

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the |) | |
| Ohio Power Company for Authority to |) | |
| Establish a Standard Service Offer |) | Case No. 23-23-EL-SSO |
| Pursuant to Section 4928.13, Revised |) | |
| Code, in the Form of an Electric Security |) | |
| Plan. |) | |

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|--|---|-----------------------|
| In the Matter of the Application of Ohio |) | |
| Power Company for Approval of Certain |) | Case No. 23-24-EL-AAM |
| Accounting Authority. |) | |

**INITIAL BRIEF
OF
DIRECT ENERGY**

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Table of Contents

I. Introduction

II. Standard of Review

III. Argument

- A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.**
- B. The Stipulation benefits ratepayers and the public interest.**
 - 1. The Stipulation benefits ratepayers and the public interest by establishing a Smart Thermostat Demand Response Program that includes reasonable safeguard to protect customer choice and Ohio's competitive retail electric market.**
 - 2. The Stipulation benefits ratepayers and the public interest by increasing the functionality of AEP Ohio's Customer Information System which will allows CRES Providers to more easily introduce new rate, product, and service offerings to customers.**
 - 3. The Stipulation benefits ratepayers and the public interest by creating a working group for further discussion on Time-of-Use Rates.**
- C. The Stipulation does not violate any important regulatory principle or practice.**

IV. Conclusion

V. Certificate of Service

**INITIAL BRIEF
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I. Introduction

The Commission should approve the Joint Stipulation and Recommendation (“Stipulation”) in this case without modifying it because the Stipulation provides a reasonable resolution of the issues. The Stipulation is a settlement package that has been agreed to by most of the parties. Each party in this case is capable, knowledgeable, and experienced in matters before the Commission. No party obtained everything that it wanted, but no party was left out or denied an opportunity to make its case or join the settlement. The standard for approval of a Stipulation is whether the settlement is reasonable. And, to evaluate the reasonableness of a settlement, the Commission uses a three-part test that has been endorsed by the Ohio Supreme Court. The settlement contained in the Stipulation meets each of the three criteria and therefore constitutes a reasonable resolution of the issues.

More than just being a reasonable resolution of the issues, the settlement would provide numerous benefits to customers. These benefits include, for example, a Smart Thermostat Demand Response Program, improvements to AEP Ohio’s Customer Information System (“CIS”), a working group that will discuss time-of-use (“TOU”) rates, programs for business customers to save on energy expenses by managing their peak demand, rate certainty for customers, a base distribution rate case commitment, and electric transportation programs. These benefits serve the public interest by giving consumers more programs and services without interfering with customer

choice or Ohio's competitive retail market. For these reasons, Direct Energy respectfully requests that the Commission approve the Stipulation without modification.¹

II. Standard of Review

Ohio Adm.Code 4901-1-30 allows parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight.² The ultimate issue for the Commission's consideration is whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has adopted and used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's practice of using these criteria to evaluate the reasonableness of a stipulation.³ The Court has stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.⁴

¹ Direct Energy Business LLC and Direct Energy Services LLC have both intervened in this case but are referred to in this Initial Brief simply as "Direct Energy."

² See, *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123,125, citing *Akron v. Pub. Util Comm.* (1978), 55 Ohio St.2d 155.

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

⁴ *Id.*

III. Argument

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

Each party in this case is capable, knowledgeable, and experienced in Commission proceedings.⁵ AEP Ohio witness Jaime L. Mayhan and Staff witness Chris Healey both testified that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.⁶ Indeed, the parties were all represented by competent counsel experienced in matters before the Commission, with most parties appearing regularly in Commission proceedings. During the negotiations that led to the settlement in this case, each party not only had the opportunity to participate in numerous settlement meetings but did so. Settlement negotiations included at least 14 all-party meetings and more than ten breakout sessions on certain topics.⁷ These settlement meetings and negotiations took place over many months and no party was excluded from the meetings or negotiations. Accordingly, the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

B. The Stipulation benefits ratepayers and the public interest.

The Stipulation will benefit ratepayers and the public interest in many ways. Importantly, the Stipulation will allow AEP Ohio to create programs and improve its systems in ways that all competitive retail electric service (“CRES”) providers to compete and do business in the state. The three benefits identified below will allow both the distribution utility and CRES providers to

⁵ See Staff Ex. 1; AEP Ohio Ex. 2.

