

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Authority to Establish a)	Case No. 23-0023-EL-SSO
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 Certain)	Case No. 23-0024-EL-AAM
Accounting Authority.)	

INITIAL BRIEF OF THE OHIO ENVIRONMENTAL COUNCIL

The Ohio Environmental Council (“OEC”) respectfully submits this initial post-hearing brief in support of the Joint Stipulation and Recommendation (the “Stipulation”) filed by the Ohio Power Company (“AEP”) on September 6, 2023.

December 1, 2023:

Respectfully Submitted,

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I. TABLE OF CONTENTS

I. TABLE OF CONTENTS	2
II. INTRODUCTION	2
III. PROCEDURAL HISTORY AND STATEMENT OF FACTS.....	3
IV. LEGAL STANDARD	6
V. ARGUMENT	7
1. The settlement, as a package, benefits ratepayers and the public interest because it works to increase reliability while attempting to limit the burden on consumers.	9
2. The Stipulation is more favorable in the aggregate as compared to the expected results of an MRO.....	10
VI. Conclusion	Error! Bookmark not defined.

II. INTRODUCTION

The Ohio Environmental Council (OEC) urges this Commission to approve the Joint Stipulation and Recommendation filed by the Ohio Power Company (“AEP”) in this case on September 6, 2023 (the “Stipulation”). The Public Utilities Commission of Ohio’s (“Commission” or “PUCO”) responsibility to ensure adequate and reliable electric service to Ohio consumers continues to pose new and rising challenges in the dynamic Ohio marketplace. The Stipulation in this case assists the Commission in pursuing these goals by seizing all available tools for managing electric load. This Stipulation results from extensive bargaining among parties representing a broad range of interests and is poised to improve Ohio grid reliability while including mechanisms to limit energy burdens on customers.

The Commission is not new to the concerns of load volatility.¹ However, as climate change increases the risks for severe weather, utilities must approach load volatility with a holistic approach. The Stipulation in this case takes an important step toward doing just that by utilizing multiple approaches to grid stability, including demand response and low-income energy efficiency programs.

III. PROCEDURAL HISTORY AND STATEMENT OF FACTS

On January 6, 2023, AEP filed an application to create a new electric security plan (“ESP V”) ahead of the expiration of its current plan, ESP IV, set for May 31, 2024.² In its application, AEP proposed to continue around thirty existing riders and add five new riders for the period of June 1, 2024 and last through May 31, 2030. The ESP V application proposed to raise rates for residential customers using 1,000 kilowatt hours of electricity per month by 5.2% (\$8.16) in the first year and a total of about 16.3% over the six-year ESP term.³

Twenty-two parties intervened in this application, including the OEC. These intervening parties included stakeholders across a variety of sectors affected by electric distribution utility service. Intervenor’s interests include commercial and industrial electric customers, residential electric customers, electric aggregations customers, generation and storage suppliers, electric vehicle charging, telecommunications providers, Ohio’s hospitals, and environmental advocates.

¹ See, *In the Matter of the Application of the Ohio Power Company to Initiate Phase 3 of its gridSMART project*, Case No. 19-1475, Opinion and Order (Dec. 1, 2021); see also, *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693 at 77 (meets second prong of 3-part stipulation test in part because the proposal addresses load volatility).

² *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-0023-EL-SSO, Application for Electric Security Plan (January 6, 2023) (ESP V Application).

³ Direct Testimony of Curtis Heitkamp, Attachment CMH-3. Attachment 1 provides that the rate impact for a residential customer using 1,000 kWhs would see a 5.2% increase in year 1, 1.4% in year 2, 2.2% in year 3, 1.9% in years 4-5, and 1.8% in year 6. These percentages total 16.3%.

