

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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**BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION**

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## **TABLE OF CONTENTS**

<b>I.</b>	<b>BACKGROUND .....</b>	<b>2</b>
<b>II.</b>	<b>ARGUMENT .....</b>	<b>3</b>
	A. Continuation of a Competitive Procurement Process for Default Service Supports the Public Interest .....	3
	B. The Stipulation Continues the Delivery of Competitive Products and Services through the Competitive Market.....	4
	C. The Public Interest is Supported by Requirements in the Stipulation for AEP Ohio's Smart Thermostat Program to Not Interfere with Market Offered Products and Services.....	8
	D. Other Stipulation Benefits: NSPL Billing and a New Customer Information System.....	12
<b>III.</b>	<b>CONCLUSION.....</b>	<b>14</b>

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The Public Utilities Commission of Ohio ("Commission") utilizes a three-part test to evaluate whether the outcome recommended through a settlement is just and reasonable.<sup>1</sup> The Stipulation in this proceeding is the culmination of numerous all-party settlement meetings that occurred over the span of multiple months<sup>2</sup> and continues Ohio's customer choice and competitive retail electric service framework through the continuation of a competitive procurement process for default generation. The Stipulation package also eliminates various unlawful and unreasonable proposals contained in Ohio Power Company's ("AEP Ohio") Application. This includes proposals by AEP Ohio to offer competitive services or nonelectric products and services and to collect the costs through a nonbypassable charge associated with energy efficiency

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<sup>1</sup> *OCC v. Pub. Util. Comm.*, 64 Ohio St.3d 123 (1992) stating that the three-part test asks: (1) Is the stipulation a product of serious bargaining among capable, knowledgeable parties?; (2) Does the stipulation, as a package, benefit ratepayers and the public interest?; and (3) Does the stipulation package violate any important regulatory principle or practice?

<sup>2</sup> Direct Testimony of Jaime L. Mayhan in Support of the Joint Stipulation and Recommendation at p. 19, Joint Stipulation and Recommendation, (September 6, 2023).

programs, subsidizing electric vehicle chargers, and offering telecommunication “middle-mile fiber” services.<sup>3</sup>

Prohibiting a monopoly electric utility from entering into the competitive service arena, and eliminating the associated proposed nonbypassable cost recovery, represents a significant benefit to the public interest and is consistent with regulatory practices and principles. While AEP Ohio will not be offering these competitive market services under the Stipulation, customers will still be able to act upon their individual customer choice preferences and select products and services from the market that fit their respective needs, preferences, and budgets.

## **I. BACKGROUND**

AEP Ohio filed its Application for an electric security plan (“ESP”) on January 6, 2023.<sup>4</sup> On June 9, 2023, the parties, with the exception of Commission Staff, filed sixteen different expert witness testimonies responding to the Application. RESA was among the parties filing expert witness testimony and RESA’s initial testimony addressed the need to remove the proposed Governmental Aggregation Standby Rider (“GASR”) and the need to eliminate AEP Ohio proposals that impeded into competitive markets. The Stipulation was filed on September 6, 2023.<sup>5</sup> Eighteen parties, including RESA, signed or were unopposed to the Stipulation. Four parties, including RESA, filed testimony in support of the Stipulation. The Stipulation is a significant improvement from AEP Ohio’s Application, and this improvement occurred as a result of significant bargaining among capable and knowledge parties.

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<sup>3</sup> Application at pp. 17-19.

<sup>4</sup> *In re Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-23-EL-SSO, Application (January 6, 2023).

<sup>5</sup> Joint Stipulation and Recommendation at pp. 3-6 (September 6, 2023).

## **II. ARGUMENT**

### **A. Continuation of a Competitive Procurement Process for Default Service Supports the Public Interest**

First and foremost, the Stipulation provides for the continuation of the existing competitive process to secure generation service for default service.<sup>6</sup> Specifically, the Stipulation proposes to continue the Competitive Bid Process (“CBP”) auctions that have been in place for years. The CBP auctions are consistent with Ohio’s pro-competition stance for retail electric generation service. No party submitted any evidence opposing the continuation of the CBP auction process. Continuing the CBP auctions for SSO generation service supports the public interest and is consistent with regulatory practices and principles.

