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. 4928.143 in the Form of an Electric Security Plan.	:	Case No 23-0023-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	:	Case No 23-0024-EL-AAM

POST-HEARING BRIEF SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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On Behalf of the Staff of the Public Utilities Commission of Ohio

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The September 6, 2023 Stipulation reached in this case has the near-unanimous support of diverse parties and should be approved as reasonable under the Public Utilities Commission of Ohio's longstanding three-part test. It improves upon the original application and includes numerous benefits achieved through negotiation. The evidence presented by the signatory parties shows that the Stipulated terms meet the statutory criteria for approval, and all tariffs and riders agreed upon in the Stipulation are authorized by law. For these reasons and the reasons set forth in greater detail below, the Commission should approve the Stipulation in this case.

I. PROCEDURAL HISTORY

On January 6, 2023, Ohio Power Company ("AEP Ohio" or the "Company") filed an application for a standard service offer ("SSO") pursuant to R.C. 4928.141

("Application"). The Application was for approval of an electric security plan ("ESP"), in accordance with R.C. 4928.143, for the period of June 1, 2024, through May 31, 2030.

By Entry dated March 2, 2023, a procedural schedule was established, including an evidentiary hearing set to commence July 10, 2023. Five in-person local public hearings were scheduled throughout AEP Ohio's service area to provide customers and the public a reasonable opportunity to be heard regarding the Application. These local public hearings were held on April 13, 2023 in Findlay, Ohio; April 26, 2023 in Zanesville, Ohio; May 1, 2023 in Marietta, Ohio; May 22, 2023 at the offices of the Commission, and May 23, 2023 in Columbus, Ohio. In addition, a virtual public hearing was held via Webex on May 9, 2023 to allow an opportunity for those who might not have been able to attend the in-person local public hearings to provide testimony. Pursuant to the Examiner's Entry of May 30, 2023, various intervening parties filed testimony on June 9, 2023.

On September 6, 2023, a Stipulation was filed by the Company and the vast majority of intervening parties. In addition to the Company and the Commission Staff, the signatory parties include: Armada Power, Citizens' Utility Board of Ohio, Direct Energy Business LLC, Direct Energy Services, LLC, Enel North America, Inc., Environmental Law and Policy Center, Interstate Gas Supply, LLC, Ohio Energy Group, Ohio Energy Leadership Council, Ohio Environmental Council, Ohio Hospital Association, Ohio Manufacturers' Association Energy Group, Ohio Partners for Affordable Energy, Retail Energy Supply Association, The Kroger Co., and Walmart, Inc. The Ohio Telecom Association did not sign the Stipulation but agreed not to oppose it.

Prior to the evidentiary hearing, the Company submitted prefiled testimony supporting the Stipulation from Jamie Mayhan.[1] Testimony supporting the Stipulation was also filed by John Smith[2] on behalf of the Retail Energy Supply Association, by Travis Kavulla[3] on behalf of Direct Energy. Staff witness Christopher Healey[4] filed testimony on behalf of Staff in support of the Stipulation. Testimony opposing the Stipulation was filed by Constellation NewEnergy, Inc. ("Constellation")[5] and the Office of the Ohio Consumers' Counsel ("OCC").[6] The initial testimony of Becky Merola[7] on behalf of Calpine Retail Holdings, Inc. ("Calpine") (filed before the Stipulation and addressing only the Application) was admitted subject to arguments as to admissibility.

The hearing on the Stipulation modifying the Application began on October 10, 2023. After five (5) days of hearing, the record was closed on November 3, 2023.

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[1] Direct Testimony of Jamie Mayhan in Support of the Joint Stipulation and Recommendation, AEP Ohio Ex. 2 ("Mayhan Testimony").

[2] Testimony of John Smith in Support of Stipulation, RESA Ex. 1 ("Smith Testimony").

[3] Supplemental Direct Testimony of Travis Tavulla, Direct Energy Ex. 1 ("Tavulla Testimony").

[4] Testimony of Christopher Healey in Support of the Joint Stipulation and Recommendation, Staff Ex. 1 ("Healey Testimony").

