AEP Ohio also commits to work with OCC to amend the Company's application in Case No. 20-1408-EL-UNC, in order to propose that customer bills display "additional computations that reflect potential consumer savings or losses as compared to the Company's SSO" (Joint Ex. 1 at 11). Nothing in this commitment by AEP Ohio to revise the application following consultation with OCC violates any important regulatory principle or practice. As IGS notes, the Commission has previously declined to adopt a number of shadow-billing proposals, in light of the availability of useful price-comparison resources like the Commission's Energy Choice Ohio website. IGS, however, has not explained how these prior decisions of the Commission preclude AEP Ohio's agreement to include a shadow-billing proposal in an amended application filed in the Company's pending bill format case. Again, to be clear, the Commission reaches no conclusion today on whether any information derived from AEP Ohio's computations should be displayed on customer bills and our decision in these proceedings should not be construed as a predetermination of the outcome in the bill format case. We merely find that the commitments in the Stipulation are not unlawful or unreasonable. The Commission will thoroughly review the amended application in Case No. 20-1408-EL-UNC following an opportunity for input and comment on the shadow-billing proposal offered by AEP Ohio in that case.

*h. BTCR Pilot*

{¶ 200} Noting that the Stipulation provides for the continuation and expansion of the BTCR pilot program for members of a limited number of the Signatory Parties, IGS asserts that the failure to align BTCR charges with the assessment of transmission charges by PJM is inconsistent with ratemaking principles, state policy, and Commission directives. Initially, IGS contends that the BTCR is unlawful because the Commission is preempted from authorizing a

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transmission-related rider that conflicts with outcomes required by PJM tariffs approved by the Federal Energy Regulatory Commission (FERC). IGS notes that BTCR charges are assessed to demand-metered customers based upon the customer's monthly peak demand or a demand ratchet, which has little, if any, relationship to the single zonal annual CP utilized by PJM. IGS further notes that the BTCR pilot program moves transmission rates in the correct direction by applying a 1 CP billing determinant for billing the demand-related costs. IGS asserts that restrictions on participation in the pilot program should, therefore, be removed. According to IGS, the expansion of the BTCR pilot program to all customers would ensure that the program's benefits are available on a non-discriminatory basis, in accordance with R.C. 4928.02(A), and further the customer-usage data sharing policy provisions in R.C. 4928.02(O) and (P), as well as the Commission's preference that a customer's actual interval data is used for settlement purposes, in order to align wholesale costs with retail charges. In their reply brief, IGS and Direct Energy contend that the Stipulation's failure to provide interested customers with the ability to control their transmission costs, particularly given that transmission charges are rising, is unreasonable. (IGS Br. at 45-50; IGS/Direct Reply Br. at 26-27.)

{¶ 201} As an initial matter, AEP Ohio responds that the BTCR is authorized, as the Commission has previously recognized, under R.C. 4928.05(A)(2) and was supported by IGS since its inception in 2015. AEP Ohio argues that IGS, with its change in position, has not pointed to any specific provision of the PJM tariffs that the BTCR would violate, or to any precedent of the Commission or FERC that requires an electric distribution utility to use the same billing determinants to recover its non-market-based transmission costs from customers as PJM uses to impose those costs on the Company. AEP Ohio contends that the BTCR is consistent with state policy and Commission directives and that IGS's arguments to the contrary are based on statements or policy provisions that relate to the CRES market rather than transmission service. In particular, AEP Ohio emphasizes that the BTCR pilot program is consistent with the important regulatory principle of gradualism. According to AEP Ohio, gradual increases in customer and MW participation in the BTCR pilot program will ensure that residential customers continue to be insulated from potential unexpected adverse rate



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impacts. Finally, AEP Ohio asserts that, as a pilot, participation in the BTCR pilot program is necessarily limited and that the Commission has previously determined, in the *ESP 4 Case*, that the program is not unduly discriminatory or preferential. (Co. Reply Br. at 40-45.)

{¶ 202} Staff avers that, although IGS argues that the BTCR pilot program violates regulatory principles, IGS's complaint, in actuality, is that it is unable to participate in the pilot. Staff also states that the Stipulation's proposed expansion of the BTCR pilot would not result in impermissible discriminatory treatment but rather was an integral part in achieving a settlement agreement among the Signatory Parties. (Staff Reply Br. at 23-24.)

{¶ 203} As to IGS's general opposition to the BTCR, we find that IGS has raised concerns that are beyond the scope of these distribution rate case proceedings. The Commission authorized the continuation of the BTCR in the *ESP 4 Case* and the rider has been approved through the end of AEP Ohio's ESP term on May 31, 2024. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 94. Although the arguments exceed the scope of the present proceedings, nothing precludes IGS from asserting its opposition to the BTCR in AEP Ohio's next ESP proceeding. With respect to the BTCR pilot program in particular, IGS requests that all restrictions on participation be lifted. We find, however, that it is not unreasonable to continue, at this time, to increase customer and MW participation in the BTCR pilot program on a gradual basis. Further, given that the program was specifically approved as a pilot, participation is, not surprisingly, limited under defined parameters, which does not render the program unduly discriminatory or preferential, as we have previously concluded. *ESP 4 Case* at ¶ 146. Accordingly, we find no merit in IGS's contention that the BTCR pilot provision in the Stipulation does not comply with the third part of the three-part test.

