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 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Case No. 23-23-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	)))	Case No. 23-24-EL-AAM

JOINT POST-HEARING BRIEF OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP AND THE KROGER CO.

Kimberly W. Bojko (0069402)
(Counsel of Record)
Emma Y. Easley (0102144)
Carpenter Lipps LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4124
bojko@carpenterlipps.com
easley@carpenterlipps.com
(willing to accept service by email)

Counsel for the Ohio Manufacturers' Association Energy Group

Angela Paul Whitfield (0068774)
(Counsel of Record)
Carpenter Lipps LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

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I. INTRODUCTION

The record evidence submitted in this case overwhelmingly demonstrates that the Stipulation and Recommendation that was filed on September 6, 2023 (Stipulation),[1] as a package, represents a just and reasonable resolution of the issues related to the January 6, 2023 Application to implement a fifth Electric Security Plan (ESP V) filed by the Ohio Power Company (AEP).[2] Nearly every party in this proceeding, including the Staff of the Public Utilities Commission of Ohio (Commission), the Ohio Manufacturers' Association Energy Group (OMAEG), and The Kroger Co. (Kroger), agreed to either join or not oppose the Stipulation. Given this large, diverse group of knowledgeable and capable Signatory and Non-Opposing Parties, the Commission should

[1] *See* Joint Ex. 1 (Joint Stipulation and Recommendation (Stipulation)) (September 6, 2023).

[2] AEP Ex. 1 (AEP Ohio's Application (Application)) (January 6, 2023).

adopt the Stipulation in its entirety to efficiently and equitably resolve numerous complex issues related to AEP's ESP V Application in a just and reasonable manner that is in the public interest.

Contrary to claims raised by the few parties opposing the Stipulation,[3] the Stipulation is the product of serious bargaining between capable, knowledgeable parties, and, as a package, is reasonable, serves the public interest, benefits ratepayers, and does not violate any important regulatory principles or practices.

In short, the manifest weight of the record evidence in this case demonstrates that the Stipulation, as a package, satisfies the criteria established by the Commission's three-part test for evaluating the reasonableness of a settlement. As such, OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety and issue an order consistent with the recommendations therein.

II. FACTS AND BACKGROUND

On January 6, 2023, AEP filed its Application for ESP V in the above-captioned cases. In its Application, AEP proposed over $4 billion in new and increased customer charges for various initiatives over the proposed six-year term of ESP V.[4] For example, AEP's Application proposed continuing the Distribution Investment Rider (DIR) and Enhanced Service Reliability Rider (ESRR) with significantly increased annual revenue caps, the former of which excluded "customer-driven investments" from the annual caps.[5] Additionally, AEP sought to implement an

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[3] The Office of the Ohio Consumers' Counsel (OCC) opposed the Stipulation, as well as Calpine Retail Holdings (Calpine), Constellation Energy Generation, LLC, and Constellation NewEnergy, Inc. (Constellation), and One Energy Enterprises (OEE), each of which opposed specific portions of the Stipulation. *See* Tr. Vol. I–V.

[4] *See* AEP Ex. 1 (Application).

[5] AEP Ex. 1 at 12–13 (Application).

energy efficiency plan that would cost approximately $43.4 million a year,[6] implement an Electric Transportation Plan (ETP) that would have cost customers over $90 million over the ESP term,[7] continue its limited Basic Transmission Cost Rider (BTCR) Pilot program participation,[8] and continue discriminatory access to the Interruptible Power Discretionary (IRP) programs.[9] AEP also sought a return on equity (ROE) of 10.65%.[10]

In order to protect their interests and their members' interests from excessive and unreasonable increases in electric charges and tariff changes, OMAEG and Kroger intervened in the above-captioned cases. OMAEG filed its motion to intervene on January 18, 2023.[11] Kroger filed its motion to intervene on February 9, 2023.[12] The Commission granted all motions to intervene on April 17, 2023.[13]

Following months of robust and lengthy settlement negotiations, as well as extensive discovery by many intervening parties,[14] the Signatory and Non-Opposing Parties reached a settlement agreement and filed the Stipulation on September 6, 2023.[15] The Stipulation resolves all outstanding issues in the above-captioned cases in a manner that is consistent with the Commission's three-part test.

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[6] AEP Ex. 1 at 17 (Application); Tr. Vol. III at 481 (Shutrump Cross); and AEP Ex. 2 at 12 (Mayhan Direct).

