

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Authority to)
Establish a Standard Service Offer) Case No. 23-23-EL-SSO
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. 23-24-EL-AAM
Accounting Authority.)

**REPLY BRIEF FOR CONSUMER PROTECTION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Joint Stipulation and Recommendation (“Settlement”),¹ will increase charges to consumers by nearly **\$1 billion** throughout the term of AEP’s new electric security plan (“ESP V”).² The Settlement harms consumers and the public interest, and violates important regulatory principles and practices. To protect consumers from paying unjust and unreasonable charges that line the pockets of AEP’s shareholders, the Settlement should be rejected.

AEP claims that the Settlement is necessary to ensure reliability for consumers. But neither AEP nor any other party can identify why reliability warrants the Settlement’s excessive increases in charges to consumers.

¹ *In the Matter of the Application of 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, et al.*, Case No. 23-23-EL-SSO, et al., Joint Stipulation and Recommendation (September 6, 2023)(“Settlement”).

² Settlement at III.H.25, III.E.8, III.L.37-38, III.I.34, III.K.36, and III.F.10.

AEP repeatedly states that the Settlement’s provisions for increased spending on vegetation management, grid maintenance, and reductions in peak capacity usage directly benefit consumers by increasing reliability. However, by AEP’s own account, it has met or exceeded all its reliability metrics for the last three years³ while ESP IV recovery cap rates were in effect, and consumers were satisfied with service reliability.⁴ Given that AEP is claiming to already meet the reliability metrics, not one of the settling parties, including AEP and the PUCO Staff, has provided any evidence to support or explain why the Company cannot continue to meet its reliability obligations without the Settlement’s enormous increased costs (averaging more than \$200 million dollars annually over the course of the Settlement).

The Settlement over-charges and under serves the consumers of Ohio. It allows AEP too much profit – profits that are well beyond the average of similar utilities. It contains inefficient, ineffective, and under-funded programs which ultimately only benefit AEP’s shareholders. The Settlement should be rejected.

II. ARGUMENT

A. There is no justification for the Settlement’s overwhelming additional charges to consumers on top of AEP’s already high rates.

The Settlement, as proposed by AEP and the other signatory parties, significantly and unreasonably increases the costs AEP intends to collect from consumers. Considering only those charges that have a specific dollar value attached to them under the Settlement

³ *In the Matter of the Application of 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, et al.*, Case No. 23-23-EL-SSO, et al., Initial Post-Hearing Brief of Ohio Power Company in Support of the Stipulation and Recommendation, (December 1, 2023)(“AEP Initial Brief”) at 5 and 46-47.

⁴ AEP Initial Brief at 5 and 45-47.

consumers will be charged an astronomical \$1.337 billion over the course of ESP V.⁵ And that number does not include the Advanced Distribution Management System (“ADMS”)⁶ and heat map charges (which the Settlement authorizes but does not quantify)⁷, the Customer Information System (“CIS”) charges that the Settlement allows AEP to recoup in a later case (plus 5% annual interest)⁸, or the potential for an additional \$8-16 million in Cost In Aid of Construction (“CIAC”) expenditures.⁹

During ESP IV, consumers were forced to pay Distribution Investment Rider (“DIR”) charges totaling approximately \$315 million¹⁰ and Electric Service Reliability Rider (“ESRR”) charges of approximately \$45 million annually (or approximately \$153.75 million over the course of ESP IV).¹¹ The additional charges discussed above for ESP V were not in effect. Excluding unquantified charges under the Settlement, the Settlement if approved would allow AEP to charge consumers nearly three times more for ESP V than what was approved just two years ago for ESP IV, nearly \$1 billion in additional charges to consumers over the ESP IV charges.

⁵ See Settlement at III.H.25 (DIR charges total \$1.022 Billion), III.E.8 (ESRR charges total \$244 Million), III.L.37-38 (Energy Efficiency Rider charges total \$48 Million), III.I.34 (Smart Thermostat charges total \$20 Million), III.K.36 (Customer Experience Rider charges Totaling \$1.8 Million), and III.F.10 (Electric Transportation Plan charges totaling \$1.2 Million).

⁶ See Direct Testimony of Chris M. Shafer in Support of AEP Ohio’s Electric Security Plan (January 6, 2023) (“Shafer Testimony”) at 15:11-16:9 (stating AEP’s estimate for Ohio Power ADMS costs is \$25.554 million, which AEP intends to collect from consumers through the Customer Experience Rider).

⁷ See Settlement at III.F.10-11 and III.I.33.

⁸ See Settlement at III.C.6; See also Direct Testimony of Stacey D. Gabbard on Behalf of Ohio Power Company (January 6, 2023) at 17:13-8:2 (Stating AEP’s January 2023 estimate of CIS costs to be recouped from consumers total \$183.476 Million).

⁹ See Settlement at III.F.14-15.

¹⁰ OCC Ex. 4 (Testimony Recommending Modification of the Stipulation of James D. Williams on Behalf of the Office of the Ohio Consumers’ Counsel) (September 20, 2023) (“Williams Testimony”) at 7:20-9:4.

¹¹ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Opinion and Order (November 17, 2021) at 23.

