

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

INITIAL POST-HEARING BRIEF OF WALMART INC.

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Dated: December 1, 2023

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Walmart Inc. ("Walmart"), by its attorneys, respectfully submits its Initial Post-Hearing Brief to the Public Utilities Commission of Ohio ("Commission") and states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

On September 6, 2023, Ohio Power Company ("AEP Ohio" or "Company") filed a Stipulation and Recommendation ("Stipulation") in these proceedings.¹ In addition to AEP Ohio and Walmart, the Stipulation was supported by 15 other parties, including Commission Staff ("Staff"), Ohio Manufacturers' Association and Energy Group ("OMAEG"), Ohio Energy Group ("OEG"), Ohio Partners for Affordable Energy ("OPAE"), Enel North America, Inc. ("Enel"), Environmental Law and Policy Center ("ELPC"), Ohio Energy Leadership Council ("OELC"), Interstate Gas Supply, LLC ("IGS"), Retail Energy Supply Association ("RESA"), Citizens' Utility Board of Ohio ("CUB"), Ohio Environmental Council ("OEC"), Direct Energy Business LLC and Direct Energy Services LLC ("Direct Energy"), The Ohio Hospital Association ("OHA"), The Kroger Company ("Kroger"), and Armada Power ("Armada"). One additional party, Ohio Telecom Association ("OTA"), formally indicated that they did not oppose the Stipulation. Moreover, while not a Signatory or Non-Opposing Party to the Stipulation, the Ohio Cable Telecommunications

¹ See Signatory Parties Ex. 1.

Association ("OCTA") indicated that it would not oppose the Stipulation. *See* October 12, 2023, Correspondence filed by Counsel on behalf of OCTA; *see also* Direct Testimony of Jamie L. Mayhan in Support of the Joint Stipulation and Recommendation ("Mayhan Stipulation Direct"), p. 3, lines 21-22. This Stipulation was the result of negotiations that took place over many months and involved compromises by all parties. The 18 parties who signed the Stipulation, whether as supporting or non-opposing parties, and OCTA who did not oppose the Stipulation, represent a wide diversity of interests.²

Six parties did not join the Stipulation including the Office of Consumers' Counsel ("OCC"), Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, "Constellation"), Calpine Retail Holdings, LLC ("Calpine"), One Energy Enterprises, Inc. ("One Energy"), Nationwide Energy Partners ("NEP"), and Northeast Ohio Public Energy Council ("NOPEC").

The ultimate issue before the Commission is whether the Stipulation is reasonable and should be approved. The Commission has adopted a three-part test to evaluate the reasonableness of a stipulation:

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?³

² ChargePoint, Inc. ("ChargePoint") intervened but subsequently filed a motion to withdraw on September 26, 2023.

³ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Opinion and Order (Nov. 22, 2011) ("Duke Energy 2011 ESP Order"), p. 41; *In the Matter of Ohio Edison Company, The Cleveland Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Offer Service Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) ("FirstEnergy 2012 ESP Order"), p. 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992)).

The Commission has discussed this standard in numerous prior proceedings.⁴ While a stipulation is not binding on the Commission, it is given substantial weight.⁵ The Supreme Court of Ohio has endorsed the Commission's analysis and affirmed that the Commission may place substantial weight on a stipulation.⁶ As discussed below, the Stipulation in these dockets satisfies the Commission's three-prong test, is reasonable, and should be adopted without modification.

II. ARGUMENT

A. The Stipulation Satisfies the Commission's Three-Prong Test for Determining Whether a Settlement is Reasonable and Should be Approved.

1. The Stipulation is the product of serious bargaining among capable and knowledgeable parties.

The 18 parties to the Stipulation and OCTA who did not oppose it were capable and knowledgeable parties, all of whom were represented by experienced legal counsel throughout these proceedings. *See* Mayhan Stipulation Direct, p. 19, lines 3-18. The Stipulating Parties represent a diverse cross-section of the Company's customer classes; in addition to Staff, CUB and OPAE represent residential customers; OPAE and CUB also represent the interests of low-income customers; OEG, OELC, and OMAEG represent manufacturing and industrial customers; Kroger and Walmart represent commercial customers; OHA represents essential services; and Direct

⁴ FirstEnergy 2012 ESP Order, p. 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, (1992)); Duke Energy 2011 ESP Order, p. 41 (citing *Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.* (Dec. 30, 1993); *Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 26, 1985)).

⁵ Duke Energy 2011 ESP Order, p. 41 (citing *Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.* (Dec. 30, 1993); *Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 26, 1985)); FirstEnergy 2012 ESP Order, p. 24 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978)).

⁶ Duke Energy 2011 ESP Order, p. 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994); *Consumers' Counsel v. Public Util. Comm.*, Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992)).

Energy, RESA, Armada, Enel, and IGS represent competitive suppliers, brokers, and standard service offer ("SSO") providers. *See id.*; *see also* Direct Testimony of Christopher Healey in Support of the Joint Stipulation and Recommendation ("Healey Stipulation Direct"), p. 3, line 17 to p. 4, line 1).

Moreover, the Stipulation was the result of serious bargaining over a multi-month period; in addition to numerous communications via email and telephone, there were sub-group topic-specific meetings between the Company and interested parties over several weeks, and 14 all-party settlement meetings were held in which all parties were invited to participate and involved the exchange of numerous term sheets, proposals, and/or draft stipulations. Healey Stipulation Direct, p. 4, lines 3-13; Mayhan Stipulation Direct, p. 19, lines 7-18. Moreover, the parties had the opportunity to (and did) engage in substantial discovery and to file and review testimony. Mayhan Stipulation Direct, p. 19, lines 6-7. The result of this extensive negotiation process was compromises made by all parties, with no party receiving everything that it wanted. *Id.*, p. 19, lines 14-18.

