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 Section 4928.143, Revised 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

INITIAL POST-HEARING BRIEF OF OHIO POWER COMPANY IN SUPPORT OF THE STIPULATION AND RECOMMENDATION

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INTRODUCTION

In a challenging and complex Electric Security Plan (ESP) case involving a term that will extend through mid-2028, the Signatory Parties expended tremendous effort over several months leading up to a Joint Stipulation and Recommendation (Stipulation) that was filed on September 6, 2023.[1] Although Signatory Parties engaged in serious negotiations with the opposing parties and made every attempt to get a unanimous settlement, a few parties still chose to oppose it. But in addition to Ohio Power Company ("AEP Ohio" or the "Company") and Staff, the Signatory Parties include industrial, commercial and residential customers; generation suppliers; CRES providers; and environmental groups.

In evaluating a contested settlement, the Public Utilities Commission of Ohio (Commission) applies a well-established three-part test:

(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 three-part test has served the Commission well for decades. An additional legal standard is also pertinent here. Because the Stipulation involves an ESP, the Commission should determine that the Stipulation meets the Market Rate Offer (MRO) test, which requires that an ESP be more favorable in the aggregate as compared to the expected results under an MRO. *See* R.C. 4928.143(C)(1). The evidentiary record demonstrates that the Stipulation satisfies both the three-part test and the MRO test.

[1] For expediency, the summary of arguments in this Introduction section omits citations; all of the parallel statements in the body of the argument are backed by specific citations the evidentiary record and case precedents.

***Prong One*: The Stipulation is the product of serious bargaining among capable, knowledgeable parties**

The first prong of the three-part tests asks whether a settlement is "a product of serious bargaining among capable, knowledgeable parties." The Stipulation here easily satisfies that standard. Indeed, no opposing party submitted any testimony contesting that the first prong is met.

***Prong Two*: The Stipulation as a package benefits ratepayers and the public interest**

Regarding the second prong, an examination of the major provisions of the Stipulation based on the record supports a Commission finding that the Stipulation package benefits customers and the public interest. Scaling back the ESP proposed in the Application represents a balanced approach to reducing expected earnings for the Company, while providing stability, predictability, and affordable bills. The commitment to file base distribution rate case by June 1, 2026 and the alignment of carrying costs for the capital riders with the rate set in the most recent base rate case provides certainty and stability for the Company and customers alike.

The Stipulation package includes beneficial enhancements to the standard service offer (SSO) auction process that should not be modified. Building incrementally on the already highly successful descending clock competitive bidding process (CBP) auction format, the Stipulation incorporates a capacity pass-through solution to address recent developments and concerns with the capacity market. Significantly, the Stipulation also "leaves the door open" for additional changes to the SSO CBP should the capacity solution need to be supplemented during the ESP term; through creation of a continuing jurisdiction framework where the Commission can monitor auction results and adopt any additional changes needed during the ESP term – provided only that such directives allow for timely and adequate cost recovery along with a reasonable time to implement the modification. The Stipulation's SSO provisions are supported by multiple

CRES Signatory Parties as well as the industry group representing CRES interests, RESA, and is only opposed by one CRES that simply wants to adopt the remaining portions of its original litigation position that were not already incorporated into the settlement. The manifest weight of the record supports a conclusion that the Stipulation's SSO provisions in Paragraph III.B are balanced, beneficial and meet the three-part test without the need for any modification.

The Stipulation's capacity pass-through solution, where proxy prices are used (subject to true-up) in the event of future base residual auction (BRA) delays, adds flexibility and certainty while reducing price volatility for SSO customers – adding further to the Stipulation's package of benefits. The Stipulation's SSO provisions support continuing jurisdiction by the Commission over AEP Ohio's SSO auction process in order to facilitate ongoing consideration of additional improvements in other dockets while maintaining all other Stipulation provisions during the ESP term – adding further to the Stipulation's package of benefits. There is no reliable evidence to support a conclusion that Stipulation modifications are needed to create a beneficial package by either adopting customer-segmented auction products or adopting circuit-breaker auction products that have volumetric limits (above which volatile spot market prices are paid by SSO customers).

There is inadequate evidence supporting the need for a modification of the Stipulation's SSO provisions to implement customer-segmented auction products, as advocated by OCC witness Wilson and Constellation witness Indukuri. Neither witness supports their proposal with a principled analysis of data or other record evidence that it will benefit customers at this time. While the Commission may wish to entertain such a proposal if the SSO enhancements of the Stipulation should prove inadequate in the future, there is no need to do so at this time based on the record in this case – especially since the Stipulation already passes the three-part test without modification.

There is also inadequate evidence supporting the need for a modification of the Stipulation's SSO provisions to implement a circuit-breaker mechanism (aka volumetric cap or contractual mitigation mechanism), advocated by Constellation witness Indukuri. Constellation witness Indukuri alone recommends an SSO CBP modification to limit the volume/quantity of MWh supplied under a single tranche, beyond which there would be a spot market price paid by non-shopping customers to purchase the actual quantity needed to supply SSO load. But as shown below, that mechanism would obscure the price-to-compare by shifting the risk of price increases away from SSO suppliers to non-shopping customers based on volatile market prices at the very time when the SSO would serve the most value to non-shopping customers (*i.e.*, when market prices go up and shopping customers migrate to the SSO safety net). While the Commission may wish to entertain such a proposal if the SSO enhancements of the Stipulation should prove inadequate in the future, there is no need to do so at this time based on the record in this case – especially since the Stipulation already passes the three-part test without modification. Finally, regarding the SSO, the controversial (but well-intentioned) governmental aggregation standby rider was dismissed with prejudice through serious bargaining.

The Distribution Investment Rider (DIR) and related commitments are part of a settlement package that benefits ratepayers and the public interest; the record shows that AEP Ohio's is placing a sufficient emphasis on reliability and a finding that AEP Ohio's expectations and customers' expectations are sufficiently aligned as to reliability. The proposed annual revenue requirement caps for *ESP V* are:

2024 (6-12):	$122.75M
2025:	$226 million

2026:	$256 million
2027:	$286 million
2028 (1-5):	$131 million

This set of annual caps reflects a reversal of the $23.727 million annual theoretical reserve charge currently reflected in the DIR and an additional credit of $10 million. There will be no rollover from year-to-year of unused annual DIR revenue requirement amounts. The DIR will continue to be subject to an annual compliance audit.

As part of the serious bargaining leading up to the Stipulation, the Company agreed to remove its customer work exception to the DIR caps that was proposed in the Application. This concession provides rate stability by eliminating an exception to the DIR caps that involves significant spending outside the Company's control. The current Customer Survey also confirms that customers expect that the number of outages should be kept to a minimum and that, when there is a power outage, service is restored quickly. The record in this case also confirms that AEP Ohio has met its reliability standards the last three years. And the survey results and reliability performance of the Company support a conclusion that AEP Ohio is placing a sufficient emphasis on reliability and a finding that AEP Ohio's expectations and customers' expectations are sufficiently aligned as to reliability. The Stipulation's DIR provisions should not be modified as they provide benefits as part of the settlement package. OCC witness Williams has not demonstrated otherwise and his recommendations – that essentially second-guess the settlement and attempt to insert OCC's own views – should be rejected.

The Enhanced Service Reliability Rider (ESRR) is beneficial and needed to ensure that the Company can continue to maintain its four-year vegetation management cycle despite rising costs while providing some amount for addressing out of right-of-way vegetation. The

Stipulation proposes to continue the ESRR, by adjusting the funding schedule proposed in the Application as follows:

2024 (6-12):	$ 34 million
2025:	$ 60 million
2026:	$ 62 million
2027:	$ 62 million
2028(1-5):	$ 26 million

As AEP Ohio witness Mayhan testified, the ESRR mechanism provides a streamlined regulatory approach to recovering many of the costs associated with vegetation management costs. From a ratemaking standpoint, she testified that the ESRR rider also promotes rate gradualism and when coupled with annual caps, it also provides rate certainty and stability for customers that would not otherwise exist under a traditional rate case ratemaking structure. Operationally, Ms. Mayhan confirmed that the ESRR funding will help the Company proactively support reliability and reduce outages caused by vegetation from both inside and outside of the right-of-way.

Contrary to the argument of OCC witness Williams that the ESRR funding should not increase because the Company has not projected reliability impacts associated with the future vegetation spending, vegetation outage results on AEP Ohio's vast network vary from year to year based on storms, vegetation growth based on weather and other conditions, non-major storm activity, labor costs, presence of pests such as the emerald ash borer, etc. One factor such as labor cost increase can mean that more funding does not translate into more vegetation work. Other variables from year-to-year obscure the ability to project specific performance results based on specific funding levels. In other words, there is no consistent or reliable basis for AEP Ohio to project specific reliability impacts based on future vegetation spending.

Mr. Williams' additional attack on the ESRR is also misguided: that ESRR cost recovery should not be permitted because the Stipulation does not impose reliability requirements attached to future vegetation spending. OCC fails to cite an example where the Commission has conditioned vegetation funding on achievement of specific performance results. As discussed, there are many factors that affect the net performance metrics and it would not be fair or reasonable to require the Company to guarantee specific results.

The customer information system (CIS) deferral provisions reflect a beneficial balance of the Company's need to invest in a modern and efficient billing/settlement system while ensuring that it will be subject to a detailed audit as part of a future rate case. OCC witness Williams recommends that the Commission reject the CIS provisions and enforce traditional ratemaking principles in this case. But R.C. 4928.143(B)(2)(d) specifically authorizes the Commission to approve deferrals and future recovery of deferrals as part of an ESP case. The Stipulation provides that only "prudently incurred" capital investments and expenses will be recovered in the next base distribution case – after being preserved for recovery through the deferral mechanism – and the Stipulation explicitly says that the amount of expenditures for future recovery "is subject to a reasonableness and prudence review." Thus, in reality, the CIS costs will not be recovered until after a prudence and reasonableness showing in the rate case (which is essentially Mr. Williams' position anyway) – the intervening costs incurred will merely be deferred until that time. Moreover, the CIS provisions are a significant reason why Direct, IGS and RESA support the Stipulation; the CIS functionalities will promote competition and are beneficial to customers and the public interest.

The Electric Vehicle (EV) commitments are part of a settlement package that benefits ratepayers and the public interest. As set forth in the Stipulation, the Electric Transportation Plan (ETP) has been amended from the as-filed Application to eliminate the rebate incentives, reducing the total cost of the ESP V by $16.2 million while providing additional commitments responsive to intervenor concerns that can reduce or delay necessary investment in the distribution system. As part of the Stipulation, the parties withdrew the proposed incentives under the ETP leaving $300,000 for education, outreach, and analytical costs associated with the EV supply equipment (EVSE) installation requests and implementation of the gridSMART tariff provisions. The analytical costs pave the way for the Company's commitment to implement a new "table top" capacity review whereby interested parties can submit requests for capacity congestion/availability for EVSE and the Company will make best efforts to respond within 5 business days. This will assist the EVSE market to have further insight into available and favorable locations for such equipment. The Company also committed to analyze and evaluate implementation of a "capacity heat map" for external use that can be used by external parties to evaluate available capacity for EVSE, distributed energy resources (DERs), or other demand intense technologies.

The Stipulation also makes adjustments to the residential Plug-In Electric Vehicle (PEV) tariffs as proposed in the as-filed case that are designed to promote electric-intense EV charging off of the peak times thereby benefitting AEP Ohio's distribution grid. Finally, AEP Ohio has withdrawn its proposal that the Company take responsibility for 100% of the contribution in aid of construction (CIAC) for customer installations of EV chargers; instead, agreeing to propose and support that electric utilities be responsible for 80% of the total cost of line extensions for publicly available EVSE in the next review of Ohio Adm. Code 4901:1-9. And to the extent the Commission adopts AEP Ohio's recommendation as part of its future rules, the Company is expressly reserving between $2 and $4 million of its DIR to fund installation of EV charging stations in locations where there is existing capacity. Combined, the commitments related to EV charging equipment, rate design, and information sharing create a suite of complimentary programs that will maximize insight and help reduce stress on the grid from the expected increase of demand-intense electric vehicle charging. This will benefit current EV owners, future EV owners, and all customers alike.

The Stipulation provides implementation of an Advanced Distribution Management System (ADMS) that will help the Company dynamically manage the distribution system including accommodating DERs. The Stipulation allows AEP Ohio to recover costs for its much-needed ADMS through the gridSMART rider, rather than through a new Customer Experience Rider as the Application originally proposed. The new ADMS platform will replace the Company's existing Outage Management System (OMS) and Distribution Management System (DMS), offering fully integrated capabilities that will be used to manage and operate the growing complexities associated with DERs moving forward. In addition to increased functionality, the Company's OMS and DMS systems must be replaced due to the vendor sunsetting these applications. The ADMS will provide AEP Ohio cost-effective and efficient access to information regarding the operation of the distribution system in order to improve performance standards and targets for service quality for all consumers. As OCC witness Shutrump confirmed, limiting or avoiding distribution outages is good for customers and the public interest.

Recovery of ADMS costs through the gridSMART rider benefits ratepayers for several reasons. First, the Stipulation allows for accelerated benefits associated with ADMS. In other words, the Stipulation provides AEP Ohio the ability to implement the ADMS functionalities now, rather than waiting until the Company's future rate distribution case. Second, the Stipulation requires AEP Ohio to update its quarterly gridSMART filings at least 60 days before their auto approval date to ensure the Company is in compliance with applicable caps. Third, the

Company has agreed to move all used and useful Phase 2 assets and costs in the gridSMART rider into base rates when it files its next base distribution rate case. The Company has also provided extra assurance that there will be no double recovery between base distribution rates and gridSMART rates. Finally, as AEP Ohio witness Mayhan testified, the Stipulation streamlines what is permitted to continue through the gridSMART rider, which will enhance the efficiency of future audits, ultimately benefiting ratepayers.

The Smart Thermostat Demand Response program is part of a settlement package that benefits ratepayers and the public interest. As part of the Stipulation filed in this matter, the Signatory Parties developed and agreed to a novel Smart Thermostat Demand Response program as a tool to reduce demand and stress on the distribution grid as well as corresponding costs of avoiding high demand events. The Smart Thermostat Demand Response program provides an annually capped amount of $5,000,000, which will be recovered through the currently existing gridSMART rider, to enable and reward residential customers for enrolling in the demand response program. In turn AEP Ohio "has the ability to call Demand Response Events to implement a PJM directive, to protect its distribution system, to limit or avoid distribution outages, to reduce load on localized constrained distribution circuits, and to reduce the coincident peak demand of the distribution network." The Smart Thermostat Demand Response program is intended to provide an innovative solution to assist AEP Ohio avoid peak demand on its distribution system by allowing the Company to call on customers to curtail during times of high demand on AEP Ohio's distribution system. Reducing stress on the distribution grid and associated costs while increasing reliability by incentivizing voluntary customer participation benefits all customers and the public interest.

The Energy Efficiency Rider provision is part of a settlement package that benefits ratepayers and the public interest**.** As part of the Stipulation, the Signatory Parties agreed to a balanced reduction and refocusing of the as-filed Energy Efficiency Rider program, which included reducing the as-filed $43.4 million in energy efficiency programs for all customers, down to a $12 million program nearly exclusively focused on low-income residential customers. This included an express withdrawal of all commercial and industrial programs. The Stipulation's Energy Efficiency Rider programs provide customers with assistance purchasing more efficient high-energy use products for their homes. The energy efficiency programs in the Stipulation provide an annual gross benefit to customers of approximately $22 million, which is far more than the cost of the program at $12 million. This not only helps low-income customers reduce their usage and therefore their bill, but it will also help reduce the energy demand placed on the electric grid, which is a benefit to all customers. The Energy Efficiency Rider program is nearly exclusively aimed at assisting customers at or below 300% poverty rate; thereby, "protect[ing] at-risk populations." R.C. 4928.02(L).

The refined Interruptible Tariff Program (IRP) provisions balance the benefits to the distribution grid by encouraging large commercial users to curtail during times of need on the distribution grid while "phasing down" the amount of the incentive and allowing additional customers to partake. The Stipulation's IRP provisions modestly expand the programs while managing the cost impact by phasing down the credit earned by participating customers over the course of the ESP term.

OCC witness Fortney supports the IRP program and acknowledges the economic development and demand response benefits of the program, but he merely asserts that the credit phase down should be more aggressive. In addition to failing to establish the need for a modification of the Stipulation under the three-part test, Mr. Fortney agreed that the longstanding program should be continued in order to continue the acknowledged benefits. Clearly, the IRP provisions of the Stipulation contribute to a package that benefits customers and advances the public interest and should not be modified.

The Stipulation package provides for a beneficial expansion of the Basic Transmission Cost Rider (BTCR) Single Coincident Peak (1 CP) program while implementing a new limited 6 CP pilot. AEP Ohio witness Mayhan's testimony establishes the benefits of the BTCR Provisions and no party that filed tesitmony in opposition to the Stipulation challenged those benefits. A moderate expansion of the 1 CP BTCR Pilot along with an independent study to determine next steps is an appropriate and a balanced approach. The Commission should find that the BTCR provisions are part of a package that benefits customers and promotes the public interest.

Other Commitments that reduce the overall bill impact of the *ESP V* and enhance the benefits associated with the Stipulation as a package. The second prong of the test asks whether the Stipulation, as a package, benefits ratepayers and the public interest. As part of the overall settlement of this case, the following negotiated commitments were included in the Stipulation package that benefit customers and the public interest:

- Discontinuation of the Smart City Rider;
- Withdrawal of the Customer Experience Rider;
- Withdrawal of the Rural Access Rider;
- Creation of the Ohio First Rider; and
- Withdrawal of the Residential Senior Citizen Tariff.

AEP Ohio witness Mayhan demonstrated that the Stipulation package was enhanced by these additional provisions and benefits customers and the public interest. Staff witness Healey also confirmed his opinion that the Stipulation, adopted in its entirety and without modification, provides substantial benefits to ratepayers and public interest. To the contrary, in its testimony opposing the Stipulation, OCC blatantly ignores these additional benefits (and the Stipulation package as a whole) and, instead, challenges a select few of the provisions of the Stipulation (but not all) as lacking benefits. The above-mentioned commitments to terminate, withdraw, or modify previously proposed riders reduce the overall bill impact of the ESP V and play an important role in satisfying the second part of the three-part test. The second prong 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. Because the entire Stipulation package benefits customers and the public interest, no modifications are needed by the Commission in order to adopt the Stipulation as its order in this case.

Prong Three**: The Stipulation does not violate any important regulatory principles or practices**

The third prong asks whether the Stipulation package violates any important regulatory principle or practice. The supporting testimony demonstrates that the Stipulation does not violate any important regulatory principles or practices and none of the opposing testimony demonstrates otherwise. In reality, the Stipulation package actually advances Ohio energy policies reflected in R.C. 4928.02 and is consistent with established practices. Consequently, the Commission should find that the Stipulation satisfies the third prong of the three-part test without any modification.

The DIR caps do not violate the principle of maintaining affordable electric rates, as claimed by OCC witness Williams. OCC witness Williams generally complains that the DIR caps "remain unreasonably high" and asserts that the rate impact associated with the DIR contradict regulatory principles and policy for reasonably price service. He recommends that

DIR caps should be maintained relatively close to the "more affordable level" approved in *ESP IV*. OCC witness Williams' recommendations should be rejected as he has not meaningfully evaluated the DIR spending or rate impacts and unreasonably wants to AEP Ohio to issue a reliability guarantee.

The Commission should reject OCC's vague position regarding the DIR caps because it is arbitrary and not based on any analysis. Mr. Williams admitted that he does not know the amount of dollars spent under the DIR which goes to maintaining reliability. Mr. Williams did agree that part of maintaining the system includes dealing with aging infrastructure. Mr. Williams also agreed that customer-driven work is recovered under the DIR. And he agreed that the more customer-driven work, the less money is left over for maintaining and improving reliability. Significantly, Mr. Williams acknowledged that customer-driven work, load growth, and economic development are outside the Company's control.

The CIS commitments do not avoid the standards of a rate case, which requires that any cost recovery will first require that the CIS investment is used and useful and the associated costs are prudent. As a threshold matter, OCC ignores that the ESP statute explicitly authorizes deferral provisions. And OCC mistakenly asserts that, by seeking to implement the CIS commitments through these ESP proceedings, AEP Ohio evades the consumer protections of a distribution rate case to ensure that investments are prudent and used and useful in the provision of electric service. This assessment is not only exceedingly cavalier but factually incorrect. It is clear in the language of the Stipulation that the Signatory Parties, made up of 17 capable and knowledgeable parties with varying interests, agreed the amount of CIS expenditures for future recovery is subject to a reasonableness and prudence review and committed to that review through a future distribution rate case or rider. There is nothing in the record that prevents any evidence or even a suggestion that such a review would not occur. OCC's premature and superficial challenge of the proposed CIS recovery as violating an important regulatory principle or practice should be rejected.