[7] AEP Ex. 1 at 13 (Application); Staff Ex. 1 at 7 (Healey Direct).

[8] AEP Ex. 1 at 18 (Application).

[9] AEP Ex. 1 at 19 (Application).

[10] Staff Ex. 1 at 7 (Healey Direct).

[11] Motion to Intervene and Memorandum of Support of The Ohio Manufacturers' Association Energy Group (January 18, 2023).

[12] Motion to Intervene and Memorandum of Support of The Kroger Co. (February 9, 2023).

[13] Entry at ¶ 6–7 (April 17, 2023).

[14] AEP Ex. 2 at 19 (Mayhan Direct); Staff Ex. 1 at 4 (Healey Direct).

[15] Joint Ex. 1 (Stipulation).

More specifically, a large and diverse group of Signatory and Non-Opposing Parties joined the Stipulation. The Signatory Parties include Staff, AEP, OMAEG, Kroger, Armada Power, Citizens' Utility Board of Ohio (CUB Ohio), Direct Energy Business LLC and Direct Energy Services LLC (Direct Energy), Enel North America, Inc. (Enel), Environmental Law & Policy Center (ELPC), Interstate Gas Supply, LLC (IGS), Ohio Energy Group (OEG), Ohio Energy Leadership Council (OELC), Ohio Environmental Council (OEC), Ohio Hospital Association (OHA), Ohio Partners for Affordable Energy (OPAE), Retail Energy Supply Association (RESA), and Walmart, Inc. (Walmart).[16] Additionally, the Ohio Telecom Association joined the Stipulation as a Non-opposing Party,[17] and the Ohio Cable Telecommunications Association filed a letter stating that it would not oppose the Stipulation.[18]

The Stipulation recommends a settlement package that provides significant benefits for customers and the public interest and complies with Ohio law and Commission regulations. As described in detail below, the Stipulation offers many benefits for customers, including, but not limited to the following:

1. Reduction to AEP's proposed ESP V term;[19]
2. Reduction to AEP's proposed ROE for capital riders;[20]
3. Expansion of the BTCR Pilot Program and increase of the megawatt (MW) cap by 100 MW per year;[21]

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[16] Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); and Staff Ex. 1 at 3 (Healey Direct).

[17] Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); and Staff Ex. 1 at 3 (Healey Direct).

[18] OCTA Letter; AEP Ex. 2 at 3 (Mayhan Direct).

[19] Joint Ex. 1 at 6 (Stipulation); AEP Ex. 2 at 4 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

[20] Joint Ex. 1 at 11 (Stipulation); AEP Ex. 2 at 6 (Mayhan Direct); and Staff Ex. 1 at 7 (Healey Direct).

[21] Joint Ex. 1 at 29–30 (Stipulation); AEP Ex. 2 at 13–14 (Mayhan Direct).

4. Creation of a new BTCR 6 CP pilot program for customer-sited battery energy storage systems (BESS) and public transit electric vehicles;[22]

5. Expansion of the IRP – Expanded (IRP-E) and increase of the MW cap from 160 MW to 215 MW;[23]

6. Elimination of AEP's request to implement a new proposed Customer Experience Rider (CER);[24]

7. Elimination of AEP's request to implement a new proposed Rural Access Rider (RAR) and proposed dark fiber projects;[25]

8. Elimination of AEP's proposed incentives available under the ETP;[26]

9. Elimination of AEP's request to implement energy efficiency programs for non-low-income customers;[27]

10. Elimination of AEP's request to implement a new proposed Governmental Aggregation Standby Rider (GASR);[28]

11. Elimination of AEP's request to implement a new proposed Residential Senior Citizen Tariff;[29]

12. Discontinuation of the Smart City Rider;[30]

13. Reduction to the amount collected from customers through the DIR;[31]

14. Implementation of revenue caps on DIR customer-driven investments;[32]

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[22] Joint Ex. 1 at 30–31 (Stipulation); AEP Ex. 2 at 13–14 (Mayhan Direct).

[23] Joint Ex. 1 at 15–18 (Stipulation); AEP Ex. 2 at 8–10 (Mayhan Direct).

[24] Joint Ex. 1 at 24 (Stipulation); AEP Ex. 2 at 11 (Mayhan Direct).

[25] Joint Ex. 1 at 27 (Stipulation); AEP Ex. 2 at 13 (Mayhan Direct).