AEP has not produced evidence to show an additional \$1 billion dollars in benefits to consumers from the Settlement. Even if AEP could promise increased reliability of service, along with all the proposed system upgrades, consumer information systems, and the alleged \$22 million of annual low-income consumer benefits, the Settlement would not benefit consumers. The Settlement fails to benefit consumers and the public interest because the additional \$1 billion in costs over the course of ESP V far exceed the value of services provided to consumers. A commonsense evaluation of the proposed Settlement clearly shows that it fails to benefit consumers and the public interest. Therefore, OCC respectfully requests the PUCO reject the proposed Settlement.

B. AEP’s blanket claims of “reliability” do not justify the unreasonable costs charged to consumers for ESP V under the settlement. The PUCO should reject the settlement.

In its Initial Brief, AEP cites reliability as the major benefit consumers will receive, or the goal of its proposed spending, for nearly every provision of the Settlement. For example, AEP claims the drastic increase in DIR spending caps “facilitates the timely replacement of aging infrastructure, improving and maintaining service reliability.”¹² AEP claims the provisions of the Settlement such as the DIR and ESRR “accelerate reliability improvements when coupled with numerous demand response programs such as the IRP, Smart Thermostat Demand Response program, and EV rate designs that can further help improve reliability.”¹³

¹² AEP Initial Brief at 41.

¹³ AEP Initial Brief at 77.

Placing an emphasis on increasing reliability would make sense if AEP was suffering from a downturn in service reliability, receiving significant consumer complaints, and seeking dramatic increases in funding to bring its performance up to standard. However, throughout its Initial Brief, AEP highlights its stellar record of reliability. AEP repeatedly touts its perfect record of meeting reliability standards for each of the last three years, and even exceeding the required metrics in some areas.¹⁴ AEP claims that it is “placing sufficient emphasis on reliability and [the Company’s] expectations and customers’ expectations are sufficiently aligned as to reliability.”¹⁵ The Company provides additional support for these claims by citing to multiple consumer surveys that show consumers are satisfied with the reliability of their AEP service.¹⁶

Given AEP’s claims of service reliability and customer satisfaction, there is no justification for the Settlement’s excessive increases in consumer charges. AEP has been able to meet or exceed its reliability standards for the last three years, and receive favorable reviews from its consumers. Thus, the funding levels under ESP IV have been sufficient to meet AEP’s obligations. In addition, AEP is delivering consistent, strong financial performance, having consistently hit the high end of its earnings per share guidance (or even exceeded the guidance range) over the last 10 years.¹⁷ So, it is clear that AEP is not achieving the alleged high reliability results by forgoing profits in the name of consumer satisfaction.

¹⁴ AEP Initial Brief at 5, 44, and 46-47.

¹⁵ AEP Initial Brief at 4, 5, 41, and 47.

¹⁶ AEP Initial Brief at 5, 45-46, and 47.

¹⁷ Buckley Testimony at 12:15-13:3.

Even more confounding, as OCC witness Williams testified, AEP has filed an application proposing to *weaken* the current minimum reliability standards it must maintain.¹⁸ Currently, AEP is required by the PUCO to maintain a System Average Interruption Frequency Index (“SAIFI”) of 1.2 and a Customer Average Interruption Duration Index (“CAIDI”) of 148 minutes.¹⁹ But AEP Ohio has a pending application to modify the reliability standards to a SAIFI of 1.28 and CAIDI of 158.0 minutes.²⁰

Considering this evidence, there is little justification for the excessive increases in consumer charges under the Settlement. The PUCO should reject the Settlement.

C. The unreasonable Return on Equity in the Settlement harms consumers and the public interest.

The Settlement proposes an unreasonably excessive return on equity of 9.71%. As set forth in the analysis performed by OCC witness Buckley, 9.51% is a fair and reasonable return on equity for a utility with an average risk profile, and likely overly generous for an entity with the lower risk profile of AEP.²¹

R.C. 4905.22 requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable. AEP, as the applicant, bears the burden of proving its Return on Equity (“ROE”) is just and reasonable. AEP has failed to provide any evidence that justifies the Company receiving a ROE that far exceeds the average ROE of utilities with higher risk profiles.

¹⁸ See Williams Testimony at 10.

¹⁹ *Id.*

²⁰ *Id.* at 10-11 (as modified at Transcript, Volume II, at 369:15-370:4).

²¹ OCC Ex. 8 (Testimony Recommending Modification of the Stipulation of Joseph P. Buckley on Behalf of the Office of the Ohio Consumers’ Counsel) (September 20, 2023) (“Buckley’s Testimony Recommending Modification”) at 7-11.

In its Initial Brief, in response to OCC’s allegations that the ROE in the Settlement is excessive, AEP basically requested the PUCO punt this issue to the next base rate case.²² Initially, in support of its ESP V application, AEP sponsored the direct testimony of Adrien M McKenzie, CFA, claiming that 10.65% was a reasonable ROE for AEP to collect throughout ESP V.²³ After OCC witness Buckley submitted direct testimony explaining how unreasonable it was for AEP to seek a 10.65% ROE when the national average granted was 9.61%²⁴, the Settlement established an ROE of 9.71%, the same as AEP’s ESP IV.²⁵ In response to OCC witness Buckley’s testimony that the ROE should be 9.51%²⁶, AEP claims that “(f)or over 35 years, it has been the PUCO’s practice not to recalculate rates of return in-between base rate cases.”²⁷

AEP’s argument should be rejected. As OCC witness Buckley²⁸ testified, for at least the last twenty-five years the PUCO Staff has averaged the outcomes of the Discounted Cashflow method (“DCF”) and the Capital Asset Pricing Model (“CAPM”)

²² AEP Initial Brief at 26-27.

