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

REPLY BRIEF OF OHIO POWER COMPANY
IN SUPPORT OF THE
STIPULATION AND RECOMMENDATION

Steven T. Nourse (0046705)
Michael J. Schuler (0082390)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
Telephone: (614) 716-1608 (Nourse)
Telephone: (614) 716-2928 (Schuler)
Facsimile: (614) 716-2950
stnourse@aep.com
mjschuler@aep.com

Eric B. Gallon (0071465)
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street Columbus, Ohio 43215
Telephone: (614) 227-2190
egallon@porterwright.com

Christopher L. Miller (0063259)
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-2339
Fax: (614) 222-4707
christopher.miller@icemiller.com

Matthew S. McKenzie (0091875)
M.S. McKenzie Ltd.
P.O. Box 12075
Columbus, Ohio 43212
Telephone: (614) 592-6425
matthew@msmckenzieltd.com

Counsel for Ohio Power Company

INTRODUCTION

The Stipulation and Recommendation filed on September 6, 2023 ("Stipulation") in this matter is the product of serious bargaining among capable and knowledgeable parties that results in a package that benefits customers, the Company, and the public interest while refraining from violating any regulatory practices or principles. Only four parties raised any arguments that the Stipulation fails the three-prong test by which settlements are evaluated by the Public Utilities Commission of Ohio ("PUCO" or "the Commission") – all of which should be duly rejected for the reasons described below and more fully in Ohio Power Company's ("AEP Ohio" or "the Company") Initial Post-Hearing Brief.

***Prong One*: The Stipulation is the product of serious bargaining among capable, knowledgeable parties**

The first prong of the three-part tests asks whether a settlement is "a product of serious bargaining among capable, knowledgeable parties." The Stipulation here easily satisfies that standard that is uncontested. Indeed, no opposing party submitted any testimony nor did they raise any arguments in their initial briefs contesting that the first prong is met.

***Prong Two*: The Stipulation as a package benefits ratepayers and the public interest**

Regarding the second prong, an examination of the major provisions of the Stipulation based on the record supports a Commission finding that the Stipulation package benefits customers and the public interest. Continuation of the highly-successful descending clock standard service offer ("SSO") auction format, along with two primary improvements that are supported by the majority of parties representing all type of interests (CRES included), benefit the public interest. Additionally, AEP Ohio agreed to withdrawal of the Governmental Aggregation Standby Rider. Nevertheless, Constellation and OCC raise arguments to advance their own business agendas to mold the SSO in their image. In doing so, those opposing parties also ignore that SSO prices have settled down in recent months.

The first improvement that Constellation glosses over is allowing the actual capacity price to be substituted for the capacity proxy during the applicable PJM delivery year to reduce price volatility by eliminating the premium in SSO auction clearing prices for unknown capacity prices during the delivery period. This was implemented to address recent developments and concerns with the capacity market. Constellation also fails to give sufficient weight to the fact that the Stipulation "leaves the door open" through continuing Commission jurisdiction for additional changes to the SSO CBP should the capacity solution need to be supplemented during the ESP term. Indeed, Constellation ignores the multiple dockets that the Commission has commenced to address SSO issues, including a directive to adopt the capacity pass-through solution outside of the pending ESP dockets. OCC further requests that the capacity proxy price err on the high side," which would only serve to artificially inflate the SSO and distort the competitive market harming all customers and the public interest.

Constellation and the Office of the Ohio Consumers' Counsel ("OCC") request further modifications to the SSO; namely, segmenting auction products by customer class. Aside from this simply advancing their original litigation positions in response to the as-filed ESP V, neither supports their proposal with a principled analysis of data or other record evidence that it will benefit customers or the public interest as more fully addressed in AEP Ohio's Initial Brief.

Constellation also advances its original litigation position establishing circuit breakers – the volume/quantity of MWh supplied under a single tranche, beyond which there would be a spot market price paid non-shopping customers to purchase the actual quantity needed to supply SSO load – a concept that would shift the risk of price increases away from SSO suppliers to non-shopping customers based on volatile market prices. There is no record support for this modification and there is no need to adopt such sweeping changes at this time.