[26] Joint Ex. 1 at 12 (Stipulation); AEP Ex. 2 at 7 (Mayhan Direct).

[27] Joint Ex. 1 at 25 (Stipulation); AEP Ex. 2 at 12 (Mayhan Direct).

[28] Joint Ex. 1 at 6 (Stipulation); AEP Ex. 2 at 5 (Mayhan Direct).

[29] Joint Ex. 1 at 34 (Stipulation); AEP Ex. 2 at 15 (Mayhan Direct).

[30] Joint Ex. 1 at 24 (Stipulation); AEP Ex. 2 at 11 (Mayhan Direct).

[31] Joint Ex. 1 at 19–20 (Stipulation); AEP Ex. 2 at 10 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

[32] Joint Ex. 1 at 18 (Stipulation); AEP Ex. 2 at 10 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

15. Elimination of the DIR annual revenue cap rollover provision;[33]

16. Reduction to the amount collected from customers through the ESRR;[34] and

17. Elimination of AEP's proposal to include charges for its new customer information system (CIS) through the CER.[35]

After filing the Stipulation, all parties participated in an evidentiary hearing that concluded on November 3, 2023, wherein testimony and evidence were presented in support of the Commission's approval of the Stipulation as a package. Following the evidentiary hearing, the Commission directed interested parties to submit initial post-hearing briefs by December 1, 2023, and reply briefs by December 22, 2023.[36]

In accordance with that directive, OMAEG and Kroger hereby submit this joint initial post-hearing brief in support of the Stipulation. As was demonstrated at the evidentiary hearing and as explained herein, the Stipulation is a product of serious bargaining among capable and knowledgeable parties; will create significant benefits for customers and, as a package, is in the public interest; and does not violate any important regulatory principles or practices. As a whole, the Stipulation is just and reasonable and in the public interest, and accordingly, should be approved by the Commission.

III. ARGUMENT

The record in this case clearly demonstrates that the Stipulation should be adopted because the manifest weight of the evidence establishes that the Stipulation satisfies the Commission's three-part test for evaluating settlements and determining whether to adopt the recommendations

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[33] Joint Ex. 1 at 20 (Stipulation).

[34] Joint Ex. 1 at 11 (Stipulation); AEP Ex. 2 at 7 (Mayhan Direct); and Staff Ex. 1 at 7 (Healey Direct).

[35] Joint Ex. 1 at 6 (Stipulation); AEP Ex. 2 at 6 (Mayhan Direct); and Staff Ex. 1 at 7 (Healey Direct).

[36] Tr. Vol. 5 at 892.

from a stipulation. The Supreme Court of Ohio has endorsed the Commission's use of this three-part test "to resolve cases in a manner economical to ratepayers and public utilities" and has "affirmed that the Commission may place substantial weight on the terms of a stipulation."[37] As part of its evaluation, the Commission considers the following:

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?[38]

In this case, a large group of capable, knowledgeable parties participated in numerous settlement meetings, over the course of several months, where the parties engaged in negotiations regarding AEP's proposed riders, tariffs, and other programs. These settlement meetings ultimately led to the almost unanimous Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding in a way that benefits ratepayers and the public interest, and does not violate any important regulatory principles or practices. The weight of the evidence presented by the parties demonstrates that the Stipulation, as a package, satisfies the Commission's three-part test, and should be adopted by the Commission in its entirety.

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

When considering whether the parties to a stipulation are capable and knowledgeable, the Commission acknowledges that the parties involved in the proceeding are in the best position to

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[37] *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing Consumers' Counsel v. Public Util. Comm*., Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992).

[38] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125–26 (1992).

evaluate their own best interests and costs, and "expects that parties to Settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation."[39] There is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory.[40] Additionally, the Commission has consistently considered "knowledgeable" in terms of whether parties are knowledgeable about the Commission's processes, regulatory matters, and the terms of the settlement being negotiated.[41]

The record in this case clearly demonstrates that the Stipulation resulted from an extensive and robust bargaining process between a large and diverse group of parties, who were represented by experienced and knowledgeable counsel. As noted by Staff witness Healey:

> The Stipulation was the product of extensive negotiations among AEP Ohio, Staff, and 24 intervening parties, all of whom are capable and knowledgeable parties represented by experienced counsel.[42]

Additionally, none of the parties opposing the Stipulation in part or in whole contested whether the parties involved are capable and knowledgeable.[43]

All of the parties are capable and knowledgeable as they were represented by attorneys, most if not all of whom have years of experience in regulatory matters before the Commission and who possess or their clients possess extensive information.[44] Over the course of several months,

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[39] *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (December 30, 2020).