The Stipulation ensures the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. The Stipulation strikes a balanced approach that reduces expected earnings from the as-filed case while maintaining AEP Ohio's cashflows that give the Company the ability to invest in the system to provide adequate, reliable and safe retail electric service while still being reasonably priced and non-discriminatorily applied. The Stipulation includes provisions such as the DIR and ESRR that accelerate reliability improvements coupled with numerous demand response programs such as the IRP, Smart Thermostat Demand Response program, and EV rate designs that further help improve reliablity by reducing outages and/or localized constraints and are intended to reduce or delay the amount of distribution investment. Under traditional bill impact analysis, the Stipulation only results in a typical residential customer using 1,000 kWh per month seeing a less than 1.0% increase ($1.50 per month) each year of the ESP term. Under an actual rider impact analysis, however, these impacts (particularly in the early years) will be even less because the riders will not be adjusted as quickly as assumed in a traditional bill impact analysis. And contrary to OCC witness Tinkham's claims that the Stipulation does nothing to help socioeconomically vulnerable customers, Stipulation provides additional help in the form of low-income energy efficiency programs, further funding of the Neighbor-to-Neighbor bill assistance program and economic development in low-income areas.

The PEV rate design mechanisms do not violate any regulatory practices or principles. As previously discussed, the Stipulation contains new optional tariffs for residential customers with electric vehicles – the PEV time of use rates. Although OCC never raised any concerns about the PEV rate design contained in the Company's Application in response to the Stipulation OCC witness Sioshansi wages a conclusory complaint that the moderately amended PEV rates in the Stipulation "appear to violate the cost-causation regulatory principle." Accordingly, OCC witness Sioshansi requests that the Commission request and scrutinize the PEV rate designs and modify them accordingly. But the Stipulation already provides the very relief that OCC witness Sioshansi seeks – the creation of a working group specifically tasked with discussing and analyzing the PEV rates and their cost of service impacts including the possibility of additional time-of-use offerings.

Similarly, the CIAC provisions contained in the Stipulation do not violate any important regulatory principles or "tie the hands of the Commission" as they are germane to the case and the Commission has plenary power to change its rules upon due consideration. Nor do the CIAC provisions create a cross subsidy to electric vehicle owners, as OCC asserts because the change will only occur if the Commission duly changes its rules. And the capital reservation commitment by the Company is limited to approved locations" with existing capacity that will benefit all customers as it reduces and/or defers the need for additional distribution plant in service that would not otherwise occur absent such an incentive.

The Smart Thermostat Demand Response program does not violate the policies set forth in R.C. 4928.02. Contrary to OCC's testimony, the Smart Thermostat Demand Response program establishes an innovative program that allows non-discriminatory market access to demand side management, which is consistent with, and even encouraged, pursuant to R.C. 4928.02(D).

Next, The Energy Efficiency program does not violate R.C. 4928.02 or any other regulatory practices or principles. OCC witness Shutrump incorrectly asserts that the Energy Efficiency Rider programs violate R.C. 4928.02(G) because it permits AEP Ohio to offer low-income energy efficiency programs that should be left to the competitive market. While recent amendments to Title 49 removed the required energy efficiency targets applicable to the regulated utilities under former R.C. 4928.66, the energy efficiency program set forth in the Stipulation does not violate regulatory practices or principles. To the contrary, the Commission has held that "decisions regarding energy efficiency programs [by both electric and natural gas utilities in this state] would be made, on a case-by-case basis." And the Commission has recently acknowledged the importance of low-income energy efficiency programs and approved similar programs as those contained in the Energy Efficiency Rider program.

Continuation of the current BTCR does not violate any important regulatory principle or practice. Calpine and One Energy apparently intend to challenge continuation of the BTCR as a non-bypassable rider to recovery transmission costs incurred by AEP Ohio under FERC-approved wholesale tariffs. Neither party filed testimony in response to the procedural schedule established in this case for addressing the three-part test and adoption of the Stipulation. As further discussed below, Calpine was able to get the Direct Testimony of Becky Merola admitted into the record of the Stipulation hearing, even though that testimony was originally filed on June 9, 2023 in response to the Application and prior to the Stipulation being filed. (Merola Direct Testimony, Calpine Ex. 1.) But the Merola Direct Testimony completely fails to address the three-part test for adoption of contested settlements and merely advances Calpine's original litigation position. To the extent the Merola Direct Testimony is considered at all by the Commission, it should be rejected.

As AEP Ohio witness Kelso explained on cross examination, AEP Ohio is opposed to adopting a bypassable transmission rider in this case because it would be a modification to the Stipulation and because there are many unknowns that should be resolved before making such a decision, including potential volatile rate impacts if 1CP billing is utilized and ensuring customers understand their choices relative to generation and transmission shopping decisions; the Stipulation strikes the right balance by moderately expanding the 1CP BTCR Pilot and committing to a third-party study to evaluate changes to transmission billing in detail. Because of the potential impacts on customers, Ms. Kelso testified that making transmission charges bypassable is a drastic and very significant change that should be carefully studied, but the Company is not saying it cannot happen after careful consideration in another case. Calpine's recommendation would be a modification of the Stipulation that is unjustified and could result in the settlement being unwound; the Commission should ignore or reject the Merola Direct testimony and the recommendation to presently convert the BTCR to being bypassable. Stated differently, the record in this case does not support a conclusion that the current BTCR violates any important regulatory principle or practice.

Much of the intervenor testimony utterly fails to address the three-prong test or superficially recites the controlling standard without any support or connection not their recommendations – instead, second-guessing and advocating additional benefits that were not part of the serious bargaining in the Stipulation package. OCC's witnesses ignore the three-part test (or misapply the three-part test by cherry picking which parts they want to address) and make the same arguments they made in the pre-settlement phase of the case. Merely repeating one's litigation position is not an appropriate basis for contesting a settlement. OCC's approach of just advancing its litigation position is also an inappropriate application of the three-part test, and such arguments cannot form the basis for rejecting the Stipulation.

The Statutory MRO test

The Commission must approve an ESP proposal if it finds that the ESP, "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 [an MRO authorized under] section 4928.142 of the Revised Code." This statute, R.C. 4928.143(C)(1), "'does not bind the commission to a strict price comparison. On the contrary, * * * the statute instructs the commission to consider "pricing and all other terms and conditions"' in evaluating whether the ESP is more favorable in the aggregate than an expected MRO." Thus, the Commission "must ensure that the * * * ESP as a total package is considered, including both a quantitative and qualitative analysis." "In conducting the [more favorable in the aggregate] test, the Commission will look at the relative price to be paid by SSO customers for generation service under both the proposed ESP and a hypothetical MRO, whether there are quantitative benefits to the ESP that would not exist in an MRO, and whether there are qualitative benefits to the ESP that would not exist in an MRO."

Under the ESP proposed in AEP Ohio's Application, as modified by the Stipulation, the SSO will continue to be priced and supplied through a Competitive Bidding Process (CBP). And it is undisputed that the Stipulation will not significantly change the auction process. Moreover, the Stipulation includes enhancements to the SSO process that are designed to produce more stable SSO generation rates going forward, including "an option for full requirements auction products with a true-up to account of a proxy capacity price, if needed[,]" to "address[ ] the volatility that customers have experienced with the energy markets and prolonged delays of PJM's base residual auctions (BRAs)."

The ESP, as modified by the Stipulation, offers an array of additional quantitative benefits compared to an MRO. For example, as AEP Ohio witness Ms. Mayhan explained, the "DIR and ESRR mechanisms include the same types of costs that would be recoverable from customers through base distribution cases[,]" but with lower costs to customers and other parties, due to the "streamlined approach to recovering * * * costs associated with investment in distribution infrastructure and vegetation management" that the ESP's DIR and ESRR mechanisms permit. The Stipulation's energy efficiency programs for low-income residential consumers will "provide an annual gross benefit to customers of approximately $22 million," which exceeds the projected costs of the programs by approximately $10 million." And the "IRP and Smart Thermostat Demand Response [program] will provide a means of calling upon customers to curtail during certain events that stress AEP Ohio's system," which, along with the Stipulation's "promotion of off-peak EV charging," will "allow[ ] the Company to call on customers to curtail load during times of high demand, and usually higher cost, as well as incentivizing peak load shifting * * * to put less stress on the distribution grid[,]" all of which will help "reduce system costs."

The modified ESP also offers numerous significant qualitative benefits related to rate stability, economic development, efficient use of the transmission grid, and technological advancement. As AEP Ohio witness Mayhan testified, "The commitment to file a base distribution case by June 1, 2026, provides customers with increased certainty regarding the timing of a base rate case, * * * as opposed to the uncertainty that would exist under an MRO." The DIS and ESRR mechanisms, "when coupled with annual caps[,] * * * provide rate certainty and stability for customers that would not otherwise exist under a traditional rate case ratemaking structure." The "Ohio First Rider will allow the Company to move forward with projects that are approved for federal funding in a streamlined manner without having to wait for a base rate case." The expansion of the IRP tariff will further support economic development in the State of Ohio. And allowing "certain customers to participate in a BTCR 1 CP transmission rate encourages more efficient use of the transmission grid[,]" while reducing AEP Ohio's overall transmission revenue requirement, and "the 6 CP BTCR Pilot promotes technological advancement while increasing grid resiliency and sustainability." Given the forgoing, the Commission should readily adopt the Stipulation without modification as its order in these cases.

STANDARD OF REVIEW

Rule 4901-1-30 of the Ohio Administrative Code authorizes parties to Commission proceedings to enter into stipulations. Although stipulations are not binding on the Commission, their terms are accorded substantial weight. *See Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) ("*Consumers' Counsel*"), citing *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). That is especially true where, as here, the stipulation is supported or unopposed by the majority of parties in a proceeding. *See In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 20 (May 13, 2010) ("*In re Columbus S. Power Co.*"). Although the Commission places substantial weight on the terms of a stipulation, it must also determine from the evidence what is just and reasonable. *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, 950 N.E.2d 164, ¶ 19.

In evaluating a contested settlement, the Commission applies a well-established three-part test:

(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?

In re Columbus S. Power Co. at 21 (citing numerous cases in support of this standard). The Ohio Supreme Court has repeatedly approved this three-part test. *See, e.g., Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel*, 64 Ohio St.3d at 126.

An additional legal standard is also pertinent here. Because the Stipulation involves an ESP, the Commission should determine that the Stipulation meets the MRO test, which requires that an ESP be more favorable in the aggregate as compared to the expected results under a market rate offer. *See* R.C. 4928.143(C)(1). AEP Ohio addresses the MRO test in a separate proposition of law below.

To a great extent, Opposing Party witnesses ignore the three-part test (or give superficial "lip service" to the test) and advance the same arguments they made in the pre-settlement phase of the case. Merely repeating one's litigation position is not an appropriate basis for contesting a settlement. As discussed in more detail below, several OCC witnesses take this approach. And Constellation witness Indukuri simply advocates for adoption of the remaining recommendations he made in his original testimony that were not already incorporated into the Stipulation. Of course, Calpine witness Merola's original testimony is the only testimony advanced by Calpine, so that testimony necessarily ignores the Stipulation and the three-part test. The approach of just advancing its litigation position in opposition to the Stipulation is an inappropriate application of the three-part test, and such arguments cannot form the basis for rejecting the Stipulation. *Cf. Ohio Partners for Affordable Energy v. Pub. Util. Comm'n (In re E. Ohio Gas Co.)*, 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32 (holding that "[t]he fact that [a] stipulation did not resolve all of [an intervenor]'s opposition arguments does not mean that the commission's approval of the stipulation was unlawful.").

ARGUMENT

I. The Stipulation satisfies the three-part test for evaluation of contested settlements.

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

The Stipulation here easily satisfies the standard that it must be a "a product of serious bargaining among capable, knowledgeable parties." *In re Columbus S. Power Co.* at 21. Indeed, none of the opposing parties submitted any testimony or other evidence contesting that the first prong is met. Although not a specific requirement under the first prong, the Signatory Parties included a variety of diverse interests, including low-income customer advocates; industrial and commercial advocates; commercial customers; competitive retail electric suppliers; environmental advocates; and Staff. (AEP Ohio Ex. 2 at 3). The Signatory Parties, as well as the non-signatory parties, are frequent participants in Commission proceedings that were afforded ample opportunity to participate in discovery and file testimony. (AEP Ohio Ex. 2 at 19). Indeed, there was robust discovery involving over 1,057 interrogatories, 264 requests for production, and 83 requests for admission – not including subparts. And fifteen parties collectively filed twenty-seven pieces of Direct Testimony in response to the Company's Application in this matter.

The Stipulation is the result of a lengthy negotiation involving experienced representatives of many stakeholder groups. (AEP Ohio Ex. 2 at 19). Negotiations lasted over several months and involved over fourteen meetings where all parties were invited and provided the opportunity to negotiate each individual piece of the Stipulation. (AEP Ohio Ex. 2 at 19; Staff Ex. 1 at 4). In addition to these "all parties" meetings, there were over ten "breakout" meetings to focus on certain topics that were identified by the parties for additional attention.

(AEP Ohio Ex. 2 at 19; Staff Ex. 1 at 4). All parties were invited to the "breakout" meetings and afforded an opportunity to discuss and negotiate. (AEP Ohio Ex. 2 at 19). No party was excluded from the "all parties" or "breakout" negotiations. The nearly twenty-five various settlement meetings (that were open to all parties) resulted in numerous versions of term sheet language that was circulated amongst all parties. (AEP Ohio Ex. 2 at 19).

These negotiations resulted in a Stipulation that reflects the entire agreement between the Signatory Parties and a compromise that differs in several respects from the Company's as-filed case and incorporates a balance of recommendations offered by Staff and intervenors. (AEP Ohio Ex. 2 at 19). Some of these changes include, but are not limited to the following:

- Streamlining of AEP Ohio riders though withdrawal of the newly proposed Customer Experience Rider, Rural Access Rider, as well as discontinuation the Smart City Rider;
- Reduction in the expected spend associated with the Distribution Investment Rider and the Enhanced Service Stability Rider;
- Adoption of some intervenor proposed changes to the standard service offer (some of these were proposed by Constellation) such as the elimination of the Government Aggregation Standby Rider and a proxy price for future competitive bids in the absence of an RPM auction;
- Balancing interests on the implementation of an energy efficiency program by eliminating commercial and industrial programs and focusing the residential portfolio on low-income assistance; and
- Implementation of an innovative Smart Thermostat Demand Response program.

Throughout the robust settlement process, all parties were represented and their views were seriously considered and resulted in a bargained for exchange.

In short, no opposing parties submitted testimony contesting the first prong and the Stipulation was clearly the product of serious bargaining among capable, knowledgeable parties (including opposing parties). Thus, the Commission should find based on the record that the first prong is met.

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

Regarding the second prong (Stipulation package benefits customers and the public interest), OCC misapplies this component of the test by examining select provisions of the Stipulation and concluding that those provisions do not convey benefits. Of course, Calpine witness Merola's original testimony filed in response to the Application and before the Stipulation was filed, fails to address the three-part test at all and completely misses the mark. OCC and Constellation also fail to comprehensively examine the total package of the Stipulation and, consequently, their analysis is lacking. Otherwise, OCC and Constellation advance largely the same litigation positions they put forth prior to the settlement being formed; that approach also fails to effectively apply the three-part test. Beyond those threshold flaws in OCC's and Constellation's approach, the Company will demonstrate that the record manifestly supports a finding that the Stipulation satisfies the three-part test and a finding that the testimony filed in opposition to the Stipulation falls short of demonstrating that the Stipulation fails the test. Below, each of the major provisions of the Stipulation are examined based on the record, to support a Commission finding that the Stipulation package benefits to customers and the public interest.

1. Scaling back the ESP proposed in the Application represents a balanced approach to reducing expected earnings for the Company, while providing stability, predictability, and affordable bills.

The Stipulation reduces the term of the ESP from six years, as proposed, to four years. (Jt. Ex. 1 at ¶¶ II and III.A.) (Rather than ending in May 2030, it will end in May 2028.) As AEP Ohio witness Jamie Mayhan testified, reducing the size and term of the proposed ESP by two years "results in a balanced approach to reducing expected earnings[,] while maintaining cash flows to make certain investments in the distribution system to help maintain and/or improve reliability." (AEP Ohio Ex. 2 at 20:2-4.) Ms. Mayhan explained that the shortened term "will provide certainty and predictability for [AEP Ohio's] customers, auction suppliers and CRES participants." (*Id*. at 20:7-8.) And it will help ensure rate stability for residential customers. Under "the traditional customer bill impact view," shown in Table 1 of Ms. Mayhan's testimony, the total average rate impact for the typical residential customer will be "an estimated increase of less than 1% or $1.50 per month." (*Id*. at 20:8-21:1.) But taking into consideration actual rider filing dates, "the typical residential customer using 1,000 kWh would see a monthly bill increase of 0.5% in Year 1" and monthly bill increases of 0.6% to 1.8% in years 2 through 4. (*Id*. at 21:3-10.) Such affordability and rate stability clearly benefits ratepayers and the public interest.

2. The commitment to file base distribution rate case by June 1, 2026 and the alignment of carrying costs for the capital riders with the rate set in the most recent base rate case provides certainty and stability for the Company and customers alike.

The Stipulation also requires AEP Ohio to file a base distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025. (*See* Jt. Ex. 1 at ¶ III.C.5.) As AEP Ohio witness Mayhan testified, this commitment "provides customers with increased certainty regarding the timing of a base rate case" and commits AEP Ohio to filing that base rate case within the next three years. (AEP Ohio Ex. 2 at 16.) The Stipulation also states that "[t]he carrying charge for capital riders will reflect the cost of capital approved in the most recent base rate case." (Jt. Ex. 1 at ¶ III.D.7.) Back in June (Tr. III at 609), OCC witness Joseph Buckley originally filed testimony in opposition to AEP Ohio's Application (Tr. III at 608) in which he recommended that the Commission do exactly what the stipulating parties ended up doing: continue applying the rates approved in AEP Ohio's last base rate case. Mr. Buckley wrote:

> For consumer protection, I recommend that the PUCO accept OCC's recommended Return on Equity (ROE) and Debt Rate in this case. However, if

> the PUCO rejects OCC's recommendation, I believe Ohio Power should be required to revert to the last PUCO approved rate established in case 20-585-EL-AIR.

(Tr. III at 612, quoting AEP Ohio Exhibit 6, Response to Question 7.) Mr. Buckley further wrote, in his June 2023 testimony, that he did not believe the rate of return should be updated in this ESP, explaining: "The current rate of return was approved less than two years ago. The national averages for rates of return for distribution only electric companies (such as Ohio Power) have not fluctuated substantially during that timeframe." (Tr. III at 612.)

For over 35 years, it has been the Commission's practice not to recalculate rates of return in-between base rate cases. (*See* Tr. III at 643 and 644.) Under that policy, AEP Ohio would not recalculate its return on equity until at least 2026. The continuation of AEP Ohio's existing carrying charge for its capital riders for at least three more years will further contribute to rate stability and certainty for the Company and customers alike.

3. The Stipulation package includes beneficial enhancements to the SSO auction process that should not be modified.

Building incrementally on the already highly successful descending clock CBP auction format, the Stipulation incorporates a capacity pass-through solution to address recent developments and concerns with the capacity market. Significantly, the Stipulation also "leaves the door open" for additional changes to the SSO CBP should the capacity solution need to be supplemented during the ESP term; through creation of a continuing jurisdiction framework where the Commission can monitor auction results and adopt any additional changes needed during the ESP term – provided only that such directives allow for timely and adequate cost recovery along with a reasonable time to implement the modification. Finally, the controversial (but well-intentioned) governmental aggregation standby rider was dismissed with prejudice through serious bargaining. The Stipulation's SSO provisions are supported by multiple CRES

Signatory Parties as well as the industry group representing CRES interests, RESA, and is only opposed by one CRES that simply wants to adopt the remaining portions of its original litigation position that were not already incorporated into the settlement. The manifest weight of the record supports a conclusion that the Stipulation's SSO provisions in Paragraph III.B are balanced, beneficial and meet the three-part test without the need for any modification.

In the context of advocating for additional changes to AEP Ohio's SSO auction process, Constellation attempts to make a big deal out of the Stipulation's provision that dismisses without prejudice proposed intervenor SSO/CBP modifications in this case – essentially implying that such a provision is extraordinary or unprecedented. (Tr. I at 125.) But Staff witness Healey explained his view of the provision:

> I would say that that concept is inherent in virtually every Stipulation and that Stipulation seeks to resolve a case in its entirety. And, therefore, anything that's not in the Stipulation, including other parties' recommendations, would be, therefore, excluded and rejected by approval of the Stipulation, so I think this sentence is merely acknowledging what a Stipulation does with respect to other parties' litigation positions.