OCC also raises concerns that the Stipulation does not address the PIPP aggregated generation auction by requiring that the PIPP generation rate default to the SSO if it is higher than the SSO rate in any given year. This overlooks AEP Ohio's inability to control the competitive market and ignores numerous Commission decisions addressing this issue over the past two years. OCC's arguments are an improper and untimely application for rehearing *6 years too late*, barred by collateral estopped and res judicata, and also carry no merit as they misinterpret R.C. 4928.54, et. seq.

OCC's attack on the Energy Efficiency Rider programs are misguided and based upon factual inaccuracies. OCC fatally misinterprets the 10% administrative fee as awarded to the winner of the competitive bidding process rather than AEP Ohio, which should be duly disregarded. OCC also seeks to add a robust audit that is unnecessary and will only thrust further costs onto customers without any articulated additive benefits. Finally, while simultaneously requesting additional bill assistance for customers, OCC argues that the Neighbor-2-Neighbor program should be removed from the Energy Efficiency Rider. To support this argument OCC cites to inapposite cases and overlooks state policy that the Neighbor-2-Neighbor program protects the admittedly at-risk customers at or below 200% of the federal poverty level.

OCC raises concerns that the DIR will result in "rate shock" and no specific metrics connected to reliability improvements. The DIR, however, will only result in an average monthly impact of just over $1 year-over-year during the term of the ESP V. And OCC points to no precedent where the Commission imposed requirements upon a utility to tie a distribution investment rider to certain reliability improvements; instead, pointing to inapposite precedent where the Commission approved Stipulations that already included such commitments, Nor should the Commission consider imposing such requirements here when there is an open docket to consider AEP Ohio's reliability metrics, which OCC expects a refresher based upon the outcome of this matter. As set forth in AEP Ohio's Initial Brief, the DIR will allow the Company to proactively invest in reliability, grid resilience to address aging infrastructure and providing service to AEP Ohio's growing service territory, which benefits the public interest.

With respect to the ESRR, OCC raised the same three arguments that AEP Ohio already anticipated and addressed in its Initial Brief – (1) the danger tree program was intended to end in 2023 and there is no justification for the increased ESRR expense in this case, (2) the Company has not included an updated vegetation management plan, and (3) the Stipulation has no required reliability improvements associated with vegetation spending. As addressed in AEP Ohio's Initial Brief, OCC ignores important precedent regarding the ESRR as set forth in AEP Ohio's most recent distribution rate case as well as the Company's administrative requirement to file annual vegetation management plans. And despite conceding the benefits of vegetation management, OCC also overlooks the realities of reliability improvement where many factors can impact reliability and as such the Commission has never previously required reliability metrics be tied to vegetation spend. Finally, OCC makes non-sensical arguments about future rate cases that will necessarily be addressed in such case(s). The ESRR promotes rate gradualism and certainty to customers allowing AEP Ohio to proactively support reliability and reduce outages caused by vegetation from both inside and outside of the right-of-way.

OCC raises numerous concerns about the new components of the gridSMART rider; most notably, raising unfounded concerns that the Stipulation provides a "blank check" despite cost estimates and express caps on spending. OCC also gins up an improper argument that the unrelated gridSMART Phase 3 Stipulation case somehow permanently tied the hands of the Company and the Commission from implementing any other technologies to be recovered under the gridSMART Rider when the very face of that Stipulation permits future investments. Finally, the record is replete with evidence demonstrating the benefits of the various new technologies to run through the gridSMART Rider – ADMS, CIS, ETP, and Smart Thermostat Demand Response program.

The Stipulation is an affordable plan that results in nominal increases for customers based upon a traditional or actuarial basis as discussed in the testimony of OCC witness Mayhan and AEP Ohio's Brief. Although OCC makes bald assertions that the plan is not affordable, they do not offer any bill impacts of their own nor do they contest AEP Ohio's calculated bill impacts. While OCC raises concerns about the disconnection rates in the AEP Ohio service territory, it does not assert how the concept impacts whether the Stipulation benefits customers and the public interest. More importantly, OCC admits that AEP Ohio is following the legal requirements and protection associated with disconnection. And OCC overlooks the many assistance programs that are offered under the law and the Stipulation.