[40] *Id*.

[41] *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR et al., Opinion and Order at ¶ 100 (December 14, 2022) ("all parties, both signatory and non-signatory, are represented by capable and knowledgeable counsel familiar with Commission proceedings"); Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 ("each of the parties is represented by competent, capable, and knowledgeable counsel familiar with Commission proceedings and with access to technical experts").

[42] Staff Ex. 1 at 3 (Healey Direct). *See also* AEP Ex. 2 at 19 (Mayhan Direct); and Tr. Vol. I at 48 (Mayhan Cross).

[43] Tr. Vol. II at 307 (Fortney Cross). *See also* Tr. Vol. IV at 669 and 671 (Morgan Cross).

[44] AEP Ex. 2 at 19 (Mayhan Direct); Staff Ex. 1 at 3 (Healey Direct).

these parties engaged in "no fewer than 14 global settlement meetings in which all parties were invited to participate"[45] and "over ten breakout meetings to focus on certain topics."[46] Numerous email and phone communications took place between the parties, and numerous versions of the term sheet language were circulated amongst the parties, which allowed parties many opportunities to share their perspectives, ask questions, and engage in productive discussions about issues.[47] These settlement negotiations were conducted at arm's length, and all intervening parties "were invited to these meetings, and no party was left out of the opportunity to negotiate" the proposed Stipulation provisions.[48]

Moreover, although diversity of interests of the parties involved in settlement negotiations is not a requirement of the Commission's review of the reasonableness of a Stipulation,[49] to the extent the Commission may consider it, not only do the Signatory Parties and Non-Opposing Parties represent a diverse group of varied interests, but so do all of the parties in this case.[50] In addition to AEP and Commission Staff, representatives of commercial and industrial customers, low-income customer advocates, retail customers, market participants, suppliers, environmental advocates, hospitals, and telecommunication groups were all involved in negotiations and signed onto or agreed to not oppose the Stipulation.[51]

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[45] Staff Ex. 1 at 4 (Healey Direct). *See also* AEP Ex. 2 at 19 (Mayhan Direct).

[46] AEP Ex. 2 at 19 (Mayhan Direct). *See also* Staff Ex. 1 at 3 (Healey Direct).

[47] Staff Ex. 1 at 3 (Healey Direct). *See also* AEP Ex. 2 at 19 (Mayhan Direct).

[48] AEP Ex. 2 at 19 (Mayhan Direct). It should be noted that the four parties opposing the Stipulation was involved in all of these negotiations.

[49] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposed to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 52 (March 31, 2016) (noting that "[t]he three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate [a] diversity of interest component [. . .]").

[50] Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); and Staff Ex. 1 at 3 (Healey Direct).

[51] Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); Staff Ex. 1 at 3 (Healey Direct); and OCTA Letter.

Therefore, the record in this case clearly demonstrates that the Stipulation results from a fair and open bargaining process between a large and diverse group of knowledgeable and capable parties. While there is no requirement that the negotiating parties represent diverse interests to satisfy this prong, the parties involved in this case do in fact represent diverse and competing interests, which resulted in a number of perspectives being considered during the months-long bargaining process. As such, the Stipulation satisfies the first prong of the Commission's three-part test.

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

As the Commission has affirmed, "the second part of the test specifically requires that [it] evaluate the settlement as a package."[52] In this regard, the Commission "has repeatedly found value in the parties' resolution of pending matters through a settlement package, as an efficient and cost-effective means of bringing their issues before the Commission, while also, at times, avoiding the considerable time and expense associated with the litigation of a fully contested case."[53] The Commission does not focus on individual settlement provisions because "[t]he question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest."[54] To the degree that any Stipulation provisions differ from a

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[52] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 77 (March 31, 2016).

[53] *Id.* at 77–78 (internal citations omitted).

[54] *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

Signatory Party's pre-settlement position, such differences represent the product of serious bargaining between parties with diverse, and sometimes adverse, interests.