(Tr. I at 125-126.) Mr. Healey went on to explain that "every Commission order approving the Stipulation as a matter of fact is, therefore, rejecting any proposals that are contrary to the Stipulation so that order would have that exact effect in any case in which there was a Stipulation approved by the Commission." (Tr. I at 126.) Thus, in reality, the provision is not unprecedented and, in fact, is consistent with most settlements. Of course, Constellation does not complain that several provisions in the Stipulation similarly reject certain aspects of the Company's Application (*i.e.*, dismiss without prejudice to future cases) or go even farther by withdrawing proposals *with prejudice*. (*See e.g*. Stipulation at ¶¶ III.B.3, III.F.14, III.H.23, III.R.61 and III.R.62.)

In any case, both because the intervenor SSO auction proposals are only dismissed without prejudice in Paragraph III.B.2 and because the same provision of the Stipulation explicitly facilitates continuing jurisdiction by the Commission over AEP Ohio SSO auction matters, the only effect of Paragraph III.B.2 of the Stipulation is that they are not adopted in this case because they were not incorporated into the settlement. Unlike the recent AES Ohio SSO proceeding, where the Signatory Parties had "carved out" SSO auction issues for litigation and entered into a partial Stipulation that only resolved some of the issues in the case (such that adopting additional SSO proposals would not be a modification of the Stipulation in that case),[2] the Signatory Parties in this Stipulation fully resolved all the issues in this case and the adoption of any additional intervenor proposals by the Commission would be a modification to the Stipulation that would risk unraveling the settlement under Paragraph IV.E ("This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification."). Under Paragraph IV.E, the Signatory Parties expressly conditioned the Stipulation on adoption *in its entirety* and any individual Signatory Party has the right to determine in their sole discretion whether any modification made by the Commission is a "material" modification to that party and withdraw or file rehearing. Although Constellation has effectively presented the same litigation position through the same witness as it used in the AES Ohio case and would like to similarly present it simply as a litigation position that should be

[2] *In the Matter of the Application of The Dayton Power and Light Company*, 22-900-EL-SSO *et al.*, Opinion and Order (August 9, 2023) at ¶ 220.

considered by the Commission,[3] that approach would improperly disregard the three-part test and the Stipulation presented here.

Contrary to Constellation's suggestion that modifications can be made without regard to the Stipulation or the three-part test, it is important to the Signatory Parties that no modifications be made to the Stipulation as that could lead to the unraveling of the entire settlement. As a related matter, the effect of the OCC and Constellation recommendations to the SSO are simply second-guess the solutions adopted in the Stipulation and seek to insert their own litigation positions. Moreover, none of the SSO changes recommended outside the Stipulation are supported by reliable evidence.

a) The Stipulation's capacity pass-through solution, where proxy prices are used (subject to true-up) in the event of future BRA delays, adds flexibility and certainty while reducing price volatility for SSO customer –adding further to the Stipulation's package of benefits.

In Paragraph III.B.1of the Stipulation, the Signatory Parties agreed "to modify the CBP as part of this Stipulation for the term of ESP V to include an option for full requirements auction products with a true-up to account for a proxy capacity price (if needed) during the term of ESP V (referred to as the "capacity pass-through mechanism"): if BRA clearing prices for the planning years covered by all products offered in the SSO auction (any of a 12-month, 24-month, or 36-month product) are not known at least five (5) business days before the scheduled SSO auction, there will be a tentative/proxy capacity price component for the delivery year for which

[3] Constellation witness Indukuri admitted that, although his original testimony docketed in June in response to the Application included adoption of a capacity pass-through feature and rejection of the Governmental Aggregation Standby Rider as two of his four main recommendations, he did not include those two items in his Stipulation testimony because the Stipulation already incorporated that solution. (Tr. IV at 704-706.) Constellation witness Indukuri continues to advance two remaining SSO recommendations in his Stipulation testimony relating to a circuit-breaker (volumetric threshold) and segmentation of auction products by customer class. (Tr. IV at 706-707.)

the results of the BRA are not known that will be trued-up/reconciled to the actual BRA capacity price." If the results of the BRAs for all products to be offered in a given SSO auction will become known soon after that scheduled SSO auction (or the results of the BRAs for all products to be offered in a given SSO auction will be known just before that scheduled SSO auction), the auction manager, in consultation with AEP Ohio, may make a timely decision to delay the scheduled SSO auction by up to 30 days. The actual capacity price will be substituted for the capacity proxy price and charged to SSO customers during the applicable PJM delivery year. Once the actual capacity price is known, AEP Ohio shall promptly calculate and post what the SSO auction clearing price would have been had the actual capacity price been known, and shall follow the same methodology as exists today for translating the SSO auction clearing price into the Generation Energy Rider and Generation Capacity Rider rate.

Constellation witness Indukuri endorses the capacity pass-through enhancement of the Stipulation. (Constellation Ex. 2 at 7; Tr. IV at 704-706.). And OCC witness Wilson is the lone witness that critiques that proposal and merely recommending that the Commission "provide some guidance on how the proxy price will be set" using an approach of "erring on the high side" to reduce the likelihood of an upward true-up later. (OCC Ex. 2 at 10.) Erring on the high side in setting a proxy price is a bad idea as it would artificially inflate the price-to-compare, intentionally distort the competitive market and cause uneconomic shopping. In any case, it is noteworthy that the two parties that oppose the Stipulation based on the SSO CBP issues disagree on this point – and OCC merely second-guesses how the capacity pass-through mechanism will be implemented and its objection to the solution is merely advisory in nature.

Contrary to OCC witness Wilson's mild critique, the Stipulation already provides that "[t]he auction manager, in consultation with Staff, will establish the proxy capacity price based on objective criteria in advance of the applicable auction." (Jt. Ex. 1 at ¶ III.B.1.) AEP Ohio also commits in the Stipulation to provide interested stakeholders information on how the proxy price will work. (*Id.*) Hence, the Stipulation already sets up a cooperative approach on setting the proxy price and there is no record basis to dictate the details of how it will be done at this point. More specifically, there is no adequate basis in the record to support a modification of the capacity pass-through solution is needed to render the Stipulation package beneficial to the public interest and not even an allegation in the record that the solution violates an important regulatory policy or principle. Thus, the Commission should not entertain any modifications to the Stipulation on this point.

b) The Stipulation's SSO provisions support continuing jurisdiction by the Commission over AEP Ohio's SSO auction process in order to facilitate ongoing consideration of additional improvements in other dockets while maintaining all other Stipulation provisions during the ESP term – adding further to the Stipulation's package of benefits.

The Stipulation supports continuing jurisdiction for the Commission to consider additional SSO CBP improvements throughout the term of ESP V in other dockets:

> The Signatory Parties recommend that all intervenor proposals for SSO/CBP modifications in this case be dismissed without prejudice but may be considered in other SSO-related proceedings. If a final order is subsequently issued by the Commission in another proceeding that modifies the SSO/CBP (including an order that modifies or reverses the capacity pass-through mechanism established under Paragraph III.B.1), the Company consents to continuing jurisdiction and agrees to waive its right to withdraw under R.C. 4928.143(C)(2)(a) provided that such SSO/CBP modifications apply only during the ESP term, allow for timely and adequate cost recovery along with a reasonable time to implement the modification. The Signatory Parties (including the Company) reserve their rights to advocate specific positions as part of separate Commission dockets concerning such SSO-related determinations, including opposing such proposals and/or filing for rehearing and appeal as they deem appropriate, provided, however, that the Signatory Parties agree that any modifications to the SSO/CBP in such other proceeding(s) (including an order that modifies or reverses the capacity pass-through mechanism addressed above in Paragraph III.B.1) would not be considered a modification of the Stipulation that triggers the right to withdrawal under Paragraph IV.E of this Stipulation.

Jt. Ex. 1 at 5-6 (¶ III.B.2.) This provision extinguishes any need to adopt modifications of the Stipulation in this case with respect to additional SSO CBP improvements.

Paragraph II.B.2 is a critical component of the Stipulation and facilitates an approach that the Commission has endorsed in other dockets: to jointly consider broad reforms to the SSO CBPs of the four Ohio electric distribution utilities during the term of an approved ESP. *See e.g., In the Matter of the Proposed Modifications to the Electric Distribution Utilities' Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC; *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC *et al*. In those dockets, substantial disagreements have been raised about the scope of the Commission's authority to make such changes outside of a proceeding under R.C. 4928.142 or R.C. 4928.143. The key barriers to the Commission making significant SSO changes during the term of an approved ESP are the lack of utility consent under R.C. 4928.143(C)(2)(a) and such SSO changes being modifications to the approved ESP or underlying Stipulation. *In re Ohio Power Co.*, 2015-Ohio-2056, ¶ 24 (an EDU's withdrawal right under R.C. 4928.143(C)(2)(a) applies even where the Commission subsequently *sua sponte* modifies its own prior order). Yet, parties in the separate SSO dockets have broadly agreed that there have been market and regulatory developments that suggest a real need to consider action outside of an SSO proceeding or during the term of an approved ESP. Paragraph II.B.2 of the Stipulation, if adopted, eliminates important barriers to the Commission's ability to monitor and adjust AEP Ohio's CBP during the ESP term whenever market or regulatory conditions support making such an adjustment – provided only that the order doing so conveys timely and adequate cost recovery along with a reasonable time to implement the modification. This continuing jurisdiction regime adds substantial benefit to the Stipulation package.

c) There is no reliable evidence to support a conclusion that Stipulation modifications are needed to create a beneficial package by either adopting customer-segmented auction products or adopting circuit-breaker auction products that have volumetric limits (above which volatile spot market prices are paid by SSO customers).

The Company and the other CRES Signatory Parties (RESA, Direct and IGS), as well as the other Signatory Parties that represent customer interests (Staff, OPAE, CUB-Ohio OELC, OEG, OMAEG, *etc*.), all agree that there is no justification in this case to further modify the SSO CBP beyond the important provisions adopted in the Stipulation. OCC witness Wilson and Constellation witness Indukuri both recommend customer-segmented auction products and Mr. Indukuri alone recommends a volume limitation on auction suppliers' tranche obligation such that additional volumes above that level would be purchased at volatile spot market prices. As shown below, neither of these proposals is justified in this case under the three-part test or otherwise in the evidentiary record.

i. There is inadequate evidence supporting the need for a modification of the Stipulation's SSO provisions to implement customer-segmented auction products, advocated by OCC witness Wilson and Constellation witness Indukuri.

OCC witness Wilson and Constellation witness Indukuri recommend an SSO CBP modification to segment auction products by customer class. (OCC Ex. 2 at 5-8; Constellation Ex. 2 at 23-28.) But neither witness supports their proposal with a principled analysis of data or other record evidence that it will benefit customers at this time. While the Commission may wish to entertain such a proposal if the SSO enhancements of the Stipulation should prove inadequate in the future, there is no need to do so at this time based on the record in this case – especially since the Stipulation already passes the three-part test without modification.

OCC witness Wilson recommends separate auction products by customer class since "it is common" in retail access states. (OCC Ex. 2 at 6.) But his recommendation is vaguely stated as holding separate SSO auctions "for residential, or perhaps residential and small commercial, customers, an approach many other states have adopted." (*Id.* at 8.) Other than listing some states that have experimented with customer-segmented auction products, Mr. Wilson really does not support his recommendation with any data or analysis and he does not even assert that residential customers would benefit in Ohio. Mr. Wilson failed to compare the Ohio SSO auction customer pricing results to the customer pricing results in the jurisdictions he referenced. (Tr. II at 326.) And he did not analyze whether the market price decreased for residential customers in the jurisdictions he referenced. (Tr. II at 329.) In fact, he was not even sure whether OCC represents commercial and industrial customers. (Tr. II at 312.) During cross examination, OCC witness Wilson merely defended the proposal for separate auctions products by class by weakly stating that it "could lead to more efficient and lower cost SSO auction outcomes for customers." (Tr. II at 329.) OCC witness Wilson's attempt to modify the Stipulation based on second-guessing the SSO provisions falls short of a proper showing needed under the three-part test.

Constellation witness Indukuri also recommends that AEP Ohio's slice-of-system method for procuring SSO supply be replaced with procurement by customer class. (Constellation Ex. 2 at 23-24.) Constellation witness Indukuri acknowledged that the slice-of-system tranches used in AEP Ohio's SSO auctions result in a blended price based on all the customer load profiles that all non-shopping customers pay; whereas, in an auction conducted on the same day, his recommendation for auction products segmented by customer class would create different prices for different customer classes, with some clearing prices lower and some higher than the blended slice-of-system approach. (Tr. IV at 717, 720-721.) In addition to failing to make a proper showing under the three-part test to justify such a modification of the Stipulation, however, Mr.

Indukuri's proposal is not fully developed or supported and such a significant change without a robust consideration of the consequences could produce unknown and potentially adverse results.

In his pre-filed testimony, Constellation witness Indukuri made an overbroad and unsubstantiated claim that "segmenting customer classes results in lower auction clearing prices." (Constellation Ex. 2 at 25.) Constellation witness Indukuri confirmed during cross examination that this assertion was based solely on the data in Figure 3 of his testimony. (Tr. IV at 737.) Stated differently, Constellation witness Indukuri separately admitted that nowhere in his testimony did he present auction clearing price data relating to an auction that implemented customer segmentation other than the narrow timeframe included in Figure 3. (Tr. IV at 772.) Mr. Indukuri's over-reliance on Figure 3 is flawed in at least three major respects: (1) he fails to adjust or correlate the Pennsylvania data in Figure 3 to the Ohio data in Figure 3 in a way that renders an apples-to-apples comparison, (2) the time period examined in Figure 3 is unduly narrow to reasonably support any general conclusion or price trend about customer-segmented auction products, and (3) an examination of similar data for a broader time period directly undercuts the specific conclusion he draws from Figure 3.

With respect to the first flaw in Figure 3 that the Pennsylvania data is not apples-to-apples with the Ohio data, Mr. Indukuri readily acknowledged that transmission and REC costs differ between the Ohio and Pennsylvania SSO products, so the prices would need to be adjusted in order to render an apples-to-apples comparison. (Constellation Ex. 2 at 25.) He claims that is not necessary to support his analysis because it would only make the Pennsylvania prices lower in further support of his conclusion. (*Id.*) And Constellation witness Indukuri admitted that looking at auction clearing prices without the appropriate context and the definition or the customer behavior in the past is not beneficial to make any statements about today. (Tr. IV at

765.) Ultimately, because Mr. Indukuri acknowledged that the data was not comparable to the Ohio data and he did not adjust the Pennsylvania auction data, it is unduly speculative to conclude that the adjustments would only further support his flawed conclusion.

With respect to the second flaw in Figure 3 that the data from customer-segmented auction products in Pennsylvania was taken from an unduly narrow time period that cannot reasonably be used to support any general conclusion or price trend associated, the record shows that a broader examination of data does undercut his flawed comparison. And Mr. Indukuri verified that nowhere in his testimony did he present auction clearing price data relating to an auction that implemented customer segmentation other than the narrow timeframe included in Figure 3. (Tr. IV at 772.) In attempting to dismiss the fact that the Pennsylvania data was not comparable to the Ohio data, Mr. Indukuri failed to consider that a broader set of data might yield the opposite trend (*i.e.*, that Pennsylvania's customer-segmented auction prices are higher than Ohio's when compared over a broader time period).

With respect to the third major flaw in Constellation witness Indukuri's Figure 3 that an examination of similar data[4] for a broader time period could undercut the specific conclusion he draws from the narrow set of data in Figure 3, AEP Ohio witness Kelso's rebuttal testimony did present an exhibit into the evidentiary record that reflects a broader set of data using the same type of auction clearing prices used by Mr. Indukuri in Figure 3:

> Using the same sources and methodology as Constellation, I retrieved all of the auction results from the fall of 2019 through the spring of 2023 for the same utilities in Ohio and Pennsylvania as appears in Constellation witness Indukuri's Figure 3 on page 26 of his testimony in opposition to the Stipulation. As Exhibit

[4] Ms. Kelso clarified on rebuttal that, although she agrees with Mr. Indukuri's admission that the Pennsylvania data in Figure 3 is not apples-to-apples to the AEP Ohio auction clearing prices, the additional data in LOK-1 is apples-to-apples to the data in Figure 3. (AEP Ohio Ex. 9 at 5.) AEP Ohio witness Kelso further clarified that Exhibit LOK-1 was not submitted to show that customer segmentation would be good or harmful, but rather to undermine Constellation witness Indukuri's argument to implement a class-based auction at this time. (Tr. V at 836.)

> *LOK-1 shows, looking at a more robust set of historical data points, the Company's slice-of-system auction process yielded a distinctly lower auction clearing price compared to the customer class auction utilities in Pennsylvania.* The auction results in Fall 2022 is the only auction clearing price where the Company's price was higher than all the customer class auctions and happens to be Constellation witness Indukuri's sole data source.

(AEP Ohio Ex. 9 at 5 (emphasis added).) As suspected, the larger set of data in LOK-1 undercuts Mr. Indukuri's overbroad assertion that customer-segmented will result in lower auction clearing prices. Further, it would appear that Mr. Indukuri's use of pinpoint data from the Fall of 2022 to support his claim was intentional, since that narrow dataset from the time period that supports his claim was extracted from a larger set of contrary data that manifestly contradicts his conclusion.

Frankly, as a general matter, Constellation's credibility is lacking when it comes to proposals that impact SSO prices. Constellation witness Indukuri verified that Constellation is both a wholesale SSO auction supplier and a retail CRES provider in Ohio. (Tr. IV at 710-711.) Effectively, Constellation can doubly enhance its business model through recommendations that tend to increase SSO prices – through directly harvesting higher prices as an auction supplier and, since the SSO prices form the price-to-compare for shopping, indirectly yielding higher prices from shopping customers as well. Indeed, during cross examination, Constellation witness Indukuri disagreed that it is a benefit for customers to have competitive options including whether to go back to the SSO if that's more favorable than their CRES price. (Tr. IV at 723.) Even more illuminating, Constellation witness Indukuri admitted that he would still recommend customer-segmented auction products even if it resulted in increased prices for residential customers. (Tr. IV at 775-776.) Even beyond his bias for higher SSO prices, Mr. Indukuri's recommendation lack merit and credibility and should not be adopted based on the record in this case.

ii. There is inadequate evidence supporting the need for a modification of the Stipulation's SSO provisions to implement a circuit-breaker mechanism (aka volumetric cap or contractual mitigation mechanism), advocated by Constellation witness Indukuri alone.

Constellation witness Indukuri alone recommends an SSO CBP modification to limit the volume/quantity of MWh supplied under a single tranche, beyond which there would be a spot market price paid non-shopping customers to purchase the actual quantity needed to supply SSO load. (Constellation Ex. 2 at 19-21.) But as shown below, that mechanism would obscure the price-to-compare by shifting the risk of price increases away from SSO suppliers to non-shopping customers based on volatile market prices at the very time when the SSO would serve the most value to non-shopping customers (*i.e.*, when market prices go up and shopping customers migrate to the SSO safety net). While the Commission may wish to entertain such a proposal if the SSO enhancements of the Stipulation should prove inadequate in the future, there is no need to do so at this time based on the record in this case – especially since the Stipulation already passes the three-part test without modification.

Under Mr. Indukuri's proposal, an SSO supplier would only "be obligated to provide default service at the agreed auction clearing price within an 8% band – 5% above, 3% below." (Constellation Ex. 2 at 22.) Constellation witness Indukuri admits that his circuit-breaker proposal uses numbers he came up with personally and would utilize a method that has not been adopted by any other state Commission. (Tr. IV at 685, 690.) Setting aside the arbitrary numbers used to design the circuit-breaker, a big part of his rationale is that this approach would lower the risk calculus for SSO suppliers. (*Id*.) But Mr. Indukuri fails to quantify the potential impact his circuit-breaker proposal would have on SSO customers at the key time where market prices rise and customers migrate to the SSO safety net. Using the 2022 example he cites in his testimony (Constellation Ex. 2 at 20) where SSO suppliers were obligated to serve 200% of the load taking SSO service at the time of the auction, the SSO price would be retroactively re-priced under his proposal after-the-fact such that nearly half of the price (the difference between 200% and 105% of the load) paid by SSO customers would be based on (high) spot market prices.

Not only does the circuit-breaker proposal unreasonably shift risk/cost from SSO suppliers to SSO customers, but it also obscures the price-to-compare. Constellation witness Indukuri admitted that a customer deciding whether to shop under his circuit-breaker proposal would have to know the SSO price to compare that is set by the auctions and would have to consider what could happen if the band gets broken and real-time market prices are added on top of that price; but he added that commercial and industrial customers are sophisticated and have the ability to make decisions by considering the variables. (Tr. IV at 713-714.) Mr. Indukuri also agreed that, under his circuit-breaker proposal, SSO customers would not know whether the volumetric band would be exceeded during the delivery period or the market price that would be added if the band was exceeded during the delivery period. (Tr. IV at 735.) Under the Constellation proposal, customers would simply not have the same level of certainty about SSO prices and would only know that beyond the volumetric limit, they would be exposed to market prices. (Tr. IV at 716.) When pressed for additional details to confirm that a shopping customer would not know when considering whether to return to the SSO whether the volumetric band would be broken or what market prices they would be exposed to, Mr. Indukuri simply stated that "we never know what future market prices are" and admitted in surrender "I can't really answer." (Tr. IV at 716-717.) By contrast, under the current CBP regime, Mr. Indukuri admitted that customers know exactly what price they will pay when returning to SSO. (Tr. IV at 715.)