[5] Direct Testimony of Muralikrishna Indukuri in Opposition to the Stipulation and Recommendation, Constellation Ex. 2 ("Indukuri Testimony").

[6] Testimony Recommending Modification of the Stipulation of Andrew Tinkham, OCC Ex. 1 ("Tinkham Testimony"); Testimony Recommending Modification of the Stipulation of James Wilson, OCC Ex. 2 ("Wilson Testimony"); Testimony Recommending Modification of the Stipulation of Robert Fortney, OCC Ex. 3 ("Fortney Testimony"); Testimony Recommending Modification of the Stipulation of James Williams, OCC Ex. 4 ("Williams Testimony"); Testimony Recommending Modification of the Stipulation of Colleen Shutrump, OCC Ex 5 ("Shutrump Testimony"); Testimony Recommending Modification of the Stipulation of Ramteen Sioshani, OCC Ex. 6 ("Sioshani Testimony"); and Testimony Recommending Modification of the Stipulation of Joseph Buckley, OCC Ex. 8 ("Buckley Testimony").

[7] Direct Testimony of Becky Merola, Calpine Ex. 1 ("Merola Testimony").

II. STANDARD OF REVIEW

R.C. 4928.143 sets out the requirements for an ESP. An ESP must include provisions relating to the supply and pricing of generation service. R.C. 4928.143(B). An ESP may also provide for the automatic recovery of certain costs, a reasonable allowance for certain construction work in progress, an unavoidable surcharge for the cost of certain new generation facilities, conditions or charges relating to customer shopping, automatic increases or decreases, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission related costs, provisions related to distribution service, and provisions regarding economic development.[8]

In addition, the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply in a Market Rate Offer ("MRO") under R.C. 4928.142.[9]

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation, as they have here. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[10]

The Commission's standard of review when considering a stipulation ultimately turns on whether the agreement is reasonable and should be adopted by the Commission.

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8 R.C. 4928.143(B)(2).

9 R.C. 4928.143(C)(1).

10 *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).

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?

The Ohio Supreme Court has endorsed the three-part test as a manner of resolving Commission cases, including SSO cases.[11] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support for the provisions of the stipulation remains in place.[12]

III. LAW AND ARGUMENT

In its Application, AEP Ohio sought approval of a Standard Offer Rate pursuant to R.C. 4928.141. The Standard Offer Rate represents AEP Ohio's retail generation charge as a result of Commission-approved auctions, and includes over- or under-recovery of supply costs associated with a capacity bidding program and recovery of costs to administer and implement the auctions.

By entering into the Joint Stipulation, the signatory parties agreed to shorten the requested term of the ESP from six (6) years to four (4), to commence on June 1, 2024

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[11] *Indus. Energy Consumers v. Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559 (1994).
[12] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

and end May 31, 2028. In addition, the Company agreed to file a base distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025.

Through negotiation, the Company agreed to modify certain requested riders requested in the Application, and to withdraw others. The Stipulation recommends approval of or modifications to a number of riders and tariffs, including: Distribution Investment Rider ("DIR"); Enhanced Service Reliability Rider ("ESRR"); Electric Transportation Plan ("ETP"); Interruptible Rider ("IRP"); gridSMART Rider; Smart City Rider; Energy Efficiency Rider; BTCR Pilot; Ohio First Rider; and the Distributed Generation Rider.

A. The Settlement satisfies the three-part test for Commission approval of stipulations.

1. The Settlement is a product of serious bargaining among capable, knowledgeable parties.

There was serious bargaining among capable and knowledgeable parties prior to the signing of the Stipulation. The parties engaged in a number of settlement discussions, including meetings with Staff and individual stakeholder groups and in negotiations including all intervening parties. As Ms. Mayhan testified, fourteen all-party bargaining sessions and ten breakout meetings were held, at which all parties were able to make comments or ask questions.[13] Significantly, no party was excluded from settlement negotiations, and all parties' positions were carefully considered in reaching the final

[13] Mayhan Testimony p. 19.

Stipulation.[14] Ms. Mayhan further documented the significant discovery interchange between the parties throughout the proceedings and leading up to the Stipulation.[15]

The list of signatory parties is large and represents diverse interests. In addition, the Ohio Telecom Association signed the Stipulation as a non-opposing party.

