

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of |) | |
| Ohio Power Company for Authority to |) | |
| Establish a Standard Service Offer |) | Case No. 23-0023-EL-SSO |
| Pursuant to §4928.143, Ohio Rev. Code, |) | |
| In the Form of an Electric Security Plan |) | |

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| In the Matter of the Application of |) | |
| Ohio Power Company for Approval of |) | Case No. 23-0024-EL-AAM |
| Certain Accounting Authority |) | |

**INITIAL POST HEARING BRIEF OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. Introduction

In this proceeding, Ohio Power Company (“AEP”) filed an application for approval of its fifth electric security plan (“ESP V”) pursuant to R.C. 4928.143. The Stipulation and Recommendation (“Stipulation”) that is currently before the Public Utilities Commission of Ohio (the “Commission”) is the product of numerous and lengthy settlement meetings, where all parties were invited to attend and participate. Those meetings culminated in a Stipulation signed by the vast majority of parties to this proceeding including AEP, Ohio Partners for Affordable Energy (“OPAE”), Commission Staff (“Staff”), and 14 other parties representing diverse and varied interests. One other party signed the Stipulation as a non-opposing party. The Stipulation is the product of serious bargaining among capable, knowledgeable parties which, as a package, benefits customers and the public interest. The Stipulation does not violate any important regulatory principle or practice.

The Stipulation will provide numerous benefits including reliability improvements, economic development opportunities, and programs to support low-income customers within AEP's service territory. In the aggregate, the benefits of the Stipulation demonstrate that it proposed an ESP more favorable than a market rate offer ("MRO").

OPAE hereby files this Initial Brief to respectfully request the Commission adopt the Stipulation without modification.

II. Legal Standard

Pursuant to Section 4928.141(A) of the Ohio Revised Code, each electric distribution utility is required to provide a standard service offer in accordance with Sections 4928.142 or 4928.143. Section 4928.143(C)(1) provides that the Commission:

[S]hall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

The Commission considers both quantitative and qualitative factors in its analysis.¹ Specifically, all provisions of a proposed ESP are considered as a "total package."² The record reflects that the total benefits of the Stipulation, in the aggregate, including the quantitative and

¹ See *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. 13-2385-EL-SSO, Opinion and Order at 94 (Feb. 25, 2015) ("AEP ESP 3 Order"); *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 56 (July 18, 2012) ("FirstEnergy ESP 3 Order"); See also *In re Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, ¶ 27 (2011). ("Moreover, while it is true that the commission must approve an electric security plan if it is 'more favorable in the aggregate' than an expected market-rate offer, that fact does not bind the commission to a strict price comparison. On the contrary, in evaluating the favorability of a plan, the statute instructs the commission to consider 'pricing and all other terms and conditions.' Thus, the commission must consider more than price in determining whether an electric security plan should be modified.") (emphasis in original).

² See AEP ESP 3 Order at 94.

qualitative benefits, demonstrate that it is considerably more favorable in the aggregate as compared to the expected results of an MRO under Section 4928.142 of the Revised Code.

Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The approval of a stipulation requires a Commission finding that the stipulation at issue is reasonable.³ A finding of reasonableness is contingent upon a proposed stipulation satisfying each prong of the three-prong test. Specifically, a reasonable stipulation must:

- (1) be a product of serious bargaining among capable, knowledgeable parties;
- (2) as a package, benefit customers and the public interest; and
- (3) not violate any important regulatory principle or practice.⁴

Under Ohio Supreme Court precedent, the Commission may properly give substantial weight to the terms of a stipulation.⁵

III. The Stipulation Satisfies All Three Parts of the Commission's Test for Approval of a Stipulation.

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

Parties to this case were all invited to participate in numerous and lengthy settlement meetings which led to the negotiation of this Stipulation. As Staff Witness Healey testified, all parties were afforded an opportunity to be heard and have their issues made known and

³ See, e.g., *FirstEnergy ESP 3* Order at 24; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison 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 No. 10-388-EL-SSO, Opinion and Order at 20 (Aug. 25, 2010).

⁴ *Consumers' Counsel v. Pub. Util. Comm'n*, 64 Ohio St.3d 123, 126 (1992). See, also, *AK Steel Corp. v. Pub. Util. Comm'n*, 95 Ohio St.3d 81, 82-83 (2002).