Despite raising concerns about disconnection rates and the assistance available to low-income customers, OCC confoundingly argues for elimination of the Neighbor-2-Neighbor program from the Energy Efficiency Rider suite of programs. Instead, OCC insists that the Commission require that AEP Ohio shareholders offer millions of dollars of bill assistance without any analysis or consideration of the impact that would have on AEP Ohio or its ability to serve its customers with safe and reliable service.

OCC argues that the Automaker Credit should not be continued as part of the ESP; rather it should be addressed under R.C. 4905.31. In so arguing, OCC ignores the nominal bill impact and the Commission precedent that has previously approved the Automaker Credit as a beneficial economic development tool over the very same objections raised by OCC.

Finally with respect to Prong Two, OCC takes issue with the Stipulation expressly committing AEP Ohio's capital riders to the cost of capital approved in the most recent base rate case, arguing that it is unreasonably excessive and should be no higher than 9.51%. OCC's own witness conceded that the Commission has refrained from recalculating rates of return in between rate cases or based upon current market conditions during an ESP. Further, OCC's own witness previously calculated an appropriate return to be nearly identical to the currently approved return on equity and acknowledges that AEP Ohio's current 9.7% return on equity is consistent with the average ROE awarded in a *distribution-only* electric utility case in the first quarter of 2023. It benefits customers and the public interest by merely continuing the status quo of applying a return on equity to AEP Ohio's capital riders based on the authorized rate approved as part of AEP Ohio's distribution rate case.

***Prong Three*: The Stipulation does not violate any important regulatory principles or practices**

The third prong asks whether the Stipulation package violates any important regulatory principle or practice. The supporting testimony demonstrates that the Stipulation does not violate any important regulatory principles or practices and none of the opposing testimony demonstrates otherwise. In reality, the Stipulation package actually advances Ohio energy policies reflected in R.C. 4928.02 and is consistent with established practices. Consequently, the Commission should find that the Stipulation satisfies the third prong of the three-part test without any modification.

Calpine and One Energy call into question the commitments related to the BTCR by relying upon testimony that was filed in response to the Company's as-filed ESP V without ever addressing the Stipulation's amendments to the BTCR or the three-prong test, which are addressed in AEP Ohio's Initial Brief. Nevertheless, Calpine argues that the BTCR should be bypassable, openly admitting that it disagrees with the Commission's decision in AEP Ohio's ESP III that originally established the BTCR in 2010. Moreover, Calpine fundamentally misunderstands the structure of the BTCR that makes competitive transmission services tied to generation supply bypassable. And classification of the BTCR as a non-bypassable wires charge is consistent with its statutory authority and case precedent as it is within the Commission's express statutory powers to determine whether services are competitive. There is no reason to reverse course in this proceeding especially in light of the substantial unknowns raised by AEP Ohio witness Kelso, which were not addressed by Calpine or One Energy who both failed to file testimony in response to the Stipulation.

Constellation argues for additional SSO reforms including provisions that support continuing jurisdiction for additional SSO reforms during the ESP term beyond the capacity proxy/pass-through proposal; recommending dismissal without prejudice of intervenors' additional SSO proposals outside of an ESP; and including standard boilerplate language that allows for a Signatory Party withdrawal from the Stipulation for material modifications made by the Commission. But the position that all SSO requirements be established inside of an ESP proceeding under R.C. 4928.141 or 4928.143 ignores precedent and the Stipulation's continuing jurisdiction provisions. Indeed, there are many proceedings outside of an ESP where the Commission makes significant and substantive decisions that define implementation of an ESP, especially where there is utility consent. Consistent with the ESP statute's EDU consent requirement, AEP Ohio has conveyed its consent to continuing jurisdiction to SSO/CBP changes and agrees to waive its right to withdraw under the ESP statute provided that such modifications apply only during the ESP term, allowing or timely and adequate cost recovery along with a reasonable time to implement the modification. Constellation also overlooks the various other dockets that the Commission has already opened to review the SSO. Constellation's overall argument is simply an effort to make changes to the Stipulation without having to prove that the Stipulation fails the three-part test and creating a chilling effect on settlements.