²³ *In the Matter of the Application of 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, et al.*, Case No. 23-23-EL-SSO, et al., Ohio Power Company’s Application for An Electric Security Plan (January 6, 2023); Direct Testimony and Exhibits of Adrien M. McKenzie, CFA (January 6, 2023).

²⁴ AEP Ohio Exh. 6, Direct Testimony of Joseph P. Buckley On Behalf of the Office of the Ohio Consumers’ Counsel (June 9, 2023)(“Buckley Direct Testimony”) at 6:18-7:16.

²⁵ Settlement at 11 (¶ III.D.7).

²⁶ Buckley Direct Testimony at 11:8-10.

²⁷ AEP Initial Brief at 27.

²⁸ Buckley’s Testimony Recommending Modification at 1:21-2:11 (Buckley was employed by the PUCO from July 1987 to July 2022, served multiple federal/state joint audits, served as Chairman and Vice Chairman of the Mid-Continent Independent System Operator (MISO) finance committee, earned the Certified in Financial Management (CFM) designation in 2000 by the Institute of Management Accountants, and was awarded the professional designation Certified Rate of Return Analyst (CRRA) by the Society of Utility and Regulatory Financial Analysts in 2011).

to calculate a utility's rate of return.²⁹ When Buckley completed these calculations for this matter, the results were:³⁰

DCF AVERAGE	9.707%
CAPM RATE	9.32%
DCF & CAPM AVERAGE	9.514%

The Settlement proposes an excessive ROE of 9.71 percent.³¹ The national average return on equity granted to electric companies from March 31, 2022 to March 31, 2023 was 9.61 percent overall and 9.19 when distribution only utilities are averaged.³² AEP's risk profile does not warrant a higher rate of return than the national average.³³ AEP has over the last 10 years come in at the high end of its earnings per share guidance (or even exceeded the guidance range).³⁴ AEP is delivering consistent, strong financial performance. AEP is producing returns that are significantly higher than the average returns earned by the other regulated companies under the AEP umbrella.³⁵ AEP also has an above average bond rating when compared to that of other regulated utilities³⁶ and plans to recover a significant amount of capital investments using riders. Based upon the above facts, OCC witness Buckley testified "[AEP] will not have any trouble accessing capital markets."³⁷

²⁹ *Id.* at 7:19-8:2.

³⁰ *Id.* at 9:3-5.

³¹ *Id.* at 3:18-4:7.

³² *Id.* at 12:8-13.

³³ *Id.* at 12:15-13:3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 7:8-17.

³⁷ *Id.* at 13:5-9.

In short, the ROE included in the Settlement harms Ohio consumers by forcing them to pay exorbitant profits to AEP. AEP has repeatedly out earned other utilities and presents a significantly lower risk profile than its competitors. Forcing Ohio consumers to fund even greater returns that primarily benefit the utility's shareholders is unreasonable. As OCC Witness Buckley's calculations and testimony demonstrate, the PUCO should set a ROE of 9.51 percent and a resulting ROR of 6.7 percent.³⁸

D. The Settlement's energy efficiency programs can harm consumers and the public interest contrary to AEP's claims. The Settlement should be rejected.

The Settlement provides for \$12 million annually (\$48 million over four years) to fund residential energy efficiency programs.³⁹ OCC continues to object to these programs as described in the Settlement based upon two major issues: 1) the funding for the programs is paid for only by residential consumers, not shareholders, and 2) the Settlement does not provide for proper oversight of administration of these programs.⁴⁰

With regard to the administration of the programs, the Settlement provides that AEP will conduct a competitive bidding process to select a program administrator for the school and the HELP programs.⁴¹ The Settlement also provides that the selected program administrator will be paid a 10% administration fee of total annual program costs incurred,⁴² and gives the PUCO Staff the right to evaluate and audit the program, at their

³⁸ *Id.* at 11:10.

³⁹ Settlement at ¶ 38.

⁴⁰ *Id.* at ¶¶ 37-39.

⁴¹ *Id.* at ¶ 38.

⁴² *Id.* at ¶ 39.

own expense.⁴³ However, there is no obligation for either AEP or the PUCO Staff to conduct an audit to ensure that consumer funds are being used effectively and efficiently.

In response to OCC’s objections, AEP defends these programs by claiming without support or analysis that the energy efficiency programs will “provide an annual gross benefit to customers of approximately \$22 million.”⁴⁴ AEP has not provided any evidence to support this assertion. The only citation for this claim is to AEP witness Mayhan’s testimony, who provides only a vague description of any claimed benefit to consumers stating “energy efficiency programs provide customers with assistance purchasing more efficient high-energy use products for their homes. Reducing energy use for low-income customers not only reduces their bill, it helps reduce the energy demand placed on the electric grid.”⁴⁵ Even if these unsupported statements were true, the Settlement does not provide for oversight to ensure such benefits are actually realized. Instead, AEP argues that the oversight recommended by OCC witness Shutrump is merely “saddling the customers with additional unnecessary costs of a burdensome audit.”⁴⁶

Consumer funds are limited.⁴⁷ Unlike the WarmChoice program approved by the PUCO in the recent Columbia Gas Settlement⁴⁸, the AEP Settlement does not provide for

⁴³ *Id.*

⁴⁴ AEP Initial Brief at 60-61.