In sum, Constellation witness Indukuri presents no valid basis to adopt a volume limit on SSO supplier obligations at this time and utterly fails to allege, let alone demonstrate, that the proposal is needed in order for the Stipulation to pass the three-part test.

4. The Distribution Investment Rider and related commitments are part of a settlement package that benefits ratepayers and the public interest; the record shows that AEP Ohio's is placing a sufficient emphasis on reliability and a finding that AEP Ohio's expectations and customers' expectations are sufficiently aligned" as to reliability.

The Commission initially approved the DIR in 2011 "as an appropriate incentive to accelerate recovery of the Compan[y's] prudently incurred costs" for ensuring the reliability of its distribution system. *ESP II*,[5] Opinion and Order at 46 (Dec. 14, 2011). Similarly, in the *ESP III*[6] proceedings, the Commission recognized that the DIR proactively "facilitate[s] the timely and efficient replacement of aging infrastructure." *ESP III*, Opinion and Order at 40, 47 (Feb. 25, 2015). Most recently, in extending the DIR as part of the *ESP IV*[7]cases, the Commission found that "AEP Ohio's expectations and customers' expectations are sufficiently aligned" as to reliability and again found that the DIR "facilitates the timely replacement of aging infrastructure, improving and maintaining service reliability; supports the installation of gridSMART technologies, including automated meter infrastructure, volt/VAR optimization, and distribution automation circuit reconfiguration; and will serve as the foundation for the installation of other advanced technologies in the future." *ESP IV*, Opinion and Order (April 25, 2018) at ¶189. As discussed below, the current Stipulation continues these same DIR benefits and more.

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[5] Case Nos. 11-346-EL-SSO, *et al.*

[6] Case Nos. 13-2385-EL-SSO, *et al*.

[7] Case Nos. 16-1852-EL-SSO, *et al*.

Under the Stipulation, AEP Ohio will continue the DIR for the term of the ESP through May 31, 2028. (Jt. Ex. 1 at ¶ III.H.25.) AEP Ohio will continue to update the DIR quarterly (with rates effective 60 days after filing, unless otherwise ordered by the Commission), but the DIR filing that previously has been effective as of August 1 will now be effective as of July 1 and docketed at least 60 days prior to that date. (*Id*. at ¶ III.H.27.) The DIR will continue to be subject to an annual compliance audit, with audit costs recoverable under the DIR. (Tr. II at 389.) Any investment funded by grants received under the All Ohio Future Fund created by R.C. 126.62 will be excluded from the DIR to the extent of such grant funding. (Jt. Ex. 1 at ¶ III.H.23.)

Because the latest available depreciation study shows a $159.246 million imbalance because the theoretical reserve balance is lower than the actual accumulated depreciation as of December 2022, a $23.727 million charge is being applied during ESP IV above the approved annual DIR revenue caps; starting with ESP V and until the effective date of new rates in the next base distribution case, the $23.727 million charge will be removed and an additional credit of $10 million will be added to the DIR. (Jt. Ex. 1 at ¶ III.H.24.) As AEP Ohio witness Mayhan explained, the net effect of the annual depreciation expense reduction will reduce the rate impact for customers from June 1, 2024 until the effective date of the next base rate case. (AEP Ohio Ex. 2 at 10.) On that basis, the proposed annual revenue requirement caps for *ESP V* are:

2024 (6-12):	$122.75M
2025:	$226 million
2026:	$256 million
2027:	$286 million
2029 (1-5):	$131 million

(Jt. Ex. 1 at ¶ III.H.25.) This set of annual caps reflects a reversal of the $23.727 million annual theoretical reserve charge currently reflected in the DIR and an additional credit of $10 million, as referenced above. The annual DIR revenue caps may be prospectively recalibrated to the level of plant-in-service reflected in rate base and adjusted as part of any base rate case filed during the ESP term. Likewise, the extent of theoretical reserve included in base rates and in the DIR, respectively, may be adjusted as part of any base rate case filed during the ESP term. There will be no rollover from year-to-year of unused annual DIR revenue requirement amounts. (Jt. Ex. 1 at ¶¶ III.H.25-26.)

As AEP Ohio witness Mayhan testified, the DIR will provide important benefits as part of the settlement package:

> Investment in proactive reliability, grid resiliency, and vegetation management under the DIR and ESRR programs under Stipulation will allow the Company to invest in critical distribution system equipment to address aging infrastructure, serve new customers in the Company's growing service territory, and help reduce outages from vegetation from both inside and outside of the right-of-way. The DIR will 1 better position the Company to react to the ever-increasing new customer growth in the AEP Ohio service territory while allowing the replacement of aging infrastructure on a more accelerated time-table than would otherwise have occurred.

(AEP Ohio Ex. 2 at 21-22.) As part of the serious bargaining leading up to the Stipulation, the Company agreed to remove its customer work exception to the DIR caps that was proposed in the Application. (Jt. Ex. 1 at ¶¶ III.H.23.) This concession provides rate stability by eliminating an exception to the DIR caps that involves significant spending outside the Company's control. (AEP Ohio Ex. 2 at 10.)

OCC witness Williams disputes that the interests of AEP Ohio and its customers are aligned with respect to reliability and recommends that the DIR be linked to actual reliability performance and asserts that reliability spending without reliability benefits is not beneficial. (OCC Ex. 4 at 8-9, 11.) As a threshold matter, Mr. Williams' premise that AEP Ohio has a "troubled past" in providing consumers with reliable service (OCC Ex. 4 at 2) is inaccurate. On cross examination, Mr. Williams clarified that he based his characterization primarily on two things: (1) the 2018 miss of the CAIDI and SAIFI standards (with SAIFI also missing again in 2019), and (2) CAIDI performance got worse in 2021-2022 compared to 2020. (Tr. II at 372-373.) Mr. Williams' "troubled past" characterization is unfounded but regardless, OCC witness Williams' recommendations should be rejected as he has not meaningfully evaluated the DIR spending or rate impacts and unreasonably wants to AEP Ohio to issue a reliability guarantee.

Regarding the first basis for his "troubled past" comment, Mr. Williams admitted on cross examination that the CAIDI failure in 2018 was only a "slight miss" and it was followed by a "big improvement" in 2019; the consecutive SAIFI misses followed up with compliance with the standard in the years since that time. (Tr. II at 375-376; OCC Ex. 8 at 17.) With respect to his second basis for the "troubled past" characterization, Mr. Williams' CAIDI deterioration claim was that the performance went down over a couple years (2021-2022) – even though he admitted in all relevant years the performance was in compliance with the standard and that performance is normally variable in general. (Tr. II at 377; OCC Ex. 8 at 17.) Moreover, Mr. Williams failed to similarly acknowledge performance on other metrics that exceeded the standard (over-compliant) when characterizing AEP Ohio's reliability performance record. (Tr. II at 378.) In sum, Mr. Williams' premise that AEP Ohio has had a troubled past in providing consumers reliable service is misguided and inaccurate.

OCC witness Williams also tries to use AEP Ohio's pending reliability metrics filing (20-1111-EL-ESS) as a wedge against the Stipulation's DIR provisions, by claiming that relaxed performance metrics will come out of that case despite the increased spending levels in the Stipulation. (OCC Ex. 4 at 10-11.) On the contrary, it is only logical to presume that the DIR spending levels in the Stipulation will be considered and reflected in the outcome of the 20-1111 case – regardless of whether it is ultimately litigated or settled. Indeed, Mr. Williams acknowledged that the Stipulation will need to be refreshed or thought through and considered in the Metrics Case. (Tr. II at 391.) In reality, each year brings new reliability challenges and performance is driven by many variables including weather, customer-driven work that absorbs funding that may have been earmarked for reliability, other outages beyond the Company's control, aging infrastructure failures, etc. While Mr. Williams believes there should be absolute requirements set for reliability performance and he cites certain instances where reliability improvements have been tied to the DIR based upon settlement, he did not cite any example where the Commission ordered that result outside of a utility-supported settlement. And the Commission should not entertain doing so for the first time in this case; the reliability metric case is pending in a separate docket and will be resolved in due course.

Significantly, OCC witness Williams also failed to study the customer survey results in reaching his conclusions related to CAIDI and SAIFI performance in this case. (Tr. II at 378.) But he admitted that he has previously implemented the customer survey results in his testimony in AEP Ohio's last ESP and agreed that the Commission has used the customer survey results in prior ESP decisions in determining whether the DIR proposal is aligned with customer expectations. (Tr. II at 379, 384.) On the stand, Mr. Williams reviewed AEP's Exhibit 5, which is the AEP Ohio 2021 Customer Reliability Survey. (Tr. II at 380-384.) Mr. Williams confirmed he is familiar with the report and previously reviewed AEP Ohio's customer survey results. (Tr. II at 390.)

As acknowledged by Mr. Williams, AEP Ohio 2021 Customer Reliability Survey shows that 70 percent of AEP Ohio customers were very satisfied or somewhat satisfied from the residential customer group with their service reliability. (Tr. II at 381; AEP Ohio Ex. 5 at §2.)

The 2021 Survey also showed that 85% of residential customers consider two outages or less during a year to be acceptable. (Tr. II at 381; AEP Ohio Ex. 5 at §4.) Mr. Williams agreed that two sustained outages could be correlated to a SAIFI of 2. (Tr. II at 382.) The 2021 Survey also shows that 88% of residential customers accept non-storm outages of up to four hours, which is well above the level of AEP Ohio's performance for 2013-2022. (AEP Ohio Ex. 5 at §6.) And even OCC witness Williams agreed that the DIR should be maintained for reliability. (Tr. II at 386.)

OCC's arguments against the DIR are essentially the same arguments made (and rejected) in *ESP IV*. The Commission first pointed out:

> In consideration of whether to approve a distribution infrastructure and modernization provision as part of an ESP, 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. R.C. 4928.143(B)(2)(h) does not expressly require the Commission to consider costs.

ESP IV, Opinion and Order at ¶ 186. Although OCC's complaints about the cost and rate impact of the DIR are unfounded, the Commission need not consider them as part of its statutory framework for approval of the DIR. In any case, as further discuss below in Section III.C.1, OCC witness Williams' argument that the Stipulation violates an important policy of affordable electric rates is misguided and should be rejected.

As to the alignment of Company and customer interests, the *ESP IV* decision also provides useful guidance. After finding that the Customer Survey revealed that customers expect that the number of outages should be kept to a minimum and that, when there is a power outage, service is restored quickly, the Commission noted that AEP Ohio met its reliability performance standards over the last three years and found that the Company is dedicating sufficient resources to reliability. *ESP IV*, Opinion and Order at ¶ 189. The Commission went on to approve the DIR, finding as follows:

> The Commission finds that the DIR facilitates the timely replacement of aging infrastructure, improving and maintaining service reliability; supports the installation of gridSMART technologies, including automated meter infrastructure, volt/VAR optimization, and distribution automation circuit reconfiguration; and will serve as the foundation for the installation of other advanced technologies in the future.

(*Id*.) The same essential circumstances exist today and support continuation of the DIR.

In sum, the current Customer Survey also confirms that customers expect that the number of outages should be kept to a minimum and that, when there is a power outage, service is restored quickly. (AEP Ohio Ex. 5 at §§ 4, 6.) The record in this case also confirms that AEP Ohio has met its reliability standards the last three years. (OCC Ex. 8 at 17.) And the survey results and reliability performance of the Company support a conclusion that AEP Ohio is placing a sufficient emphasis on reliability and a finding that AEP Ohio's expectations and customers' expectations are sufficiently aligned" as to reliability. The Stipulation's DIR provisions should not be modified as they provide benefits as part of the settlement package. OCC witness Williams has not demonstrated otherwise and his recommendations – that essentially second-guess the settlement and attempt to insert OCC's own views – should be rejected.

5. The ESRR is beneficial and needed to ensure that the Company can continue to maintain its four-year vegetation management cycle despite rising costs while providing some amount for addressing out of right-of-way vegetation.

The Stipulation proposes to continue the ESRR, by adjusting the funding schedule proposed in the Application as follows:

2024 (6-12):	$ 34 million
2025:	$ 60 million
2026:	$ 62 million

2027: $ 62 million
2029 (1-5): $ 26 million

(Jt. Ex. 1 at ¶ III.E.) For planning purposes and for setting annual ESRR rates only, the ESRR funding level should be set at $34 million in 2024 (6-12), $60 million in 2025, $62 million in 2026, $62 million in 2027 and $26 million in 2028 (1-5). Any spending exceeding the afore mentioned amounts by year will be deferred without carrying charges for recovery through the ESRR, subject to final reconciliation for the total period up to the $244 million cap. (*Id.*)

As AEP Ohio witness Mayhan testified, the ESRR mechanism provides a streamlined regulatory approach to recovering many of the costs associated with investment in vegetation management costs. From a ratemaking standpoint, she testified that the ESRR rider also promotes rate gradualism and when coupled with annual caps it also provides rate certainty and stability for customers that would not otherwise exist under a traditional rate case ratemaking structure. (AEP Ohio Ex. 2 at 16-17.) Operationally, Ms. Mayhan confirmed that the ESRR funding will help the Company proactively support reliability and reduce outages caused by vegetation from both inside and outside of the right-of-way. (*Id*. at 21-22.)

OCC witness Williams claims that the increased level of vegetation spending to be recovered through the ESRR is not beneficial for customers and the public interest, based on three points: (1) the danger tree program was intended to end in 2023, (2) the Company has not projected reliability impacts associated with the ESRR or updated its vegetation management plan, and (3) the Stipulation has no required reliability improvements associated with vegetation spending. (OCC Ex. 4 at 12-14.) Each of these reasons is misguided and insufficient to support OCC's conclusion that the ESRR is not beneficial to customers or serves the public interest.

With respect to the first argument that the ESRR funding should not increase because the danger tree program was supposed to end in 2023, that position is misleading. Mr. Williams cites the Commission's Opinion and Order in AEP Ohio's most recent base distribution rate case (Case No. 20-585-EL-AIR) to support that assertion. (OCC Ex. 4 at note 17.) As the ESRR section of the Opinion and Order in the 20-585 case makes clear, continued prudent spending on danger trees outside the right-of-way was already contemplated when the stand-alone program was merged into general vegetation spending: "The stand-alone danger tree program will end at the conclusion of 2023, *but AEP Ohio may continue to take prudent actions to address danger trees after 2023 within the funding levels described above as part of its overall vegetation management plan*." *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Opinion and Order (November 17, 2021) at 23 (emphasis added). As AEP Ohio witness Mayhan testified, the ESRR "will provide much needed funds" for the Company to increase its "ability to target out of right-of-way vegetation, which has previously proven to have a materially positive impact on reliability." (*Id*. at 22.) Hence, Mr. William's first attack on the ESRR has no merit.

With respect to Mr. Williams' second argument that the ESRR funding should not increase because the Company has not projected reliability impacts associated with the future vegetation spending, that position also lacks merit. Vegetation outage results on AEP Ohio's vast network vary from year-to-year based on storms, vegetation growth based on weather and other conditions, non-major storm activity, labor costs, presence of pests such as the emerald ash borer, etc. One factor such as labor cost increase can mean that more funding does not translate into more vegetation work. Other variables from year-to-year obscure the ability to project specific performance results based on specific funding levels. Moreover, other factors such as corporate financing or allocation of spending during challenging financial times, can affect the actual spending levels (and any expected results from such activity levels). In other words, there is no consistent or reliable basis for AEP Ohio to project specific reliability impacts based on future vegetation spending.

As a related matter, Mr. Williams faults the Stipulation for not requiring the Company to file an updated vegetation management plan to reflect the approved spending levels. (OCC Ex. 4 at 13.) But OCC fails to recognize that OAC 4901:1-10-26(B) requires the Company to submit an annual system improvement plan, including the goals for each program and whether these goals for the prior year were achieved. The vegetation management program is necessary for maintaining safe and reliable service for customers and the existing reporting requirements cover OCC's concern in this regard.

Finally, Mr. Williams' third attack on the ESRR is misguided: that ESRR cost recovery should not be permitted because the Stipulation does not impose reliability requirements attached to future vegetation spending. OCC fails to cite an example where the Commission has conditioned vegetation funding on achievement of specific performance results. As explained above, there are many factors that affect the net performance metrics and it would not be fair or reasonable to require the Company to guarantee specific results.

Over OCC's objections, the Commission approved similar updates to the ESRR in the *ESP IV* decision:

> Reliable service is a benefit to customers and the public interest. The Commission finds the cost to customers, given the ongoing nature of the program, to be reasonable. 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. Vegetation management is by its very nature an ongoing process.

ESP IV, Opinion and Order at ¶ 196. All of these same considerations apply in this case. Every dollar that goes through the ESRR will be audited to confirm that the funds were prudently spent as a condition of recovery. (Tr. II at 389.)

In sum, the ESRR provisions of the Stipulation should be approved without modifications, since vegetation spending is one of the most effective ways to maintain and improve reliability and is beneficial to customers and the public interest.

6. The CIS deferral is a beneficial balance of the Company's need to invest in a modern and efficient billing/settlement system while ensuring that it will be subject to a detailed audit as part of a future rate case.

As part of the CIS provisions, the Stipulation authorizes a deferral of capital costs and expenses until the next bae distribution rate case, which will be filed by June 1, 2026, but there are also significant commitments that go with the deferral provision – four and a half pages of commitments no less. (Jt. Ex. 1 at ¶ III.C.6.) The Company agrees to form a collaborative group (open to any interested party in this case) to discuss and coordinate CIS implementation rollout and related matters. As part of the CIS implementation AEP Ohio shall reflect an extensive list of functionalities, subject to compliance with any applicable Commission rules and orders (bill format, customer rights, data restrictions, customer consent, rescission rights, etc.) All of these items are designed to enhance customer information and promote competition, including flexible billing, customer and CRES access to interval data, and accelerated switching. (*Id*.) The Stipulation also provides commitments to develop data sharing for customers and third-parties, appropriate provision of non-jurisdictional billing and potential revenue options to reduce the cost – all with appropriate regulatory and customer safeguards that go with those commitments:

- The new CIS will incorporate secure data sharing functionality. Upon receiving evidence of all necessary customer consent, AEP Ohio's CIS system will be capable of providing to CRES providers and third-party aggregators available customer data sufficient to allow them to enroll residential accounts to participate in the PJM ancillary services market, including but not limited to the customer's peak load contribution. AEP Ohio will evaluate the costs of providing such service, if any, and propose charges, as applicable, for this service in its next rate case.
- AEP may propose tariff charges to be billed to third parties that utilize the AEP Ohio bill to charge for non-jurisdictional items/services, The revenue for those tariff services shall be credited to help offset any charges for data transfer and bill format costs. Signatory Parties reserve their rights to contest the proposed tariff changes.
- AEP Ohio will ensure that it shows past due non-jurisdictional charges separately from AEP Ohio past due regulated charges on its bill through a bill format application within 60 days of executing the Stipulation.

(*Id*.) This robust list of commitments about the future state of its CIS to benefit customers, the competitive market, and the public interest. As AEP Ohio witness Mayhan testified, the CIS deferral under the Stipulation enables the Company to proceed with converting an outdated CIS system to a modern and efficient billing/settlement system that promotes the advancement of retail competition in the Company's territory and enhances the protection of customer data; the CIS will also serve to improve the customer experience. (AEP Ohio Ex. 2 at 22.)

OCC witness Williams recommends that the Commission reject the CIS provisions and enforce traditional ratemaking principles in this case:

> The PUCO should protect consumers by not requiring them to pay any unjust and unreasonable charges to replace the existing CIS system. The PUCO should reject the proposed Settlement and instead require AEP Ohio to seek collection of all capital costs and expenses associated with the replacement of the CIS system in future base rate proceedings, *after* it demonstrates that the costs were prudently incurred and that the investments are used and useful in providing distribution service to consumers.

(OCC Ex. 4 at 4.) Mr. Williams assertion that the deferral ahead of the rate case is somehow harmful or unjust is misguided and the approach recommended by OCC witness Williams ignores the ESP statutory authority and precedent for approving alternative regulatory mechanisms like the CIS deferral.

R.C. 4928.143(B)(2)(d) specifically authorizes the Commission to approve deferrals and future recovery of deferrals as part of an ESP case. The Stipulation provides that only "prudently incurred" capital investments and expenses will be recovered in the next base distribution case – after being preserved for recovery through the deferral mechanism – and the Stipulation explicitly says that the amount of expenditures for future recovery "is subject to a reasonableness and prudence review." (Jt. Ex. 1 at 6 ¶ III.C.6.) Thus, in reality, the CIS costs will not be recovered until after a prudence and reasonableness showing in the rate case – the intervening costs incurred will merely be deferred until that time. Moreover, the CIS provisions are a significant reason why Direct, IGS and RESA support the Stipulation; the CIS functionalities will promote competition and beneficial to customers and the public interest.