OCC fails to demonstrate that the Smart Thermostat Demand Response program violates R.C. 4928.02(H) or (D). The Smart Thermostat Demand Response program offers benefits form the utility to its customers and is designed to be competitively neutral by allowing any CRES to sign up customers as well. This possibility further advances the demand response capabilities of AEP Ohio's distribution grid and ensures effective competition. The fact that smart thermostats are sold in other channels is irrelevant because there is no evidence that they include enrollment in a demand response program that gives AEP Ohio the ability to call demand response events to benefit the distribution grid. Finally, OCC's citation to Duke's voluntary energy efficiency portfolio, a matter that is still pending, is inapposite and has no bearing on the legality of the Smart Thermostat Demand Response program contained in the Stipulation.

OCC's confusing arguments that the Alternative Energy Rider ("AER") should not be permitted to continue until Staff completes an evaluation of the AER is nothing more than an improper attempt to collaterally address an unrelated docket as well as seeking relief that has already been granted. This has no bearing on whether the Stipulation, that simply continues the existence of the legally authorized AER, violates important regulatory principles.

Like OCC's arguments under the second prong, OCC's assertions that the Automaker Credit violates R.C. 4905.31 reiterates an argument that the Commission has already rejected in ESP IV when it initially created the Automaker Credit. It also overlooks the express language of

R.C. 4928.143 that allows such economic development provisions as part of an ESP. The Stipulation simply continues the Automaker Credit, which results in a nominal impact to customer bills of but a few cents per month.

OCC's argument that the Stipulation violates regulatory principles because it does not adopt a procedure to reduce disconnections has no legal justification and would ironically create a discriminatory paradigm where certain customers, that are otherwise indistinguishable from other customers, will be shielded from legally appropriate disconnection at the peril of increasing bad debt expense borne by the rest of the customer base. Furthermore, to support the argument, OCC relies upon evidence that is outdated, unverified, and not applicable to the AEP Ohio service territory. OCC concedes that AEP Ohio is following the disconnection requirements set forth in the Ohio Administrative Code and points to no legal requirement to depart from those requirements. Moreover, OCC overlooks the numerous protections and assistance that are afforded under various state and federal laws as well as the Stipulation.

The plug-in electric vehicle (PEV) tariffs adopted as part of the Stipulation do not violate any the generic regulatory principles that OCC admits are, at times, mutually exclusive to each other. OCC concedes that implementing rates designed to shift peak EV load, which is contained in the Stipulation, is a recognized regulatory principle. Perhaps even more importantly, OCC's argument is based upon a proposed solution that the Commission review PEV data and consider modifying the rate design – a misunderstanding that the Stipulation provides the very relief that OCC seeks via the creation of a new working group.

OCC also fails to establish that the contribution in aid of construction ("CIAC") commitments violate any important regulatory principles. Contrary to OCC's position, the commitments are part of a bargained for exchange that are germane to the matters asserted as part of the ESP V and do not prohibitively reduce the Commission's plenary powers to address its own rules related to CIAC. Moreover, there is no reliable or verified information to support OCC's argument that the CIAC provisions, which the Commission will have ample opportunity to review in a future rulemaking proceeding, will create a cross-subsidy amongst certain socioeconomic classes. OCC also overlooks the benefits of the CIAC provisions only applicable to "approved locations" that is designed to reduce and/or defer the need for additional distribution plant in service.

OCC attempts to renegotiate the phased-down IRP credits, arguing that they are not phasing down fast enough and somehow violates important regulatory principles merely because it differs from their viewpoint. But the stipulated IRP provisions balance the benefits to the distribution grid by encouraging large commercial users to curtail during times of need on the distribution grid, a benefit recognized by OCC's own witness.

Finally under Prong Three, OCC argues that the Stipulation violates important regulatory principles and practices by authroizing AEP Ohio to collect certain costs of a new CIS from consumers through its next distribution case or future rider. But the Stiuplation acknowledges that any cost recovery will first require that the CIS investment is *used and useful* and the associated costs are *prudently incurred* – the very protections OCC seeks. And OCC ignores that the ESP statute explicitly authorizes deferral provisions under R.C. 4928.143(B)(2)(d).