⁴⁵ Direct Testimony of Jaime L. Mayhan in Support of the Joint Stipulation and Recommendation (September 11, 2023) at 17:4-12.

⁴⁶ AEP Initial Brief at 61-62.

⁴⁷ *Id.* at 9:19-10:9.

⁴⁸ OCC Exh. 5 (Testimony Recommending Modification of the Stipulation of Colleen Shutrump) (September 20, 2023) (“Shutrump Testimony”) at 9:19-10:9 (“WarmChoice is Columbia’s low-income weatherization program.”)

shared investment, nor does it provide either AEP or the PUCO Staff any incentive to conduct a management review to ensure efficiency and efficacy of these programs.⁴⁹ Failing to provide for a management audit of such programs is unreasonable, and AEP's refusal to provide for such an audit endangers the \$12 million dollars in consumer funds AEP intends to hand out to contractors for these programs.⁵⁰ This type of audit is especially necessary here, where the PUCO's Staff is not even required to conduct their standard prudency review.⁵¹ Neither AEP, nor the PUCO Staff, has any incentive to conduct an audit aimed at determining guidelines to protect consumer funding.⁵² Further, AEP's description of what it intends to use consumers' funds for is lacking, claiming to reduce usage, and therefore bills, by assisting low income consumers with acquiring more efficient high-energy use products for their homes.⁵³ For all of these reasons, OCC respectfully requests the PUCO refuse to approve the energy efficiency programs as described in the Settlement.

E. Forcing all consumers, including Percentage of Income Payment Plan ("PIPP") consumers, to fund AEP's Neighbor-to-Neighbor program does not benefit consumers and the public interest.

As OCC witness Tinkham testified, in order to actually benefit consumers and public interest, as well as comply with regulatory principles and policy as stated within R.C. 4928.02, the Settlement's provisions for the Neighbor-to-Neighbor program funding must change.⁵⁴ The Settlement directs that the Neighbor-to-Neighbor program is funded

⁴⁹ Shutrump Testimony at 9:19-10:9; Settlement at ¶¶ 37-39.

⁵⁰ AEP Initial Brief at 61-62.

⁵¹ Shutrump Testimony at 6:1-8:2.

⁵² *Id.* at 7:8-8:2.

⁵³ Settlement at ¶¶ 37-39; AEP Initial Brief at 60-61.

⁵⁴ Tinkham Testimony at 3:6-5:7 and 13:8-14:12.

by all residential consumers through the EE Rider⁵⁵. However, none of the signatory parties (including AEP) address OCC's legitimate concerns that it is unreasonable to have this program funded by residential consumers, including those who are supposed to be its beneficiaries.⁵⁶ In fact, the Citizens Utility Board of Ohio⁵⁷, Ohio Environmental Counsel⁵⁸, and the PUCO's own Staff⁵⁹ mention the Neighbor-to-Neighbor program in their initial briefs without addressing this inequity. Therefore, OCC respectfully requests the PUCO not approve the provision of the Settlement that requires residential consumers to fund the Neighbor-to-Neighbor program. Instead, the program should be shareholder funded, similar to the program the PUCO ordered shareholder funding for when the PUCO modified the Columbia Gas of Ohio Proposed Settlement accordingly.⁶⁰

F. Failing to separate SSO auctions by consumer classes does not benefit consumers and the public interest.

OCC has proposed that the PUCO require Standard Service Offer ("SSO") auctions be separated by consumer class. As both OCC and Constellation have argued, a class-based auction format will reduce residential consumers' service charges while shifting the cost of insuring highly variable service demands to the commercial and

⁵⁵ Settlement at ¶¶ 37-38.

⁵⁶ In addition, none of the signatory parties addressed OCC's argument that the funding for the Neighbor-to-Neighbor program should be increased to \$1.5 million annually. See Tinkham Testimony at 14:1-12

⁵⁷ Initial Post-Hearing Brief By the Citizens' Utility Board of Ohio (December 1, 2023) at 7.

⁵⁸ Initial Brief of the Ohio Environmental Council (December 1, 2023) at 12.

⁵⁹ Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (December 1, 2023) at 17.

⁶⁰ *In the Matter of 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 et. al.*, Case No. 21-637-GA-AIR, et. al., Opinion and Order (January 26, 2023) at ¶177.

industrial consumers who actually cause those costs.⁶¹ As the admitted evidence shows, there is no reason for residential consumers to continue footing the bill for the higher risk associated with commercial and industrial consumers' energy demands.