This ESP V application came after two large outages in AEP's service territory in 2022: an outage over the Christmas holiday⁴ and an outage during some of the hottest days of the summer in June. The Christmas holiday outage in December 2022 resulted from severe winter weather and extreme cold temperatures, sparking an unusually high demand for electricity.⁵ At the same time, the severe weather caused climbing generator outages in the PJM service territory, which includes AEP.⁶ Similarly, severe weather also led to the June 2022 outage. The combination of a severe storm knocking down several power lines during some of the hottest days of the summer left fewer power lines available to serve a surging demand for electricity.⁷

In each of these outages, PJM and AEP turned to commercial and industrial customers for relief through demand response programs.⁸ During the Christmas holiday outage, PJM and AEP both called on commercial and industrial customers to curtail usage twice from December 23 to 24, 2022.⁹ PJM similarly called on commercial and industrial customers twice to reduce load times during the summer heat wave outages.¹⁰ PJM's senior vice president operations, Michael Bryson, reported to PUCO Commissioners in a July 13, 2022 public review that PJM's limited demand response measures lessened the burden on the grid, and helped buy some additional time for response during the heat wave outages.¹¹

⁴ Direct Testimony of Matthew Brakey, p. 23, FN 14 (June 9, 2023).

⁵ OEE Ex.1, p. 72.

⁶ Direct Testimony of Matthew Brakey, p. 23, line 11.

⁷ *In the Matter of the Power Outages that Occurred June 14-16, 2022, as Explained by AEP Ohio and PJM Interconnection, LLC.*, Transcript of Proceedings, p. 28, lines. 2-14 (July 13, 2022) (hereinafter "2022 Summer Outages Review Transcript") available at:

<https://puc.ohio.gov/static/emplibrary/files/Power+outage+review/July+13th+2022+AEP+Ohio+and+PJM+Interconnection+power+outage+review+minutes.pdf>.

⁸ 2022 Summer Outages Review Transcript, p. 16, lines 1-17; Direct Testimony of Matthew Brakey, p. 21, lines 4-8 (June 9, 2023).

⁹ Direct Testimony of Matthew Brakey, p. 21, lines 4-8.

¹⁰ 2022 Summer Outages Review Transcript, p. 7, lines 10-11 & p. 14, lines 1-2.

¹¹ *Id.*, at pp. 13-14.

So, throughout AEP’s ESP application, these outages, and the need to do more to address them, weighed heavily on the minds of AEP’s customers.¹² This Commission held five public hearings from April 26, 2023 to May 23, 2023 for AEP customers to share their opinions on AEP’s ESP V application.¹³ In particular, several customers raised concerns about the summer outages disproportionately affecting low-income and communities of color.¹⁴ Other customers shared their experiences with electric shut offs due to an inability to pay their electric bill.¹⁵ The customers who testified urged action to prevent outages, steps toward additional transparency, and lower prices.

On September 6, 2023, sixteen of the twenty-two intervening parties filed a Joint Stipulation and Recommendation (the “Stipulation”).¹⁶ Of the six intervening parties that did not sign the Stipulation, the Ohio Telecom Association indicated it was not opposed.¹⁷ Prior to filing this Stipulation, all intervening parties engaged in extensive negotiations with AEP Ohio regarding its ESP V application throughout several months, with over twenty-four meetings in total.¹⁸

The Stipulation modified AEP’s application in several key ways: the term of the ESP, the rate impacts, and the number and scope of riders. The Stipulation withdraws the Governmental

¹² *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case Nos. 23-0023, Transcript of Public Hearing, Testimony of Jessica Holmes p. 14, lines 21-25 (May 9, 2023) (“Public Hearing Tr.”); Public Hearing Tr., Testimony of Kat Finneran p. 12, lines 6-7 (May 23, 2023); Public Hearing Tr., Testimony of Frances Panek, p. 10, lines 20-25 (May 22, 2023).

¹³ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-0023, Attorney Examiner Entry scheduling local public hearings ... as set forth in Paragraph 6 (Mar. 21, 2023).

¹⁴ Public Hearing Tr., p. 21, lines 7-8, p. 20, lines 18-23 (May 23, 2023); Public Hearing Tr., p. 10, lines 20-23 (May 22, 2023).

¹⁵ *See e.g., In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-0023, Transcript of Public Hearing, p. 26, lines 24-25 and p. 27, lines 1-4 (May 23, 2023).

¹⁶ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-0023, Joint Stipulation and Recommendation, pp. 39-40 (Sept. 6, 2023) (“Stipulation”).