The Stipulation also eliminates the proposed GASR. The GASR was proposed as a conditionally nonbypassable Provider of Last Resort (“POLR”) charge that would have been applied to customers served by a government aggregation. Government aggregation customers that did not pay the nonbypassable GASR charge would have been required to pay market-based rates, with generation service provided by AEP Ohio, if they returned to the Standard Service Offer (“SSO”) rather than returning to the SSO at rates determined by the CBP auctions.<sup>7</sup> RESA, along with other parties, objected to the proposed GASR through initial testimony as unlawful and unreasonable. The Stipulation provides that the GASR is withdrawn with prejudice.<sup>8</sup> The elimination of the proposed GASR is a substantial benefit to the public interest. The proposed GASR

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<sup>6</sup> Joint Stipulation at ¶¶ 1-3.

<sup>7</sup> Application at p. 10.

<sup>8</sup> Joint Stipulation at ¶ 3.

was also inconsistent with prior Commission and Court precedent on POLR charges.<sup>9</sup> Accordingly, eliminating the proposed nonbypassable GASR/POLR charge is also consistent with important regulatory practices and principles.

**B. The Stipulation Continues the Delivery of Competitive Products and Services through the Competitive Market**

The Stipulation eliminates proposals from AEP Ohio's Application that were unlawful and unreasonable and would have permitted the monopoly distribution utility to provide competitive services and nonelectric products and services and recover the costs in nonbypassable distribution riders. These include a portfolio of energy efficiency programs,<sup>10</sup> a proposal to provide middle-mile fiber telecommunication services, and subsidies for behind-the-meter electric vehicle ("EV") chargers.<sup>11</sup> With the elimination of these proposals, the Stipulation conforms with Ohio law and regulatory policies and principles regarding customer choice and the role of an electric distribution utility ("EDU") and permits customers to choose the products and services they desire from the competitive market without having to pay nonbypassable charges regardless of whether they individually benefitted.

Ohio law defines the scope of an EDU through the statutory definition of the entity.<sup>12</sup> An entity meets the statutory definition of an EDU "when engaged in the

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<sup>9</sup> *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655 at ¶¶ 8-21, 31-35, 22-30 (December 6, 2012); see *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSE, Commission Order on remand.

<sup>10</sup> The Stipulation authorizes funding for AEP Ohio to provide assistance to low income customers through home weatherization efforts.

<sup>11</sup> Joint Stipulation at ¶ 37-42; see Application at pp. 18-19.

<sup>12</sup> EDUs, electric utilities, and electric light companies are interchangeable terms in the context used here. R.C. 4928.01(A)(6) provides that: "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service. R.C. 4928.01(A)(7) provides "Electric light company" has the same meaning as in section [4905.03](#) of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises." R.C. 4928.01(A)(11)

business of supplying electricity for light, heat, or power purposes to consumers within this state.”<sup>13</sup> An energy efficiency and peak demand reduction rebate portfolio program, middle-mile fiber telecom services, and subsidization of EV chargers are not the supplying of electricity for light, heat, or power purposes to consumers.

The Commission also recently applied the statutory definition of an electric utility to EV charging and reached the same conclusion that EV charging does not qualify for regulation by the Commission because it was not part of supplying of electricity for light, heat, or power to consumers.<sup>14</sup> The Commission found that EV chargers were instead “providing battery charging services that uses electricity” and that this did not fit within the definition of providing a retail electric service.<sup>15</sup> As the Commission explained, retail electric service is defined as a component of service in “supplying or arranging the supply of electricity to ultimate consumers in the state, from the point of generation to the point of consumption.”<sup>16</sup> The behind the meter EV chargers, the Commission reasoned, “operated within the sphere of a competitive marketplace and are analogous to a cellphone battery charging port at an airport that requires compensation for service.” Continuing, the Commission stated that the statutory definition of a public utility under R.C. 4905.03 “does not contemplate these types of services as ones that supply light, heat, or power to consumers in the state.”<sup>17</sup> The Commission stated that leaving EV charging to the competitive market would “help to foster the emergence of a

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provides “‘Electric utility’ means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. ‘Electric utility’ excludes a municipal electric utility or a billing and collection agent.”

<sup>13</sup> R.C. 4905.03.

<sup>14</sup> *In re the Commission’s Investigation into Elec. Vehicle Charging Service in the State*, Case No. 20-434-EL-COI, Finding & Order at ¶ 26-27 (July 1, 2020).

<sup>15</sup> *Id.* at ¶ 27.

<sup>16</sup> *Id.* at ¶ 27.