AEP does not dispute that a class-based auction system would benefit consumers. Instead, AEP claims that the proposed Settlement is good enough and there is no need to put more thought into its ESP.⁶² AEP acknowledges that OCC witness Wilson and Constellation witness Indukuri recommend an SSO competitive bidding process ("CBP") modification to segment auction products by consumer class.⁶³ However, AEP claims that neither witness supports their proposal with a principled analysis of data or other record evidence.⁶⁴ AEP is wrong. Both Indukuri and Wilson present substantial data and testimony in support of a class-based auction system.⁶⁵ The Settlement fails to even consider these reasonable suggestions made by OCC and Constellation, or address their submitted analysis and evidence. AEP ignores, rather than addresses, the merits of OCC's and Constellation's testimony.⁶⁶

AEP seeks to discredit Indukuri's testimony by claiming that he has cherry-picked data from Pennsylvania to support his position when the larger picture does not.⁶⁷ However, it is undisputed that unlike Ohio's electric utilities, Pennsylvania's utilities also

⁶¹ OCC Exh. 2 (Testimony Recommending Modification of the Stipulation of James F. Wilson) (September 20, 2023) ("Wilson Testimony") at 2:14-3:20; Initial Post-Hearing Brief of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (December 1, 2023) at 27-35.

⁶² AEP Initial Brief at 34.

⁶³ AEP Initial Post Hearing Brief at 34.

⁶⁴ *Id.*

⁶⁵ *See* Wilson Testimony at 2:14-8:12 and Constellation Post-Hearing Brief at 27-35.

⁶⁶ AEP Initial Post Hearing Brief at 34-35.

⁶⁷ AEP Initial Post Hearing Brief at 37-38.

obtain transmission and/or renewable energy credits as part of their default service auctions.⁶⁸ Indukuri demonstrates that in the most recent set of auction data⁶⁹ even without removing the value of those additional services, Pennsylvania’s class-based auctions resulted in lower prices than Ohio’s faulty “slice of service” system.⁷⁰

AEP witness Kelso presents rebuttal testimony in which she suggests that there are years where Ohio’s slice-of-system auction yielded lower auction clearing prices compared to the consumer class auction utilities in Pennsylvania.⁷¹ However, AEP’s witness Kelso admits that the data in Figure 3 is not an apples-to-apples comparison to the auction clearing prices in AEP Ohio’s SSO auctions.⁷² She further admits that had Constellation witness Indukuri adjusted his Figure 3 numbers to account for the differences between Ohio’s slice-of-service auction and Pennsylvania’s class-based auction (which includes transmission and/or REC charges) the evidence showing the benefit of Pennsylvania’s class-based auction would be even greater for that period.⁷³

Constellation witness Indukuri has provided a clear example of how class-based auctions are reducing the auction clearing prices for residential consumers by eliminating the cost of larger commercial and industrial entities’ risk of fluctuating demand. Continuing the status quo of “slice of service” auctions is harmful and unfair to Ohio’s residential consumers.

⁶⁸ Constellation Exh. 2 (Direct Testimony of Muralikrishna Indukuri in Opposition to the Stipulation and Recommendation) (September 20, 2023) (“Indukuri Testimony”) at 25:14-21.

⁶⁹ *Id.* at Figure 3, p.26.

⁷⁰ *Id.* at 31-32.

⁷¹ AEP Ohio Exh. 9 (Rebuttal Testimony of Lisa O. Kelso on Behalf of Ohio Power Company) (October 20, 2023) (“Kelso Rebuttal”) at 5:1-10.

⁷² *Id.* at 5:17-19.

⁷³ Transcript Vol. V. at 822:12-823:10.

Further, as OCC witness Wilson testified, it is common in other states to hold separate auctions for either residential consumers, or residential together with small commercial.⁷⁴ In particular, Wilson provided citations to the approaches used by New Jersey, Maryland, the District of Columbia, and Illinois who all hold separate auctions for residential consumers together with small commercial consumers.⁷⁵ Wilson further testified that Pennsylvania, Delaware and Massachusetts hold auctions by consumer class, with residential consumer service in a wholly separate auction.⁷⁶ As Indukuri pointed out, “No other jurisdiction in PJM conducts a default service procurement that includes large commercial and industrial customers with residential customers as a slice of the system.”⁷⁷ Indukuri has also clearly identified that residential consumers are being forced to foot the bill for the inherently greater risk of industrial and large commercial customers’ load uncertainty through higher auction closing prices and lower auction participation rates.⁷⁸

AEP has the burden of proving its ESP benefits consumers and the public interest, while not violating public policy and standards. The intervenors in this matter are not required to prove otherwise to defeat the Settlement. However, given the testimony, analysis, and data presented by both Wilson and Indukuri, it is clear that AEP’s rejection of class-based auctions harms Ohio’s residential consumers. Therefore, OCC respectfully requests the PUCO refuse to approve the Settlement.

⁷⁴ Wilson Testimony at 6:13-8:3.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Indukuri Testimony at 25:1-7.

⁷⁸ Indukuri Testimony at 17:15-19:12.