No party offered any direct evidence contesting that the Stipulation satisfied the first prong of the Commission's three-prong test. While OCC acknowledged that CUB and OPAE represented low-income residential customers, OCC did cross-examine Company witness Mayhan concerning whether any of the Signatory Parties, including OPAE and CUB, represent "non-low income residential electric customers." *See* Hearing Transcript ("Tr."), October 10, 2023, p. 48, line 17 to p. 51, line 1. In the Commission's Final Order in the recent AES Ohio ESP IV case⁷, the Commission found that the stipulation in that case satisfied the first prong of the three-part test

⁷ *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan*, Case No. 22-0900-EL-SSO, Final Order (Aug. 9, 2023) ("AES Ohio ESP IV Final Order").

even where OCC was not a party to the stipulation and the only customer groups representing residential customers were those representing low-income residential customers. *See* AES Ohio ESP IV Final Order, p. 49, ¶ 84 and p. 52, ¶ 90. For similar reasons here, the Commission should find that the Stipulation satisfies the first prong of the three-part test for evaluating stipulations.

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

In evaluating whether a Stipulation satisfies the second prong of the three-part test, the Commission has stated – and we should be guided by – the following:

The Commission emphasizes, as the language of the second criterion clearly states, that the benefits of the Stipulation are evaluated as a package. Not all ratepayers will benefit from each and every provision of the Stipulation; some provisions may impose costs on certain ratepayers. Nor are benefits accorded equally to all ratepayers and, therefore, the Commission considers the public interest benefits of the whole Stipulation.⁸

More recently, in the AES Ohio ESP IV Final Order, the Commission said that when assessing whether a Stipulation satisfies prong two, the question 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." AES Ohio ESP IV Final Order, p. 62, ¶ 109. Consistent with these prior Commission directives stated above, it is clear that the Stipulation presented here, viewed as a package, benefits customers and the public interest. Some of the specific benefits of the Stipulation are discussed below.

First, as Company witness Mayhan explains, in exchange for a reasonable rate increase, customers receive numerous benefits. Mayhan Stipulation Direct, p. 19, lines 22-23. Among other things, the Stipulation will provide certainty of cash flows to AEP Ohio in order to help maintain

⁸ *In the Matter of the Application Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO and 16-1853-EL-AAM, Opinion and Order (Apr. 25, 2018), p. 93.

and/or improve reliability to customers. *Id.*, p. 20, lines 1-4. As noted by Staff witness Healey, not only were the Distribution Investment Rider ("DIR") caps substantially lower than the Company initially proposed in its Application – by \$33 million per year⁹ – but the Stipulation places an emphasis on the DIR dollars being used for "investments that are designed to maintain or improve reliability." Healey Stipulation Direct, p. 9, lines 4-9. Not only is maintaining or improved reliability a state policy set forth in R.C. 4928.02(A), but this Commission has recognized the benefits of reasonable DIR caps in the recent AES Ohio ESP IV Final Order. *See* AES Ohio ESP IV Final Order, pp. 64-65, ¶¶ 111-112.

Additionally, by resolving this matter through a comprehensive Stipulation, it avoids the "considerable time and expense associated with the litigation of a fully contested case." AES Ohio ESP IV Final Order, pp. 62-63, ¶ 109; *see* Mayhan Stipulation Direct, p. 19, line 23 to p. 20, line 1. The Commission has recognized this as being a specific benefit considered in assessing whether a Stipulation satisfies prong two of the three-part test. AES Ohio ESP IV Final Order, pp. 62-63, ¶ 109.

Two further elements of the Stipulation that benefit customers and the public interest are the shortened ESP period of four years¹⁰ and the commitment to file a base distribution rate case by June 1, 2026. Stipulation, ¶¶ C(4) and (5); Mayhan Stipulation Direct, p. 6, lines 4-8. A base rate case filing commitment ensures that the Commission, Staff, and all parties will have the opportunity to pass upon all expenses and revenues of the Company and to reset the various riders set forth as part of this ESP proceeding.

Finally, an additional benefit in the Stipulation is the Company's agreement to utilize the

⁹ Healy Stipulation Direct, p. 6, lines 11-19.

¹⁰ In the Application, the Company proposed an ESP term of June 1, 2024, through May 31, 2030.

return on equity ("ROE") set forth in the "most recent base rate case." *See* Stipulation, ¶ D(7). The Company sought approval of a 10.65 percent ROE, which is 95 basis points above the 9.7 percent ROE the Company was awarded in its last base rate case. Healey Stipulation Direct, p. 7, lines 14-17. Had the Company been successful in arguing for a higher ROE in this ESP, it would have increased costs to customers.

The benefits described above are just some of the benefits that accrue to ratepayers and the public interest as a result of the Stipulation. Additional benefits have been identified by the Company and Staff, which further support the conclusion that as a package the Stipulation satisfies the second prong of the three-part test.

3. The Stipulation Does Not Violate Important Regulatory Principles.

Walmart agrees with the conclusions of Staff witness Healy and Company witness Mayhan that rather than violating any important regulatory principles, the Stipulation supports important regulatory policies and principles. Healy Stipulation Direct, p. 11, lines 13-22; Mayhan Stipulation Direct, p. 24, line 5 to p. 25, line 35.

III. CONCLUSION

For all the reasons set forth above, Walmart Inc. respectfully requests that this Commission adopt and approve the Stipulation in its entirety and without modification.

Respectfully submitted,

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Dated: December 1, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Post-Hearing Brief of Walmart Inc., was served by electronic mail, upon the following Parties of Record on this 1st day of December, 2023.

/s/ Carrie H. Grundmann

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Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Brief Initial Post-Hearing Brief of Walmart Inc. electronically filed by
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