The Statutory MRO Test

The Commission must approve an ESP proposal if it finds that the ESP, "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 [an MRO authorized under] section 4928.142 of the Revised Code." This statute, R.C. 4928.143(C)(1), "'does not bind the commission to a strict price comparison. On the contrary, * * * the statute instructs the commission to consider "pricing and all other terms and conditions"' in evaluating whether the ESP is more favorable in the aggregate than an expected MRO." Thus, the Commission "must ensure that the * * * ESP as a total package is considered, including both a quantitative and qualitative analysis." "In conducting the [more favorable in the aggregate] test, the Commission will look at the relative price to be paid by SSO customers for generation service under both the proposed ESP and a hypothetical MRO, whether there are quantitative benefits to the ESP that would not exist in an MRO, and whether there are qualitative benefits to the ESP that would not exist in an MRO." AEP Ohio's Brief addresses these requirements in detail.

Only one opposing party, OCC, addresses whether the ESP is more favorable than the MRO and makes minimal effort to argue that the ESP is not more favorable, essentially just adopting OCC witness Buckley's original testimony in response to the as-filed ESP V that is no longer relevant or probative. OCC's insistence that the ESP creates $1.1 billion more in costs than an MRO are non-existent in the Buckley testimony on which OCC relies. OCC also tries to rely upon testimony that was filed in support of the original as-filed case that is relevant or probative of the Stipulation. OCC ignores the testimony of witness Mayhan who discussed the qualitative and quantitative benefits in the modified ESP under the Stipulation. And OCC's attempts to downplay the value of the ESP by asserting a quantitative analysis that has already been rejected by the Supreme Court. Similarly, OCC argues that the Commission should disregard the numerous qualitative benefits over an MRO because the qualitative benefits asserted in the ESP IV did not pan out – but OCC cites to no precedent to support that the current ESP should be measured by unverified evidence retroactively asserted in response to the prior

ESP. Finally, OCC's argument also ignores the plain text of R.C. 4928.143, which requires consideration of the ESP in the aggregate as set forth in the Stipulation package as a whole.

STANDARD OF REVIEW

AEP Ohio already set forth the appropriate Standard of Review for this case in its Initial Brief. (AEP Ohio Br. at 21-22.) As expected, opposing parties would like to brush aside the controlling standard and impose their own will on the Commission. OCC, Calpine and Constellation advance the same positions they did in response to the Application in this case (with Calpine not even bothering to submit Stipulation testimony). Merely repeating one's litigation position is not an appropriate basis for contesting a settlement. One Energy took a different approach and did not submit any testimony at either the Application or Stipulation phases of the proceeding – holding back on stating any of its positions until the post-hearing briefing stage, merely to piggyback onto Calpine's positions.

As the record shows, no opposing party challenged Prong One of the test or established that the Stipulation fails Prong Two (package does not benefit customers and the public interest) or fails Prong Three (violates an important regulatory principle or practice). Rather, the opposing parties merely substitute their judgment for the Signatory Parties in fashioning their own recommendations for resolving the issues presented in this case.

Constellation is brazenly open in disregarding the three-part test standard of review and suggesting the Commission can and should adopt proposals to amend the Stipulation merely because they are beneficial and without regard to the three-part test. (Constellation Br. at 35-38.) The bulk of Constellation's brief is spent arguing that its own ideas have some level of benefit and abstractly qualify as good ideas – as if this was a fully litigated case and no Stipulation existed. (*Id*. at 15-35.) Only 7 pages of Constellation's 40-page brief are spent addressing the three-part test. (*Id*. at 7-14.) The three-part test is not merely a Commission precedent or practice but is a well-established standard endorsed by the Supreme Court of Ohio. *See e.g*., *Consumers' Counsel v. Pub. Util. Comm.,* 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992); *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978); *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, 950 N.E.2d 164. In reality, Constellation knows that its arguments do not pass muster under the three-part test and, therefore, wants to bypass the controlling standard.