*i. Facility Purchase Requests*

{¶ 204} In its reply brief, NEP notes that the Stipulation provides that the "Company agrees to make best efforts to respond within 21 days to customer requests to purchase AEP Ohio facilities on customer premises." NEP argues that this provision is ineffective because it will have no meaningful impact by permitting AEP Ohio to dictate how it responds to

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customer requests. With respect to the third part of the Commission's three-part test, NEP contends that words without substance, such as this provision in the Stipulation, violate an important regulatory principle requiring that regulations and orders should effectuate a purpose or desired outcome. NEP avers that its equipment purchase proposal contemplates actual customer service by AEP Ohio through the implementation of a process for responding to customer requests. (NEP Reply Br. at 9-10, 11-12.)

{¶ 205} The Commission is not persuaded by NEP's argument on this issue. Even if we assume that NEP has articulated an important regulatory principle or practice that is applicable here, we do not agree that the "best efforts" standard adopted in the Stipulation has no substance or will fail to have any meaningful impact on AEP Ohio's process for responding to equipment purchase requests submitted by its customers (Joint Ex. 1 at 11). In fact, a "best efforts" standard is used at times in the application of the Commission's own rules. *See, e.g.,* Ohio Adm.Code 4901:1-10-05; Ohio Adm.Code 4901:1-10-32. We also note that it was procedurally improper for NEP to raise this argument for the first time in its reply brief. *See In re Complaint of W.D.I.A. Corp., Inc. v. Cincinnati Bell Telephone Co.,* Case No. 91-1905-TP-CSS, Opinion and Order (Mar. 10, 1994) at 10 (declining to consider issue raised for first time in party's reply brief). For these reasons, NEP has failed to show that the equipment purchase provision in the Stipulation violates any important regulatory principle or practice of the Commission.

*j. Commission Conclusion*

{¶ 206} The Commission has completed a thorough review of the evidence of record and the various positions of the parties. Following our review, we agree with the Signatory Parties that the Stipulation does not violate the third part of the three-part test. Consistent with the Commission's findings above, the Stipulation does not violate any important regulatory principle or practice and advances many of the state policy objectives set forth in R.C. 4928.02. (Co. Ex. 6 at 18-20; Staff Ex. 6 at 5; OCC Ex. 1 at 10.)

**F. *Rate of Return and Authorized Increase***

{¶ 207} Attachment A to the Stipulation contains schedules reflecting the terms agreed upon by the Signatory Parties. The Commission finds that the stipulated schedules are reasonable and proper, and we adopt them for the purposes of these proceedings. Given AEP Ohio's current rates, the Company has a current operating income of (\$4,314,000) and a stipulated rate base of \$3,088,389,000 which yields a -0.14 percent earned rate of return. This rate of return is insufficient to provide AEP Ohio with reasonable compensation for distribution service provided to its customers. (Joint Ex. 1 at Attach. A.)

{¶ 208} The negotiated rate of return recommended by the Stipulation is 7.28 percent. In order to realize this rate of return on the stipulated rate base of \$3,088,389,000, AEP Ohio requires net operating income of \$224,986,000. Thus, the stipulated revenue increase, or base rate increase, amounts to \$294,729,000, reflecting a total stipulated revenue requirement of \$955,101,000. (Joint Ex. 1 at Attach. A.)

**G. *Effective Date and Tariffs***

{¶ 209} As part of its investigation in these matters, Staff reviewed the various rates, charges, and provisions governing the terms and conditions of service contained in AEP Ohio's proposed tariffs. Proposed tariffs in compliance with the Stipulation were submitted by the Signatory Parties for the Commission's consideration. Subsequently, on July 7, 2021, AEP Ohio filed updates to certain tariff pages to incorporate technical corrections. Upon review, the Commission finds the proposed tariffs, as attached to the Stipulation, and updated on July 7, 2021, to be reasonable. Consequently, AEP Ohio shall file final tariffs, consistent with this Opinion and Order. The new tariffs shall become effective on a date not earlier than the date upon which the final tariff pages are filed with the Commission.

**IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶ 210} AEP Ohio is an electric light company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, AEP Ohio is subject to the Commission's jurisdiction pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 211} On April 29, 2020, AEP Ohio filed a notice of intent to file an application for an increase in rates. AEP Ohio proposed a date certain of December 31, 2019, and a test year of the 12 months ending November 30, 2020.

{¶ 212} On June 8, 2020, AEP Ohio filed its application for approval of an increase in its electric distribution rates, tariff modifications, and changes in accounting methods.

{¶ 213} By Entry issued on May 6, 2020, the test year and date certain were approved.

{¶ 214} On July 29, 2020, the Commission issued an Entry that accepted the application for filing as of June 8, 2020.

{¶ 215} On November 18, 2020, as amended on November 25, 2020, the Staff Report was filed with the Commission.