When analyzed as a package, the Stipulation in this case benefits ratepayers and the public interest by lowering the costs to customers, obtaining other concessions from AEP, and enabling AEP to continue making reliability improvements and encourage economic development.[55] Any focus on individual provisions, rather than the Stipulation as a whole, is contrary to the Commission's precedent.[56]

The Stipulation, as a package, benefits ratepayers by lowering the costs incurred by customers over the course of the ESP term. AEP witness Mayhan testified in detail as to the terms and concessions contained in the Stipulation.[57] For example, in addition to the benefits listed above, AEP witness Mayhan and others testified that the Stipulation secures the following benefits for customers:

1. AEP will file a distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025;[58]

2. AEP will analyze and evaluate the implementation of a capacity "heat map" that would be externally available;[59]

3. AEP will provide an additional $10 million DIR credit;[60]

4. AEP will eliminate a $23.727 million charge currently included in the DIR;[61]

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[55] *See* AEP Ex. 2 at 19–24 (Mayhan Direct); Staff Ex. 1 at 4–10 (Healey Direct).

[56] *See In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468- GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

[57] AEP Ex. 2 at 4–15, 19–24 (Mayhan Direct).

[58] Joint Ex. 1 at 16; AEP Ex. 2 at 16 (Mayhan Direct).

[59] Joint Ex. 1 at 12; AEP Ex. 2 at 7–8 (Mayhan Direct); and Staff Ex. 1 at 8 (Healey Direct).

[60] Joint Ex. 1 at 19; AEP Ex. 2 at 10 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

[61] Joint Ex. 1 at 18; AEP Ex. 2 at 10 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

5. AEP will contribute $450,000 in shareholder funding for economic development;[62]

6. AEP will implement energy efficiency programs for low-income residential customers;[63]

7. AEP will reduce the IRP-L credits over the course of the ESP term;[64]

8. AEP will commit to data sharing associated with plug-in electric vehicles;[65]

9. AEP will not recover lost distribution revenues associated with the proposed energy efficiency programs;[66]

10. AEP will eliminate the Ohio First Rider if it is not populated by June 1, 2026;[67]

11. If the Commission approves increased levels of financial incentives to offset contribution in aid of construction (CIAC) costs during the ESP term, AEP will invest between $2 to $4 million of capital investment per year;[68]

12. Staff will make best efforts to complete its review and file a recommendation regarding any IRP-E reasonable arrangement applications within 60 days;[69] and

13. Staff will make best efforts to complete its review and file a recommendation regarding any BTCR Pilot reasonable arrangement applications within 60 days.[70]

In addition to the foregoing benefits, as explained above, the Stipulation also secures a number of reductions or limitations to the revenue that AEP will receive during the ESP term, which will benefit customers by reducing the overall costs of the ESP.[71] For example, the Stipulation recommends revenue caps (without rollover) that decrease the total amount AEP can

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[62] Joint Ex. 1 at 25; AEP Ex. 2 at 12 (Mayhan Direct); and Staff Ex. 1 at 12 (Healey Direct).

[63] Joint Ex. 1 at 25–26; AEP Ex. 2 at 12 (Mayhan Direct); and Staff Ex. 1 at 8 (Healey Direct).

[64] Joint Ex. 1 at 15; AEP Ex. 2 at 9–10 (Mayhan Direct).

[65] Joint Ex. 1 at 13; AEP Ex. 2 at 8 (Mayhan Direct).

[66] Joint Ex. 1 at 26.

[67] Joint Ex. 1 at 32; AEP Ex. 2 at 14 (Mayhan Direct).

[68] Joint Ex. 1 at 14.

[69] Joint Ex. 1 at 18.

[70] Joint Ex. 1 at 30.

[71] AEP Ex. 2 at 4–14 (Mayhan Direct); Staff Ex. 1 at 6–10 (Healey Direct).

recover through the DIR over the ESP term to $1.022 billion from $2.712 billion.[72] Additionally, unlike the proposal in AEP's Application, the stipulated DIR revenue caps do not exclude "customer-driven investments," meaning that such investments will be counted towards the annual caps.[73] Recovery caps that apply to all distribution-related investments will not only lower the total rates that will be paid by customers, but they will also protect ratepayers from charges escalating unreasonably. While incremental investments in distribution system infrastructure may be necessary, hard revenue caps without year-to-year rollover provide a more meaningful check on potential overspending and prevent AEP from charging customers for excessive spending. Similarly, the Stipulation recommends revenue caps (without rollover) that decrease the total amount AEP can recover through the ESRR over the ESP term to $244 million from $539 million.[74]

In the Stipulation, AEP also agrees to numerous other cost reductions, such as eliminating a $23.7 million charge from the DIR,[75] decreasing the amount that customers will pay for the ETP by more than $90 million,[76] eliminating non-low-income energy efficacy programs, which will decrease the annual cost to customers to $12 million from $43.4 million,[77] and eliminating the proposed RAR, CER, and GASR.[78]

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[72] Joint Ex. 1 at 19–20 (Stipulation); AEP Ex. 2 at 10 (Mayhan Direct).

