

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Dayton Power and Light Company d/b/a	)	Case No. 22-900-EL-SSO
AES Ohio for Approval of Its Electric	)	
Security Plan	)	

In the Matter of the Application of The	)	
Dayton Power and Light Company d/b/a	)	Case No. 22-901-EL-ATA
AES Ohio for Approval of Revised Tariffs	)	

In the Matter of the Application of The	)	
Dayton Power and Light Company d/b/a	)	Case No. 22-902-EL-AAM
AES Ohio for Approval of Accounting	)	
Authority Pursuant to Ohio Rev.	)	
Code § 4905.13	)	

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**INITIAL BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION**

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**INITIAL BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION**

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The Retail Energy Supply Association (“RESA”) submits this Brief in its support of the Stipulation and Recommendation (“Stipulation”) submitted to the Public Utilities Commission of Ohio (“Commission”) in this proceeding. The Stipulation is just and reasonable, is supported by the vast majority of parties to the proceeding, and satisfies the three-part test the Commission utilizes to evaluate settlements.

**I. STANDARD OF REVIEW**

Pursuant to Rule 4901-1-30 of the Ohio Administrative Code, parties to Commission proceedings may enter into stipulations.<sup>1</sup> Stipulations are given substantial weight by the Commission.<sup>2</sup>

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<sup>1</sup> Ohio Adm.Code 4901-1-30.

<sup>2</sup> See *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

## II. **ARGUMENT**

The Commission's 3-part test to evaluate a stipulation asks the following questions:<sup>3</sup>

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

As demonstrated below, the Stipulation satisfies these three elements.

### **A. The Stipulation was a product of serious bargaining among capable and knowledgeable parties.**

The Stipulation was the product of serious bargaining among capable, knowledgeable parties.

In addressing this element, the Commission considers whether all parties were invited to and afforded the opportunity to participate in settlement discussions.<sup>4</sup> AES Ohio witness Schroder testified that all parties were in fact invited to participate in settlement discussions, and further testified that all parties did in fact participate in settlement discussions occurring over many months.<sup>5</sup>

Moreover, all Stipulating Parties are capable and knowledgeable, are represented by experienced counsel, and nearly all parties are frequent participants in Commission proceedings.<sup>6</sup> The Stipulating Parties represented a variety of diverse

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<sup>3</sup> See *OCC v. Pub. Util. Comm.*, 64 Ohio St.3d 123 (1992).

<sup>4</sup> *In re the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Opinion and Order, ¶ 107 (Nov. 17, 2021).

<sup>5</sup> AES Ohio Ex. 1 at 5.

<sup>6</sup> Tr. Vol. I at 6–10.

interests, including industrial, commercial, and residential customers; generation suppliers; CRES providers; environmental groups; and Staff.

The serious bargaining and compromises that took place culminating in the provisions in the Stipulation was also attested to by AES Ohio witness Schroder.<sup>7</sup> RESA addresses some of the elements reflected in the serious bargaining that occurred during the settlement process below as well.

Finally, OCC's witness Fortney conceded on cross examination that he was not aware of any facts that would suggest prong one was not met.<sup>8</sup> The Stipulation satisfies the first prong of the three-part test.

**B. The Stipulation is a reasonable settlement compromise and benefits ratepayers and the public interest without violating any important regulatory principle or practices.**

The Stipulation as a package is reasonable, benefits ratepayers and the public interest, and should be approved. The Stipulation as a package also supports important regulatory practices and principles. The Commission should therefore approve the Stipulation without modification.

Initially, the Stipulation eliminates proposals from AES Ohio's application that were unlawful and would have resulted in unnecessary and unlawful costs being assessed to customers. The Stipulation does this by eliminating AES Ohio's proposals to utilize its monopoly power and force customers to purchase products and services from AES Ohio that are otherwise available to customers in the competitive marketplace. The competitive proposals in AES Ohio's application that were removed in the Stipulation include programs that would have allowed AES Ohio to own and lease

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<sup>7</sup> AES Ohio Ex. 1 at 6.

<sup>8</sup> Tr. Vol. II at 307.

electric vehicles to customers and programs that would have allowed AES Ohio to provide active demand load management services.<sup>9</sup> Had these programs been adopted, customers would have been forced to pay for the competitive products and services delivered to other customers.<sup>10</sup>

The removal of these competitive retail electric services and non-electric products and services from the ESP is consistent with important regulatory practices and principles, and is the law. In the Commission's investigation of electric vehicle charging ("EVC"), the Commission concluded that EVC was a behind the meter service that operates within the competitive marketplace.<sup>11</sup> In recent decisions, the Commission also held that energy efficiency and demand response programs should be offered by the competitive market. In AEP Ohio's rate case the Commission held that energy efficiency programs are best served by reliance on market-based approaches.<sup>12</sup> In Columbia Gas' rate case the Commission held that "it is time to look to the competitive market place to play a more significant role in the provision of energy efficiency services in this state."<sup>13</sup> It is clear Ohio law and policy provides that customers should be able to choose from a variety of products and services offered in the competitive market.<sup>14</sup> Thus, the outcome here is consistent with that important regulatory practice and principle.

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<sup>9</sup> Joint Ex. 1 at 25.

<sup>10</sup> Joint Ex. 1 at 19.

<sup>11</sup> *In re the Commission's Investigation into Elec. Vehicle Charging Service in the State*, Case No. 20-434-EL-COI, Finding & Order at ¶ 27 (July 1, 2020).

<sup>12</sup> *In re the Application of the Ohio Power Company for an increase in Elec. Distribution Rates*, Opinion & Order, Case No. 20-585-EL-AIR at ¶ 128 (Nov. 17, 2021).

<sup>13</sup> *In re the Application of Columbia Gas of Ohio Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case no. 21-637-GA-AIR, Opinion and Order at ¶ 56 (Jan. 26, 2023).

<sup>14</sup> R.C.4928.02, 4928.66(G).

The Stipulation also offers other benefits to ratepayers through the elimination all switching fees<sup>15</sup> and a collaborative process to discuss converting the SSO competitive bid process results into retail rates for SSO customers with on-peak and off-peak rates as Grid Mod Implementation.<sup>16</sup>

These Stipulation benefits will permit customers to act upon their individual preferences and manage their electric costs through engagement with the competitive market. This benefits ratepayers, is in the public interest, and does not violate any important regulatory practice or principle. The Stipulation therefore passes the second and third prongs of the Commission's three-part test.

### **III. CONCLUSION**

All parties engaged in lengthy, open, and productive settlement discussions that culminated in a Stipulation supported by nearly every party in the proceeding. The Stipulation satisfies the Commission's three-part by reducing AES Ohio's proposed charges to customers and by expanding and preserving customer choice over the products and services they wish to receive to meet their respective needs. For the foregoing reasons, the Commission should adopt the Stipulation without modification.

Respectfully submitted,

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<sup>15</sup> Joint Ex. 1 at 35.

<sup>16</sup> Joint Ex. 1 at 5–6.

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## **CERTIFICATE OF SERVICE**

In accordance with Ohio Adm.Code 4901-1-05, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 26<sup>th</sup> day of May 2023. The following parties were provided by electronic mail a copy of this document:

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