Given the extensive benefits provided by the CIS and broad-based support from CRES providers to develop these functionalities, the Commission should adopt the CIS provisions without modification.

7. The Electric Vehicle commitments are part of a settlement package that benefits ratepayers and the public interest.

As set forth in the Stipulation, the ETP has been amended from the as-filed Application to eliminate the rebate incentives, reducing the total cost of the ESP V by $16.2 million while providing additional commitments responsive to intervenor concerns that can reduce or delay necessary investment in the distribution system. As part of the Stipulation, the parties withdrew the proposed incentives under the ETP leaving a capped amount of $300,000 for education, outreach, and analytical costs associated with the EVSE installation requests and implementation of the gridSMART tariff provisions. (Jt. Ex. 1 at ¶ III.F.10.) The analytical costs pave the way for the Company's commitment to implement a new "table top" capacity review whereby interested parties can submit requests for capacity congestion/availability for EVSE and the Company will make best efforts to respond within 5 business days. (Jt. Ex. 1 at ¶ III.F.11.) This will assist the EVSE market to have further insight into available and favorable locations for such equipment. The Company also committed to analyze and evaluate implementation of a "capacity heat map" for external use that can be used by external parties to evaluate available capacity for EVSE, DERs, or other demand intense technologies. (*Id.*)

The Stipulation also makes adjustments to the residential PEV tariffs as proposed in the as-filed case. Specifically, the hours and rate of the whole home PEV rate was adjusted to expand the off-peak hours and the separately metered PEV rate was further adjusted to allow for a super off-peak rate to incorporate various intervenor positions set forth in their June 9, 2023, testimony. (Jt. Ex. 1 at ¶ III.F.12.) Both rates, hare designed to promote electric-intense EV charging off of the peak times thereby benefitting AEP Ohio's distribution grid and saving customers money. (AEP Ohio Ex. 2 at 23; Staff Ex. 1 at 8.) The Stipulation also contemplates and allows for flexibility for the PEV rates – expressly permitting the Company to file an application to change the PEV rates based upon collaborative discussions. (Jt. Ex. 1 at ¶ III.F.13.) To that end, the Company commits to data sharing associated with the PEV rates with a newly established workgroup to further analyze the time-of-use rates, which is directly responsive to OCC's request to share data. (*Id.*) The data sharing will be informative for future PEV time-of-use rates that could be filed under an ATA case as previously mentioned, but also for the Company's upcoming rate case that it committed to file by no later than June 1, 2026.

Finally, AEP Ohio has withdrawn its proposal that the Company take responsibility for 100% of the CIAC for customer installations of EV chargers; instead, agreeing to propose and support that electric utilities be responsible for 80% of the total cost of line extensions for publicly available EVSE in the next review of Ohio Adm. Code 4901:1-9. (Jt. Ex. 1 at ¶ III.F.14.) This commitment provides the Commission due consideration and oversight prior to implementing such change that could have a meaningful impact to the distribution grid, CIAC, and customer rates. To the extent the Commission adopts AEP Ohio's forementioned proposal in a future rulemaking proceeding, AEP Ohio has committed to reserve at least $2 million but no more than $4 million of capital investment for recovery through the DIR to support modification of the CIAC costs for customer installations of EV charging stations in approved locations. (Jt. Ex. 1 at ¶ III.F.15.) Importantly, approved locations are limited to those "where there is existing capacity to serve the requested amount of peak load without having to install additional facilities to maintain, protect, upgrade or improve the existing distribution facilities before the point of origin." (*Id*.) Limiting this incentive ratemaking to such locations will help reduce or delay investment in the distribution grid that might otherwise be borne by all customers via increased rate base.

Combined, the commitments related to EV charging equipment, rate design, and information sharing create a suite of complimentary programs that will maximize insight and help reduce stress on the grid from the expected increase of demand-intense EV charging. This will benefit current EV owners, future EV owners, and all customers alike.

8. The Stipulation provides implementation of an ADMS that will help the Company dynamically manage the distribution system including accommodating Distributed Energy Resources.

The Stipulation allows AEP Ohio to recover costs for its much-needed ADMS through the gridSMART rider, rather than through a new Customer Experience Rider as the Application originally proposed. (*Cf.* Jt. Ex. 1 at ¶ III.I with AEP Ohio Ex. 1 at 15.) The new ADMS platform will replace the Company's existing OMS and DMS, offering fully integrated capabilities that will be used to manage and operate the growing complexities associated with DERs moving forward. (AEP Ohio Ex. 1 at 15, 23.) In addition to increased functionality, the Company's OMS and DMS systems must be replaced due to the vendor sunsetting these applications. (*Id*. at 15.) The ADMS will provide AEP Ohio cost-effective real-time, and efficient access to information regarding the operation of the distribution system in order to improve performance standards and targets for service quality for all consumers. (AEP Ohio Ex. 2 at 24-25.) As OCC witness Shutrump confirmed, limiting or avoiding distribution outages is good for customers and the public interest. (Tr. III at 527.)

Under the Stipulation, the signatories agree that "[u]ntil such time as ADMS costs are subsequently reflected in base distribution rates, the Company will recover its ADMS investment through the gridSMART Rider." (Jt. Ex. 1 at ¶ III.I.) OCC witness Williams conclusively asserted, however, that the proposed Stipulation "unreasonably shifts expenses into the previously approved gridSMART rider for programs that have nothing to do with gridSMART as approved by the PUCO." (OCC Ex. 4 at 3.) But Mr. Williams agreed that in previous ESP proceedings, the Commission permitted the Company to recover investments through the DIR that support gridSMART technology that were not gridSMART technologies themselves. (Tr. II at 398.) Notably, Mr. Williams did not argue that the ADMS is unnecessary or imprudent. Instead, he argued that AEP Ohio should wait until its future base distribution rate proceeding to seek capital costs associated with replacing the OMS and DMS systems. (OCC Ex. 4 at 4.)

Recovery of ADMS costs through the gridSMART rider benefits ratepayers for several reasons. First, the Stipulation allows for accelerated benefits associated with ADMS. In other words, the Stipulation provides AEP Ohio the ability to implement the ADMS functionalities now, rather than waiting until the Company's future rate distribution case. Second, the

Stipulation requires AEP Ohio to update its quarterly gridSMART filings at least 60 days before their auto approval date to ensure the Company is in compliance with applicable caps. (AEP Ohio Ex. 2 at 11; Jt. Ex. 1 at ¶ III.I.) Third, the Company has agreed to move all used and useful Phase 2 assets and costs in the gridSMART rider into base rates when it files its next base distribution rate case. (Jt. Ex. 1 at ¶ III.I.) The Company has also provided extra assurance that there will be no double recovery between base distribution rates and gridSMART rates. (*Id*.)

Finally, as AEP Ohio witness Mayhan testified, the Stipulation streamlines what is permitted to continue through the gridSMART rider, which will enhance the efficiency of future audits, ultimately benefiting ratepayers. (AEP Ohio Ex. 2 at 23.) Once AEP Ohio's new base rates become effective, only three costs will be eligible for recovery: (1) ADMS costs and assets, (2) Phase 3 costs and assets, and (3) any other costs approved for recovery in the gridSMART Rider in this Stipulation and/or other future Commission Orders. (Jt. Ex. 1 at ¶ III.I.) Therefore, AEP Ohio is not using the gridSMART rider as a "slush fund," as Mr. Williams testified. (OCC Ex. 4 at 3:22-23.) Rather, the Stipulation provides recovery for costs associated with the ADMS through the gridSMART rider until the Company's next base distribution rate. Thus, AEP Ohio's recovery of ADMS costs through this streamlined process will not only benefit ratepayers now, but will also benefit customers in future rate proceedings.

9. The Smart Thermostat Demand Response program is part of a settlement package that benefits ratepayers and the public interest.

As part of the Stipulation filed in this matter, the Signatory Parties developed and agreed to a novel Smart Thermostat Demand Response program as a tool to reduce demand and stress on the distribution grid as well as corresponding costs of avoiding high demand events. (AEP Ohio Ex. 2 at 23.) The Smart Thermostat Demand Response program provides an annually capped amount of $5,000,000, which will be recovered through the currently existing gridSMART rider, to enable and reward residential customers for enrolling in the demand response program. In turn AEP Ohio "has the ability to call Demand Response Events to implement a PJM directive, to protect its distribution system, to limit or avoid distribution outages, to reduce load on localized constrained distribution circuits, and to reduce the coincident peak demand of the distribution network." (Jt. Ex. 1 at ¶ III.I.34.)

As described in the Stipulation, residential customers will be eligible for an initial $75 incentive toward a new smart thermostat or $50 toward an existing smart thermostat in exchange for enrolling in the Smart Thermostat Demand Response program. Enrollment in the Smart Thermostat Demand Response program and receipt of the initial incentives can be attained through AEP Ohio or a CRES provider. (*Id*.) Customers will be also be eligible for an additional $25 incentive each year provided that they participate (by not opting-out) in at least 75% of the demand response events that AEP Ohio calls. (*Id*.) The Stipulation also contains a commitment for a semi-annual collaborative to maximize the benefits of the program, ensure a forum to address CRES capabilities, and consider potential expansion to other in-home demand-response-capable devices without increasing costs beyond the annual cost cap. (*Id*.) The Smart Thermostat Demand Response program is intended to provide an innovative solution to assist AEP Ohio avoid peak demand on its distribution system by allowing the company to call on customers to curtail during times of high demand on AEP Ohio's distribution system. (AEP Ohio Ex. 2 at 23; *See generally*, Tr. III at 521.) Specifically, the Smart Thermostat Demand Response program is designed to lower coincident peaks and stress on AEP Ohio's delivery networks, which can thereby lower costs for all customers. (AEP Ohio Ex. 2 at 18, 23.) Even OCC's witness Shutrump concedes that successful demand response programs have the potential to reduce stress on the grid at peak times. (Tr. III at 440.) The Smart Thermostat Demand

Response program is also designed to improve reliability by reducing or avoiding outages or localized constraints. (AEP Ohio Ex. 2 at 18; Staff Ex. 1 at 10.) Reducing stress on the distribution grid and associated costs while Increasing reliability by incentivizing voluntary customer participation benefits all customers and the public interest.

10. The Energy Efficiency Rider provision is part of a settlement package that benefits ratepayers and the public interest.

As part of the Stipulation, the Signatory Parties agreed to a balanced reduction and refocusing of the as-filed Energy Efficiency Rider program, which included reducing the as-filed $43.4 million in energy efficiency programs for all customers, down to a $12 million program nearly exclusively focused on low-income residential customers. This includes an express withdrawal of all commercial and industrial programs. As a result, the Energy Efficiency Rider program set forth in the Stipulation contains five remaining components. (Jt. Ex. 1 at ¶ III.L.)

The first component of the stipulated Energy Efficiency Rider program is the e3smart program with an annual budget of $600,000 (reduced from the $912,000 in the Company's Application) that provides energy education to schoolchildren in AEP Ohio's service territory. (Staff Ex. 1 at 8.) The second component is the High Efficiency for Low-Income Program ("HELP") that provides assistance to two different sub-sets of at-risk low-income customers for energy efficiency measures. The first sub-set of the HELP program is $8 million (increased from the $5.9 million in the Company's Application) of assistance to customers with incomes up to 200% of the federal poverty level to be used toward lighting, heat pumps, refrigerators and weatherization. (Jt. Ex. 1 at ¶ III.L.) The second sub-set of the HELP program is the Supplemental Low-Income Program, retaining the as-filed annual budget of $2 million to fund heat pumps and weatherization for at-risk customers at 200%-300% of the federal poverty level. (Jt. Ex. 1 at III.L.) The third component of the Energy Efficiency Rider program includes funding for AEP Ohio's long-running Neighbor-to-Neighbor program, which provides bill assistance to at-risk customers that are below 200% of the federal poverty level. (Tr. III at 514.) The Neighbor-to-Neighbor program further leverages customers donations that are matched by AEP Ohio's shareholder funds. (AEP Ohio Ex. 2 at 12; Tr. III at 518-519.) The fourth component of the Energy Efficiency Rider program includes an annual budget of $1 million to educate and train customers so that they are aware of the Energy Efficiency programs and can avail themselves to save money and improve comfort. The final component of the Energy Efficiency Rider program is a cap on the administrative fee that AEP Ohio is entitled to collect in addition to the programs themselves. In the as-filed case, AEP Ohio proposed that it be entitled to an administrative fee that ranged from 10% to 20% based upon cost-effectiveness of the as-filed energy efficiency programs. (Tr. III at 498.) The Stipulation, however, caps the administrative fee for AEP Ohio at the lowest threshold (10%), which reduces the amount that customers would otherwise pay in total for the Energy Efficiency Rider program. (Tr. III at 501-502.)

The Energy Efficiency Rider program is nearly exclusively aimed at assisting customers at or below 300% poverty rate; thereby, "protect[ing] at-risk populations." R.C. 4928.02(L); (Staff Ex. 1 at 8.) OCC's own witness even concedes that low-income customers, such as those the 200% poverty level, are at-risk customers (Tr. III at 514-515). It will provide those at-risk customers with assistance purchasing more efficient high-energy use products for their homes. This not only helps low-income customers reduce their usage and therefore their bill, but it will also help reduce the energy demand placed on the electric grid, which is a benefit to all customers. (AEP Ohio Ex. 2 at 22.) As such, the energy efficiency programs in the Stipulation provide an annual gross benefit to customers of approximately $22 million, which is far more than the cost of the programs at $12 million with a maximum $1.2 million administrative fee. (AEP Ohio Ex. 2 at 17.)

To further limit the costs associated with the Energy Efficiency Rider program, the Signatory Parties agreed to prohibiting AEP Ohio from collecting lost distribution revenues, which was contained as part of the Company's Application. (Jt. Ex. 1 at ¶ III.L.) The Signatory Parties also empower Staff to evaluate the programs (through an independent auditor or otherwise), including but not limited to annual rider audits and periodic Evaluation, Measurement, & Verification (EM&V) of the programs. (*Id*.) OCC, however, recommends additional auditing that is unnecessary and needlessly thrusts additional costs onto customers without additional benefits.

Specifically, OCC requests that in addition to the Staff's annual prudence review there should be an additional level of review by an independent auditor, which should be paid for by customers. (OCC Ex. 5 at 8-9; Tr. III at 511.) Page 8-9 of OCC witness Shutrump's testimony outlines the laundry list of issues that OCC recommends should be addressed by this additional independent audit. (OCC Ex. 5 at 8-9; Tr. III at 506-507.) But OCC has not analyzed the costs, (Tr. III at 510-511), or identified any additional benefits that will be acquired as a result of this additional audit let alone benefits that will outweigh the blank check for the audit that is to be paid for by customers.

The Energy Efficiency program was streamlined and primarily designed to provide efficient devices and bill assistance to low-income customers up to 300% of poverty level; thereby, assisting at-risk customers to reduce their usage and pay their bills. And the Staff's expressly reserved ability to review and audit the Energy Efficiency Rider program is sufficient without saddling customers with additional unnecessary costs of a burdensome audit as outline by OCC. This benefits the Company, its customers, and the public interest.

11. The refined IRP programs balance the benefits to the distribution grid by encouraging large commercial users to curtail during times of need on the distribution grid while "phasing down" the amount of the incentive and allowing additional customers to partake.

The Stipulation's provisions to continue and modify the IRP are part of a package that benefits customers and advances the public interest. (Jt. Ex. 1 at ¶ III.G.) AEP Ohio witness Mayhan summarized the IRP provisions as follows:

> This provision of the Stipulation addresses the Service and General Terms and Conditions of the Interruptible Program (IRP) Tariff. Participating IRP-L (IRP Legacy) and IRP-E (IRP Expanded) customers (including reasonable arrangement 1 participants) may reset their firm service levels annually beginning on May 31, 2024, and on May 31 of each year of the ESP thereafter through written notice to AEP Ohio (without changing their interruptible load subscription under the IRP program). In order to provide the Company with certainty of the benefits of IRP participants, each IRP current or eligible subscriber (all eligible IRP-L, IRP-E and reasonable arrangement IRP participants during the ESP IV term) and the additional allocation to the ESP IV participation group referenced in Paragraph III.G.18 will provide the Company with a written notice of its election within 30 days of the ESP V term commencement (*i.e.*, by July 1, 2024) whether to participate in the program for the entire ESP term; the total demand of all current and eligible customers submitted by an individual participating sponsor group under this election process will be subject to the total MW caps for that group as modified by this Stipulation. Every eligible ESP IV participant that elects to participate in the program will secure its status as a participant for the full term of ESP V. If a customer subsequently gives notice during the ESP term that it can no longer participate, the last months of IRP credits given during the ESP term will be reversed and the customer will have to repay the credits applicable to that time period. The penalty for noncompliance with a curtailment obligation under IRP-L and IRP-E will be 150% the current level (the current penalty calculated for uninterrupted demand times 1.5).
>
> The IRP-L demand credit will be reduced to $8/KW month on the effective date of the new ESP then to $7/KW month in the second year of the ESP, and $6/KW month in the third and fourth years of the ESP. There will be an IRP-L minimum demand credit of 70% of the PJM Base Residual Auction price during the entire ESP term. The minimum demand credit for IRP-E will be $5.6/Kw month in the first 1 year of the ESP, $4.9/Kw month in the second year, and $4.2/Kw month in the third and fourth years of the ESP term (*i.e.*, 70% of the corresponding IRP-L demand credit). IRP-E will not contain a dollar cap. The Expanded IRP will

> include an additional amount of up to 215 MW of interruptible capacity to be made available as outlined in the Stipulation.

(AEP Ohio Ex. 2 at 8-10.) Thus, the Stipulation modestly expands the IRP programs while managing the cost impact by phasing down the credit earned by participating customers over the course of the ESP term.

When jointly addressing the IRP program for non-residential customers and the smart thermostat program for residential customers, AEP Ohio witness Mayhan observed as follows:

> The IRP and Smart Thermostat Demand Response will provide a means of calling upon customers to curtail during certain events that stress AEP Ohio's system. These programs will prepare the Company for the future of the electric distribution grid and have operational benefits to the Company, as well as benefits for customers. Specifically, these programs allow the Company and customers to provide benefits to the grid by allowing the Company to call on customers to curtail load during times of high demand, and usually higher cost, as well as incentivizing peak load shifting in order to put less stress on the distribution grid and avoid potential outages to other customers. These programs can be powerful tools to avoid more widespread customer outages and reduce system costs.

(*Id*.) AEP Ohio witness Mayhan concluded that the IRP tariff provisions enhance the value and benefits of having economic development and demand response resources available, while strengthening the commitments from participating IRP customers. (AEP Ohio Ex. 2 at 17, 23.)

No party opposes the continued existence of the IRP or the credit phase down, but OCC simply asks for a faster "phase down." In particular, OCC witness Fortney merely recommends that the IRP credits be phased down faster than the Stipulation. (OCC Ex. 3 at 4.) He came to his proposed credit through his own judgement by trying to get to $4 by the end of the four-year term. (Tr. II at 355, 356.) Mr. Fortney agreed he did not conduct any analysis or assessment of what impact that credit reduction would have on the IRP-L tariff participants for the state of Ohio or local economies. (Tr. II at 357.) OCC witness Fortney acknowledged that the Commission has previously found that AEP Ohio's IRP programs have reliability and economic benefits, and he agreed that he does not dispute that AEP's IRP programs have reliability and economic benefits. (Tr. II at 357, 366.) Ultimately, Mr. Fortney agreed that the Stipulation's credit reduction is good, but not enough of a reduction in his opinion. (Tr. II at 364.)

In addition to merely substituting his opinion for the bargaining that actually occurred in developing the Stipulation, OCC's request for a greater "phase down" of the IRP is not supported and overlooks the concept of gradualism and what is necessary to adequately induce customer participation. Indeed, Mr. Fortney admitted that his testimony does not provide any rate impact analysis to show what his recommendation would mean for a typical residential consumer in terms of rate impact. (Tr. II at 363, 364.) In effect, Mr. Fortney merely second-guesses the Stipulation's IRP provisions in a manner that suits his own personal opinion. But that posture is no different from saying that a Stipulation provision does not match an opposing party's litigation position and is an inadequate basis to challenge a Stipulation under the three-part test.