Despite the wide range of diverse interests represented by the signatory parties, diversity of interest is not required. Nor does opposition from non-signatory parties indicate that there was a lack of serious bargaining among capable, knowledgeable parties. Certainly, the abilities of these parties, Constellation, Calpine, OCC, and One Energy, is beyond question. Nor could there be any dispute that each was afforded ample opportunity to present their positions and arguments throughout the negotiation process. The evidentiary hearing was continued twice, by Entries of June 27, August 16, "in light of the progress toward a settlement and continuing negotiations among the parties." It is beyond reasonable dispute that there was serious bargaining among capable and knowledgeable parties prior to the signing of the Stipulation.

2. The Stipulation benefits ratepayers and the public interest.

The Commission must determine whether the Stipulation, as a package, benefits ratepayers and the public interest. That is, it must look at the overall impact of the Stipulation. There is no requirement that each individual provision, or that any particular provision, of the settlement must satisfy some "cost / benefit" analysis. If the package, as a whole, benefits ratepayers and the public interest, it should be approved. Because the

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14 Healey Testimony p. 4.
15 *Id*.

Stipulation benefits both ratepayers and the public interest, it should be approved.

In the recent AES Ohio ESP case, the Commission clearly reiterated the meaning of this element of the three-part test:

> As a preliminary matter, we note 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. . . . Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. . . . 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. . . . We, therefore, reaffirm that the Stipulation offered by the Signatory Parties in these proceedings must be viewed as a whole.[16]

There are two critical components in this explanation. First, it is not determinative that there may be other or different provisions that might *better* benefit ratepayers and the public interest. The non-signatory parties will claim that some provisions could have been improved, or that other proposals would produce greater benefits to one customer class or another. But settlement is almost always about compromise, and rarely does such *quid pro quo* maximize benefits for any customer or class. The standard is whether ratepayers benefit, not whether they could have benefitted more.

Similarly, the second critical component recognizes that benefits must be considered on balance, as a package. The argument that any one provision could have

[16] *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan (AES SSO),* Case Nos. 22-900-EL-SSO et al., Opinion and Order (Aug. 9, 2023) at ¶ 109 (internal citations omitted).

been improved or that a different proposal could provide greater benefits is not determinative in the Commission's consideration of the Stipulation as a package. As the Commission stated in AEP's last ESP case:

> [T]he benefits of the Stipulation are evaluated as a package. Not all ratepayers will benefit from each and every provision of the Stipulation; some provisions may impose costs on certain ratepayers. Nor are benefits accorded equally to all ratepayers and, therefore, the Commission considers the public interest benefits of the whole Stipulation.[17]

Although counsel for OCC questioned supporting witnesses at length about whether modifications of the Application should be considered a benefit, the Commission has consistently found settlement itself beneficial vis-à-vis litigation. The Commission has "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."[18]

Both AEP witness Mayhan and Staff witness Healey testified about the numerous benefits of the Stipulation. While many of the specific provisions have tangible benefits, discussed briefly below, Staff witness Healey particularly noted that it was significant that the rate impacts under the Stipulation are reasonable:

> [T]he rate increases resulting from implementation of the Stipulation are modest and reasonable. For example, I understand that according to AEP Ohio's bill impact

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[17] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan* (*AEP ESP 4*), Case Nos. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018) at ¶ 204.

[18] *AES SSO* at ¶ 109.

> calculations, a typical residential customer using 1,000 kWh per month would see a 2.0% increase on a total bill basis in 2024, followed by annual increases of around 0.5%—in total, an increase of less than 1% per year, or about $1.50 monthly.[19]

Also significant, as noted above, the signatory parties agreed to shorten the requested term of the ESP from six (6) years to four (4), to commence on June 1, 2024 and end May 31, 2028. In addition, the Company agreed to file a base distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025. Both of these measures provide substantial safeguards for ratepayers.

The benefits of the Stipulation, both to ratepayers and for the public interest, are numerous and widespread. Because this is a negotiated settlement, each party is likely to feel that some of the benefits that it sought were "left on the table." But the Commission's standard for evaluating stipulations does not require that agreements maximize benefits, or even result in the lowest cost to consumers. Rather, a stipulation must be reasonable, and provide benefits to ratepayers and the public.

