

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Power Company for Authority to Establish	)	
a Standard Service Offer Pursuant to R.C.	)	Case No. 23-23-EL-SSO
4928.143 in the Form of an Electric	)	
Security Plan.	)	

In the Matter of the Application of Ohio	)	
Power Company for Approval of Certain	)	Case No. 23-24-EL-AAM
Accounting Authority.	)	

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**MEMORANDUM CONTRA AEP OHIO'S MOTION TO STRIKE SPECIFIED  
INTERVENOR TESTIMONY IN OPPOSITION TO THE JOINT STIPULATION  
AND RECOMMENDATION  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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(willing to accept service by e-mail)

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**I. INTRODUCTION**

At a time of soaring electricity costs, Ohio Power Company (“AEP Ohio”) and others have signed a Settlement<sup>1</sup> that raises charges on AEP Ohio’s consumers and denies them necessary consumer protections. Now, AEP Ohio has moved to strike the consumer protection testimony that OCC filed on consumers’ behalf. AEP Ohio has requested that the PUCO strike the testimony of OCC expert witnesses Joseph P. Buckley and Andrew R. Tinkham.

The PUCO should deny AEP Ohio’s Motion to Strike the testimony of Mr. Buckley and Mr. Tinkham. The PUCO must determine whether the Settlement is the product of serious bargaining, benefits consumers and the public interest, and does not violate important regulatory principles and practices.<sup>2</sup> To do so, the PUCO must assess a

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<sup>1</sup> Joint Stipulation and Recommendation (September 6, 2023) (the “Settlement” or “Stipulation”).

<sup>2</sup> Consumers’ Counsel v. Pub. Util. Comm’n. (1992), 64 Ohio St.3d 123, 126.

full and accurate record and consider perspectives of all stakeholders, including residential consumers. That includes OCC's testimony of Mr. Buckley and Mr. Tinkham. For the reasons set forth below, the PUCO should deny AEP Ohio's Motion to Strike with respect to OCC's testimony.

## II. LAW AND ARGUMENT

### A. **Joe Buckley's testimony regarding return on equity is relevant to whether the stipulation meets the PUCO's three-prong standard for approving settlements. AEP Ohio's claims to the contrary should be rejected.**

AEP Ohio moves to strike portions of Joe Buckley's testimony as irrelevant. AEP Ohio argues that "OCC witness Buckley's ROE analysis ignores both the Commission's three-part test for stipulations, and the statutory test for ESP approval, and improperly focuses on one aspect of the Stipulation in isolation."<sup>3</sup> That is incorrect. Mr. Buckley's analysis of the return on equity (profit) the Company will charge consumers is relevant to this case.

Relevance is construed broadly. Per the Ohio Supreme Court, "[e]vidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."<sup>4</sup> Federal courts state that "Whether evidence is highly relevant or just a little relevant, it is relevant nonetheless."<sup>5</sup> Evidence is not *irrelevant* and excluded from consideration just because a decisionmaker does not ultimately find that evidence *persuasive* in deciding the case.

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<sup>3</sup> AEP Ohio's Motion to Strike at 7.

<sup>4</sup> *State v. Nemeth* (1998), 82 Ohio St.3d 202, 207, 1998 Ohio 376, 694 N.E.2d 1332.

<sup>5</sup> *Nilavar v. Mercy Health Sys. - W. Ohio*, 210 F.R.D. 597, 608-609, 604 (S.D. Ohio 2002).

AEP Ohio is wrong that Mr. Buckley’s testimony is irrelevant to this case. First, AEP Ohio’s statement that Mr. Buckley ignores<sup>6</sup> the PUCO’s three-part test for Settlements is untrue. Mr. Buckley directly connects his ROE analysis to the three-part test, stating “the ROE in the Settlement and resulting rate of return is too high and result in rates that do not benefit consumers or the public interest.”<sup>7</sup> Further, profits (ROE) built into the rates that AEP Ohio will charge consumers under the Settlement clearly affect whether the Settlement benefits consumers. Mr. Buckley’s analysis of current market data and recommendation of a 9.51% ROE,<sup>8</sup> rather than the 9.7% ROE authorized in AEP Ohio’s last distribution rate case,<sup>9</sup> squarely addresses whether the Settlement meets the PUCO’s three-prong test. AEP Ohio’s argument that Mr. Buckley’s testimony does not address the three-part settlement test is baseless and should be rejected.