<sup>17</sup> *Id.*

competitive [electric vehicle charging station] market.”<sup>18</sup> The Commission went on to explain that competition would expand the array of consumer choices, and that competition would manifest in competitive pricing, promotional offers, value-added services, and other benefits consistent with the state policy in R.C. 4928.02 promoting competition and consumer choice.<sup>19</sup>

Like EV charging, leaving energy efficiency and peak demand reduction efforts to the market is also consistent with Ohio law, the public interest, and regulatory practices and principles. Energy efficiency and peak demand reduction products and services were, for a time, required to be provided by an EDU pursuant to R.C. 4928.66. However, both the energy efficiency and peak demand reduction statutory mandates have ceased.<sup>20</sup>

Since the elimination of the energy efficiency and peak demand reduction products mandate obligation on EDUs, the Commission has continued to state that energy efficiency and peak demand reduction products and services should be provided by the competitive market. In AEP Ohio’s most recent rate case, the Commission held that energy efficiency programming is best done when there is a reliance on market-based approaches.<sup>21</sup> In Columbia Gas’ recent rate case, the Commission held that energy efficiency should be provided by the competitive market, stating, “it is time to look to the competitive market place to play a more significant role in the provision of

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; see also *In re Commission’s investigation into the Implementation of the Federal Infrastructure Investment and Jobs Acts’ Electric Vehicle Charging PURPA Standard*, 22-1025-AU-COI, Finding & Order at ¶ 33 (November 1, 2023). See also *In re Commission’s investigation into the Implementation of the Federal Infrastructure Investment and Jobs Acts’ Electric Vehicle Charging PURPA Standard*, 22-1025-AU-COI, Finding & Order at ¶ 33 (November 1, 2023) (Ohio is a state with a robust, retail choice-based market,” and the “market should drive innovation.”).

<sup>20</sup> See *In re Ohio Power Co.*, Case No. 16-574-EL-POR, et al. (AEP Ohio EE/PDR Case), Finding and Order (Feb. 26, 2020) at ¶ 44.

<sup>21</sup> *In re the Application of the Ohio Power Company for an increase in Elec. Distribution Rates*, Opinion & Order, Case No. 20-585-EL-AIR at ¶ 128 (Nov. 17, 2021).



energy efficiency services in this state.”<sup>22</sup> Most recently in Dominion’s alternative regulation case, the Commission denied Dominion’s request for energy efficiency programming stating that:

“[T]he market for energy efficiency services and products has developed to the extent that customers should be aware of and sufficiently knowledgeable to explore the availability and benefits of such services and products through the competitive marketplace.”<sup>23</sup>

In the Dominion case, the Commission also recognized the negative impact that occurs when competitive market products and services are undertaken by a public utility and collected through nonbypassable charges:

[i]n these difficult times [caused by the pandemic, supply shortages and high inflation], the Commission is acutely mindful of the range of residential household budgets, particularly Dominion’s low-income customers and moderate income customers whose income is above the eligibility requirements for various income assistance programs. We find the subsidization of the costs of these programs across Dominion’s footprint acts as a burden on the Company’s ratepayers.<sup>24</sup>

With the end of the statutory energy efficiency/peak demand reduction mandates in R.C. 4928.66, EDUs should not offer a portfolio of energy efficiency and peak demand reduction programs. Like EV charging, energy efficiency and peak demand reduction products and services are not the delivery of electricity to consumers for light, heat, or power and they are not part of the supply or arranging for supply of electricity from the point of generation to the point of consumption. These behind-the-meter energy efficiency and peak demand reduction products and services are competitive market services.

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<sup>22</sup> *In re the Application of Columbia Gas of Ohio Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case no. 21-637-GA-AIR, Opinion and Order at ¶ 56 (Jan. 26, 2023).

<sup>23</sup> *In the Matter of the Application of the East Ohio Gas Company DBA Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Continue and to Expand its Demand-Side Management and Energy Efficiency Programs*, Opinion and Order, Case No. 21-1109-GA-ALT at ¶ 18 (October 4, 2023).

<sup>24</sup> *Id.* at ¶ 49.

Furthermore, and consistent with the Commission's holdings quoted above, the spirit of the corporate separation requirements also supports reliance on the market to deliver energy efficiency and peak demand reduction products. The corporate separation requirements generally provide that an electric utility should not be permitted to use its monopoly status to interfere with the competitive market or provide itself with an undue advantage over market participants. These policies are reflected in the requirements that a corporate separation plan "satisf[y] the public interest in preventing unfair competitive advantage and preventing the abuse of market power," and the requirement that an electric utility not utilize its superior access to "customer and marketing information" as well as "billing and mailing systems" to provide a part of its own business with an undue preference over a market participant.<sup>25</sup> The spirit of these policies applied to energy efficiency, peak demand reduction, EV charging services, and telecommunication services all support the Commission's statements above that these types of products and services should be delivered by the competitive marketplace.

The removal of competitive services and nonelectric products and services from the EDU, as accomplished by the Stipulation, complies with the law and Commission precedent. This aspect of the Stipulation, accordingly, promotes the public interest and is consistent with important regulatory practices and principles.

