

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power	:	
Company for Authority to Establish a Standard Service	:	Case No. 23-23-EL-SSO
Offer Pursuant to Section 4928.143, Revised Code, in	:	
the Form of an Electric Security Plan.	:	
	:	
In the Matter of the Application of Ohio Power	:	Case No. 23-24-EL-AAM
Company for Approval of Certain Accounting	:	
Authority.	:	

**REPLY BRIEF OF THE
THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Reply Brief in response to the Initial Briefs of the Office of the Ohio Consumers’ Counsel (“OCC”), Constellation Energy Generation, LLC and Constellation NewEnergy, Inc (“Constellation”), Calpine Retail Holdings LLC (“Calpine”), and One Energy Enterprises, Inc. (“One Energy”) filed December 1, 2023 in the above-captioned proceedings. OEG’s decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

While most parties to these proceedings, and Commission Staff, recommend approval of the Joint Stipulation and Recommendation (“Stipulation”), explaining in detail how it satisfies the Commission’s three-prong settlement review standard, a minority push for its rejection. None of the Stipulation opponents dispute that the settlement satisfies the first prong of the three-part test. Rather, their claims surround the second and third prongs of the test.

With respect to the second prong, OCC broadly disputes many of the provisions within the Stipulation, including the recommendations regarding return on equity, low-income energy efficiency programs, standard service offer (“SSO”) structure, Distribution Investment Rider caps, vegetation management expenditures, grid modernization costs, automaker credits, and

residential demand response programs. With respect to the third prong, OCC adopts a similar broad opposition approach, disputing the settlement's resolution with respect to residential demand response programs, interruptible rates, the alternative energy rider, customer information system costs, automaker credits, and electric vehicles. Calpine, One Energy, and Constellation challenge the Stipulation on a much more limited basis, with Calpine and One Energy focused on transmission billing changes and Constellation pushing for SSO structure changes. But none of the claims raised by opponents constitute an actual violation of the Commission's three-prong settlement test.

I. The Stipulation Satisfies The Second Prong Of The Commission's Three-Part Settlement Test.

In considering the second prong of the three-part settlement test, the Commission recently explained that the *"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."*¹ Many of OCC's allegations regarding the second prong of the test hinge largely on the principle that it believes customers should pay less than the amount resulting from the recommended settlement.² But as Staff and others explained, the Stipulated outcome lowers customer rates substantially as compared to Ohio Power Company's ("AEP Ohio") filed Application.³ The typical residential customer increase resulting from the proposed settlement is estimated to be 2.0% in 2024 (followed by annual increases of around 0.5% per year) as compared to the 5.15% increase in 2024 (followed by annual increases of nearly 2.0%) proposed in the Application.⁴ And the agreed-upon increases

¹ Order, Case No. 22-900-EL-SSO at 62.

² OCC Brief at 3-10; 15, 20-31, 33-34.

³ Staff Brief at 9-10.

⁴ Joint Ex. 1; Staff Ex. 1 at 5:15-6:8.

help fund distribution infrastructure investments to improve reliability and customer satisfaction. The settlement therefore provides significant rate impact benefits for customers.

As the Commission has held, the Stipulation “*must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations.*”⁵ While OCC, Calpine, One Energy, and Constellation would prefer that the final package differ, the mere fact that a settlement does not reflect a given party’s litigation position or policy preference does not mean that the settlement is not beneficial to customers and in the public interest. The Stipulation is supported by parties representing a wide variety of interests, including the Company, low-income residential customers, commercial customers, industrial customers, environmental advocates, and competitive retail electric service providers. It reasonably balances the interests of those parties, resolving many of the complex issues surrounding the proposed ESP in a manner that they all can support. And the numerous benefits of the carefully-negotiated settlement package are outlined in detail in the supporting parties’ initial briefs.⁶ The Stipulation therefore satisfies the second prong of the settlement test.

II. The Stipulation Satisfies The Third Prong Of The Commission’s Three-Part Settlement Test.

Contrary to opponents’ assertions, the Stipulation does not violate any important regulatory principle or practice. The Stipulation provisions that OCC contests with respect to the interruptible rate and automaker credit programs are authorized under R.C. 4928.143(i) and further state policy encapsulated in R.C. 4928.02(N) by facilitating the state’s effectiveness in

⁵ Order, Case No. 22-900-EL-SSO at 62 (citing *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).