Contrary to AEP Ohio’s claims,<sup>10</sup> Mr. Buckley’s testimony also addresses the requirement in R.C. 4928.143(C) that AEP Ohio’s electric security plan be more favorable in the aggregate than a market-rate offer. Mr. Buckley “recommend[s] that the PUCO reject the ESP in favor of an MRO.” This is because the ESP imposes costs on consumers that an MRO does not. Mr. Buckley explains that the Settlement calls for \$2.2 billion in reliability-related projects,” and AEP Ohio’s consumers “will...be charged a return on these investments.”<sup>11</sup> Mr. Buckley compared these costs to AEP Ohio’s own

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<sup>6</sup> AEP Ohio’s Motion to Strike at 7.

<sup>7</sup> Testimony Recommending Modification of the Stipulation of Joseph P. Buckley (“Buckley Testimony”) at 3-4.

<sup>8</sup> Buckley Testimony at 8-12.

<sup>9</sup> See *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Opinion & Order (November 17, 2021) at 17.

<sup>10</sup> AEP Ohio’s Motion to Strike at 7.

<sup>11</sup> Buckley Testimony at 14.

prediction that the Settlement will provide “an annual benefit to consumers of \$144.7 million,”<sup>12</sup> concluding the “benefits of the ESP are dwarfed by the costs.”<sup>13</sup> Not so with an MRO, which does not include the reliability improvement projects in the Settlement. And, as Mr. Buckley testifies, an MRO provide for “generation rates” that are “100% market-based,” so an MRO and ESP are equal in this regard.<sup>14</sup> In sum, Mr. Buckley’s testimony directly compares an MRO and ESP, finding the difference to be reliability-related improvements that are more costly than beneficial to consumers. AEP Ohio disagrees with Mr. Buckley’s conclusion, but that does not mean his testimony is irrelevant to the more-favorable-in-the-aggregate test in R.C. 4928.143(C).

Next, AEP Ohio argues Mr. Buckley’s testimony should be stricken for focusing only on “one aspect of the Stipulation in isolation.”<sup>15</sup> AEP Ohio is misguided in arguing that the PUCO’s consideration of Settlements *as a package* prohibits a witness from testifying about some elements of a Settlement and not others. The PUCO has routinely allowed OCC experts to do exactly that.<sup>16</sup> Beyond contradicting PUCO precedent, AEP Ohio’s arguments misunderstand relevance. To prove anything, says AEP Ohio, a witness must attempt to prove everything. That is not how relevance works. In an OVI<sup>17</sup> case, for example, AEP Ohio’s argument would require a court to exclude testimony of a pedestrian that saw a car drive erratically unless the pedestrian also perceived the driver’s

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<sup>12</sup> Direct Testimony of Brian F. Billings at 3.

<sup>13</sup> Buckley Testimony at 14.

<sup>14</sup> *Id.*

<sup>15</sup> AEP Ohio’s Motion to Strike at 7.

<sup>16</sup> *See generally* Case No. 22-900-EL-SSO, et al. and Case No. 22-507-GA-AIR, et al.

<sup>17</sup> R.C. 4511.19, Operating vehicle under the influence of alcohol or drugs

level of intoxication. Again, testimony is relevant if it makes “*any* fact” more or less probable. Not *every* fact, as AEP Ohio suggests.

Lastly, AEP Ohio argues that OCC witness Buckley’s ROE analysis is irrelevant because it is inconsistent with a recent Ohio Supreme Court decision.<sup>18</sup> In AEP Ohio’s words, that decision states “The Commission is not required to update ROEs in between distribution rate cases.” Even if true,<sup>19</sup> this would not make Mr. Buckley’s testimony irrelevant. Mr. Buckley’s testimony is that the outdated ROE causes the Settlement as a package to harm consumers and the public interest by causing consumers to pay rates that are too high. This is true even if the law does not *require* an updated ROE. And in any event, AEP can make that legal argument in briefs.

Mr. Buckley’s analysis that the Settlement includes an inflated ROE based on outdated market data is relevant. It “has...tendency” “to make more probable” that consumers are paying too high rates, meaning the Settlement does not benefit consumers and the public interest or comply with important regulatory practices and principles. The PUCO should deny AEP Ohio’s motion to strike Mr. Buckley’s testimony.