¹⁷ *Id.*

¹⁸ Direct Testimony of Jaime L. Mayhan in Support of the Joint Stipulation and Recommendation, p. 21, lines 7-10 (Sept. 11, 2023).

Aggregation Standby Rider, the proposed incentives under the Electric Transportation Rider, the Customer Experience Rider, the Rural Access Rider, and the residential Senior Citizen Tariff. The company also withdrew its proposed business customer programs in the Energy Efficiency Rider.¹⁹ Of the remaining riders, the Stipulation reduced several of its budgets.

The Stipulation's efforts to address affordability include lowering rate impacts for residential customers from 16.3% over six years to 4.5% over four years; \$400,000 to bill payment assistance for low-income consumers; and \$12 million for low-income energy efficiency programs, including increasing the number of low-income customers eligible for these programs. To address additional opportunities for non-low-income customers to reduce energy bills and contribute to grid reliability, the Stipulation includes \$5 million dedicated to a new residential demand response program. The Stipulation also commits to providing additional transparency in shutoff data due to non-payment by committing to provide PUCO staff with the zip codes for all shutoffs reported under R.C. 4933.123.

The PUCO held an evidentiary hearing from Tuesday, October 10-16, 2023 and November 3, 2023.²⁰ During the hearing, the Commission heard direct testimony from at least 14 witnesses.²¹ Following the conclusion of this evidentiary hearing, the Attorney Examiners in this case set a briefing schedule with initial briefs due December 1, 2023 and reply briefs due December 22, 2023.²²

IV. LEGAL STANDARD

Electric Security Plan

¹⁹ Joint Stipulation and Recommendation, p. 25, para 37.

²⁰ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-0023.

²¹ *Id.*

²² Tr. p. 894, lines 23-24 (Nov. 3, 2023).

Pursuant to Section 4928.141(A) of the Ohio Revised Code, each electric distribution utility is required to provide a standard service offer in accordance with R.C. 4928.142 or 4928.143. A utility may choose to provide a standard service offer through an electric security plan or market rate offer. Regardless of the mechanism, Ohio law requires every utility to charge just and reasonable rates and provide necessary and adequate facilities and services.²³ For an ESP, R.C. 4928.143(C)(1) provides that a just and reasonable plan is one where the ESP is more favorable in the aggregate to an MRO. It explains the Commission:

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

Stipulation

Where a case includes a settlement between all or some of the parties, the Commission employs a three-part test to evaluate stipulations.²⁴ This test asks the following questions:

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?

V. ARGUMENT

The OEC supports the Stipulation in this case because it benefits the public interest by providing multiple tools for reliability and opportunities for customers to manage their energy usage and bills. A stipulation must pass three elements: it must be a product of serious bargaining, a benefit to ratepayers and the public interest as a package, and conform with

²³ R.C. 4905.22.

²⁴ *Consumers' Counsel v. Pub. Util. Comm'n*, 64 Ohio St.3d 123, 126 (1992). *See, also, AK Steel Corp. v. Pub. Util. Comm'n*, 95 Ohio St.3d 81, 82-83 (2002).

important regulatory principles and practices.²⁵ A utility may only provide its standard service offer through an electric security plan if it is more favorable in the aggregate to a Market Rate Offer (MRO).²⁶ This settlement fulfills all three elements of the stipulation test and the MRO test because, in large part, it takes important steps towards grid reliability while also taking steps to limit rate impacts for consumers.

This stipulation meets the three-part test for approval because it involves numerous parties representing a variety of interests, takes important steps to improve reliability and support customers, and fulfills important state and regulatory principles. This Stipulation is a product of serious bargaining because it comes after extensive negotiations and involves signatory parties representing a variety of constituencies.²⁷ Here, AEP invited all intervenors to 14 negotiation meetings and 10 issue-specific breakout sessions. The sixteen signatory parties to the Stipulation represent a large variety of consumer and competitive marketplace suppliers interests.²⁸ This Stipulation also fulfills important state policies and regulatory principles by encouraging demand side management programs. State law prioritizes encouraging demand side management as part of the state's policy for public utilities.²⁹ These demand side management programs include new tactics for limiting outages and empowering consumers to take more action to prevent shutoffs and outages.