The Stipulation includes numerous benefits. It recommends shortening the term of the ESP from that requested by the Company[20] and recommends adoption of the return on equity ("ROE") approved in AEP Ohio's most recent base distribution rate case for capital riders.[21] It defers any recovery for the Company's new customer information system ("CIS") to a future case rather than through a rider and ensures that the CIS has

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19 Healey Testimony, p. 5.
20 Mayhan Testimony, p. 6.
21 Healey Testimony, p. 6.

certain functionalities that are important to stakeholders, which may provide additional benefits to customers.[22]

Based on the record before the Commission, the Stipulation, as a package, benefits ratepayers and the public interest and therefore satisfies the second prong of the three-part test.

a. SSO Competitive Bidding Process

The Stipulation proposes to maintain the current SSO Competitive Bidding Process ("CBP"), with appropriate modifications. The Commission has consistently found continuation of a CBP to supply generation to SSO customers to be a key benefit of stipulations in ESP cases. "Provisions for the supply and pricing of electric generation service are the primary element of an ESP. R.C. 4928.143(B)(1)."[23]

Company witness Mayhan testified that "minor modifications to the auction rules and documentation" have been proposed to address "the volatility that customers have experienced with the energy markets and prolonged delays of PJM's base residual auctions (BRAs)."[24] Moreover, and significantly, the Company has consented to Commission jurisdiction should it determine to address auction issues in separate dockets during the ESP term.[25]

While non-signatory parties will undoubtedly argue that more significant modifications would produce greater benefits to some customers, the Stipulation must be

22 *Id.*
23 *AES SSO*, Opinion and Order at ¶ 110.
24 Mayhan Testimony, p. 5.
25 *Id.*

evaluated as a package, and the test is not whether there a different CBP would better benefit ratepayers.

b. Distribution Investment Rider ("DIR")

AEP Ohio plans to invest in its distribution system during the ESP V period, which it asserts is necessary to improve its reliability metrics and provide reliable service to customers. The Stipulation proposes to continue the DIR to facilitate the timely and efficient replacement of aging infrastructure to maintain or improve service reliability.

As originally proposed in AEP Ohio's application, there was no cap on DIR charges to ratepayers for what AEP Ohio referred to as "customer driven investments."[26] The Stipulation, in contrast, establishes DIR revenue caps that "include all customer investments."[27] The Stipulation specifies that the "Company's proposal in the Application to categorically exclude customer work from the DIR annual revenue caps will not be adopted."[28] In its Application, the Company characterized this "categorical exclusion" as a "need to excise any new customer/growth related distribution infrastructure investment from the DIR caps."[29] In testimony filed with the Application, Company witness Kratt described these "obligation to serve projects" as including

> capacity additions necessary for system improvement to serve new load, customer service work for new customer service lines or repair or upgrades to existing lines, third-party work requests to accommodate customers or developers on changes to the distribution or customer service lines, and public

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26 Healey Testimony, p. 6 (citing AEP Ohio's testimony in support the Application).
27 Mayhan Testimony, p. 10.
28 Joint Stipulation and Recommendation, Joint Ex. 1, p. 18, ¶ 23.
29 Ohio Power Company's Application for an Electric Security Plan, AEP Ex. 1, p. 12.

> project relocations necessary to accommodate government infrastructure changes.[30]

The Company currently recovers capital funding of these "customer work" projects through the DIR. It had proposed to separate the DIR into two categories, one for reliability projects, which would have an established cap, and one for "obligation to serve" projects, which would be uncapped. By including both categories under the Stipulation revenue caps for the DIR, the signatory parties have averted potentially unfettered DIR charges by the Company, and incentivized DIR spending on reliability-focused projects. Aside from saving customers nearly half a billion dollars as compared to AEP's Application, the Stipulation both reduces charges currently in the DIR and provides an additional credit.[31]