**B. Andrew Tinkham’s expert testimony about the abnormally high disconnection rate of AEP Ohio compared to Ohio’s other electric distribution utilities is relevant, admissible, and essential expert testimony important for consumer protection. The PUCO should reject AEP Ohio’s attempts to exclude it.**

AEP Ohio seeks to exclude from the PUCO’s consideration the very data that the PUCO ordered AEP Ohio and the other electric distribution utilities (“EDU”) to produce

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<sup>18</sup> *In re Application of E. Ohio Gas Co.*, Slip Opinion No. 2023-Ohio-3289, ¶ 12.

<sup>19</sup> OCC does not concede that AEP accurately interprets *In re Application of E. Ohio Gas Co.*, Slip Opinion No. 2023-Ohio-3289.

to Andrew Tinkham, OCC's expert witness.<sup>20</sup> Mr. Tinkham testified about the enormous disparity between AEP Ohio's disconnection rate and that of every other Ohio electric utility. Mr. Tinkham testified that the Settlement's failure to address this disparity violates prongs two and three of the test used by the PUCO to evaluate settlements.<sup>21</sup> It's not surprising that in the face of direct factual evidence of what very well could be abusive disconnection practices and policies, AEP Ohio seeks to deny the PUCO the opportunity to even hear that evidence.

AEP Ohio also seeks to exclude Mr. Tinkham's Testimony on p. 7 commencing on line 15 through p. 8, line 8, and related Attachments ART-3, 4, and 5. The data in these attachments was ordered by the PUCO to be filed with the PUCO and produced by each of the electric distribution utility companies directly to Andrew Tinkham, OCC's expert witness.<sup>22</sup>

Mr. Tinkham gathered the data for his analysis from these public records filed by AEP Ohio and the other Ohio electric utilities with the PUCO and produced directly to him. These records are attached to Mr. Tinkham's testimony as Attachments ART-1, 2, 3, 4, and 5.

Each of the Attachments ART-1 through ART-5 expressly state that they are being filed pursuant to the statutory mandate of R.C. 4933.123. Attachments ART-1 through ART-4 further specifically reference the PUCO's Entry dated May 31, 2023 in

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<sup>20</sup> Entry, Case No. 23-532-GE-UNC, dated May 31, 2023, at ¶ 5.

<sup>21</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.13 in the Form of an Electric Security Plan*, Case No. 23-23-EL-SSO, et al., Testimony Recommending Modification of the Stipulation of Andrew R. Tinkham, *September 20, 2023*.

<sup>22</sup> Entry, Case No. 23-532-GE-UNC, dated May 31, 2023, at ¶ 5.



the service disconnection reporting case, which further mandated their filing.<sup>23</sup> That Entry directed all energy companies subject to R.C. 4933.123 to file their written reports on service disconnections for nonpayment on or before June 30, 2023.<sup>24</sup>

The data required to be set forth on each of the Attachments ART-1 through ART-5 is specifically detailed in R.C. 4933.123, which states:

- (A) For the purpose of this section:
  - (1) "Energy company" shall have the meaning assigned in division (A)(4) of section [5117.01](#) of the Revised Code.
  - (2) "Service disconnection for nonpayment" means the intentional discontinuation of gas or electric services to a residential customer by an energy company due to the failure of the customer to pay for such services.
  - (3) "Service reconnections" means the reconnection of gas or electric services by an energy company to a residential customer whose service was discontinued by such company for nonpayment.
- (B) Annually, on or before the thirtieth day of June, each energy company shall file a written report on service disconnections for nonpayment with the public utilities commission and the consumers' counsel. The report shall include the following information for the twelve-month period ending on the preceding thirty-first day of May, by month:
  - (1) Total number of service disconnections for nonpayment and the total dollar amount of unpaid bills represented by such disconnections;
  - (2) Total number of final notices of actual disconnection issued for service disconnections for nonpayment and the total dollar amount of unpaid bills represented by such notices;

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<sup>23</sup> *In the Matter of the Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for Nonpayment*, Case No. 23-532-GE-UNC, May 31, 2023.

<sup>24</sup> *Id.*

- (3) Total number of residential customer accounts in arrears by more than sixty days and the total dollar amount of such arrearages;
- (4) Total number of security deposits received from residential customers and the total dollar amount of such deposits;
- (5) Total number of service reconnections;
- (6) Total number of residential customers.

AEP Ohio does not allege any irregularities in the preparation and submission of these statutorily mandated reports. As set forth above, the statutes provide clear definitions of the data required and great specificity about exactly what must be included in the report. There is nothing to support AEP Ohio's claim that the "numbers are left without context" or this "could result in misleading information". As a PUCO-ordered recipient of these reports, Mr. Tinkham is certainly qualified to testify regarding the information in the reports and the statutory mandate.