G. The PUCO should set the proxy price if the capacity pass-through mechanism is approved.

The Settlement proposes to use a capacity pass-through mechanism to address the concern that the applicable PJM capacity prices may not be known before an SSO auction, creating risk for bidders into the SSO auction.⁷⁹ For the sake of consumer protection, if the capacity pass-through mechanism is approved, the PUCO should provide guidance on how the proxy price will be set.⁸⁰

The Settlement calls for the capacity pass-through mechanism to be used in the event “BRA clearing prices” for some of the planning years covered by any of the SSO auction products are not known before the SSO auction.⁸¹ However, the Settlement does not set forth any principles to guide how the proxy price is set.⁸² The Settlement merely states “The auction manager, in consultation with Staff, will establish the proxy capacity price based on objective criteria in advance of the applicable auction.”⁸³ OCC acknowledges that this is the approach approved by the PUCO in the recent SSO procurement auction decision.⁸⁴ However, given that the mechanism and associated true-up are likely confusing to smaller residential and commercial consumers PUCO direction on the implementation of the proxy auction prices is necessary.⁸⁵ AEP argues that “AEP Ohio commits to provide interested stakeholders information on how the proxy price will

⁷⁹ *Id.* at 8:16-9:14.

⁸⁰ Wilson Testimony at 4:13-16.

⁸¹ *Id.* at 9:1-14.

⁸² *Id.* at 9:16-18.

⁸³ Settlement p.4 at ¶ III.B.1.

⁸⁴ *In the Matter of the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Finding and Order (December 13, 2023).

⁸⁵ Wilson Testimony at 9:20-10:4.

work.”⁸⁶ However, this explanation provides no substance to help reduce the likely confusion and misunderstanding caused by not having a proxy price or having a formula to set the proxy price.

For the protection of consumers, OCC requests the PUCO provide guidance on how any potential proxy price will be set.⁸⁷

H. The Settlement fails to consider affordability, especially to at-risk consumers, or the exorbitant number of AEP service disconnections, and therefore harms consumers and public interest, and violates important regulatory principles.

OCC witness Tinkham testified that the Settlement does nothing to specifically address the affordability of consumers’ essential electric utility service. Nor does the Settlement address the unreasonably large number of AEP service disconnections that occurred in previous years.⁸⁸ By failing to address the huge and growing problem with AEP’s disconnections, and affordability of service in general, 1) the Settlement does not benefit consumers and the public interest, and 2) violates Ohio’s long standing regulatory principles and policy as stated within R.C. 4928.02.⁸⁹

Rather than addressing the actual issues raised by Tinkham’s testimony regarding AEP’s excessive service disconnections, AEP belittles Tinkham’s suggestions. AEP blames other utilities for misreporting disconnections.⁹⁰ AEP disclaims responsibility for

⁸⁶ Settlement p. 5 at ¶ III.B.1.

⁸⁷ Wilson Testimony at 10:6-13.

⁸⁸ OCC Ex. 1 (Testimony Recommending Modification of the Stipulation of Andrew R. Tinkham on Behalf of the Office of the Ohio Consumers’ Counsel) (September 20, 2023) (“Tinkham Testimony”) at 6:10-9:2.

⁸⁹ Tinkham Testimony at 4:1-8, 6:10-9:2, and 11:12-27.

⁹⁰ AEP Initial Brief at 78.

the unreasonably disproportionate number of consumers that AEP disconnects each year.⁹¹

However, none of AEP's claims directly address OCC's evidence. According to OCC witness Tinkham, AEP's 2022 to 2023 annual disconnection reports demonstrate that, even without the increased consumer charges proposed in this case, electric service is becoming less affordable for AEP consumers.⁹² In fact, AEP disconnected more than double the number of residential consumers of the electric distribution utility with the second highest disconnection rate.⁹³ The PUCO should refuse to accept the Settlement, which will increase rates for residential consumers, until it includes provisions to protect consumers from the unreasonable level of disconnections by AEP.⁹⁴ Until such changes are made, the Settlement fails to meet the three part test because it unreasonably and unnecessarily violates the basic principles of Ohio's regulatory policy of providing reasonably priced electrical service⁹⁵ and continues to cause serious harm to Ohio consumers.

I. The Settlement proposes Contribution in Aid of Construction ("CIAC") provisions for consumer installations of electric vehicle chargers which violate important regulatory principles and practices.

The Settlement makes two proposals⁹⁶ with respect to CIAC. First, during the PUCO's next review of O.A.C. 4901:1-9, AEP will propose and support that electric utilities be responsible for eighty percent of the cost of line extensions for publicly

⁹¹ AEP Initial Brief at 78-79.

⁹² Tinkham Testimony 6:10-9:2.

⁹³ *Id.*

⁹⁴ *Id.* at 6:10-9:2.

⁹⁵ R.C. 4928.02(A).

⁹⁶ Settlement at ¶¶ 14–15.

available electric vehicle charging stations and that the consumer (*e.g.*, that owns or installs the charging station) be responsible for the remaining twenty percent, provided that AEP is ensured full cost recovery of the eighty percent.⁹⁷ Second, if the PUCO approves increased financial incentives to offset CIAC costs during the term of the electric security plan (“ESP”), AEP will invest at least \$2 million but no more than \$4 million for CIAC costs for customer installations of electric vehicle-charging stations in approved locations.⁹⁸ The Settlement proposes recovery of these costs from all consumers through the Distribution Infrastructure Rider (“DIR”).⁹⁹

AEP has claimed these costs are beneficial to consumers and the public because they will reduce stress on the grid from the expected increase of demand-intense EV charging¹⁰⁰ and “reduces and/or defers the need for additional distribution plant in service that would not otherwise occur absent such an incentive.”¹⁰¹ AEP also claims that the CIAC benefits all customers, because the capital reservation in the Settlement is only applicable to “approved locations,” which are limited to “where there is existing capacity to serve the requested amount of peak load without having to install additional facilities to maintain, protect, upgrade or improve the existing distribution facilities before the point of origin.”¹⁰²

The PUCO should reject AEP’s circular argument. The Company claims that it is reducing stress on the grid, and thereby benefiting customers, by funding electric vehicle

⁹⁷ *Id.* at ¶ 14.