Contrary to Constellation's approach, the second part of the three-part 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. *In re The Dayton Power and Light Company dba AES Ohio,* Case No. 22-900-EL-SSO, et al. Opinion and Order (Aug. 9, 2023) (*"DP&L ESP IV")* citing *In re Columbia Gas of Ohio, Inc*., Case No. 21-637-GA-AIR (DP&L ESP), et al. Opinion and Order (Jan. 26, 2023) at ¶ 170, citing *In re Ohio Power Co*., Case No. 20-585-EL-AIR, Opinion and Order (Nov. 17, 2021) at ¶ 151; *In re The East Ohio Gas Co. dba Dominion Energy Ohio,* Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) at ¶ 73 and *In re Duke Energy Ohio, Inc., Case No. 19-791-GA-ALT,* Opinion and Order (Apr. 21, 2021) at ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *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. The "as a package" language means that the Commission looks at stipulations holistically to determine that a settlement package either does or does not benefit customers and the public interest; if it does not or an important regulatory principle is violated, modifications are made in order to remedy any such flaws. It is particularly true with Constellation's proposed modifications – all of which relate to the SSO process – that the Commission need not make changes in this docket since the Stipulation affirmatively and legally facilitates continuing jurisdiction over SSO CBP issues in other dockets. (Jt. Ex. 1 at ¶ III.B.2.) Accordingly, AEP Ohio respectfully requests the Commission approve the Stipulation without modification, since any unilateral change could lead to the unraveling of the settlement.

ARGUMENT

I. The Stipulation satisfies the three-part test for evaluation of contested settlements.

A. *Prong One*: The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Stipulation here easily satisfies the standard that it must be a "a product of serious bargaining among capable, knowledgeable parties." *In re Columbus S. Power Co.* at 21. Indeed, none of the opposing parties submitted any testimony or other evidence contesting that the first prong is met. Nor did they raise any such arguments in their initial briefs. In short, the Stipulation was clearly the product of serious bargaining among capable, knowledgeable parties (including opposing parties). Thus, the Commission should find based on the record that the first prong is met.

B. *Prong Two*: The Stipulation as a package benefits ratepayers and the public interest.

Regarding the second prong (Stipulation package benefits customers and the public interest). As set forth in AEP Ohio's Brief, the Stipulation affords countless benefits for customers and the public interest, none of which are overcome by the two parties that raised arguments in response to the second prong. OCC and Constellation, the only two parties to attack the second prong, largely limit their arguments to advancing their litigation positions on the as-filed ESP V application in a vacuum without considering the Stipulation as a package. As set forth below, none of the arguments raised by OCC or Constellation do anything to undermine that the record manifestly supports a finding that the Stipulation as a package benefits customers and the public interest.

1. The Stipulation package includes beneficial enhancements to the SSO auction process that should not be modified.

a. Constellation's superficial criticisms of the Stipulation's CBP provisions under Prong Two of the Three-Part Test miss the mark.

Constellation raises limited points under Prong Two of the test arguing in merely 3 pages of its 40-page brief that the Stipulation is not in the public interest based on two related allegations: (1) AEP Ohio has presented no CBP auction modifications to address the higher recent SSO prices even though it is "within its power to do so in this proceeding," and (2) the Commission should not adopt a Stipulation that fails to address increasing default service prices. (Constellation Br. at 12-14.) Neither of these reasons supports a conclusion that the Stipulation is not in the public interest. Both of Constellation's arguments under Prong Two should be rejected.

In support of the first point, Constellation attempts to use AEP Ohio's concern for SSO customers and addressing the recent market volatility and MOPR problems against the Stipulation. In this regard, Constellation makes a point of assigning personal blame for the result to AEP Ohio even though the Company cannot dictate or control the outcome of this case (*id*. at 12-13); but the Stipulation is the consensus of the majority of parties representing all type of interests, most notably in this regard with respect to CRES providers and auction suppliers. And Constellation is on record as opposing the Governmental Aggregation Standby Rider (GASR) that was offered by AEP Ohio as a specific remedy designed to address the additional SSO supplier risk associated with NOPEC default in 2022. (Tr. IV at 704-706.) So, it is disingenuous for Constellation to suggest that no effort or consideration was put into this case to address impacts of governmental aggregation. In any case, the GASR was withdrawn with prejudice as part of the Stipulation package.