Finally, the Stipulation's investment in these new programs would be unavailable under an MRO. These reliability investments are balanced against an attempt to limit rate impacts. In particular, the Stipulation includes dedicated funding for low-income energy efficiency and bill

²⁵ *Id.*

²⁶ R.C. 4928.143(C)(1).

²⁷ *Time Warner AxS v. Public Utilities Commission of Ohio*, 75 Ohio St.3d 229, 233 n.2, 661 N.E.2d 1097 (1996). The signatory parties must also represent a diverse set of constituencies.

²⁸ Direct Testimony of Jaime L. Mayhan in Support of the Joint Stipulation and Recommendation, p. 21, lines 7-10 (Sept. 11, 2023).

²⁹ R.C. 4928.02.

payment assistance to try and lower the burden for those customers most vulnerable to rate increases. As a result, the package as a whole is more favorable in the aggregate than an MRO.

1. The settlement, as a package, benefits ratepayers and the public interest because it works to increase reliability while attempting to limit the burden on consumers.

The second part of the three-part test requires this Commission to look at a stipulation's public interest benefits as a package.³⁰ The Commission looks at a variety of factors when considering a stipulation's overall benefit. These factors include the two issues raised most often by customers in the five public hearings in this case: rate impacts and reliability.³¹ This Stipulation takes an important step toward improving grid reliability by expanding cost-effective mechanisms to manage load while also managing the immediate rate impacts to customers for these long-term investments.

In addition to the Stipulation's continued investments in reliability tactics like vegetation management and ADMS technology, this Stipulation also adds two additional load management mechanisms to support grid reliability. The Stipulation includes a \$5 million budget to create a new residential demand response program and implements two new residential time-varying rates for electric vehicles.³² The Stipulation also contemplates adjusting the proposed time-varying rates during the ESP V term based on market signals and customer feedback.³³ These are cost-effective means for managing load volatility because they do not require any expensive equipment or infrastructure investments. Instead these new programs invest in AEP's greatest asset: its consumers.

³⁰ *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 77 (March 31, 2016).

³¹ *Id.* at 85.

³² Joint Stipulation and Recommendation, at para. 34, 12.

³³ *Id.*, at para. 13.

The demand response and time-varying rate programs empower customers to take a more active role in the electric service reliability in their community and compensate customers for the benefits they provide to the grid. Through the demand response program, customers are compensated for the benefit they provide to the grid at peak load emergencies through a smart thermostat rebate and annual \$25.00 participation incentive.³⁴ The EV time-varying rates provide customers a discounted rate for charging their electric vehicle at times when this demand intensive activity is likely to have the least costly impact on the grid. Each of these programs were not available during the summer heat wave or Christmas holiday outages from 2022.

This Stipulation benefits the public interest because it includes provisions to manage electric load, increase transparency in shutoff data, and provide support to low-income customers. The Commission has consistently viewed programs designed to manage load volatility as a long-term financial benefit. The Commission has viewed programs designed to manage load volatility, such as the gridSMART program and riders to reimburse AEP's ownership stake in fossil fuels plants, as a long-term financial benefit to consumers.³⁵ The demand response and time-varying rate programs also manage load without the heavy price tags of expensive new equipment or emissions from fossil fuels.

2. The Stipulation is more favorable in the aggregate as compared to the expected results of an MRO.

Once the Commission finds a stipulation meets the three criteria above, it must still find that the ESP as a whole is more favorable in the aggregate to an MRO.³⁶ This test requires the

³⁴ *Id.*, at para. 34.

³⁵ See, *In the Matter of the Application of the Ohio Power Company to Initiate Phase 3 of its gridSMART project*, Case No. 19-1475, Opinion and Order (Dec. 1, 2021); see also, *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693 at 77 (meets second prong of 3-part stipulation test in part because the proposal addresses load volatility).

³⁶ R.C. 4928.143(C)(1).