Further, in considering whether to approve the DIR, R.C. 4928.143(B)(2)(h) requires that the Commission examine the reliability of the utility's distribution system, ensure that the reliability expectations of the distribution utility and its customers are aligned, and determine whether the utility is placing sufficient emphasis on, and dedicating sufficient resources to, the reliability of its distribution system. The evidence of record provides ample opportunity for the Commission to make such examination and determination. The testimony of OCC witness Buckley provides a comprehensive table detailing AEP's reliability performance as compared with its standards, allowing the Commission to examine the reliability of its distribution system and see that with limited

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[30] Direct Testimony of Thomas A. Kratt in Support of AEP Ohio's Electric Security Plan (Jan. 6, 2023), p. 3.
[31] Healey Testimony, p. 6.

exceptions in 2018 and 2019, AEP Ohio has consistently met its reliability metrics for the last decade.[32]

Further, pursuant to Ohio Adm.Code 4901:l-10-10(B)(4)(b), a survey is to be conducted, at least every three years, to measure the reliability expectations of AEP Ohio's customers. AEP's 2021 Customer Reliability Survey was admitted through the cross-examination of OCC witness Williams.[33] The survey, as it relates to reliability, reveals that AEP Ohio's customers want power to be restored quickly in the event of an outage and power outages to be kept to a minimum.[34] Company witness Mayhan testified that investments made through the DIR program will allow AEP to improve or maintain reliability.[35] The Commission has also previously found that AEP's DIR facilitates the timely replacement of aging infrastructure, improving and maintaining service reliability, and is an appropriate component of an ESP that "affords the benefit of reliable service to all customers."[36] Based on this evidence, the Commission should conclude that the requirements of R.C. 4928.143(b)(2)(h) have been met under the Stipulation.

c. Enhanced Service Reliability Rider ("ESRR")

AEP's Enhanced Service Reliability Rider recovers vegetation management program costs. The vegetation management program is critical to clearing circuits of trees and vegetation that could pose a danger to Company lines and poles and, therefore,

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32 Buckey Testimony, p. 17.
33 Tr. Vol. II, p. 380.
34 AEP Ohio 2021 Customer Reliability Survey, AEP Ex. 5.
35 Tr. Vol. I at 44.
36 *AEP ESP IV*, Opinion and Order at ¶ 189.

reduces the risk of weather-related events. The program is essential to securing safe and reliable electric service for customers.

The ESRR was authorized in the Company's first ESP case, and has been modified and reapproved in each of AEP's subsequent SSO cases. In the Company's *ESP IV* case, the Commission was

> The Commission continues to find significant benefit in proactive, cycle-based, end-to-end vegetation management along the Company's circuits and rights of way as an effective means of reducing and preventing outages and service interruptions caused by vegetation. . . . Accordingly, the Commission finds that the ESRR benefits electric consumers and the public interest, as the program enhances service reliability, particularly the electric system's ability to withstand weather-related events.[37]

The ESRR as proposed would continue the ESRR through May 31, 2028 and remains essentially unchanged from its approval in the *ESP IV* case, subject to new annual spending caps. Further, the Stipulation benefits ratepayers by reducing the cap on charges by more than $20 million annually as compared with the Application.[38] The only change to adjustment of the rider is the recommendation that filings be approved automatically 60 days after filing unless otherwise ordered by the Commission. The mechanism would continue to be audited annually.

Company witness Mayhan testified that the Company's reliability has improved by 80% since the ESRR began in 2010.[39] Staff witness Healey testified that the

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37 *AEP ESP IV*, Opinion and Order at ¶ 196.
38 Healey Testimony, p. 7.
39 Tr. Vol. I, p. 478.

vegetation management program is important to allow the company to maintain or improve reliability.[40]

d. Electric Transportation Plan ("ETP")

The Stipulation lowers the amount that customers would pay for the ETP (as compared to the Application) by more than $90 million.[41] It retains a $300,000 annual commitment for customer education, recoverable through the existing gridSMART Rider.[42] In addition, the Company will implement time-of-use rates in certain of its schedules.

e. Interruptible Rider ("IRP")

The Stipulation continues important interruptible power programs, expanding the amount of interruptible capacity to be available in the Expanded IRP (IRP-E) while gradually reducing the demand credits for the legacy program (IRP-L) during the ESP term, thus providing benefits to ratepayers who pay for the program. These programs require participants to curtail usage when the grid is stressed, enhancing reliability.[43]