⁵ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125, 592 N.E.2d 1370 (1992). Citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 9 O.O.3d 122, 378 N.E.2d 480 (1978). ("The commission, of course, is not bound to the terms of any stipulation; however, such terms are properly accorded substantial weight. Likewise, the commission is not bound by the findings of its staff. Nevertheless, those findings are the result of detailed investigations and are entitled to careful consideration.")

considered.⁶ All the parties who have signed on either in support or non-opposition are also knowledgeable, capable parties who were represented by experienced and competent counsel.⁷ Further, these parties represent a diverse group of interests such as: a low-income residential customer advocate; industrial customer groups; competitive retail energy suppliers; a hospital trade group; environmental groups, national and regional retailers, and another consumer advocate group.⁸ Further Staff, who must balance the needs of the utility and its customers, also participated and has joined the Stipulation. The negotiation process in this proceeding was fair, transparent, and open to all parties. Therefore, the Stipulation is the culmination of extensive negotiation among capable and knowledgeable parties and represents a fair and balanced compromise of the interests of those parties.

B. The Stipulation, as a package, benefits customers and the public interest.

The Stipulation, as a package, benefits customers and the public interest by improving AEP's reliability, supporting low-income residential customers, and saving customers money through the elimination of certain charges.⁹

AEP will improve its reliability through comprehensive vegetative management,¹⁰ continuing interruptible power programs which reduce usage during periods of peak demand on the grid,¹¹ and implementing a new demand response program to similarly lower usage during periods of peak demand.¹²

The Stipulation will protect low-income customers. The Stipulation calls for a low-income weatherization program for customers with incomes up to 200% of the federal poverty line with

⁶ Staff Ex. 1 p. 4 lines 3-13.

⁷ Id. lines 3-5.

⁸ Id. lines 7-15.

⁹ Id. p. 6 lines 16-19, p. 7 lines 6-8, p. 8 lines 6-13, p. 9 lines 7-9.

¹⁰ Id. p. 9 lines 11-13.

¹¹ Id. lines 15-18.

¹² Id. p. 10 lines 1-5.

an annual budget of \$8 million – an increase over the amount originally proposed by AEP.¹³ The low-income program also includes a supplemental program with eligibility to those making up to 300% of the federal poverty level.¹⁴ To further protect customers, the programs will be administered by a third party chosen through a competitive bid process.¹⁵

The Stipulation supports reliability in AEP's service territory, supports low-income customers both through weatherization, bill payment assistance, and education to help them achieve and maintain electric service, among other benefits. The Stipulation provide significant benefits to customers and the public interest.

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

The Stipulation does not violate any important regulatory principle or practice. The Stipulation furthers the policies of the state codified in R.C. 4928.02. Specifically, the Stipulation will help ensure the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. This is particularly true as the Stipulation provides for increased investment in the distribution grid without unreasonable bill increases being foisted upon customers. The Stipulation further provides protections for at-risk populations—also consistent with Section 4928.02—through annual funding to programs targeted to assist low-income customers, including elderly, and disabled customers. Finally, the Stipulation facilitates the state's effectiveness in the global economy by offering critical economic development incentives for businesses operating in Ohio.

¹³ Joint Exhibit 1 p. 25.

¹⁴ Id. p. 26.

¹⁵ Id.

IV. The Stipulation is More Favorable in the Aggregate as Compared to the Expected Results of an MRO.

In order to approve an ESP, R.C. 4928.143(C)(1) requires the Commission determine that:

[T]he electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

This test requires the Commission to consider both qualitative and quantitative aspects of the Stipulation as compared to an MRO.¹⁶ Both Staff Witness Healey and AEP Witness Mayhan testified to the benefits of the Stipulation over a hypothetical MRO. From a quantitative perspective, the Stipulation is similar to an MRO because AEP will implement a competitive bid process to secure energy for its standard offer rate just as it would under an MRO. From a qualitative perspective, customers benefit under the Stipulation far more than they would under an MRO. Those benefits, described above, include low-income assistance programs, reliability improvements, and economic development that would not be present in an MRO. Therefore, the ESP is more favorable in the aggregate than an MRO.

V. Conclusion

The Stipulation is the product of serious bargaining among capable, knowledgeable parties and, as a package, benefits customers and the public interest. The Stipulation does not violate any important regulatory principle or practice and is more favorable in the aggregate than an MRO. Therefore, OPAE respectfully requests that the Commission adopt the Stipulation without modification.

¹⁶ *In re Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, ¶ 27 (2011). (“Moreover, while it is true that the commission must approve an electric security plan if it is ‘more favorable in the aggregate’ than an expected market-rate offer, that fact does not bind the commission to a strict price comparison. On the contrary, in evaluating the favorability of a plan, the statute instructs the commission to consider ‘pricing *and all other* terms and conditions.’ Thus, the commission must consider more than price in determining whether an electric security plan should be modified.”)

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CERTIFICATE OF SERVICE

I certify that The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case on this the 1st day of December 2023.

/s/ Robert Dove
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Summary: Text Initial Post-Hearing Brief electronically filed by Mr. Robert Dove on behalf of Ohio Partners for Affordable Energy.