⁹⁸ *Id.* at ¶¶ 14-15.

⁹⁹ *Id.* at ¶ 15.

¹⁰⁰ AEP Initial Brief at 55.

¹⁰¹ AEP Initial Brief at 82-83.

¹⁰² AEP Initial Brief at 82.

charging locations where the grid already has the capacity to support additional load without being stressed. However, as OCC witness Sioshansi testified, electric vehicle charging benefits only those who can afford electric vehicles.¹⁰³ Forcing all consumers to subsidize these facilities is an improper transfer of wealth to those who have the means to afford electric vehicles in the first place.¹⁰⁴ To avoid this cross subsidy, the proposal surrounding the treatment of CIAC costs in paragraph 15 of the settlement should be denied.¹⁰⁵ Instead, in compliance with the principle of cost causation, the cost of electric vehicle-charging infrastructure and associated CIAC costs should be borne by the beneficiaries of the infrastructure, who are the electric vehicle owners themselves.¹⁰⁶

In addition, as OCC witness Sioshansi further testified, the Settlement¹⁰⁷ commits AEP to pre-specified spending and investment levels on CIAC costs for consumer installation of electric vehicle-charging stations before the PUCO has made any determination regarding the regulatory treatment of CIAC costs.¹⁰⁸ Even more importantly, the Settlement would automatically commit consumers to an additional \$2-\$4 million in costs, which AEP will charge to consumers through the DIR, should the PUCO approve increased levels of financial incentives to offset CIAC costs in a later matter.¹⁰⁹ As such, it is premature for these spending levels to be set in this Settlement.¹¹⁰

¹⁰³ OCC Exh. 6 (Testimony Recommending Modification of the Stipulation of Ramteen Sioshansi) (September 20, 2023) (“Sioshansi Testimony”) at 10:13-11:12.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Settlement at ¶ 15.

¹⁰⁸ Sioshansi Testimony at 9:12-11:12.

¹⁰⁹ Settlement at III.F.14-15.

¹¹⁰ *Id.*

Because the CIAC provisions of the Settlement violate cost-causation regulatory principles, and prematurely commits consumers to accept and bear additional unwarranted charges, OCC respectfully requests the PUCO reject the proposed Settlement.

J. The Settlement Fails the “MRO vs ESP” test.

In addition to violating the PUCO’s three-part test for considering settlements, the Settlement here fails to satisfy the “MRO vs. ESP” test and should be rejected. The comparison the PUCO must make between the results of a utility’s ESP and the results that would be expected under a Market Rate Offer (“MRO”) is the “statutory test,”¹¹¹ sometimes also referred to as the “MRO vs. ESP test.” Under Section 4928.143(C)(1) of the Ohio Revised Code, the PUCO cannot approve, or modify and approve, an ESP unless it finds that the ESP “including its pricing and all other terms and conditions, including any deferrals and future recovery of deferrals, is more favorable in the aggregate [to customers] as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.”

In conducting the statutory test, the PUCO has generally evaluated three parts - comparing the results of these elements under the proposed ESP to the results expected under an MRO:

- (1) The SSO price of generation to consumers;
- (2) Other quantifiable provisions; and

¹¹¹ Duke Energy Ohio, Case No. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011) at 46; Columbus Southern Power and Ohio Power, Case No. 11-346-EL-SSO, et al., Opinion and Order (August 8, 2012) at 73; and Dayton Power & Light, Case No. 12-426-EL-SSO, et al., Opinion and Order (September 3, 2013) at 48-52.

(3) Other qualitative provisions.¹¹²

The utility bears the burden of proving the ESP is more favorable in the aggregate to customers than a market rate option.¹¹³ The ESP embodied in the Settlement fails the statutory test.

Because of the current auction procedures for generation, the Standard Service Offer (SSO) generation rates have become 100% market-based rates.¹¹⁴ As a result, there should be no difference between market-based generation rates under an MRO or an ESP.¹¹⁵

OCC witness Buckley testified that there are a number of new riders and increases to existing riders under the ESP that add over \$1.1 billion in costs to customers with little to no value to customers.¹¹⁶ These riders would not be included in an MRO because an MRO merely sets the standard offer price.¹¹⁷ There are no other provisions under an MRO that allow AEP to include charges to customers for numerous and varied riders.¹¹⁸ With these riders consumers would pay \$1.1 billion more in costs under the ESP than under an MRO.¹¹⁹ Further, AEP's purported qualitative arguments are unpersuasive. And

¹¹² AEP Ohio ESP, Case No. 11-346-EL-SSO et al., Opinion and Order (August 8, 2012) at 73 and Entry on Rehearing (January 30, 2013) at 13-14 and Dayton Power & Light, Case No. 12-426-EL-SSO, et al., Opinion and Order (September 3, 2013) at 48-52.