In any case, the Stipulation, building incrementally on the already highly successful descending clock CBP auction format, incorporates a capacity pass-through solution to address recent developments and concerns with the capacity market. The actual capacity price will be substituted for the capacity proxy price and charged to SSO customers during the applicable PJM delivery year. Once the actual capacity price is known, AEP Ohio shall promptly calculate and post what the SSO auction clearing price would have been had the actual capacity price been known, and shall follow the same methodology as exists today for translating the SSO auction clearing price into the Generation Energy Rider and Generation Capacity Rider rate. The Company and the other CRES Signatory Parties (RESA, Direct and IGS), as well as the other Signatory Parties that represent customer interests (Staff, OPAE, CUB-Ohio OELC, OEG, OMAEG, *etc*.), all agree that there is no justification in this case to further modify the SSO CBP beyond the important provisions adopted in the Stipulation. Finally on this point, Constellation's position also ignores the fact that SSO Prices have settled down in recent months; it is public knowledge and the Commission can certainly take administrative notice of its own orders adopting lower SSO prices. *See e.g., In the Matter of the Procurement of Standard Service Offer Generation for the Customers of Ohio Power Company*, Case No. 23-1097-EL-UNC, November 30, 2023 Finding and Order (and cases cited therein).

Regarding Constellation's second allegation that the Stipulation does not address SSO price volatility, Constellation's position ignores that the capacity pass-through solution proposed in the Stipulation does reduce price volatility by eliminating the premium in SSO auction clearing prices for unknown capacity prices during the delivery period. Moreover, the Stipulation also "leaves the door open" for additional changes to the SSO CBP should the capacity solution need to be supplemented during the ESP term that will address pricing volatility. Through creation of a continuing jurisdiction framework where the Commission can monitor auction results and adopt any additional changes needed during the ESP term – provided only that such directives allow for timely and adequate cost recovery along with a reasonable time to implement the modification. (Jt. Ex. 1 at ¶ III.B.2.) The continuing jurisdiction framework is a significant and beneficial modification to AEP Ohio's CBP and applies throughout the ESP term. The Signatory Parties as a whole support the Stipulation's SSO provisions as being a balanced approach to addressing incremental reform to the CBP. In making this argument, Constellation also ignores the multiple SSO dockets being pursued by the Commission to address the same issues; indeed, the Commission recently put forth another directive to adopt the capacity pass-through solution outside of the pending ESP dockets. *See In the Matter of the Proposed Modifications to the Electric Distribution Utilities' Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, December 13, 2023 Finding and Order at ¶ 38 (adopting the Staff's capacity proxy rate proposal and directing EDUs to modify their SSO auction products accordingly).

In sum, the half-hearted effort devoted to this passing argument exposes the disingenuous nature of it. Constellation's credibility is lacking when it comes to proposals that impact SSO prices. Constellation witness Indukuri verified that Constellation is both a wholesale SSO auction supplier and a retail CRES provider in Ohio. (Tr. IV at 710-711.) Effectively, Constellation can doubly enhance its business model through recommendations that tend to increase SSO prices – through directly harvesting higher prices as an auction supplier and, since the SSO prices form the price-to-compare for shopping, indirectly yielding higher prices from shopping customers as well. Indeed, during cross examination, Constellation witness Indukuri disagreed that it is a benefit for customers to have competitive options including whether to go back to the SSO if that's more favorable than their CRES price. (Tr. IV at 723.) Even more illuminating, Constellation witness Indukuri admitted that he would still advance his recommendations even if they resulted in increased prices for residential customers. (Tr. IV at 775-776.)

b. The additional CBP criticisms offered by OCC and Constellation fail under Prong Two of the Three-Part Test and otherwise lack merit based on the record in this case.

As expected, OCC and Constellation also set forth arguments from their witnesses' testimony that advocate further modifications to the SSO/CBP. While OCC at least frames up its CBP arguments under Prong Two of the Three-Part Test (OCC Br. at 16-20), Constellation goes out of its way to avoid the Three-Part Test and sets forth a separate section of its brief that simply advocates its CBP litigation position as being in the public interest and beneficial to customers in order to substitute its judgment for that of the Signatory Parties in negotiating the Stipulation package. (Constellation Br. at 15-35.) In any case, these arguments were already fully addressed in AEP Ohio's Initial Brief and should be rejected. (*See* § I.B.3 of AEP Ohio Br. at 27-41, 93-99.)