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

{¶ 217} Following public notice, the Commission conducted a local public hearing by Webex on February 8, 2021. Notice of the local public hearing was published in accordance with R.C. 4903.083, and proof of such publication was filed by AEP Ohio on February 22, 2021.

{¶ 218} The evidentiary hearing was called via Webex on March 4, 2021, and continued to allow for additional settlement negotiations.

{¶ 219} On March 12, 2021, the Stipulation was filed by the Signatory Parties.

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

{¶ 221} The value of AEP Ohio's property used and useful for the rendition of service to customers affected by the application, determined in accordance with R.C. 4909.15, is not less than \$3,088,389,000.

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{¶ 222} The current net annual compensation of (\$4,314,000) represents a rate of return of -0.14 percent on the jurisdictional rate base of \$3,088,389,000.

{¶ 223} A rate of return of -0.14 percent is insufficient to provide AEP Ohio with reasonable compensation for the services rendered to its customers.

{¶ 224} A rate of return of not more than 7.28 percent is fair and reasonable under the circumstances of these cases and is sufficient to provide AEP Ohio just compensation and return on its property used and useful in the provision of services to its customers.

{¶ 225} An authorized revenue increase of \$294,729,000 will result in an operating income of \$224,986,000, which, when applied to the rate base of \$3,088,389,000, yields a rate of return of approximately 7.28 percent.

{¶ 226} The allowable gross annual revenue to which AEP Ohio is entitled for purposes of these proceedings is \$955,101,000.

{¶ 227} AEP Ohio's application was filed pursuant to, and this Commission has jurisdiction over the application under, the provisions of R.C. 4909.17, 4909.18, and 4909.19, and the application complies with the requirements of these statutes.

{¶ 228} Staff conducted an investigation with a report duly filed and mailed, and public hearings were held, the written notice of which complied with the requirements of R.C. 4909.19 and 4903.083.

{¶ 229} The Stipulation is the product of serious bargaining among capable, knowledgeable parties, advances the public interest, and does not violate any important regulatory principle or practice. The Stipulation submitted by the Signatory Parties is reasonable and should be adopted in its entirety.

{¶ 230} AEP Ohio is authorized to file final tariffs, consistent with this Opinion and Order.

**V. ORDER**

{¶ 231} It is, therefore,

{¶ 232} ORDERED, That the Stipulation filed on March 12, 2021, and updated on May 11, 2021, be approved in accordance with this Opinion and Order. It is, further,

{¶ 233} ORDERED, That the application of AEP Ohio for authority to increase its rates and charges for distribution service be granted to the extent provided in this Opinion and Order. It is, further,

{¶ 234} ORDERED, That AEP Ohio be authorized to file tariffs, in final form, consistent with this Opinion and Order. AEP Ohio shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 235} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 236} ORDERED, That AEP Ohio shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

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

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{¶ 238} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Daniel R. Conway

Dennis P. Deters

SJP/GNS/mef

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**in**

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

Summary: Opinion & Order adopting the joint stipulation and recommendation resolving all issues related to the application filed by Ohio Power Company d/b/a AEP Ohio to increase its distribution rates electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio



**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**

**ENTRY ON REHEARING**

Entered in the Journal on January 12, 2022

**I. SUMMARY**

{¶ 1} The Commission grants the applications for rehearing filed by Nationwide Energy Partners, LLC and Interstate Gas Supply, Inc. for the purpose of further consideration of the matters specified in the applications for rehearing.

**II. DISCUSSION**

{¶ 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 an electric security plan 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., 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.<sup>1</sup>

{¶ 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; 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);<sup>2</sup> 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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<sup>1</sup> 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).

<sup>2</sup> On April 30, 2021, CUB-Ohio filed notice of its withdrawal as a party to these proceedings.

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{¶ 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} The Commission believes that sufficient reason has been set forth by NEP and IGS to warrant further consideration of the matters specified in the applications for

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rehearing. Accordingly, the applications for rehearing filed by NEP and IGS should be granted.

### III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the applications for rehearing filed by NEP and IGS be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

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

COMMISSIONERS:

*Approving:*

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

SJP/mef

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**in**

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

Summary: Entry granting the applications for rehearing filed by Nationwide Energy Partners, LLC and Interstate Gas Supply, Inc. for the purpose of further consideration of the matters specified in the applications for rehearing electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY FOR AN  
INCREASE IN ELECTRIC DISTRIBUTION  
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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.<sup>1</sup>

{¶ 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);<sup>2</sup> 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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<sup>1</sup> 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).

<sup>2</sup> 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

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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.

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{¶ 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

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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

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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.<sup>3</sup> 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

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<sup>3</sup> *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 19.



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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

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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 SSOOCR 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 SSOOCR, 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 SSOOCR 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.

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{¶ 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.

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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

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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



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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.<sup>4</sup> As we found in the Opinion and Order, without a complete analysis of

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<sup>4</sup> 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.*

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*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

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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 Lipthrott, 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).<sup>5</sup> 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

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<sup>5</sup> 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.

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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,

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{¶ 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

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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