In advocating for lower IRP credits, Mr. Fortney employed a false premise in arguing that the IRP credit "should reflect the market price for a very comparable product (capacity in the AEP zone) as closely as possible, for consumer benefit." (*Id*. at 5.) In reality, the commitments made by a customer participating in the IRP program are different from a PJM capacity obligation or from a PJM demand response program. As he acknowledged during cross examination, Mr. Fortney reviewed the terms proposed in the Stipulation for the IRP-L tariff for ESP V and recalled that AEP Ohio has a requirement that it can interrupt load separate and apart from the PJM emergency event including for localized load constraints. (Tr. II at 360.) Mr. Fortney further agreed he did not take potential interruption into consideration when calculating the $4 per kilowatt per month. (Tr. II at 361.) Mr. Fortney also agreed that he did not take into account the 10-minute notice for interruption when coming up with the $4 per kilowatt-hour figure. (Tr. II at 361.) Finally in this regard, OCC witness Fortney agreed that the Market Clearing Price in the AEP zone for the ’27-’28 delivery year will not be set for several more years. (Tr. II at 359.) As a related point, he agreed that capacity prices could change substantially between now and the auction for the ’27-’28 delivery year capacity market. (Tr. II at 360.)

In sum, OCC witness Fortney supports the IRP program and acknowledges the economic development and demand response benefits of the program, but he merely asserts that the credit phase down should be more aggressive. In addition to failing to establish the need for a modification of the Stipulation under the three-part test, Mr. Fortney agreed that the longstanding program should be continued in order to continue the acknowledged benefits. Clearly, the IRP provisions of the Stipulation contribute to a package that benefits customers and advances the public interest.

12. The Stipulation package provides for a beneficial expansion of the BTCR 1CP program while implementing a new limited 6 CP pilot.

AEP Ohio witness Mayhan summarizes the Stipulation’s provisions that continue the BTCR 1 CP Pilot as follows:

> In this provision, the Signatory Parties agree to an audit of the Basic Transmission Cost Rider (BTCR) Pilot 1 CP with a third-party auditor, chosen by the Commission. The BTCR Pilot 1 CP program will continue, and the MW participation cap will increase by 100 MW per year, with incremental increases effective when the program year starts to avoid participation cap issues, except at the start and end of the ESP V term. In order to balance the cost and benefits of the program, each customer that was eligible to participate in the Pilot BTCR program during ESP IV (including reasonable arrangement participants) will provide the Company with a written notice of its election within 30 days of the ESP term commencement (*i.e.*, by July 1, 2024) whether to participate in the BTCR Pilot 1 CP program for the entire ESP term, subject to continued application of both the overall MW cap for the BTCR Pilot 1 CP program and the participation group slot allocations adopted by the Commission in Case No. 20-585-EL-AIR. Twenty percent of the increased participation cap per year (20 MW) will be set aside for customers with a monthly billing demand of 10 MW or less; such qualifying customers will have an opportunity to register one week ahead of

> the normal registration process during the ESP V term associated with the annual 100 MW expansion. To the extent the entire 20 MW is not fully subscribed during the one-week 1 advance period, the remainder will be made available on a first-come, first-served basis to the customers in a customer portal establish by the Company to create the customer queue of interested customers. Any AEP Ohio customer wishing to enroll in the BTCR Pilot 1 CP Program that was not able to subscribe through the above processes can enter the program through a reasonable arrangement application**.** Additional clarification of the preliminary elections to take service under the BTCR Pilot 1 CP program are also included in this section.

(AEP Ohio Ex. 2 at 13-14; Jt. Ex. 1 at ¶¶ III.N.44-54.) Ms. Mayhan described the benefits of the 1 CP BTCR Pilot in her testimony as follows: "allowing certain customers to participate in a BTCR 1 CP transmission rate encourages more efficient use of the transmission grid and reduces the overall transmission revenue requirement for AEP Ohio while ensuring no cross-class subsidies occur." (AEP Ohio Ex. 2 at 17-18.) She also confirmed that the 1 CP Pilot could also help improve reliability by reducing or avoiding outages or localized constraints. (*Id*.)

AEP Ohio witness Mayhan also summarized the new 6 CP pilot program that is proposed under the Stipulation:

> The Stipulation will include a new BTCR 6 CP pilot program for customer-sited battery energy storage systems (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.

(AEP Ohio Ex. 2 at 14; Jt. Ex. 1 at ¶ III.N.55.) Ms. Mayhan described the benefits of the 1 CP BTCR Pilot in her testimony as follows: "the 6 CP BTCR Pilot promotes technological advancement while increasing grid resiliency and sustainability that benefit all customers in the Company's service territory; the smart thermostat demand response program will help to lower coincident peaks and stress on AEP Ohio's delivery networks, which can lower costs for all customers." (AEP Ohio Ex. 2 at 18.) She also confirmed that the 6 CP Pilot could also help improve reliability by reducing or avoiding outages or localized constraints. (*Id*.)

AEP Ohio witness Mayhan's testimony establishes the benefits of the BTCR Provisions and no party that filed tesitmony in opposition to the Stipulation challenged those benefits. A moderate expansion of the 1 CP BTCR Pilot along with an independent study to determine next steps is an appropriate and abalanced approach. The Commission should find that the BTCR provisions are part of a package that benefits customers and promotes the public interest.

13. Other Commitments that reduce the overall bill impact of the ESP V and enhance the benefits associated with the Stipulation as a package.

As part of the overall settlement of this case, the following negotiated commitments were included in the Stipulation package that benefit customers and the public interest:

- Discontinuation of the Smart City Rider;
- Withdrawal of the Customer Experience Rider;
- Withdrawal of the Rural Access Rider;
- Creation of the Ohio First Rider; and
- Withdrawal of the Residential Senior Citizen Tariff.

AEP Ohio witness Mayhan demonstrated that the Stipulation package was enhanced by these provisions. (AEP Ohio Ex. 2 at 19-24.) Staff witness Healey also confirmed his opinion that the Stipulation, adopted in its entirety and without modification, provides substantial benefits to ratepayers and public interest. (Staff Ex. 1 at 5). To the contrary, in its testimony opposing the Stipulation, OCC blatantly ignores these additional benefits (and the Stipulation package as a whole) and, instead, challenges a select few of the provisions of the Stipulation (but not all) as lacking benefits. However, as detailed elsewhere, each of the commitments contribute to the overall package of benefits reflected in the Stipulation.

First, the Smart City Rider ("SCR"), previously approved by the Commission in AEP's *ESP IV*, allowed AEP Ohio to recover costs associated with technology demonstration projects for electric vehicle charging stations and microgrids. *AEP Ohio ESP IV*, Case No. 16-1852-EL-SSO, Opinion and Order (April 25, 2018). It was expected that the SCR would sunset after four years except for true up and corrections that occur after the sunset from activities and expenses incurred during the four-year term. *ESP IV* at ¶ 54. In its Application, the Company requested to extend and amend the existing SCR to collect funds for a suite of programs that encourage EV adoption and optimized charging projects under the as-filed ETP. (AEP Ohio Ex. 1 at 13.) As detailed in the Stipulation and explained by Company witness Mayhan, the Parties stipulate to discontinue the SCR upon approval of ESP V. (AEP Ohio Ex. 2 at 11.) Furthermore, the Stipulation proposes that final true ups and audit adjustments for the SCR shall occur in the gridSMART Rider. (Jt. Ex. 1 at ¶ III.J.) No party to this proceeding contested the discontinuation of the SCR.

Second, in its Application, AEP Ohio sought approval of a non-bypassable Customer Experience Rider ("CER"), pursuant to R.C. 4928.143(B)(2)(h) and (B)(2)(i), to allow the Company to track and recover the capital and O&M costs associated with various customer experience enhancements that will be implemented during the ESP V term. (AEP Ohio Ex. 1 at 15-16.) AEP Ohio agreed to withdraw the CER and the Stipulation proposes to fund AEP's economic development plan through the Economic Development Rider (EDR) at a level of $450,000 per year – *and*, in an effort to demonstrate the Company's commitment to invest in various customer experience enhancements, the Company will contribute an additional $450,000 in shareholder funding (*i.e.*, Company money and not ratepayer funded) for Economic Development. (Jt. Ex. 1 at ¶ III.K.) Staff witness Healey opines that this solution promotes economic development within the state of Ohio and is consistent with state policies under R.C. 4928.02(N) ("Facilitate the state's effectiveness in the global economy"). (Staff Ex. 1 at 5.) No party to this proceeding contested the withdrawal of the CER and proposed economic development contribution as contemplated by the Stipulation.

Third, AEP Ohio's Application proposed to create the Rural Access Rider (RAR), pursuant to R.C. 4928.143(B)(2)(h) and (B)(2)(i), to recover investment and expenses for installing fiber optic cable in nine counties of AEP Ohio's service territory. (AEP Ohio Ex. 1 at 17.) As a result of negotiations, the Company agrees to withdraw the RAR in this proceeding, without prejudice, including the two middle mile projects – (1) Allen County Middle Mile Connect project and (2) Southeastern Ohio Middle Mile Connect project. (Jt. Ex. 1 at ¶ III.M.) No party to this proceeding contested the withdrawal of the RAR.

Fourth, AEP Ohio's Application proposed to create the Ohio First Rider (OFR), pursuant to R.C. 4928.143(B)(2)(h) and (B)(2)(i), as a result of the Infrastructure Investment and Jobs Acts ("IIJA") which presented AEP Ohio with the opportunity to seek federal grants to be used to improve the reliability and resiliency of the grid. (AEP Ohio Ex. 1 at 16.)

AEP Ohio witness Mayhan addresses the OFR and states it will be a placeholder rider, initially set at $0, to recover the remaining costs associated with projects that are approved for the state funding. (AEP Ohio Ex. 2 at 14.) She further explains the OFR will be designed to recover the net costs of the eligible projects, and those net costs of eligible projects will be offset with a credit for state funds received less any taxes paid on the grants received. (*Id*.) The Stipulation further contemplates that, to the extent that the All-Ohio Future Fund created by R.C. 126.62 partially funds projects that are otherwise eligible for recovery under the OFR, the remaining costs associated with such projects may be included in the OFR, which will be charged on a per bill basis. (Jt. Ex. 1 at ¶ III.O.) As an additional requirement, the OFR will sunset if the Company fails to submit an application for approved grant opportunities by the midpoint of the ESP V term (*i.e.*, June 1, 2026). (*Id.*)

By establishing this rider *before* applying for the IIJA federal grant funding, AEP Ohio's opportunities of acquiring such federal grant funding and other types of governmental funding will increase. Given the fact that the OFR will be a placeholder rider and set at $0 until any remaining costs are appropriately identified, AEP Ohio ameliorates concerns about premature costs associated with federally funding projects when no specific grants or funding have been identified at the time of its *ESP V*. Furthermore, should circumstances change and the Company does not submit an application for approved grant opportunities by the midpoint of the ESP term (June 1, 2026), the OFR will sunset. Additionally, the Commission will have oversight over of the implementation of the OFR and pursuant to Exhibit A of the Stipulation, the rider is subject to reconciliation, including, but not limited to, refunds to customers, based upon the results of audits ordered by the Commission. (Jt. Ex. 1A at Original Sheet No. 435-1.) Any potential funds allocated by the state will allow AEP Ohio to support local communities with site-readiness and preparation to attract economic development project, of which improvements will benefit ratepayers and the public interest. No party to this proceeding contested the creation of the OFR as proposed by the Stipulation.

Fifth, the Company's Application proposed a new, optional Residential Senior Citizen tariff (Schedule RS-SC). Under this new tariff, qualified participants would receive a reduced customer charge of $5, the delta of which will be recovered through the Bad Debt Rider ("BDR"). (AEP Ohio Ex. 1 at 13, 18.) OCC witness Fortney opposed the creation of the optional Residential Senior Citizen Tariff stating the recovery of the lost revenues from the senior citizen tariff through the BDR is not bad debt. As a result of negotiations, the Company agrees to withdraw its proposed Residential Senior Citizen Tariff. (Jt. Ex. 1 at ¶ III.Q.) No party to this proceeding contested the withdrawal of the Residential Senior Citizen Tariff as contemplated by the Stipulation.

In sum, the above-mentioned commitments to terminate, withdraw, or modify previously proposed riders reduce the overall bill impact of the ESP V and play an important role in satisfying the second part of the three-part test. 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. *In re The Dayton Power and Light Company dba AES Ohio*, Case No. 22-900-EL-SSO, et al. Opinion and Order (Aug. 9, 2023) (*"DP&L ESP IV")* citing *In re Columbia Gas of Ohio, Inc*., Case No. 21-637-GA-AIR (DP&L ESP), et al. Opinion and Order (Jan. 26, 2023) at ¶ 170, citing *In re Ohio Power Co*., Case No. 20-585-EL-AIR, Opinion and Order (Nov. 17, 2021) at ¶ 151; *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) at ¶ 73 and *In re Duke Energy Ohio, Inc., Case No. 19-791-GA-ALT*, Opinion and Order (Apr. 21, 2021) at ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *See*, *In re Ohio Power Co*., Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus S. Power Co. and Ohio Power Co*., Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44. The "as a package" language means that the Commission looks at stipulations holistically. The above provisions of the Stipulation reflect additional benefits ignored by OCC in its selective evaluation of the Stipulation and other benefits. The benefit/public interest part looks at the totality of the settlement package and does not focus exclusively on a handful of select provisions to conclude that no benefit is conveyed by a settlement as a whole. The above-mentioned commitments support the adoption of the total Stipulation package, and the Stipulation in this case satisfies the second part of the test because the settlement, as a package, benefits customers and the public interest. AEP Ohio respectfully requests the Commission approve the Stipulation without modification.

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

The third prong asks whether the Stipulation package violates any important regulatory principle or practice. The supporting testimony demonstrates that the Stipulation does not violate any important regulatory principles or practices and none of the opposing testimony demonstrates otherwise. In reality, the Stipulation package actually advances Ohio energy policies and is consistent with established practices. Consequently, the Commission should find that the Stipulation satisfies the third prong of the three-part test without any modification.

1. The DIR caps do not violate the principle of maintaining affordable electric rates, as claimed by OCC witness Williams.

OCC witness Williams generally complains that the DIR caps "remain unreasonably high" and asserts that the rate impact associated with the DIR contradict regulatory principles and policy for reasonably price service. (OCC Ex. 4 at 8-9.) He recommends that DIR caps should be maintained relatively close to the "more affordable level" approved in ESP IV. (*Id.*) OCC witness Williams' recommendations should be rejected as he has not meaningfully evaluated the DIR spending or rate impacts and unreasonably wants to AEP Ohio to issue a reliability guarantee.

The Commission should reject OCC's recommended DIR caps because they are arbitrary and not based on any analysis. Mr. Williams admitted that he does not know the amount of dollars spent under the DIR which goes to maintaining reliability. (Tr. II at 386.) Mr. Williams did agree that part of maintaining the system includes dealing with aging infrastructure. (Tr. II at 388.) Mr. Williams also agreed that customer-driven work is recovered under the DIR. (Tr. II at 387.) And he agreed that the more customer-driven work, the less money is left over for maintaining and improving reliability. (Tr. II at 387-388.) Significantly, Mr. Williams acknowledged that customer-driven work, load growth, and economic development are outside the Company's control. (Tr. II at 388.)

OCC witness Williams agreed that the overall bill impact is important, but admitted he did not analyze the rate impact of the Stipulation. (Tr. II at 402, 404-405.) Mr. Williams does not have a reason to dispute AEP Ohio witness Mayhan's analysis that a typical residential customer using 1,000 kWh would see a minimal monthly bill increase of 0.5 percent in year one and the range of 0.6 percent to 1.8 percent of the total bill for years two through four of the ESP. (Tr. II at 403.) As a related matter, although he is familiar with the Commission has historically approved DIR growth of a range of 3 to 4 percent, Mr. Williams did not conduct a calculation of the DIR revenue caps under the Stipulation in light of the 3 to 4 percent range. (Tr. II at 406.) But he did agree that inflation has increased since the guidelines were set 10 years ago, subject to check. (Tr. II at 406.) Of course, it stands to reason that as the base distribution rate base grows, so grows the relative level of the annual DIR revenue cap over time; both the accumulation of rate base and inflation would contribute to a larger DIR rate caps over time.

AEP Ohio witness Mayhan addressed the rate impacts of the Stipulation as a whole and during the ESP term, a residential a typical residential customer using 1,000 kWh per month will see an estimated increase of less than 1% or $1.50 per month. (AEP Ohio Ex. 2 at 20.) That is using a traditional rate impact analysis for the entire Stipulation, not just the DIR incremental impact (which is much smaller by itself). Ms. Mayhan also did a rate impact view that incorporated the timing and delay associated with rider mechanics so that it replicates the actual customer experience; under that view, the typical residential customer using 1,000 kWh would only see a monthly bill increase of 0.5% in Year 1 or $0.82. Years 2-4, the monthly bill increase would range from 0.6% to 1.8% of the total bill ($1.08 - $2.95). (*Id*. at 21.) Thus, the

Stipulation rate impacts fully advance the policy of affordable electric rates and it is inaccurate to suggest otherwise.

As referenced above, the Commission in its *ESP IV* decision pointed out in response to similar arguments from OCC:

> In consideration of whether to approve a distribution infrastructure and modernization provision as part of an ESP, 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. R.C. 4928.143(B)(2)(h) does not expressly require the Commission to consider costs.

ESP IV, Opinion and Order at ¶ 186. Although OCC's complaints about the cost and rate impact of the DIR are unfounded, the Commission need not consider them as part of its statutory framework for approval of the DIR. In any case, OCC witness Williams' argument that the Stipulation violates an important policy of affordable electric rates is misguided and should be rejected.

In sum, because he did not evaluate the DIR program spending, did not evaluate the settlement rate impacts, and did not evaluate whether the DIR caps fall within the Commission's prior guidance of 3-4%, OCC witness Williams' recommendation to simply keep the ESP IV DIR caps should be rejected by the Commission as arbitrary and unreasonable. As AEP Ohio witness Mayhan demonstrated, the overall rate impact of the Stipulation is modest and reasonable, easily complying with the policy of maintaining affordable rates for electric service. The DIR caps do not violate any important regulatory policy or principle.

2. **The CIS commitments do not avoid the standards of a rate case, which requires that any cost recovery will first require that the CIS investment is used and useful and the associated costs are prudent.**

Under the Stipulation, the Company agrees to defer a return on and of its prudently incurred capital investments in the new CIS and its incremental expenses rather than immediate recovery of costs associated with the CIS through the CER as proposed in the Application. (Jt. Ex. 1 at ¶ III.C.6; AEP Ohio Ex. 1 at 15.) The Stipulation further commits that the deferral will be recoverable through either future base distribution rates or a future rider, subject to a demonstration of functionality. (Jt. Ex. 1 at ¶ III.C.6.) Additionally, AEP Ohio made numerous commitments regarding the various updated and new functionalities that will be included as part of the new CIS, including but not limited to allowing for flexible billing, customer, and CRES access to interval data, and accelerated switching. (*Id*.)

OCC witness Williams grossly mischaracterizes the CIS commitments contemplated under the Stipulation as an "inappropriate[] guarantee that AEP Ohio will essentially collect from consumers all costs associated with replacing its [CIS] regardless of the amount and/or if the capabilities are used and useful in providing utility services to consumers." (OCC Ex. 4 at 3.) By regurgitating many of the same points made in his pre-settlement direct testimony, Mr. Williams continues to ignore the fact that the ultimate inclusion of the CIS investment in rate base in the Company's next distribution case will be subject to a reasonableness and prudence review by the Commission *prior* to being reflected in distribution rates. (*See* OCC Ex. 4; Tr. II at 415.) Furthermore, interested stakeholders, such as OCC and Staff, will have the opportunity to opine on the prudently incurred capital investments in the CIS and its incremental expenses during a future distribution rate case or rider. Nothing has prevented OCC in the past from intervening in

AEP Ohio's future filings nor will this Stipulation. For clarity, OCC will have a chance to opine on future CIS investment recovery.

Throughout cross-examination, OCC witness Williams fails—and clearly refuses—to form an opinion on the consumer benefit provisions of the Stipulation associated with the CIS improvements and insists during that his testimony does not speak to the benefits residential customers will receive from the CIS investments. (Tr. II at 413, 415.) Conversely, Mr. Williams did form an opinion that the Commission should reject the proposed settlement because consumers should not be required to pay to replace the existing CIS, and that if and when these costs are collected from customers, the standard of review should be prudency and used and useful. (OCC Ex. 4 at 4; Tr. II at 415, 416.) Yet, Mr. Williams' provides no analysis or details as to the specifics of a prudency and reasonable standard of review and could not identify an OCC witness who could speak to the commitments of the CIS investments and customer benefits when asked by AEP Ohio's counsel. (Tr. II at 412-415.)

OCC mistakenly asserts that, by seeking to implement the CIS commitments through these ESP proceedings, AEP Ohio evades the consumer protections of a distribution rate case to ensure that investments are prudent and used and useful in the provision of electric service. (OCC Ex. 4 at 17-18.) This assessment is not only exceedingly cavalier but factually incorrect. It is clear in the language of the Stipulation that the Signatory Parties, made up of 17 capable and knowledgeable parties with varying interests, agreed the amount of CIS expenditures for future recovery is subject to a reasonableness and prudence review and committed to that review through a future distribution rate case or rider. (Jt. Ex. 1 at ¶ III.C.6.) There is nothing in the record that prevents any evidence or even a suggestion that such a review would not occur. OCC's premature and superficial challenge of the proposed CIS recovery as violating an important regulatory principle or practice should be rejected.