Mr. Tinkham's data compilation from these reports demonstrates that AEP Ohio disconnected more consumers than AES Ohio, Cleveland Electric Illuminating, Duke Energy Ohio, Ohio Edison, and Toledo Edison combined.<sup>25</sup> Mr. Tinkham's analysis further demonstrates that the rate of disconnection of residential consumers by AEP Ohio was more than double the rate of the next nearest utilities – 11.7% for AEP Ohio and 5.4% for AES Ohio and Toledo Edison.

Expert witness Tinkham's analysis and testimony regarding AEP Ohio's own disconnection data further shows that AEP Ohio disconnected far more residential

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<sup>25</sup> Mr. Tinkham's data compilation and analysis demonstrates from June 1, 2022 through May 31, 2023, 155,398 residential consumers disconnected by AEP Ohio compared to 125,481 residential disconnections by the five other Ohio electric distribution utilities combined.

consumers then it reconnected; that its service disconnections were concentrated in twenty zip codes; that the total dollar amount of AEP Ohio disconnections tripled from the 2022 to 2023 annual disconnection reports; that the number of disconnection notices continued to increase, and that the total amount of unpaid balances on the final disconnection notices increased from the 2022 to the 2023 filing from \$459,550,106 to \$542,345,458.50.

Contrary to AEP Ohio's suggestion, the reports and data can be authenticated pursuant to several Rules of Evidence, including R.Evid. 901(A), R.Evid. 901(B)(1), and R.Evid. 901(B)(7) which state:

**RULE 901. Requirement of Authentication or Identification.**

**(A) General provision**

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

**(B) Illustrations**

By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

**(1) Testimony of witness with knowledge**

Testimony that a matter is what it is claimed to be.

...

**(7) Public records or reports**

Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data

compilation, in any form, is from the public office where items of this nature are kept.

As a direct recipient of the data ordered to be produced to him by the PUCO, Mr. Tinkham can testify as to its authenticity under these Evidence Rules. Moreover, as public records or reports filed by each of the electric utilities, the reports are authenticated pursuant to R.Evid. 901(B)(7).

Further, as data mandated by Revised Code §4933.123 and PUCO Order the reports are not hearsay and were made at or near the time from information transmitted by a person with knowledge (the electric utilities), were kept in the ordinary course of a regularly conducted business activity, and pursuant to statute and order it is the regular practice of each utility to make the disconnection reports on an annual basis. AEP Ohio does not allege or identify any lack of reliability of the statutorily mandated data.

Given the statutory mandate, the PUCO Order, the specificity of the data to be reported, the definitions provided in the statute, and the lack of any evidence that the data is somehow unreliable, AEP Ohio's claim that the testimony should be stricken has no basis. It is the fact that the data demonstrating unreasonably excessive disconnections by AEP Ohio is so well-founded that AEP Ohio seeks to have it excluded.

Expert witness Tinkham's testimony is directly relevant to the PUCO's consideration of this Settlement. A settlement that increases rates in the face of enormous disconnections without consideration of necessary consumer protections does not benefit consumers, is not in the public interest, and violates regulatory policy and principles.

In its Motion, AEP Ohio completely ignores the impact of R.C. 4928.02(A) and (L). These statutory provisions set forth Ohio's policy concerning reasonably priced retail

electric service and the protection of at-risk populations. In relevant part, R.C. 4928.02 states:

**It is the policy of this state to do the following throughout this state:**

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric service;
- ...
- (L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

[Emphasis added]. Expert witness Tinkham's testimony regarding unreasonably priced electric service and unacceptably high disconnection rates is clearly relevant testimony to these state policies and should not be stricken.

**C. The PUCO is not required to strictly follow the rules of evidence and can appropriately weigh the evidence without striking it from the record.**

There is no factual or legal basis for striking any part of the testimony or exhibits of expert witness Andrew Tinkham. However, even if there was some deficiency (there isn't), the PUCO is capable of appropriately weighing the evidence without striking it from the record.<sup>26</sup>

In its argument regarding the disconnection reports referenced by expert witness Tinkham, AEP Ohio does not quote or even cite a single case of or about the PUCO regarding the admission of expert testimony. The only case it cites is *State v. Jones*, 9 Ohio St.3d 123 (1984). Not surprisingly, as a criminal case the Rules of Evidence are strictly enforced. That is not true of proceedings before the PUCO.