[73] Joint Ex. 1 at 18 (Stipulation); AEP Ex. 2 at 10 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

[74] Joint Ex. 1 at 11 (Stipulation); AEP Ex. 2 at 7 (Mayhan Direct); and Tr. Vol. II at 392–93 (Williams Cross). *See also* Staff Ex. 1 at 7 (Healey Direct).

[75] Joint Ex. 1 at 18 (Stipulation); Staff Ex. 1 at 6 (Healey Direct); AEP Ex. 2 at 10 (Mayhan Direct).

[76] Staff Ex. 1 at 7–8 (Healey Direct); Joint Ex. 1 at 12–15 (Stipulation); and AEP Ex. 2 at 7–8 (Mayhan Direct).

[77] Joint Ex. 1 at 25 (Stipulation); Tr. Vol. III at 481 (Shutrump Cross); and AEP Ex. 2 at 12 (Mayhan Direct).

[78] Joint Ex. 1 at 6, 24, 27 (Stipulation).

The Stipulation also expands the BTCR Pilot to allow more customers to be billed based on their network service peak load (NSPL) rather than peak demand. This will allow additional customers to manage and potentially decrease their transmission costs, which will in turn make them more cost-effective and thus facilitate Ohio's competitiveness in the global economy. Per the Stipulation, participating customers may maintain their places in the program, and the participation MW cap will increase by 100 MW every year of the ESP to allow more customers to enroll.[79] Additionally, the Stipulation will create a new BTCR 6 CP pilot program for customer-sited BESS and public transit electric vehicle loads based on a 6 CP rate design and subject to a 100 MW participation limit for BESS and 50 MW participation limit for public transit electric vehicle loads.[80]

Moreover, the Stipulation benefits customers by improving grid reliability via the expansion of the IRP-E program, which requires participants to curtail their usage at times when the grid is stressed.[81] The Commission has previously found that IRP programs "have economic development benefits in addition to the benefits that they provide for reliability."[82] The Stipulation will expand participation in the IRP-E program by increasing the MW cap by 55 MW,[83] while also allowing current participants the option to remain a part of the program.[84]

The Stipulation, as a package, further benefits the public interest by allowing AEP to make necessary investments in its infrastructure and increase its vegetation management expenditures,

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[79] Joint Ex. 1 at 29 (Stipulation); AEP Ex. 2 at 13 (Mayhan Direct).

[80] Joint Ex. 1 at 30–32 (Stipulation); AEP Ex. 2 at 14 (Mayhan Direct).

[81] Staff Ex. 1 at 8–9 (Healey Direct).

[82] Staff Ex. 1 at 11 (Healey Direct).

[83] Joint Ex. 1 at 16 (Stipulation); AEP Ex. 2 at 10 (Mayhan Direct).

[84] Joint Ex. 1 at 15–16 (Stipulation); AEP Ex. 2 at 9 (Mayhan Direct).

with the goal of improving grid reliability. For example, the DIR and ESRR provide a streamlined approach to recovering many of the costs associated with investment in distribution infrastructure and vegetation management costs.[85] AEP testified that these increased investments are expected to improve reliability, which benefits the public interest as well as ratepayers.[86] Additionally, the Stipulation includes benefits such as AEP expending $450,000 per year in shareholder dollars to further its 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.[87]

Most of the foregoing benefits, both to the public interest and to customers, would not have occurred absent the Stipulation. As explained above, the decreased DIR and ESRR caps, the expanded BTCR Pilot and IRP-E programs, and the elimination of proposed riders were not part of AEP's as-filed Application.[88]

In sum, the Stipulation, as a package, provides meaningful and valuable benefits to customers and benefits the public interest. The Stipulation significantly lowers costs to customers as compared to the as-filed Application, while still incentivizing AEP to improve reliability for customers across all rate classes.[89] Therefore, the Stipulation, as a package, benefits customers and the public interest, and satisfies the second prong of the Commission's three-part test.