**C. The Public Interest is Supported by Requirements in the Stipulation for AEP Ohio's Smart Thermostat Program to Not Interfere with Market Offered Products and Services**

The Stipulation also includes a new residential peak demand reduction program that would allow AEP Ohio to call upon a 3<sup>rd</sup> party to make adjustments to a participating residential customer's smart thermostat. In exchange for participation, a customer would receive \$75 if they purchase a new smart thermostat and enroll in the program,

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<sup>25</sup> R.C. 4928.17(A)(2) & (3).

\$50 if they already have a smart thermostat, and an annual enrollment incentive of \$25. These incentives will be funded through \$20 million in nonbypassable charges on residential customers over the 4-year ESP. In the event that there are reliability issues, up to sixteen events could be called for reliability to implement PJM directives, protection of AEP Ohio's distribution system, to limit or avoid distribution outages, and to reduce load on localized constrained distribution circuits. To the extent that AEP Ohio has not needed to call reliability events, the Stipulation indicates AEP Ohio could also call upon the smart thermostats to reduce the coincident demand of the distribution network.<sup>26</sup>

While the settlement package embodied in the Stipulation does recommend that AEP Ohio be approved to implement the Smart Thermostat peak demand reduction program, RESA and the other Signatory Parties included language to recognize that the market can and does provide similar types of programs. To this end, 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.<sup>27</sup> The Stipulation includes a requirement that AEP Ohio cannot bid the demand response attributes into PJM capacity auctions, and an explicit recognition that customers participating in AEP Ohio's program retain those attributes and can participate on their own or through a CRES provider in the PJM markets.<sup>28</sup> The Stipulation also recognizes that the enrollment of customers into AEP Ohio's Smart Thermostat program should occur in a

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<sup>26</sup> Presumably, that would occur during the peak hours used to allocate distribution costs, but the Stipulation is silent on this point. RESA Ex. 1 at p. 4.

<sup>27</sup> RESA Ex. 1 at p. 4.

<sup>28</sup> Joint Ex. 1 at p. 22. See *also* RESA Ex. 1 at p. 4.

manner that would not restrict customer choice.<sup>29</sup> This is reflected, in part, in the requirement that provides that CRES providers can directly sign up a shopping customers into the Smart Thermostat program and that regardless of whether the customer enrolls through AEP Ohio or a CRES the same enrollment requirements would apply.<sup>30</sup>

While the Stipulation was crafted in a manner that explicitly recognizes the role and ability of the market to deliver energy efficiency and peak demand reduction benefits from smart thermostats, the Stipulation also recognizes that AEP Ohio's program might interfere with the competitive market. As RESA witness Smith the Stipulation and record are "silent on the technical operational details of smart thermostats" and that the lacking information specifically included "whether a single smart thermostat would allow different entities like AEP Ohio and a CRES provider to both send signals to the smart thermostat."<sup>31</sup> This is one of many potential issues that might need resolved. The Stipulation sets up a collaborative process that will attempt to resolve the myriad of potential issues to ensure that a program offered by AEP Ohio would not interfere with the competitive market.<sup>32</sup> Another important issue identified in RESA witness Smith's testimony that still needs resolved is the fee structure charged by the smart thermostat vendor that will actually be tasked with sending the signals to the smart thermostats.<sup>33</sup> RESA does not believe it would be reasonable or lawful to require a customer to pay twice to unlock its smart thermostat demand response capabilities

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<sup>29</sup> RESA Ex. 1 at p. 5.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Joint Ex. 1 at pp. 22, 24; RESA Ex. 1 at pp. 5-6.

<sup>33</sup> RESA Ex. 1 at p. 6.

(once through the nonbypassable charge used to fund the Smart Thermostat program and a second time through any CRES offered program).

Resolving the many potential issues associated with AEP Ohio's Smart Thermostat program so that it does not interfere with the competitive market is critically important because the market can and has delivered nearly identical programs. As RESA Witness Smith testified, Vistra has developed and implemented its own smart thermostat program in Texas that is funded through market revenue.<sup>34</sup> There are some structural differences between Texas and Ohio markets that have prevented the deployment of similar programs in Ohio, but those are slowly changing. For example, historically a residential customer's capacity demand tag, known as a Peak Load Contribution ("PLC") was exclusively based on a load profile.<sup>35</sup> AEP Ohio has recently changed this process for residential customers with a smart meter, and these residential customers are now receiving a PLC demand tag based on the residential customer's actual usage. AEP Ohio has also recently begun settling energy usage for residential customers with a smart meter based on the individual customer's actual interval meter data (total hourly energy obligation or "THEO").<sup>36</sup>