The Commission has consistently found that the IRP programs provide flexible options for energy intensive customers, promotes energy efficiency, further Ohio's effectiveness in the global economy, and enhance service reliability.[44]

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[40] Healey Testimony, p. 9.
[41] Healey Testimony, p. 7.
[42] Mayhan Testimony, p. 7.
[43] Healey Testimony, p. 9.
[44] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al*., Opinion and Order (Aug. 8, 2012), p. 26, 66; *In the Matter of the Application Ohio Power Company to Establish a Standard Service Offer Pursuant to Section 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, *et al*., Opinion and Order (Apr. 25, 2018) at ¶ 140.

f. Energy Efficiency Rider

The Stipulation supports programs for low-income customers through residential energy efficiency programs. This includes $10 million annually for HELP, the Company's High Efficiency for Low-Income Program, which provides weatherization and other measures that can reduce low-income customers' energy usage (and thereby reduce bills) and increase comfort and safety. An additional $400,000 is budgeted for the Neighbor-to-Neighbor program that leverages matching donations from other customers for the benefit of low-income customers. Also included is "e3smart" program that provides energy education to schoolchildren.[45]

g. BTCR Pilot

The Stipulation proposes to continue the BTCR, gradually increasing the MW participation cap by 100 MW per year during the ESP term. In addition, the Stipulation recommends a new pilot program for customer-sited battery energy storage systems and public transit electric vehicle loads. Significantly, the signatory parties agreed that the BTCR Pilot program should be audited by a third-party auditor chosen by the Commission.

Calpine witness Merola whose testimony addressed only the Application and not the Stipulation[46], was critical of continuing the BTCR Pilot "as previously established

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45 Mayhan testimony, p. 12; Healey Testimony, p. 8.

46 The Attorney Examiner agreed to admit Ms. Merola's testimony, inviting objecting parties to "reduce their arguments as to admissibility to writing and include it as part of their brief." Tr. Vol. III at 434. Staff is generally in agreement with the Company that the scope of the evidentiary hearing was limited to determining whether the Stipulation should be adopted, and that testimony not addressing the ESP proposal as modified by the Stipulation is not relevant, and, therefore, should not be admitted. Staff, however, believes that the BTCR as modified benefits

without any evaluation."[47] The Stipulation, of course, provides for such an evaluation. Staff would expect that any such audit would also evaluate whether the BTCR rates, as designed, appropriately reflect cost causation principles.

h. Ohio First Rider

Recommended as a $0 placeholder rider, this mechanism is intended to recover costs associated with projects approved for federal funding. The rider would automatically sunset if not populated by June 1, 2026.[48]

3. The Stipulation does not violate any important regulatory principle or practice.

The General Assembly has provided a list of policies it intends to promote through electric regulation restructuring in R.C. 4928.02. The Commission has recognized that the state policy codified by the General Assembly in Chapter 4928, Revised Code, sets forth important objectives. And it has determined that, in determining whether an ESP meets the requirements of R.C. 4928.143, it will take into consideration the policy provisions of R.C. 4928.02 and use those policies as a guide in its implementation of R.C. 4928.143.

Company witness Mayhan testified that the stipulated ESP promotes a number of the policies set forth in R.C. 4928.02, specifically enumerating a dozen policies advanced

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ratepayers and the public interest, as evidenced by the fact that CRES providers were signatory parties to the Stipulation, and because provisions for an audit have been included. Staff reserves the right to opine on the admissibility of Ms. Merola's testimony on reply as it deems appropriate.

47 Merola Testimony, p. 5.

48 Mayhan Testimony, p. 14.

by the Stipulation. "None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice."[49]

Staff witness Healey echoed that opinion. Specifically, Mr. Healey testified that

> the Stipulation supports important regulatory policies and principles, including facilitation of just and reasonable rates, promotion of investments in the utility's that are system designed to provide safe and reliable service to customers, economic development in the State of Ohio, support for competitive generation rates through the Company's SSO, administrative efficiency in resolving numerous complex issues raised in this proceeding, and consistency with many State policies under R.C. 21 4928.02.[50]

The Stipulation complies with all relevant and important regulatory principles and practices. R.C. 4928.02 provides guidelines for the Commission to weigh in evaluating an electric distribution utility's SSO. The Stipulation, as outlined in greater detail above, ensures the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. The Stipulation will ensure that AEP Ohio has the appropriate programs and infrastructure to provide reliable and sufficient supply of retail electric service for its customers.