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[85] AEP Ex. 2 at 16 (Mayhan Direct); Staff Ex. 1 at 9 (Healey Direct).

[86] Tr. Vol. I at 44–45 (Mayhan Cross); Tr. Vol. II at 387–88, 394 (Williams Cross).

[87] Joint Ex. 1 at 13–14, 24–25 (Stipulation); AEP Ex. 2 at 8, 12 (Mayhan Direct); Staff Ex. 1 at 12 (Healey Direct).

[88] *See* AEP Ex. 1 (Application); Joint Ex. 1 (Stipulation); and AEP Ex. 2 (Mayhan Direct).

[89] Staff Ex. 1 at 13 (Healey Direct).

C. The Stipulation does not violate any important regulatory principles or practices.

Lastly, the Stipulation, as a package, complies with the Ohio Revised Code, the Ohio Administrative Code, and Commission precedent. When determining whether a stipulation violates any important regulatory principles or practices, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.[90]

The record in this case clearly demonstrates that the Stipulation does not contain any provisions that run contrary to Commission precedent, and various witnesses have submitted testimony on the record or stated in their cross-examination that the Stipulation does not violate any important regulatory principles or practices. As Staff witness Messenger testified:

> [T]he 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. 4928.02.[91]

Moreover, the Stipulation benefits customers by lowering the total bill impacts proposed in AEP's Application, which in turn helps prevent rate shock and follows the important regulatory principle of gradualism so that the necessary increases are more gradual over time.[92] The

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[90] *See, e.g.*, *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (December 30, 2020) (Where the stipulating parties had "presented adequate justification for the Commission to uphold the precedent" and "no argument presented by opposing Intervenors [convinced] the Commission to change or revise this practice," the Commission adopted the stipulation.).

[91] Staff Ex. 1 at 11 (Healey Direct). *See also* AEP Ex. 2 at 24–26 (Mayhan Direct).

[92] AEP Ex. 2 at 16–17 (Mayhan Direct).

Stipulation mitigates bill impacts. For example, by decreasing the total revenue requirements for the DIR and ESRR, the Stipulation avoids rate shock and promotes just and reasonable rates across customer classes.[93] Additionally, as noted by Staff witness Christopher Healey, the rate increases under the Stipulation are less than half of what AEP proposed in its Application.[94]

Furthermore, the Stipulation also satisfies various regulatory principles and practices related to Ohio's policy towards retail electric service, as specified in R.C. 4928.02.[95] For example, the benefits provided by low-income programs help ensure the availability of reasonably priced retail electric service[96] and protect at-risk populations.[97] R.C. 4928.02(A)'s policy of ensuring the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric retail service is facilitated by the expanded BTCR Pilot and IRP-E programs, as well as the DIR and ESRR caps.[98] The IRP-E program and residential demand response programs also encourage innovation and market access for cost-effective supply and demand-side retail electric service.[99] AEP's commitment to supporting economic development with $450,000 shareholder dollars, as well as the expansion of the BTCR Pilot both further the state policy of "[f]acilitat[ing] the state's effectiveness in the global economy."[100]

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[93] AEP Ex. 2 at 16–17 (Mayhan Direct)

[94] Staff Ex. 1 at 6 (Healey Direct).

[95] *See* AEP Ex. 2 at 24–26 (Mayhan Direct).

[96] R.C. 4928.02(A).

[97] R.C. 4928.02(L).

[98] R.C. 4928.02(A). *See also* Staff Ex. 1 at 9 (Healey Direct).

[99] R.C. 4928.02(D).

[100] R.C. 4928.02(N).

Lastly, the stipulated ESP V is more favorable in the aggregate than a hypothetical market rate offer (MRO).[101] As explained by Staff witness Healey, the stipulated ESP V is more favorable in the aggregate because the benefits of the ESP outweigh any added costs.[102] Because the Stipulation provides for the SSO load to be procured through a competitive bidding process, there is no difference between market-based SSO rates under an ESP or an MRO.[103] Additionally, the Stipulation provides various quantitative benefits such as the $450,000 per year in shareholder dollars for economic development and bill reductions to low-income customers, as well as qualitative benefits such as facilitating investments in the grid, ensuring certain functionalities in AEP's CIS investment, and requiring AEP to file a new base rate case in 2026.[104] In sum, taking into account all of the important benefits provided to ratepayers, low-income assistance programs, and economic development, to the extent that the different ESP provisions provide added costs, they are outweighed by the provided benefits.[105]

Overall, the Stipulation serves a variety of important regulatory principles and practices. As compared to AEP's proposals in its Application, the Stipulation provides many benefits to customers while remaining consistent with regulatory principles and practices. Therefore, the Stipulation satisfies the third prong of the Commission's three-part test.