However, AEP Ohio's wires charges for distribution and transmission service still do not send a signal to residential customers to reduce demand during system peaks. Transparent price signals can reach all of AEP Ohio's residential customers and send market-based signals to reduce consumption during system peaks, and provide a basis

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<sup>34</sup> RESA Ex. 1 at p. 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

for the market to deliver products and services to residential customers without the need for nonbypassable funding mechanisms.<sup>37</sup>

These recent changes to PLC and THEO calculations and settlements, and future improvements to CRES providers access to residential customers' interval data will help the market develop opportunities that provide market-derived cost savings for assisting residential customers manage their demand without the need for nonbypassable funding mechanisms. Approval of AEP Ohio's smart thermostat program as part of the Stipulation package should be viewed in the context of the Stipulation requirements identified above that generally provide that AEP Ohio's program should not be permitted to disrupt what the competitive market can provide to customers.

**D. Other Stipulation Benefits: NSPL Billing and a New Customer Information System**

The Stipulation also contains other benefits from the expansion of Network Service Peak Load ("NSPL") billing and provisions addressing a new Customer Information System ("CIS"). These additional benefits further the public interest and are consistent with regulatory practices and principles.

The Stipulation proposes to expand access to NSPL billing for nonresidential customers that is currently available to participants in the BTCR Pilot.<sup>38</sup> The BTCR pilot was authorized in AEP Ohio's ESP III.<sup>39</sup> Today, the BTCR Pilot is offered to signatory parties of AEP Ohio's ESP IV as well as several customers with reasonable arrangements, and allows participants to be billed transmission service based on NSPL

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<sup>37</sup> See RESA Ex. 1 at p. 7.

<sup>38</sup> Joint Stipulation at ¶¶ 44-55.

<sup>39</sup> *In re the Application of the Ohio Power Company for an increase in Elec. Distribution Rates*, Case no. 13-2385-EL-SSO; see AEP Ohio Ex. 9 at p. 6.

demand instead of monthly billing demand.<sup>40</sup> The Stipulation will expand access to NSPL billing by 100 MW per year, including a 20 MW set aside for smaller nonresidential customers with a monthly billing demand of 10 MW or less, all of which will be available on a first-come first-served basis.<sup>41</sup>

The expansion of access to NSPL billing for transmission service reflects an expansion of transparent price signals for nonresidential customers. The current default methodology under the BTCR is to recover transmission costs based on a customer's monthly billing demand, a metric that looks at the period of time of the customer's highest usage regardless of whether the grid is experiencing a peak at the same time. NSPL demand, however, is based on a customer's load coincident to the time when the transmission grid is experiencing peak levels of demand. Billing nonresidential customers transmission service based on NSPL demand will send a transparent price signal to the customer to reduce demand during the system peak. The competitive market can deliver products and services to customers to help them manage their coincident peak demand and reduce overall stress on the transmission grid during times of peak demand constraints. Encouraging customers to manage their coincident peak demand through transparent price signals is in the public interest.

The Stipulation also benefits the public interest through provisions that address AEP Ohio modernizing its CIS.<sup>42</sup> AEP Ohio committed that the next CIS will have no less functionality than its current system, that the new CIS will be flexible to allow introductions of new market offered rates and products without the need for additional IT

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<sup>40</sup> *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. 16-1852-EL-SSO, Joint Stipulation and Recommendation pp. 28-29 (August 25, 2017).

<sup>41</sup> Joint Stipulation at ¶ 47.

<sup>42</sup> Joint Ex. 1 at pp. 6-10.

investments, have the ability to provide granular interval customer data including historical interval data where available, and other items reflected in the Stipulation.<sup>43</sup> Ensuring that AEP Ohio's IT systems can support customer choice furthers the public interest.

### **III. CONCLUSION**

All parties engaged in lengthy, open, and productive settlement discussions that culminated in a Stipulation supported by most parties in the proceeding. The Stipulation satisfies the Commission's three-part by continuing provisions that support competitive generation and customer choice and through the elimination of anticipation items contained in AEP Ohio's application. For the foregoing reasons, the Commission should adopt the Stipulation.

Respectfully submitted,

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<sup>43</sup> Joint Ex. 1 at pp. 7-8.



## **CERTIFICATE OF SERVICE**

In accordance with Ohio Adm.Code 4901-1-05, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 1st day of December 2023. The following parties were provided by electronic mail a copy of this document:

/s/ Matthew Pritchard

**Matthew Pritchard**

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