⁶ Initial Post-Hearing Brief AEP Ohio at 25-71; Brief of Retail Energy Supply Association at 3-14; Initial Post-Hearing Brief of the Environmental Law & Policy Center at 4-6; OEG Post-Hearing Brief at 3-4; Initial Brief of the Ohio Environmental Council at 9-10; Initial Brief of Direct Energy at 5-10; Initial Brief of Interstate Gas Supply, LLC at 6-13; Initial Post-Hearing Brief of Walmart Inc. at 5-7; Initial Post-Hearing Brief of the Ohio Energy Leadership Council at 4-7; Joint Post-Hearing Brief of the Ohio Manufacturers’ Association Energy Group and the Kroger Co. at 10-15; Initial Post-Hearing Brief by the Citizens’ Utility Board of Ohio at 4-9; Initial Post-Hearing Brief of Ohio Partners for Affordable Energy at 4-5; Post-Hearing Brief of Staff at 7-18.

the global economy. Further, both the interruptible rate programs and residential demand response programs outlined in the settlement promote state policies under R.C. 4928.02(A) by enhancing the reliability of retail electric service and under R.C. 4928.02(D) by encouraging demand-side management. At the hearing, OCC witness Fortney expressly acknowledged the reliability and economic development benefits provided by the interruptible rate program.⁷

Continuation of AEP Ohio's Alternative Energy Rider is required in order to collect costs incurred pursuant to R.C. 4928.64. Customer information system costs may lawfully be recovered in a base distribution case. And the electric vehicle provisions within the Stipulation further state policy under R.C. 4928.02(D) by expanding time-differentiated pricing options for customers. OCC's claims that the Stipulation is unlawful are therefore unfounded.

While Calpine and One Energy would prefer a different transmission billing approach than the one recommended within the Stipulation, the settled billing approach merely expands upon AEP Ohio's current lawful approach. Moreover, to the extent that Calpine and One Energy cite Ohio Adm. Code 4901:1-36-04(B) in arguing that utility transmission riders must be bypassable, the Commission can and has waived that rule in prior cases.⁸ Nor is it reasonable to shift transmission billing away from AEP Ohio. Maintaining utility involvement in transmission billing protects customers by ensuring that such billing remains "*at cost*" and does not include risk premiums that suppliers would necessarily build into their transmission pricing. Similarly, while Constellation pushes for structural changes to the SSO, the Stipulation largely maintains the current lawful approach to the competitive bidding process with a slight modification to

⁷ Tr. Vol. II (October 11, 2023) at 366:10-18.

⁸ Third Entry on Rehearing, Case No. 08-1094-EL-SSO (Dec 14, 2016) at 8-9 ("IEU-Ohio argues the Commission violated its rules, including Ohio Adm.Code 4901:1-36-04(B), which requires transmission riders to be fully bypassable. However, Ohio Adm.Code 4901:1-36-02(B) expressly provides that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown. Regarding the TCRR-N, such a motion was made by DP&L and granted by the Commission. *ESP II; In re The Dayton Power and Light Co. for Waiver of Certain Commission Rules*, Case No. 12-429-EL-WVR.").

allow for a proxy capacity price in the event of PJM auction delays. Opponents' arguments that the Stipulation is in violation of the law thus fall flat and should be rejected.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulation without modification.

Respectfully submitted,

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

jkylercohn@BKLawfirm.com

December 22, 2023

**COUNSEL FOR THE OHIO ENERGY
GROUP**

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 REPLY BRIEF OF THE OHIO ENERGY GROUP was sent to the following parties of record this 22nd day of December, 2023, via electronic transmission.

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

bryce.mckenney@nrg.com
William.michael@occ.ohio.gov
angela.obrien@occ.ohio.gov
connor.semples@occ.ohio.gov
Alana.Noward@occ.ohio.gov
Bojko@carpenterlipps.com
Easley@carpenterlipps.com
emcconnell@elpc.org
paul@carpenterlipps.com
wilcox@carpenterlipps.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouy@bakerlaw.com
pwillison@bakerlaw.com
ctavenor@theOEC.org
knordstrom@theOEC.org
Alex.Kronauer@walmart.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
sean.mcglone@ohiohospitals.org
dparram@brickergraydon.com
rmains@brickergraydon.com
mjschuler@aep.com
rkelter@elpc.org
gkrassen@nopec.org
aasanyal@vorys.com
jlang@calfee.com
dromig@armadapower.com
trent@hubaydougherty.com
brian.gibbs@nationwideenergypartners.com
dborchers@brickergraydon.com
KHerrnstein@brickergraydon.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
cynthia.brady@constellation.com
jesse.rodriguez@constellation.com

mjsettineri@vorys.com
glpetrucci@vorys.com
Fdarr2019@gmail.com
dstinson@bricker.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
werner.margard@ohioattorneygeneral.gov
ambrosia.wilson@OhioAGO.gov
ashley.wnek@OhioAGO.gov
stnourse@aep.com
egallon@porterwright.com
christopher.miller@icemiller.com
matthew@msmckenzieltld.com
Stacie.cathcart@igs.com
Evan.betterton@igs.com
Joe.oliker@igs.com
little@litohio.com
hogan@litohio.com
mpritchard@mcneeslaw.com
awalke@mcnesslaw.com
whitt@whitt-sturtevant.com
jhlaskey@norris-law.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on
12/22/2023 2:33:03 PM**

in

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

Summary: Brief Ohio Energy Group Reply Brief electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group.