IV. CONCLUSION

The record evidence presented at the evidentiary hearing clearly demonstrates that the Stipulation, as a package, filed on September 6, 2023 satisfies the Commission's three-part test for

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[101] Staff Ex. 2 at 12–13 (Healey Direct); AEP Ex. 2 at 15–18 (Mayhan Direct).

[102] Staff Ex. 2 at 12 (Healey Direct). *See also* AEP Ex. 2 at 16 (Mayhan Direct).

[103] Staff Ex. 2 at 12 (Healey Direct).

[104] Staff Ex. 2 at 12–13 (Healey Direct). *See also* AEP Ex. 2 at 16–17 (Mayhan Direct).

[105] Staff Ex. 2 at 12–13 (Healey Direct); AEP Ex. 2 at 15–18 (Mayhan Direct).

evaluating stipulations. A large, diverse group of capable, knowledgeable parties participated in a fair and open settlement process where all parties were invited to negotiate the Stipulation's provisions. The Stipulation, as a package, which expeditiously and equitably resolves all of the issues in this proceeding, serves the public interest by reducing numerous costs to customers and avoiding costs associated with a fully litigated ESP case. And by being more favorable in the aggregate than a hypothetical MRO, and promoting State policy pursuant to R.C. 4928.02, the Stipulation, as a package, complies with important regulatory principles and practices.

Accordingly, for the foregoing reasons, the weight of the evidence presented by AEP and the other Signatory and Non-Opposing Parties demonstrates that the Stipulation, as a package, satisfies the Commission's three-part test for evaluating stipulations. Therefore, OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety.

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402)
(Counsel of Record)
Emma Y. Easley (0102144)
Carpenter Lipps LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4124
bojko@carpenterlipps.com
easley@carpenterlipps.com
(willing to accept service by email)

Counsel for the Ohio Manufacturers' Association Energy Group

/s/ Angela Paul Whitfield
Angela Paul Whitfield (0068774)
(Counsel of Record)
Carpenter Lipps LLP
280 North High Street, Suite 1300

Columbus, Ohio 43215
Telephone: (614) 365-4100
paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

CERTIFICATE OF SERVICE

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. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on December 1, 2023 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

PARTIES OF RECORD

stnourse@aep.com
mjschuler@aep.com
egallon@porterwright.com
Christopher.Miller@icemiller.com
matthew@msmckenzieltd.com
dromig@armadapower.com
jlaskey@norris-law.com
whitt@whitt-sturtevant.com
trent@hubaydougherty.com
mjsettineri@vorys.com
glpetrucci@vorys.com
bryce.mckenney@nrg.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
rkelter@elpc.org
emcconnell@elpc.org
Evan.Betterton@igs.com
mnugent@igsenergy.com
Stacie.Cathcart@igs.com
brian.gibbs@nationwideenergypartners.com
dstinson@bricker.com
gkrassen@nopec.org
aasanyal@vorys.com
William.michael@occ.ohio.gov
angela.obrien@occ.ohio.gov
connor.semple@occ.ohio.gov
Donald.kral@occ.ohio.gov
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouty@bakerlaw.com
pwillison@bakerlaw.com
ctavenor@theOEC.org
knordstrom@theOEC.org
dparram@brickergraydon.com
dborchers@brickergraydon.com
rmains@brickergraydon.com
rdove@keglerbrown.com
nbobb@keglerbrown.com
Fdarr2019@gmail.com
little@litohio.com
hogan@litohio.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
mpritchard@mcneeslaw.com
awalke@mcneeslaw.com
cgrundmann@spilmanlaw.com

dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
werner.margard@ohioAGO.gov
ambrosia.wilson@OhioAGO.gov
ashley.wnek@OhioAGO.gov

ATTORNEY EXAMINERS

greta.see@puco.ohio.gov
david.hicks@puco.ohio.gov