¹¹³ R.C. 4928.143.

¹¹⁴ Buckley Testimony Recommending Modification at 14:7-13.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 13:19-14:5.

¹¹⁷ R.C. 4928.142.

¹¹⁸ *Id.*

¹¹⁹ Buckley Testimony Recommending Modification at 13:19-14:5.

the asserted qualitative benefits for customers cannot begin to offset in any meaningful way the quantitative cost of the ESP, let alone the more than \$1.1 billion cost of this ESP.¹²⁰

1. AEP’s proposed ESP fails the statutory test based on analysis of purported quantitative benefits.

AEP does not provide any concrete evidence of quantitative benefits regarding its proposed Settlement. Rather, as demonstrated above, from a quantitative standpoint the Settlement is abysmally negative for consumers in comparison to an MRO. Other than the low-income programs which AEP claims will “provide an annual gross benefit to customers of approximately \$22 million,”¹²¹ AEP is silent about quantitative benefits of the Settlement. When compared to the more than \$1 billion increase in costs over the course of ESP V, there can be no real doubt that an MRO would be significantly more beneficial to consumers. This has been the case from the outset of AEP’s application, when AEP predicted an annual benefit to consumers of \$144.7 million and reliability-related investments of roughly \$2.2 billion over the term of the plan.¹²²

2. AEP’s proposed ESP fails the statutory test based on analysis of purported qualitative benefits.

Throughout its Initial Brief, AEP touts service reliability, grid maintenance, and customer assistance programs as qualitative benefits consumers will receive as a direct result of the Settlement. However, as stated above, even if AEP’s promises with regard to service reliability, grid maintenance, and customer assistance programs through the

¹²⁰ *Id.*

¹²¹ AEP Initial Brief at 60-61.

¹²² Case No. 23-23-EL-SSO, et al., Direct Testimony and Exhibits of Brian F. Billings (January 6, 2023) at 4.

proposed ESP are delivered, an MRO would still be more beneficial to consumers than the outrageous increase in costs the Settlement authorizes.

AEP cites specific qualitative benefits it claims consumers will enjoy as a result of the proposed Settlement. For example, AEP witness Mayhan testified that “The commitment to file a base distribution case by June 1, 2026 provides customers with increased certainty regarding the timing of a rate case, as opposed to the uncertainty that would exist under an MRO.”¹²³ AEP claims the DIS and ESRR mechanisms, “when coupled with annual caps[,] provide rate certainty and stability for customers that would not otherwise exist under a traditional rate case ratemaking structure.”¹²⁴ AEP also claims the provisions of the Settlement will further support economic development in the State of Ohio, encourage more efficient use of the transmission grid while reducing AEP’s overall transmission revenue requirement, and promote technological advancement while increasing grid resiliency and sustainability.¹²⁵

The above claimed qualitative benefits are all laudable hypothetical goals, but those goals are unlikely to be achieved. Indeed, OCC witness Buckley testified that AEP has made prior predictions of proposed benefits that did not materialize to the degree promised.¹²⁶ Previously, Staff witness Tamara S. Turkenton¹²⁷ and AEP witness William Allen¹²⁸ both stated that the Stipulation in 16-1852-EL-SSO would provide many

¹²³ AEP Initial Brief at 101 (citing AEP Ohio Ex. 2 at 16).

¹²⁴ AEP Initial Brief at 101(citing AEP Ohio Ex. 2 at 17).

¹²⁵ AEP Initial Brief at 101-102.

¹²⁶ Buckley Testimony at 14:5-15:15.

¹²⁷ Case No. 16-1852-EL-SSO, Pre-Filed Testimony of Tamara S. Turkenton (September 13, 2017).

¹²⁸ Case No. 16-1852-EL-SSO, Pre-Filed Testimony of William Allen (September 13, 2017).

qualitative benefits.¹²⁹ These purported qualitative benefits included provisions for economic development, enhancements to the retail competitive market, and renewable energy options, as well as the promotion of measures related to the Smart City and Power Forward initiatives.¹³⁰ However, as OCC witness Buckley testified, residential consumers have not seen large improvements since the last ESP in 2016.¹³¹ Too many PIPP consumers are struggling to pay their electric bills. Further, consumers have not seen noticeable improvements in reliability performance statistics as shown below.¹³² Considering the unprecedented enormous increase in costs to customers that the Settlement authorizes, and AEP prior failures to actually deliver on claimed qualitative benefits, consumers are far better served by an MRO than the ESP proposed in the Settlement.

The ESP embodied in the Settlement fails the statutory test, and the Settlement should be rejected.

IV. CONCLUSION

The Settlement, if approved, will dramatically increase the cost of consumers' electric service without providing consumers meaningful additional services, increasing reliability, or safety benefits. The Settlement will harm consumers and the public interest, and it violates important regulatory principles and practices. The ESP embodied in the Settlement also fails the MRO v. ESP test.

The Settlement should be rejected to protect consumers.

¹²⁹ Buckley Testimony at 15:17-16:8.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 16:1-8.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief for Consumer Protection was served via electronic transmission upon the parties this 22nd day of December 2023.

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