3. The Stipulation ensures the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.

The Stipulation strikes a balanced approach that reduces expected earnings from the as-filed case while maintaining AEP Ohio's cashflows that give the Company the ability to invest in the system to provide adequate, reliable and safe retail electric service while still being reasonably priced and non-discriminatorily applied. (AEP Ohio Ex. 2 at 19-21); *see also* R.C. 4928.02(A). The Stipulation includes provisions such as the DIR and ESRR that accelerate reliability improvements (AEP Ohio Ex. 2 at 16) coupled with numerous demand response programs such as the IRP, Smart Thermostat Demand Response program, and EV rate designs that can further help improve reliablity by reducing outages and/or localized constraints and are intended to reduce or delay the amount of distribution investment. (AEP Ohio Ex. 2 at 17-18, 23.) Under traditional bill impact analysis, the Stipulation only results in a typical residential customer using 1,000 kWh per month seeing a less than 1.0% increase ($1.50 per month) each year of the ESP term. (AEP Ohio Ex. 2 at 20.) Under an actual rider impact analysis previously described, however, these impacts (particularly in the early years) will be even less because the actual rider rates will not be adjusted as quickly as assumed in a traditional bill impact analysis. (AEP Ohio Ex. 2 at 21.)

In addition to the extremely modest increase during a time of rapidly rising inflation, the Stipulation does nothing to undo the various forms of assistance that are available to customers, particularly socioeconomically vulnerable customers with which OCC witness Tinkham is most concerned. In fact, the Stipulation provides additional help in the form of low-income energy efficiency programs, further funding of the Neighbor-to-Neighbor bill assistance program and economic development in low-income areas. (Jt. Ex. 1 at ¶¶ III.K-III.L.)

Despite the overall benefits and affordability of the ESP V as stipulated, OCC witness Tinkham opines that the Stipulation violates regulatory practices and principles by not addressing a reduction in service disconnections for non-payment. (OCC Ex. 1 at 3.) But Witness Tinkham does not identify any specific regulatory law, practice, or principle that is violated by not reducing reductions by 15% year-over-year (Tr. II at 234), let alone ensuring that disconnections are arbitrarily reduced by 15% in the top twenty zip codes with the highest amount of disconnections. (See OCC Ex. 1 at 3-4.) Nor was witness Tinkham aware of the Commission ever establishing such a practice before. (Tr. II at 237.) In fact, OCC witness Tinkham agreed that AEP Ohio is following the rules and laws related to disconnection. (Tr. II at 252.)

Witness Tinkham's proposal to reduce disconnections by 15% year-over-year is nothing more than a number that he backed into by attempting to return AEP Ohio to the number of disconnections it performed 10 years ago. (Tr. II at 234.) Much has changed since ten years ago, however, including the significant increases in the generation market that OCC witness Tinkham conceded are not within AEP Ohio's control. (OCC Ex. 1 at Tr. II at 217, 284-286.) And while OCC witness Tinkham attempts to boost the veracity of his recommendation by comparing AEP Ohio's disconnection rates to other utilities (OCC Ex. 1 at 7-8), he was not involved with the preparation of or familiar with how the different utilities prepared their disconnection reports upon which he exclusively relied. (Tr. II at 218, 223-224.) Nor did witness Tinkham analyze or otherwise compare the socioeconomic makeup between each of the utilities, (Tr. II at 226), that could be one of the infinite amount of factors that could explain this difference.

Instead, with little to no detail explaining how his proposed disconnection reduction is to be implemented, including which customers are preferentially selected for this reduction, OCC witness Tinkham recommends that certain customers be protected from disconnection and continue to receive electricity despite failing to meet their obligation to pay until the 15% threshold is met. (Tr. II at 251.) OCC witness Tinkham doubles down on the discriminatory treatment of AEP Ohio customers, recommending that the 15% reduction in the top twenty zip codes within the highest number of disconnections will constitute nearly 50% of the total 15% reduction (Tr. II at 238-239); thereby, providing an arbitrarily discriminatory benefit to the unknown amount of customers that live in those zip codes that do not otherwise differ from other customers throughout the AEP Ohio service territory. (Tr. II at 242.) While it is unclear how AEP Ohio, the Commission, or OCC are to choose which customers get this benefit, the one thing for certain is that disconnection is one of the few tools that AEP Ohio has to ensure that bad debt does not rise significantly. (Tr. II at 259.) But OCC witness Tinkham did not analyze the impact his recommendation would have on bad debt that could be charged to all customers through the Company's non-bypassable bad debt rider (Tr. II at 259, 286-287), including those that were not lucky enough to be chosen for the discriminatory reprieve from disconnection.

OCC witness Tinkham's recommendations are unfounded, unprecedented and fraught with administrative concerns that would discriminatorily impact similarly situated customers. Accordingly, OCC witness Tinkham's recommendations regarding disconnection should be rejected and the Commission should find that the Stipulation does not violate any important regulatory principles.

4. The PEV-EV rate design mechanisms do not violate any regulatory practices or principles.

As previously discussed, the Stipulation contains new optional tariffs for residential customers with electric vehicles – the PEV time of use rates. (*See supra* at Section I.B.7; Jt. Ex. 1 at ¶ III.F.12.) Although OCC never raised any concerns about the PEV rate design contained in the Company's Application (Tr. III at 566), in response to the Stipulation OCC witness Sioshansi wages a conclusory complaint that the moderately amended PEV rates in the Stipulation "appear to violate the cost-causation regulatory principle." (OCC Ex. 6 at 5-6.) Accordingly, OCC witness Sioshansi recommends that the Commission request and scrutinize the PEV rate designs and modify them accordingly. (OCC Ex. 6 at 6.) But the Stipulation already provides the very relief that OCC witness Sioshansi seeks – the creation of a working group specifically tasked with discussing and analyzing the PEV rates and their cost-of-service impacts including the possibility of additional time-of-use offerings. (Jt. Ex. 1 at ¶ III.F.13.) Dr. Sioshansi, however, never addresses the working group commitment in his testimony and admitted he was unaware of the working group commitment, (Tr. III at 546); a pivotal omission rendering his analysis nearly irrelevant.

While OCC witness Sioshansi focused primarily on the concept of "cost causation," he admits that there are numerous other regulatory principles, practices, and concepts, many of which are not aligned with each other. (Tr. III at 563.) For instance, OCC witness Sioshansi concedes that incentivizing electric vehicle charging to shift their electric vehicle charging demands to periods of low demand is an important regulatory rate design principle (OCC Ex. 6 at 5). And he further concedes that encouraging customers to charge at off-peak times on AEP Ohio's distribution grid could be beneficial and could be an important rate design goal. (Tr. III at 545.) He further agreed that shifting load off the distribution peak could reduce the overall amount of distribution investment AEP Ohio would have to make that it otherwise would have to make without shifting that peak. (Tr. III at 570.) Such peaking shifting, for demand-intense resources such as EVs, would have the effect of saving customers on distribution costs. (Tr. III at 571-572.) The stipulated PEV rates are designed to achieve these very regulatory concepts by incentivizing off-peak charging through price signals. And while finding an appropriate price signal can be an iterative process of analyzing customer feedback and utility system needs (Tr. III at 546), that is the very purpose of the workgroup and the corresponding commitment of data sharing.

Despite these concessions and recognizing the negative impact that uncontrolled EV charging can have on the distribution grid (Tr. III at 543) and the corresponding benefits associated with setting price signals to encourage EV customers to charge off peak (Tr. III at 545-546), OCC witness Sioshansi questions the perfection of the PEV rates. (OCC Ex. at 5-6.) And OCC witness Sioshansi fails to bother proposing alternative PEV time-of-use rates to address the aforementioned concerns. (Tr. III at 573-574.) The stipulated PEV rates are designed to shift demand-intense EV load while maintaining a revenue neutral structure and saving customers money (Joint Ex. 1 at ¶ III.F.; AEP Ohio Ex. 2 at 8, 23), which is the very essence of cost causation ratemaking. Moreover, the optional time-of-use rates contained in the stipulated PEV tariffs, coupled with robust data sharing commitments and optionality for revisiting the PEV rates through an ATA filing, support numerous enumerated regulatory policies, including but not limited to encouraging innovation for cost-effective demand-side retail electric service through time-differentiated pricing. R.C. 4928.02(D).

OCC witness Sioshansi also takes issue with the other main rate component related to EVs – AEP Ohio's commitment to propose a modification to the Commission's rules related to

CIAC for customer installations of EV charging (from the current 60% to 80%) and a corresponding reservation of capital to support that proposal to the extent the Commission later approves such an amendment to its rules. (OCC Ex. 6 at 7-11.) OCC witness Sioshansi raises two primary concerns with this commitment.

The first is that AEP Ohio's commitment is premature and not germane to the Stipulation, which OCC witness Sioshansi appears to hinge on the misguided believe that it "ties the hands of the Commission" in a future rulemaking case. (OCC Ex. 6 at 9-10.) Yet, the Commission has plenary power over the Stipulation at issue in this case, as well as any future cases related to its rules. Furthermore, AEP Ohio's commitment to advance a position for the Commission's consideration related to the assignment of CIAC is directly germane to the issues in this case and is a commitment that the Company likely would not have otherwise made but-for the serious bargaining that took place in this matter. Thus, these concerns are red herrings that should be disregarded by the Commission.

OCC witness Sioshansi also asserts that an amendment to the CIAC rules would "create[] a perverse cross subsidy to electric vehicle owners." (OCC Ex. 6 at 10.) As an initial matter, the CIAC position will only come to fruition if the Commission first amends its rules accordingly. Thus, the Commission will presumably permit and engage in an analysis of cost causation and consideration of other regulatory policies and principles as part of its rulemaking process. Moreover, the capital reservation in the Stipulation is only appliable to "approved locations," which are limited to "where there is existing capacity to serve the requested amount of peak load without having to install additional facilities to maintain, protect, upgrade or improve the existing distribution facilities before the point of origin." (Jt. Ex. 1 at ¶ III.F.14-15.) This benefits all customers as it reduces and/or defers the need for additional distribution plant in service that would not otherwise occur absent such an incentive.

For these reasons, the Commission should reject the concerns that OCC witness Sioshansi raises and find that the Stipulation does not violate regulatory policies or principles.

5. The Smart Thermostat Demand Response program does not violate the policies set forth in R.C. 4928.02.

OCC submitted testimony opining that the Smart Thermostat Demand Response program violates 4928.02(H) and (D). Specifically, OCC witness Shutrump testifies that the Smart Thermostat Demand Response program violates R.C. 4928.02(H) because the program "because it allows a portion of consumer funding (intended for smart thermostat rebates to standard service offer consumers) to go to CRES providers so that they can close the sale to shoppers." (OCC Ex. 5 at 14.) Ms. Shutrump conceded, however, that the Smart Thermostat Demand Response program will be charged through the non-bypassable gridSMART rider, which will be assessed to all customers, not just SSO customers. (Tr. III at 522.) Moreover, the Smart Thermostat Demand Response program is designed to be competitively neutral; whereby, customers can participate directly through AEP Ohio or through any CRES or agent on their behalf. (Jt. Ex. 1 at III.I.34.) This non-discriminatory advancement allowing CRES providers to enroll customers in the program will encourage higher enrollment in AEP Ohio's demand response program (Tr. III at 527); thereby, advancing benefits to the grid by maximizing AEP Ohio's demand response capabilities.

OCC witness Shutrump also opines that the Smart Thermostat Demand Response program violates 4928.02(D) because smart thermostats are readily available in the competitive marketplace. (OCC Ex. 5 at 11-12.) OCC's opinion, however, overlooks a key component of the Demand Response Smart Thermostat program – it is not just rebates for smart thermostats, it is a demand response program. Thus, while smart thermostats are readily available through numerous consumer channels, OCC witness Shutrump admitted that she was not aware of any retailers including demand response as a condition of purchasing a smart thermostat. (Tr. III at 528.) In fact, OCC witness Shutrump admitted that only AEP Ohio is uniquely situated as the exclusive controller of the distribution network to be able to call demand response events to benefit the distribution grid. (Tr. III at 530.) Contrary to OCC's testimony, the Smart Thermostat Demand Response program establishes an innovative program that allows non-discriminatory market access to demand side management, which is consistent with, and even encouraged, pursuant to R.C. 4928.02(D).

6. The Energy Efficiency program does not violate R.C. 4928.02 or any other regulatory practices or principles.

OCC witness Shutrump incorrectly asserts that the Energy Efficiency Rider programs violate R.C. 4928.02(G) because it permits AEP Ohio to offer low-income energy efficiency programs that should be left to the competitive market. (OCC Ex. 5 at 12-13.) While recent amendments to Title 49 removed the required energy efficiency targets applicable to the regulated utilities under former R.C. 4928.66, the energy efficiency program set forth in the Stipulation does not violate regulatory practices or principles. To the contrary, the Commission has held that "decisions regarding energy efficiency programs [by both electric and natural gas utilities in this state] would be made, on a case-by-case basis." *In Re the Application of Columbia Gas of Ohio Inc. for Authority to Amend its Field Tariffs and to Increase the Rates and Charges for Gas Services and Related Matters ("Columbia 2021 Rate Case"),* Case No. 21-637-EL-AIR, Opinion and Order ¶ 53 (Jan. 26, 2023). And the electric security plan statute itself expressly permits an electric distribution utility's ESP to contain energy efficiency programs. *See* R.C. 4928.143(B)(2)(i). R.C. 4905.70 also tasks the Commission to "initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs." Even the very Commission decision cited by OCC witness Shutrump recognized that "[p]ursuant to this statutory authority, we have long recognized that energy efficiency and DSM programs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with this state's economic and energy policy objectives." *In Re the Application of Columbia Gas of Ohio Inc. for Authority to Amend its Field Tariffs and to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 21-637-EL-AIR, Opinion and Order ¶ 53 (Jan. 26, 2023) (citing *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 07-829-GAAIR, et al., Opinion and Order at 22-23 (Oct. 15, 2008); *In re Columbia Gas of Ohio, Inc*., Case No. 16-1309-GA-UNC, Opinion and Order at 63 (Dec. 21, 2016)).

In addition to the statutory authority for regulated utilities to conduct energy efficiency programs, OCC neglects to mention that the Commission has recently approved similar energy efficiency programs. *See e.g., Columbia Gas 2023 Rate Case at ¶ 55; DP&L ESP IV*, Opinion and Order at 33-34. Instead, OCC focuses on inapposite cases and out-of-context quotes. For instance, OCC cites to Duke's 2020 voluntary energy efficiency portfolio filing where the Commission struck Duke' shared savings provision. The Stipulation in this matter, however, does not contain a shared savings mechanism; therefore, the Entry in the 20-1013-EL-POR Duke case is inapposite. Moreover, the Commission expressly reserved judgment on the remaining provisions of Duke's application, which have yet to be ruled upon. (Entry at ¶ 10.)

The Commission has even more recently reaffirmed the importance of low-income energy efficiency programs:

> The Commission also notes that *energy efficiency and conservation programs*, such as the Home Weatherization Assistance Program, have assisted residential customers in controlling their utility bills. These programs, in concert with the financial assistance afforded residential customers through orders such as this one, provide much needed support for residential customers, including customers residing in multi-family housing and low-income customers.

In Re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2023-2024 Winter Heating Season, Finding and Order at ¶ 5 (Oct. 4, 2023) (emphasis added). The Energy Efficiency Rider program is nearly exclusively aimed at assisting customers at or below 300% of the federal poverty rate. OCC's own witness even concedes that low-income customers, such as those below the 200% poverty level are at-risk customers. (Tr. III at 514-515.) Accordingly, the Energy Efficiency Rider program furthers state polices including "protect[ing] at-risk populations." R.C. 4928.02(L); (AEP Ohio Ex. 2 at 25; Staff Ex. 1 at 8.)

As such, the Commission should approve the Stipulation as a package, including the Energy Efficiency Rider program, as it does not violate any regulatory practices or principles.

7. Continuation of the current BTCR does not violate any important regulatory principle or practice.

Calpine and One Energy apparently intend to challenge continuation of the BTCR as a non-bypassable rider to recovery transmission costs incurred by AEP Ohio under FERC-approved wholesale tariffs. Neither party filed testimony in response to the procedural schedule established in this case for addressing the three-part test and adoption of the Stipulation. As further discussed below, Calpine was able to get the Direct Testimony of Becky Merola admitted into the record of the Stipulation hearing, even though that testimony was originally filed on June 9, 2023 in response to the Application and prior to the Stipulation being filed. (Merola Direct Testimony, Calpine Ex. 1.) But the Merola Direct Testimony completely fails to address the three-part test for adoption of contested settlements and merely advances Calpine's original litigation position. To the extent the Merola Direct Testimony is considered at all by the Commission, it should be rejected.

The deadline for filing testimony in opposition to the Stipulation was established by Entry as being 10 business days of the filing of the Stipulation. (August 16, 2023 Entry.) After OCC complained that the procedural schedule was too short and filed an interlocutory appeal to challenge the schedule, the Attorney Examiner reinforced the deadlines and upheld the schedule as being reasonable. (September 18, 2023 Entry.) After the September 20, 2023 deadline for filing of opposition testimony passed without Calpine filing any testimony, Calpine changed its legal representation in this case through a Substitution of Counsel filing on September 25, 2023. Calpine's new counsel maintained at the Stipulation hearing that the original direct testimony should be admitted into the record of the Stipulation hearing. AEP Ohio objected to the Merola testimony as being irrelevant because it does not address the three-part test and was not filed in accordance with the mandatory procedural deadlines established in this case. (Tr. III at 430-434.) But the Attorney Examiner admitted the Merola Direct Testimony (Calpine Ex. 1) into the record over AEP Ohio's (and OMAEG's) objections. (*Id*.)

Admitting original litigation testimony into the record is one thing, but permitting it to be used to contest a subsequent Stipulation without the need to address the three-part test endorsed by the Supreme Court is quite another. That would set a dangerous precedent, discourage settlements and encourage contesting settlements without expending more resources and addressing the controlling standard at all. To the extent the Commission considers the litigation testimony at all, the testimony necessarily fails to meet the three-part test or establish anything relevant to this case and it should be rejected as completely failing to address the controlling standard in this case.

The Merola Direct testimony recommends that the BTCR to be converted to a bypassable rider and claims that result would "follow cost causation principles" – apparently because Ms. Merola believes that the existing BTCR will "continue to shift to ratepayers to ratepayers that do not participate in the [1 CP] Pilot the wholesale business risk and costs that should be incurred by market participants based on their individual business plans and management decisions and their own independent valuation of financial and operational risk." (Calpine Ex. 1 at 5-6.) The Merola Direct testimony argues that transmission service should be competitive and follow generation supplied by a CRES provider so CRES can manage transmission costs based on their own unique customer load. (*Id*.) No analysis, study or details of any kind were included to support Ms. Merola's assertions or assumptions. The record in this case does not support a conclusion that the current BTCR violates any important regulatory principle or practice.

AEP Ohio witness Kelso explained the background and steps of how wholesale transmission costs end up being charge to AEP Ohio retail customers: step one is to allocate OATT costs to AEP East affiliates as a group based on 1CP, step two is to allocate those costs to each AEP-East operating utility based on 12CP in accordance with the FERC-approved Transmission Agreement, step three begins the retail/BTCR treatment by allocating the AEP Ohio share to customer classes based on 1CP, and the final step is to design individual customer rates based on billing demand for non-residential customers and kWh for residential customers. (Tr. V at 875, 876, 887-888.) In this regard, Ms. Kelso also confirmed that the BTCR is a pass-through rider to collect no more and no less that what AEP Ohio is billed through the FERC-approved OATT and Transmission Agreement. (Tr. V at 880.)

Through rebuttal testimony, AEP Ohio witness Kelso explained AEP Ohio's position in response to the Merola Direct testimony:

> The Company believes that the moderate expansion of the BTCR pilot and related study as agreed to in the Stipulation are the most prudent actions. The Company also believes that a change to the process for non-market-based transmission costs warrants a much more in-depth analysis than what was included in Calpine's proposal. In addition, the proposal should be vetted in a docket where others would have the ability to weigh in on the changes. The Commission should adopt the BTCR provisions of the Stipulation without modification.

(AEP Ohio Ex. 9 at 9.) Ms. Kelso went on to elaborate some of the many unknowns related to Calpine's proposal and what impacts there could be if the BTCR were made bypassable.