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<sup>26</sup> Case No. 20-585-EL-AIR, Hearing Transcript (May 20, 2021) at 509, 684, and 933.

The Supreme Court of Ohio has long recognized that PUCO proceedings are “informal” and “should not be inhibited by the strict rules as to the admissibility of evidence which prevail in courts....” *Chesapeake & O.R. Co. v. Public Utilities Com.* (1955), 163 Ohio St. 252, 263.

Consistent with governing law, the PUCO has “allowed the admission of hearsay testimony” when it has “deemed it appropriate.”<sup>27</sup> The PUCO stated “hearsay rules are designed, in part, to exclude evidence, not because it is not relevant or probative, but because of concerns regarding jurors’ inability to weigh evidence appropriately.”<sup>28</sup> The PUCO went on to state that “(t)hese concerns are inapplicable to administrative proceedings before the Commission, as the Commission has the expertise to give the appropriate weight to testimony and evidence.”<sup>29</sup> So, even if there is some deficiency in Mr. Tinkham’s testimony or exhibits, which there is not, the PUCO should admit the testimony and evidence and use its expertise to weigh it as it deems appropriate.

Another “purpose of the rule against hearsay is to keep unreliable evidence, particularly evidence that is not subject to cross-examination,” out of the record.<sup>30</sup> This purpose does not apply to Mr. Tinkham’s testimony, about which he will be subject to cross-examination at the hearing. The PUCO should not exclude expert witness Andrew Tinkham’s testimony or exhibits.

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<sup>27</sup> *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376, Opinion and Order (December 14, 2011) at 13.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *State v. Bradley*, 7<sup>th</sup> Dist. Columbiana No. 11 CO 26, 2012-Ohio-5880, ¶ 39.

**D. For consumer protection, expert witness Andrew Tinkham's testimony regarding health and safety concerns associated with the disconnection of electricity consumers should not be stricken.**

Expert witness Tinkham's professional experience includes 6 years in the telecom industry and 18 years of utility regulatory experience with the OCC.<sup>31</sup> During his 18 years at OCC Mr. Tinkham has had ongoing and continual interaction with Ohio residential consumers. As a compliance investigator his duties included researching and resolving consumers' inquiries and complaints that involved Ohio regulated utilities.<sup>32</sup> Later, as senior outreach and education specialist, his role included public presentations on utility assistance programs, energy choice, and consumers' rights along with educating local agencies and organizations on utility rules.<sup>33</sup> Most recently, he was promoted to a Utility Consumer Program Specialist.

Based on his 18 years of experience in working with Ohio's utility consumers, Mr. Tinkham is qualified to express facts and opinions, on among other things, the impact of disconnection of utility service on residential consumers. In his testimony, Mr. Tinkham states:

The disconnection of essential electric service jeopardizes the health and safety of consumers, especially during the Summer and Winter months. Electric service is critical for households to maintain lighting, heating that requires electricity, electricity hot water heating, cooling (air conditioners and fans), medical devices, refrigeration of perishable food and medicine, and electric cooking appliances.

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<sup>31</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.1432 in the Form of an Electric Security Plan*, Case No. 23-23-EL-SSO, et al., Testimony Recommending Modification of the Stipulation of Andrew R. Tinkham (September 20, 2023), at p. 1.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

Even if a consumer is able to pay the electric bill, they could experience other health and safety needs due to a lack of funds.<sup>34</sup>

AEP Ohio has moved to strike Mr. Tinkham's testimony regarding statistics and measures taken by consumers to cope with high energy costs for which he references two documents. As an expert knowledgeable of the health and safety consequences of high energy bills, Mr. Tinkham can certainly testify regarding statistical information that is commonly available to experts in his field on the impacts of high energy costs and the sources of that information.

Again, as stated above, "hearsay rules are designed, in part, to exclude evidence, not because it is not relevant or probative, but because of concerns regarding jurors' inability to weigh evidence appropriately."<sup>35</sup> As the PUCO stated, "(t)hese concerns are inapplicable to administrative proceedings before the Commission, as the Commission has the expertise to give the appropriate weight to testimony and evidence."<sup>36</sup> Mr. Tinkham should be permitted to testify about this general information available and relied upon by experts in his field.