B. The Stipulated ESP Passes the ESP vs. MRO Test

R.C. 4928.143 sets out the requirements for approval of an ESP. The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the

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[49] Mayhan Testimony, p. 24.
[50] Healey Testimony, p. 11.

expected results that would otherwise apply under R.C. 4928.142 (MRO Test). The Supreme Court of Ohio has determined that R.C 4928.143(C)(1) does not bind the Commission to a strict price comparison, but rather instructs the Commission to consider pricing, as well as all other terms and conditions.[51] Therefore, the Stipulation as a total package should be considered, including both a quantitative and qualitative analysis.

The record demonstrates that the Stipulation is, in fact, more favorable to customers, evaluated from a quantitative and a qualitative perspective, than would be expected of an MRO, and should be approved. Compliance with the MRO Test was attested to by both Company witness Mayhan and Staff witness Healey, both of whom considered both quantitative and qualitative factors included as part of the Stipulation.[52]

Company witness Mayhan opined that the stipulated ESP is more favorable to customers from both a qualitative and quantitative perspective.[53] Significantly, she noted that mechanisms such as the DIR and ESRR "provide a streamlined approach to recovering many of the costs associated with investment in distribution infrastructure and vegetation management costs." [54] These are costs that would otherwise be "recoverable from customers through base distribution cases although with higher costs to customers and other parties as a result of the added complexity of a distribution base case."[55] Such streamlining, of course, incentivizes the Company to accelerate reliability improvements compared to traditional base case ratemaking.

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51 *Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501.
52 Healey Testimony, p. 12.
53 Mayhan Testimony, p. 16.
54 *Id*.
55 *Id*.

Among other quantifiable benefits, Ms. Mayhan testified that the Energy Efficiency Rider and associated energy efficiency programs would provide a gross benefit to customers, unavailable under an MRO, of roughly $22 million annually. She also observed that the agreed-upon Ohio First Rider would permit the Company to pursue and implement federally funded projects without waiting for a base rate case.[56]

She also emphasized the qualitative benefits of the Stipulation. The various programs and riders proposed are expected to increase rate stability, economic development, increased demand response, and more efficient use of the transmission grid. "The quantifiable benefits in combination with the non-quantifiable benefits." She concluded, "clearly demonstrate that the provisions of the ESP as modified by the Stipulation are more favorable in the aggregate than what would be expected under an MRO."[57]

At the outset, Staff witness Healey testified that "the results under the Stipulation and an MRO would be the same because the Stipulation recommends continuation of market-based SSO auctions that would be expected to yield the same results as an MRO." In addition to the numerous benefits described above, Mr. Healey testified that:

> Quantitative benefits under the Stipulation include $450,000 per year in shareholder dollars under the Economic Development plan, bill reductions to low-income customers under the proposed energy efficiency programs, and the availability of time-of-use rates to encourage off-peak electric vehicle charging. The Stipulation also provides qualitative benefits, including facilitating investments in reliability, ensuring certain functionalities in AEP Ohio's CIS investment,

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56 *Id.*, p. 17.

57 *Id.*, p. 18.

> promoting economic development in the State of Ohio, and requiring AEP Ohio to file a base rate case.[58]

In balancing those factors, he concluded that the benefits added by the ESP outweigh any added costs, should the Commission find any.[59]

The Company's ESP, as modified by the Stipulation, satisfies the MRO test. The stipulated ESP here is beneficial because it ensures lower costs for ratepayers by eliminating proposed charges and imposing caps on riders like the DIR, both of which weigh in favor of passage of the test.

IV. CONCLUSION

For the above-stated reasons, the Commission should approve the Stipulation agreed to in this case.

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58 Healey Testimony, p. 12-13.
59 Healey Testimony, p. 13.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the below parties, this 1st day of December, 2023.

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