First, making the BTCR bypassable is a major rate design change – similar to dramatically expanding the BTCR pilot – and it is unknown what the impact would be for shopping and non-shopping customers. (*Id*. at 6.) By contrast, the Stipulation takes an incremental approach to expanding the BTCR pilot and commits to a third-party review of the pilot program including customer savings and analysis of the allocation of costs. For example, under the former TCRR mechanism, there was a variance in allocation methodology between what was allocated to CRES suppliers and what was allocated to AEP Ohio. (*Id*. at 7.) CRES suppliers were charged on a 1CP basis; however, the AEP operating companies' full 1CP share (including CRES customers' 1CP) was further allocated to AEP Ohio on a 12CP basis. This difference in methodology resulted in a variance that was pushed to non-shopping customers. (*Id*.) If Calpine's BTCR proposal were adopted, it is unclear what the level of transmission shopping would be and the resulting magnitude in the variance. As a related matter, it is also unknown how this variance would be allocated to AEP shopping and non-shopping customers.

A second significant unknown with the recommendation made in the Merola Direct testimony that AEP Ohio witness Kelso pointed out is that the 1 CP rate design is inherently less stable for individual customers because it measures each customers' load in only one hour of the year. (*Id*. at 8.) When applied to individual customers, the 1CP method can result in cost allocations reflecting anywhere from zero to 100% of a customers' annual peak load. The 1CP method can produce significant variability year over year, in particular at times when the annual peak shifts from summer to winter or *vice versa*. (*Id*.) Consequently, Ms. Kelso concluded that it would be prudent to further study and consider how different types of customers, especially those that are limited in their ability to manage their load and/or that have seasonality, such as hospitals, retail stores, and schools, could be impacted by the expansion of 1CP billing. It is also unknown what the impact this 1CP volatility could have on customer migration between shopping and the SSO. (*Id*.)

Third, AEP Ohio witness Kelso expressed her concerns that a bypassable BTCR could impact the price-to-compare (PTC) in multiple ways. (*Id*. at 8-9.) There could be a combined generation and transmission PTC or there could be a separate generation PTC and a transmission PTC. The addition of transmission charges to the PTC would add some additional complexity to the shopping process for customers. Ms. Kelso explained that AEP Ohio is also concerned that the proposal ignores that the costs included in the BTCR are non-market-based costs. As such, the Commission should have the ability to review how the costs are being allocated and billed to each of the retail customers. In AEP Ohio witness Kelso's opinion, the price-to-compare is an important tool for shopping customers. (Tr. V at 868.) As a related matter, Ms. Kelso concluded that the Commission also would lose visibility and oversight into what customers are paying for transmission service and customers would experience additional complexity in making shopping price comparisons.

Finally, AEP Ohio witness Kelso listed a fourth major unknown associated with a bypassable BTCR:

> The Company also has not studied how making the BTCR bypassable in Ohio would impact operation of the FERC-approved Transmission Equalization

> Agreement with its affiliates for transmission services in PJM. This is another important set of issues that would need to be understood before converting the BTCR to a bypassable charge.

(*Id*. at 9.) In other words, it is not clear whether ongoing operation of the FERC-approved AEP East Transmission Agreement in a new bypassable BTCR regime would leave a substantially different cost for non-shopping customers to bear. It is simply another unknown to consider.

As AEP Ohio witness Kelso explained on cross examination, AEP Ohio is opposed to adopting a bypassable transmission rider in this case because it would be a modification to the Stipulation and because there are many unknowns that should be resolved before making such a decision, including potential volatile rate impacts if 1CP billing is utilized and ensuring customers understand their choices relative to generation and transmission shopping decisions; the Stipulation strikes the right balance by moderately expanding the 1CP BTCR Pilot and committing to a third-party study to evaluate changes to transmission billing in detail. (Tr. V at 852-854, 858.) Because of the potential impacts on customers, Ms. Kelso testified that making transmission charges bypassable is a drastic and very significant change that should be carefully studied, but the Company is not saying it cannot happen after careful consideration in another case. (Tr. V at 861, 877.) Calpine's recommendation would be a modification of the Stipulation that is unjustified and could result in the settlement being unwound; the Commission should ignore or reject the Merola Direct testimony and the recommendation to presently convert the BTCR to being bypassable. Stated differently, the record in this case does not support a conclusion that the current BTCR violates any important regulatory principle or practice.

8. The Stipulation is consistent with and advances numerous Ohio energy polices under R.C. 4928.02.

The Stipulation does not violate any important regulatory principle or practice, but rather, the Stipulation, reached by the diverse set of Signatory Parties, promotes a number of the state policies expressed in Ohio Revised Code 4928.02, as explained by AEP Ohio witness Mayhan:

- Ensuring the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service consistent with R.C. 4928.02(A);
- Ensuring the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs consistent with R.C. 4928.02(B);
- Ensuring diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities consistent with R.C. 4928.02(C);
- Encouraging innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure consistent with R.C. 4928.02(D);
- Encouraging cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language consistent with R.C. 4928.02(E);
- Ensuring that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces consistent with R.C. 4928.02(F);
- Recognizing the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment consistent with R.C. 4928.02(G);
- Ensuring effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates consistent with R.C. 4928.02(H);
- Ensuring retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power consistent with R.C. 4928.02(I);

- Protecting at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource consistent with R.C. 4928.02(L);
- Facilitating the state's effectiveness in the global economy consistent with R.C. 4928.02(N); and
- Encouraging cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization consistent with R.C. 4928.02(O).

(AEP Ohio Ex. 2 at 24-25.)

In determining whether the Stipulation promotes Ohio policies, Company witness Mayhan identifies that none of the individual provisions in the Stipulation are inconsistent or violate any important Commission principle or practice. (Tr. I at 36.) Ms. Mayhan further indicates that the settlement reached by a diverse set of Signatory Parties resulted in a Stipulation that promotes the regulatory principles and policies outlined in R.C. 4928.02. (Tr. I at 37.) Staff Witness Healey agrees that the Stipulation promotes good public policy for the State of Ohio and does not violate any important regulatory policy or principle. (Staff Ex. 1 at 3-4, 11.)

As demonstrated, the Stipulation not only does not violate any important regulatory principles or policies, but it actually advances important State regulatory policies and principles, including the facilitation of just and reasonable rates, promotion of system designed investments 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.

D. Much of the intervenor testimony utterly fails to address the three-prong test or superficially recites the controlling standard without any support or connection not their recommendations – instead, second-guessing and advocating additional benefits that were not part of the serious bargaining in the Stipulation package.

As referenced above, much of the opposing testimony utterly fails to address the controlling three-part test for consideration of contested settlements. And their recommendations are not connected to the test at all or merely reflect second-guessing of the Stipulation benefits and continued advancement of their litigation positions. None of those approaches are relevant to the issues in this proceeding – let alone justify modifications to the settlement based on the three-part test. Such testimony should be disregarded or rejected.

1. Constellation Witness Indukuri

As referenced above, Constellation Witness Indukuri's Stipulation testimony is not well considered and is plainly a second bite at the apple in an attempt to renegotiate the settlement because the agreement only adopts two out of his four recommendations. (Constellation Ex. 2 at 6.) Unbelievably, Mr. Indukuri fails to even mention the three-part test. (*See generally* Constellation Ex. 2.)

Mr. Indukuri admits that Constellation actively participated in the settlement discussions that led to the Stipulation. (Constellation Ex. 2 at 6.) The Stipulation adopts two of Mr. Indukuri's four recommendations, and he acknowledges these recommendations in his Stipulation testimony. (Constellation Ex. 2 at 6.) In fact, Constellation witness Indukuri admitted that, although his original testimony docketed in June in response to the Application included adoption of a capacity pass-through feature and rejection of the Governmental Aggregation Standby Rider as two of his four main recommendations, he did not include those two items in his Stipulation testimony because the Stipulation already incorporated his proposed solution. (Tr. IV at 704-706.)

Constellation witness Indukuri continues to advance two remaining SSO recommendations in his Stipulation testimony relating to a circuit-breaker (volumetric threshold) and segmentation of auction products by customer class. (Constellation Ex. 2 at 4; Tr. IV at 706-707.) Mr. Indukuri goes so far as to say that Constellation is *now* presenting its recommendations to the Commission even though Constellation actively participated in the settlement discussions. (Constellation Ex. 2 at 6.) Mr. Indukuri's Stipulation testimony is not the first time Constellation presented its recommendations as these recommendations were first presented in Mr. Indukuri's June testimony addressing the Application, pre-settlement discussions. Furthermore, Constellation witness Indukuri agrees that the Stipulation facilitates consideration of his two SSO recommendations (circuit-breaker (volumetric threshold) and segmentation of auction products by customer class) through other dockets as part of the continuing jurisdiction provisions but is unsure whether the items would actually be considered. (Tr. IV at 710; *see also* Jt. Ex. 1 at ¶ III.B.2.)

Constellation witness Indukuri effectively ignores the three-part test and makes the same arguments he made in the pre-settlement phase of the case.

2. Calpine Witness Merola

Calpine witness Merola's direct testimony was admitted into the record as Calpine Exhibit 1. (Tr. III at 434.) Ms. Merola's testimony is irrelevant for purposes of the Commissioner's review of the Stipulation because it is direct testimony contemplating the Application rather than the Stipulation. (*See generally* Calpine Ex. 1.) Furthermore, both topics addressed in Ms. Merola's testimony were modified by the Stipulation. (Calpine Ex. 1 at 3.) Specifically, Calpine witness Merola's testimony recommends continuation of the BTCR as a non-bypassable charge, continuation, and expansion of the BTCR pilot, continuation of the EE/PDR pilot and related rider as a non-bypassable charge as well as the new EE pilot and related EE Rider as a non-bypassable charge. (*Id.*) The Stipulation modifies most of the topics discussed by Calpine witness Merola in her direct testimony, so the Merola Testimony simply does not address the right package of issues presented in this case. (Jt. Ex. 1 at ¶¶ III.L and III.N.)

The Commission's review of the Stipulation is dictated by the three-part test, and the scope of the Commission's query hinges on a record that speaks to such. Ms. Merola's testimony fails to address both the Stipulation and the three-part test. Ms. Merola's testimony is not probative of the Stipulation. Her direct testimony, although admitted into the record, is irrelevant to this proceeding as the provisions included in the original Application and referenced in her testimony are not being offered as part of this proceeding and are certainly not part of the Stipulation.

3. OCC witnesses Buckley, Wilson and Sioshansi

OCC's testimony opposing the Stipulation fails to address—and clearly ignores—the three-part test. OCC's testimony just second-guesses the Stipulation in an attempt to renegotiate the agreement but ultimately fails to establish that the Stipulation violates even one regulatory principle. As demonstrated below, OCC attempts to obscure the Commission's three-part test, but these efforts should be rejected.

OCC witnesses patently ignore the three-part test and make identical arguments to the ones they made in the pre-settlement phase of the case. For example, OCC witness Buckley recycles original direct testimony without new analysis to address the changes in the Stipulation. (*See generally* OCC Ex. 8.) Mr. Buckley included the majority of the same points he made in his pre-settlement direct testimony, and he even included the exact same attachments (totaling 195 pages) in his Stipulation testimony as in his direct testimony. (*Id.)* It appears that Mr. Buckley simply copied and pasted the majority of his initial testimony, swapped out a few synonyms and/or reworded questions, and briefly made minor references to the Stipulation. (Tr. III at 624; s*ee* OCC Ex. 8 at 4-14, 15, 16-20.) Indeed, OCC witness Buckley is a technical expert and not an attorney; however, he fails to provide technical and legal analysis, and his pre-settlement testimony and post-settlement testimony are nearly identical. Additionally, OCC witness Buckley agreed that his Stipulation testimony does not offer an opinion on whether the modified ESP proposed in the Stipulation is more favorable in the aggregate than his suggested MRO approach, though he also clearly agreed that AEP Ohio's original Application was modified in the Stipulation. (Tr. III at 648, 649.) Mr. Buckley's testimony in opposition to the Stipulation shows that his original recommendations basically remain unchanged even in light of the Stipulation. (OCC Ex. 8 at 3.).

Similarly, in his Stipulation testimony, OCC witness Wilson recycles the same arguments he made throughout his direct testimony and fails to address the three-part test as it relates to the Stipulation. Mr. Wilson opines he made two recommendations in his Stipulation testimony, that the Commission: (1) require the Company to hold separate auctions by customer class and (2) provide guidance on how the proxy price will be set for the capacity pass-through mechanism, both of which were not incorporated in the Stipulation. (Tr. II at 300, 304; OCC Ex. 4 at 3, 4.) These recommendations are consistent with those made in his direct testimony filed in June prior to September settlement. There clearly is a pattern to Mr. Wilson's recommendations as he even made the same SSO auction arguments in DP&L's ESP earlier this year – ironically admitting the testimony he prepared and filed in this case is materially the same as that in DP&L's ESP, which ultimately ended in a Commission-approved stipulation with the Commission rejecting to adopt Mr. Wilson's recommendations. *DP&L's ESP IV* at ¶ 247.

During cross-examination, Mr. Wilson states he has known about the three-part test for years and believes his testimony addresses whether the Stipulation benefits customers in the public interest. (Tr. II at 338.) He believes the Stipulation violates an important regulatory principle, cost causation. That being said, Mr. Wilson admitted that his supplemental testimony does not provide any details regarding why he believes there is a violation of an important regulatory principle. (Tr. II at 338.)

OCC witness Sioshansi also fails to explain why the Stipulation doesn't satisfy the three-part test. In his Stipulation testimony, Dr. Sioshansi states the settlement fails parts two and three of the three-part test for violating cost-causation as it relates to electric vehicle charging. (OCC Ex. 6 at 2.) Accordingly, Dr. Sioshansi recommends the Commission reject or modify substantively the Stipulation. (*Id.*) OCC Witness Sioshansi ignores part one altogether, fails to review the Stipulation, *as a package*, and fails to elaborate on the perceived violation of cost causation. Dr. Sioshansi simply mentioned the three-part test buzzwords in some misguided attempt to make his arguments "relevant" but fails on all accounts to substantiate or detail his claims that the Stipulation fails parts two and three.

OCC's witnesses ignore the three-part test (or misapply the three-part test by cherry picking which parts they want to address) and make the same arguments they made in the pre-settlement phase of the case. Merely repeating one's litigation position is not an appropriate basis for contesting a settlement. OCC's approach of just advancing its litigation position is also an inappropriate application of the three-part test, and such arguments cannot form the basis for rejecting the Stipulation. *Cf. Ohio Partners for Affordable Energy v. Pub. Util. Comm'n (In re E. Ohio Gas Co.*), 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32 (holding that "[t]he fact that [a] stipulation did not resolve all of [an intervenor]'s opposition arguments does not mean that the commission's approval of the stipulation was unlawful.").

II. The Amended ESP proposed in the Stipulation satisfies the statutory MRO test.

The Commission must approve an ESP proposal if it finds that the ESP, "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 [an MRO authorized under] section 4928.142 of the Revised Code." R.C. 4928.143(C)(1). This statute, R.C. 4928.143(C)(1), "'does not bind the commission to a strict price comparison. On the contrary, * * * the statute instructs the commission to consider "pricing and all other terms and conditions"' in evaluating whether the ESP is more favorable in the aggregate than an expected MRO." *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 22, *quoting In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, ¶ 27.

Thus, the Commission "must ensure that the * * * ESP as a total package is considered, including both a quantitative and qualitative analysis." *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 17-1263-EL-SSO, et al., Opinion and Order ¶ 288 (Dec. 19, 2018). "In conducting the [more favorable in the aggregate] test, the Commission will look at the relative price to be paid by SSO customers for generation service under both the proposed ESP and a hypothetical MRO, whether there are quantitative benefits to the ESP that would not exist in an MRO, and whether there are qualitative benefits to the ESP that would not exist in an MRO."

DP&L ESP IV, Opinion and Order, ¶ 208. Here, the Signatory Parties agree the Stipulation passes the statutory MRO test. (Jt. Ex. 1 at ¶ III.T.)

1. Generation Pricing

Under the ESP proposed in AEP Ohio's Application, as modified by the Stipulation, the SSO will continue to be priced and supplied through a Competitive Bidding Process (CBP). (AEP Ohio Ex. 2 at 5.) And it is undisputed that the Stipulation will not significantly change the auction process. OCC witness Mr. Buckley testified that "[b]ecause of the current auction procedures for generation, the Standard Service Offer (SSO) generation rates" should be "no differen[t] * * * under an MRO or an ESP." (OCC Ex. 8 at 14.) Moreover, the Stipulation includes enhancements to the SSO process that are designed to produce more stable SSO generation rates going forward (see Section III.B.3., *supra*), including "an option for full requirements auction products with a true-up to account of a proxy capacity price, if needed[,]" to "address[ ] the volatility that customers have experienced with the energy markets and prolonged delays of PJM's base residual auctions (BRAs)." (AEP Ohio Ex. 2 at 5.) The Stipulation also provides for continuing PUCO jurisdiction over potential additional modifications to the SSO CBP in other proceedings. (Jt. Ex. 1 at ¶ III.B.2.)

2. Quantitative Benefits

The ESP, as modified by the Stipulation, offers an array of additional quantitative benefits compared to an MRO. For example, as AEP Ohio witness Ms. Mayhan explained, the "DIR and ESRR mechanisms include the same types of costs that would be recoverable from customers through base distribution cases[,]" but with lower costs to customers and other parties, due to the "streamlined approach to recovering * * * costs associated with investment in distribution infrastructure and vegetation management" that the ESP's DIR and ESRR mechanisms permit. (AEP Ohio Ex. 2 at 16.) The Stipulation's energy efficiency programs for low-income residential consumers will result in bill reductions (Staff Ex. 1 at 12) and "provide an annual gross benefit to customers of approximately $22 million," which exceeds the projected costs of the programs by approximately $10 million." (*Id*. at 17.) And the "IRP and Smart Thermostat Demand Response [program] will provide a means of calling upon customers to curtail during certain events that stress AEP Ohio's system" (*id*. at 23), which, along with the Stipulation's "promotion of off-peak EV charging," will "allow[ ] the Company to call on customers to curtail load during times of high demand, and usually higher cost, as well as incentivizing peak load shifting * * * to put less stress on the distribution grid[,]" all of which will help "reduce system costs." (*Id*. at 23; see also *id*. at 18.)

3. Qualitative Benefits

The modified ESP also offers numerous significant qualitative benefits related to rate stability, economic development, efficient use of the transmission grid, and technological advancement. As AEP Ohio witness Mayhan testified, "The commitment to file a base distribution case by June 1, 2026, provides customers with increased certainty regarding the timing of a base rate case, * * * as opposed to the uncertainty that would exist under an MRO." (AEP Ohio Ex. 2 at 16.) The DIS and ESRR mechanisms, "when coupled with annual caps[,] * * * provide rate certainty and stability for customers that would not otherwise exist under a traditional rate case ratemaking structure." (*Id*. at 17.) The "Ohio First Rider will allow the Company to move forward with projects that are approved for federal funding in a streamlined manner without having to wait for a base rate case * * * ." (*Id*. at 17.) The expansion of the IRP tariff will further support economic development in the State of Ohio. (*See id*. at 17.) And allowing "certain customers to participate in a BTCR 1 CP transmission rate encourages more efficient use of the transmission grid[,]" while reducing AEP Ohio's overall transmission revenue requirement (id. at 17:21-23), and "the 6 CP BTCR Pilot promotes technological advancement while increasing grid resiliency and sustainability" (*Id*. at 18.) The Stipulation also ensures certain functionalities in AEP Ohio's CIS investment and promotes economic development in Ohio. (Staff Ex. 1 at 12-13.)

4. OCC's Criticisms of the ESP Under the "More Favorable" Test

As AEP Ohio witness Ms. Mayhan testified, and the Signatory Parties agree (*see supra*), the ESP's quantifiable and qualitative benefits "clearly * * * are more favorable in the aggregate than what would be expected under an MRO." (AEP Ohio Ex. 2 at 18.) OCC did not file written testimony rebutting this point. In filed testimony, OCC witness Mr. Buckley did opine that AEP Ohio's "proposed ESP is [not] more favorable in the aggregate than an MRO." (OCC Ex. 8 at 19.) But, as Mr. Buckley admitted at hearing, when he said AEP Ohio's "proposed ESP," he meant the ESP proposed in AEP Ohio's application (Tr. III at 648:18-23), not the ESP as modified by the Stipulation. The questions in Mr. Buckley's testimony ask what he "considered regarding the ESP vs. MRO test for this application" (OCC Ex. 8 at 13), for example, and what "quantitative benefits" and "qualitative benefits" AEP Ohio described "in its application" (*Id*. at 13, 14). They do not ask his opinion on the modified ESP that AEP Ohio and the other Signatory Parties now ask the Commission to approve. Mr. Buckley admitted, at hearing, that his testimony did not offer an opinion on whether the modified ESP proposed in the Stipulation is more favorable in the aggregate than an MRO. (Tr. III at 649.) For these reasons, the Commission should disregard OCC's unsupported opposition to the modified ESP under the "more favorable" test in R.C. 4928.143(C)(1).

CONCLUSION

For the foregoing reasons, the Commission should adopt the Stipulation without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 1st day of December 2023, via electronic transmission.

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