⁶ AEP Ohio Ex. 2 at 19 (“The parties involved in these negotiations were capable and knowledgeable about the issues raised in this case.”); Staff Ex. 1 at 4 (“The Stipulation was extensively negotiated and took shape over a period of three months through (i) no fewer than 14 global settlement meetings in which all parties were invited to participate (both in person and virtually), (ii) sub-group settlement meetings over a period of several weeks to address topics of interest to particular parties (and which all parties were invited to join); and (iii) numerous email and phone communications among parties.”).

⁷ AEP Ohio Ex. 2 at 19.

provide better products and services to customers. These benefits include (1) a new Smart Thermostat Demand Response Program, (2) improving the functionality of AEP Ohio's Customer Information System (CIS), and (3) creating a working group to discuss time-of-use rates. These benefits, along with the other terms and provisions in the Stipulation, as a package, benefit ratepayers and the public interest.

1. The Stipulation benefits ratepayers and the public interest by establishing a Smart Thermostat Demand Response Program that includes reasonable safeguards to protect customer choice and Ohio's competitive retail electric market.

The Stipulation includes a Smart Thermostat Demand Response Program designed to reduce peak demand and thus reduce stress on the distribution grid. As set forth in the Stipulation, for participating customers, AEP Ohio will be capable of calling events on the customer's smart thermostat.⁸ Some important aspects of the program are that (1) customers and CRES providers will have the exclusive right to bid the participating demand response into PJM markets, (2) there will be ongoing working group meetings to discuss how to preserve CRES provider communication channels and maximize CRES provider participation, and (3) funds will be allocated to CRES providers for system improvements. Each of these program designs are safeguards to encourage CRES provider demand response offerings without AEP Ohio's interference in the competitive marketplace.

First, the program will protect the integrity of customer choice and the competitive marketplace by ensuring that only customers and CRES providers can bid the demand response into the PJM market. The Stipulation states clearly that "AEP Ohio will not bid in [a customer's] demand response into the PJM markets."⁹ The Stipulation then makes clear that "Customers

⁸ Joint Ex. 1; Direct Energy Ex. 1 at 4.

⁹ Joint Ex. 1 at 22.

reserve the ability, on their own or through their agent on their behalf (*e.g.* CRES) to engage in energy efficiency and peak demand reduction activities and/or participate in PJM demand response programs.)”¹⁰ As noted by RESA witness John Smith, “the Stipulation recognizes that management of individual residential customer demand on the customer’s side of the meter is critically important to customer choice issues and the development and maintenance of a strong competitive market.”¹¹ By prohibiting AEP Ohio from bidding demand response into PJM, the program will promote demand response participation without allowing AEP Ohio to interfere in competitive services.

Second, to maximize the ongoing success and benefits of the program, AEP Ohio will host semi-annual working group meetings with stakeholders. This collaborative working group will discuss and implement any reasonable and cost-effective changes necessary to preserve CRES provider communication channels with their CRES customers. Regarding the collaborative working group, Direct Energy witness Travis Kavulla explained:

“[T]he collaborative working group will explore solutions for any potential limitations to CRES provider offered programs that could be impacted or limited due to physical or technology capabilities with smart thermostats and the vendors running the smart thermostat demand response program. This working group will be instrumental in ensuring that the program is successful on a going forward basis while spurring additional demand response offerings by CRES providers.”¹²

Importantly, the working group will consider how to spur additional demand response offerings by CRES providers beyond any limitations of the Smart Thermostat Demand Response Program in the Stipulation. This means that the benefits to customers and the public interest are more than just this program offering but includes the opportunity for many additional demand response

¹⁰ Joint Ex. 1 at 22.

¹¹ RESA Ex. 1 at 4.

¹² Direct Energy Ex. 1 at 6.

offerings by CRES providers. The program set forth in the Stipulation provides that opportunity for CRES providers to offer more demand response offerings without AEP Ohio interfering in the competitive market.

Further, the working group will collaborate on many of the technical and operational details that are not fully set forth in the Stipulation. For example, as testified to by RESA witness John Smith, the case is “silent on the technical operational details of smart thermostats, and specifically, whether a single smart thermostat would allow different entities like AEP Ohio and a CRES provider to both send signals to the smart thermostat vendor to initiate temperature changes on a thermostat.”¹³ This is an example of one of the important issues that remains to be determined on program implementation. The Stipulation provides an opportunity for further discussion on how to maintain the success of the program despite unforeseeable operational and technical challenges. This is a benefit to customers and the public interest because it provides a process to overcome any unexpected barriers to program implementation.