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<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



**E. Expert witness Andrew Tinkham’s testimony regarding the failure of the Settlement to address the more than double charges to AEP Ohio PIPP consumers compared to the amount an SSO consumer paid is directly relevant to this action and not a “collateral” attack on prior PUCO Orders. Such testimony is necessary for consumer protection.**

Expert witness Tinkham testifies that the proposed Settlement fails to remedy the fact that at-risk PIPP consumers have been burdened to pay more than double the amount an SSO consumer paid for electric generation from June 1, 2022, through May 31, 2023. What sense does it make for the PUCO to essentially mandate that PIPP consumers, those least able to afford rising utility costs, to pay twice the amount that is charged to other residential consumers? Not only does this ignore the plight of at-risk consumers but it does not benefit the public interest. A higher PIPP generation rate results in *all* consumers paying a higher USF rider rate. This testimony is directly relevant to whether the PUCO should adopt the proposed Settlement and is not a collateral attack on prior PUCO rulings.

Under the Settlement, PIPP consumers continue to be subject to possible higher generation charges than the generation charges for residential consumers served under AEP Ohio’s SSO. But under the policy of Ohio in R.C. 4928.02(L), the PUCO and ODOG must “protect at-risk populations....” PIPP consumers are an at-risk population. Moreover, because of the higher PIPP charges, all consumers who pay the USF are also being charged higher USF rates. The policy of the state that the PUCO must carry out in R.C. 4928.02(A) requires “reasonably priced retail electric service.” Consumers and the public interest are harmed by unreasonably priced retail electric service. The Settlement thus fails this prong.

AEP Ohio is correct that the PUCO has, in the past, turned a blind eye to OCC’s arguments regarding the unfairness and unlawfulness of PIPP charges substantially in

excess of the SSO charges. For example, the PUCO has stated that “(w)hile this may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542(B).”<sup>37</sup>

However, since making that statement time has moved on. More history is behind us. The facts scream out even louder. This proceeding regarding SSO generation is the perfect opportunity for the PUCO to recognize that as part of the SSO generation program PIPP consumers should receive the SSO charge where the PIPP auction continues to fail in reducing the cost of the PIPP program relative to the SSO charge. This is not a collateral attack on the PUCO’s prior rulings but rather a relevant and important update on the fact that there is now greater information available to the PUCO by which it can evaluate its comment that “this may occasionally result in the PIPP load being served at a price higher than the blended SSO price....”<sup>38</sup>

There is no reason to deny the PUCO the opportunity to consider expert witness Tinkham’s testimony regarding the need to incorporate the PIPP consumer into an SSO rate when the PIPP auction fails to beat the SSO rate. The PUCO is able to give Mr. Tinkham’s arguments the weight it deems appropriate in arriving at its decision.

AEP Ohio is essentially arguing that in a different proceeding with more information available to it, the PUCO is prohibited from arriving at a new conclusion

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<sup>37</sup> *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF, Opinion and Order (October 5, 2022) at ¶ 45 (quoting *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC (PIPP RFP Case), Finding and Order (March 2, 2016) at ¶ 5).

<sup>38</sup> *Id.*

based on the additional information then available. AEP Ohio's attempt to wrest control away from the PUCO to consider additional, new information should be denied.

The proposed Settlement does not pass the PUCO's three-part test for evaluating settlements. The Settlement harms customers and disserves the public interest because low-income PIPP consumers are being billed rates higher than the standard service offer, and USF charges are increased to all consumers. Rider charges to all USF consumers are significantly increased as a result of the magnitude of the increased charges. And the Settlement violates regulatory principles by, among other things, sanctioning unjust and unreasonable rates. That is a violation of Ohio law.

AEP Ohio's Motion to Strike as to Mr. Tinkham's testimony regarding the PIPP auction should also be denied.

### **III. CONCLUSION**

To determine whether the stipulation meets its three-prong standard for approval, the PUCO must consider a full and accurate record that reflects perspectives of all stakeholders, including residential consumers. Striking the testimony of expert witnesses Josephy Buckley and Andrew Tinkham from consideration would be unfairly prejudicial to consumers. The PUCO should deny the Motion to Strike as it applies to these witnesses.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra AEP's Motion to Strike Specified Intervenor Testimony in Opposition to the Joint Stipulation and Recommendation was served via electronic transmission upon the parties this 10<sup>th</sup> day of October 2023.

*/s/ William J. Michael*

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Summary: Memorandum Memorandum Contra AEP Ohio's Motion to Strike Specified Intervenor Testimony in Opposition to the Joint Stipulation and Recommendation by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Michael, William J..