Commission to consider both qualitative and quantitative aspects of a stipulation as compared to an MRO.³⁷ The Supreme Court of Ohio has affirmed this aggregate test requires more than a simple price comparison, but rather includes pricing as part of a holistic review of the application's terms and conditions.³⁸ Here, in addition to the grid reliability measures giving consumers new ways to save on their bills by managing their usage, the Stipulation takes steps to limit the overall burden on customers for these new investments. For AEP's most financially vulnerable customers, the Stipulation also improves transparency in utility shutoff data reported under R.C. 4933.123.³⁹

While the Stipulation in this case is more beneficial than an MRO because it provides additional reliability spending, it still takes a measured approach in that spending to limit the overall burden on consumers. This Stipulation removes several riders and reduces the budget of other riders from AEP's original proposal. During the public hearing on May 23, 2023, AEP customer Molly Nichols specifically identified AEP's vegetation management spending proposals as too costly.⁴⁰ The Stipulation caps spending under the Enhanced Service Reliability Rider, the primary vegetation management recovery mechanism, at \$244 million for the four-year ESP term.⁴¹ This cap is over half of AEP's original proposal for \$596 million over a six-year ESP term.⁴²

The Stipulation also features low-income assistance programs that would not be available in an MRO. The Stipulation includes attempts to provide financially vulnerable residential customers with bill payment assistance and programs to help them limit costs by managing

³⁷ *In re Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, ¶ 27 (2011).

³⁸ *Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501.

³⁹ Joint Stipulation and Recommendation at p. 34, Section R, para, 60.

⁴⁰ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-0023, 23-0024, Transcript of Public Hearing, p. 21, lines 4-19 (May 23, 2023).

⁴¹ Joint Stipulation and Recommendation, p. 11, section E.

⁴² Direct Testimony of Jamie L. Mayhan, p. 17 line 21 (Jan. 6, 2023).

energy consumption. The Stipulation increases AEP's proposed budget of a little under \$8 million for low-income residential households to \$12 million. This increase includes a program for households living at up to 250% of the federal poverty line. This increase in eligibility will improve the low-income programs' overall impact on vulnerable customers. Finally, the Stipulation includes \$400,000 in bill payment assistance to AEP's existing neighbor to neighbor program.

Under an MRO all customers would bear the same rate impacts, regardless of ability to pay. This Stipulation takes steps to limit the burden on the most financially vulnerable customers with both long-term usage curtailment and bill payment assistance for emergency situations. An MRO would not provide this targeted assistance to those ratepayers who may struggle to make ends meet.

Finally, the Stipulation includes additional consumer protection through increased transparency regarding utility shutoffs due to nonpayment. In particular, AEP commits to providing PUCO staff with the shutoffs due to nonpayment by zip code during its regular reporting period required by R.C. 4933.123.⁴³ In the May 23, 2023 public hearing, AEP customer Rebecca Pollard recounted the stress of experiencing a shutoff due to non-payment as a single mother.⁴⁴ She noted that not only did she have to try desperately to scrape together the money to pay her balance, but also had to pay onerous reconnection fees.⁴⁵ The stress and lasting financial impacts of a utility shutoff should be avoided at all costs. Transparency in the location of shutoffs can allow PUCO staff to monitor shutoff disparities and work with AEP to target certain

⁴³ Joint Stipulation and Recommendation, at p. 34, Section R, para, 60.

⁴⁴ Public Hearing Tr., at p. 26, lines 24-25 & p. 27, lines 1-5 (May 23, 2023).

⁴⁵ *Id.*

communities for additional outreach and assistance. An MRO would not include this increased transparency for the PUCO staff.

VI. CONCLUSION

Following the summer heat wave and Christmas holiday shutoffs of 2022, AEP's Stipulation in this case benefits the public interest as a package because it takes important steps to continue AEP's existing reliability programs and adds new tactics for AEP to manage its load. These new load management tactics would not be available under an MRO. While the Stipulation comes with increased rates, these impacts are significantly less than those proposed in AEP's ESP V application and include additional consumer support that would not be available under an MRO. For these reasons, the OEC asks this commission to approve the Stipulation in this case.

CERTIFICATE OF SERVICE

The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties. I hereby certify that a courtesy copy of the foregoing has been served upon the following parties by electronic mail this 1st day of December 2023.

/s/Karin Nordstrom

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