Finally, the Stipulation includes provisions to allow a portion of the annual \$5 million funding cap to be allocated to CRES providers for system improvements.¹⁴ The amount of the annual \$5 million to be allocated to CRES providers will be discussed by the working group, with the intent to “optimize CRES participation in the smart thermostat demand response program.”¹⁵ Some CRES system improvements will be necessary to ensure continued program success and customer satisfaction. Fortunately, the Stipulation contemplates the need for system improvements and provides funding for CRES providers. This benefits customers by increasing

¹³ RESA Ex. 1 at 6.

¹⁴ Jt. Ex. 1 at 22.

¹⁵ Jt. Ex. 1 at 22; Direct Energy Ex. 1 at 6.

the products and services that CRES providers can offer, allowing customers to obtain products and services more tailored to their individual needs.

2. The Stipulation benefits ratepayers and the public interest by increasing the functionality of AEP Ohio's Customer Information System which will allow CRES Providers to more easily introduce new rate, product, and service offerings to customers.

AEP Ohio will increase the functionality of its Customer Information System (CIS) which will improve service to customer by both the utility and CRES providers.¹⁶ The new CIS will “allow for the introduction of new rate, product, and service offerings without the need for substantial additional investment in IT systems.”¹⁷ Further, the new CIS contains numerous provisions regarding interval customer data (15-minute interval), including providing customers with energy usage data, detailed billing history, flexible views (for non-residential customers with multiple accounts), and information on tariffs and rebates. Additionally, no additional fees will be charged to customers for directly accessing or requesting their own data. These improvements to AEP Ohio's CIS will allow both the distribution utility and CRES providers to provide better service to customers, thus benefiting ratepayers and the public interest.

3. The Stipulation benefits ratepayers and the public interest by creating a working group for further discussions on Time-of-Use Rates.

In the Stipulation, AEP Ohio commits to establish a working group that will meet semi-annually with interested parties to discuss and analyze AEP Ohio's cost of service. While the working group will analyze the impacts of plug-in electric vehicles (“PEVs”), the Stipulation expands the scope of the working group to include consideration of time-of-use (“TOU”) rates, stating “The working group will also consider additional TOU rate offerings, including potential

¹⁶ Stipulation at 7-8.

¹⁷ Jt. Ex. 1 at 7.

SSO TOU options.”¹⁸ The Direct Energy companies believe that TOU rates can benefit consumers individually and customers as a class. Experience in other jurisdictions has shown default service TOU rates can empower customers, reduce peak load, bring savings to customers, spur innovation, and realize more of the benefits of AMI meters.¹⁹ This is an important issue for both Direct Energy and customers, and the Stipulation affords opportunities for further discussion on the matter.

As testified by Travis Kavulla on behalf of Direct Energy, the parties “will have the opportunity to continue the discussion ... to move SSO customers to a TOU rate, such as a retail rate design where all residential and small commercial SSO customers are billed on-peak and off-peak rates.”²⁰ Through the working group, the parties can analyze the data from customers on the whole house service PEV rate to determine if it would be appropriate for AEP Ohio to amend its tariff to bill all residential and small commercial SSO customers on-peak rates from 1:00pm-11:00pm in the summer and 6:00am-10:00am and 4:00pm-10:00pm in the winter, consistent with the PEV rates in the Stipulation.²¹ Accordingly, while the Stipulation does not adopt Direct Energy’s proposal for AEP Ohio to bill all residential and small commercial SSO customers an on-peak and off-peak rate, it still provides an avenue for further consideration of TOU rates and Direct Energy’s proposal. The Stipulation benefits ratepayers and the public interest by creating this working group to discuss expansion of TOU rates.

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

The Stipulation is consistent with all important regulatory principles and practices. While the terms of the Stipulation in this case may be different from past ESP cases, when it comes to

¹⁸ Jt. Ex. 1 at 13.

¹⁹ Direct Energy Ex. 1 at 8.

²⁰ Direct Energy Ex. 1 at 3.

²¹ Jt. Ex. 1 at Paragraph 12; Direct Energy Ex. 1 at 7.

complying with important regulatory principles and practices, this Stipulation is no different from any other Stipulation that has been approved by the Commission.

IV. Conclusion

The settlement set forth in the Stipulation is the product of serious bargaining among capable and knowledgeable parties, benefits ratepayers and the public interest, and does not violate any important regulatory principle or practice. Accordingly, the Stipulation is reasonable and should be approved. Direct Energy respectfully requests that the Commission approve 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 on December 1, 2023, via email.

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