OCC and Constellation propose segmenting auction products by customer class. As with Constellation witness Indukuri's pre-filed testimony, Constellation's brief argues that customer-segmented auction products will eliminate inter-class subsidies, help reverse the recent upward SSO pricing trend and mitigating supplier risks. (Constellation Br. at 27-35.) Similarly, OCC recites the arguments from OCC witness Wilson's pre-filed testimony that customer-segmented auction products will better match supplier risks and customer loads and presumably lower prices for residential customers. (OCC Br. at 16-18.) Neither OCC witness Wilson nor Constellation witness Indukuri supports their proposal with a principled analysis of data or other record evidence that it will benefit customers at this time. While the Commission may wish to entertain such a proposal if the SSO enhancements of the Stipulation should prove inadequate in the future, there is no need to do so at this time based on the record in this case – especially since the Stipulation already passes the three-part test without modification. AEP Ohio already fully addressed these points in detail as part of its Initial Brief, showing why each argument should be rejected as speculative and unnecessary. (*See* AEP Ohio Br. at 34-38.)

Constellation alone advocates establishing circuit breakers to limit auction supplier risk. (Constellation Br. at 20-27.) Constellation witness Indukuri alone recommends an SSO CBP modification to limit the volume/quantity of MWh supplied under a single tranche, beyond which there would be a spot market price paid non-shopping customers to purchase the actual quantity needed to supply SSO load. (Constellation Ex. 2 at 19-21.) But as already demonstrated in AEP Ohio's Initial Brief, Constellation's proposed mechanism would obscure the price-to-compare by shifting the risk of price increases away from SSO suppliers to non-shopping customers based on volatile market prices at the very time when the SSO would serve the most value to non-shopping customers (*i.e.*, when market prices go up and shopping customers migrate to the SSO safety net). (AEP Ohio Br. at 39-41.) While the Commission may wish to entertain such a proposal if the SSO enhancements of the Stipulation should prove inadequate in the future, there is no need to do so at this time based on the record in this case – especially since the Stipulation already passes the three-part test without modification.

Finally with respect to the CBP, OCC also asks the Commission to "provide some guidance on how the proxy price will be set" using an approach of "erring on the high side" to reduce the likelihood of an upward true-up later. (OCC Ex. 2 at 10; OCC Br. at 18-20.) Erring on the high side in setting a proxy price is a bad idea as it would artificially inflate the price-to-compare, intentionally distort the competitive market and cause uneconomic shopping. In any case, AEP Ohio already addressed this faulty recommendation of OCC and explained why it should be denied in its Initial Brief. (AEP Ohio Br. at 31-32.)

c. OCC's Prong Two challenge regarding the PIPP SSO issues also lacks merit.

OCC argues that the Stipulation fails to benefit consumers because it does not address an issue that has previously been addressed by the Ohio Revised Code and in numerous prior Commission decisions where OCC has raised its concerns about the PIPP generation auction results. OCC attempts to control the competitive SSO and PIPP auction generation market, over which it concedes that AEP Ohio has no control (Tr. II at 284), by arguing that the PIPP generation rate must be at or below the SSO rate; otherwise, it should default to the SSO rate. (OCC Brief at 33.) Far be it for OCC to refrain from raising its concerns about the competitive auction to acquire the PIPP load in a proceeding before the Commission as it has already done on numerous other occasions. The ESP statute, however, contains no references to PIPP or the USF. Indeed, there is a separate statutory structure that governs PIPP, including how generation is to be acquired for that segment of customers. Thus, OCC's challenge should be rejected as it is logically incomprehensible that the Stipulation does not benefit the public interest by failing to address an issue that is outside the scope of the ESP and irrelevant to the consideration of this Stipulation.

Not only is this matter utterly unrelated to the ESP statute, it is something that has been addressed *ad nauseum*. For sake of the record, however, AEP Ohio will re-tread this ground once again. The process for acquiring generation to serve the PIPP SSO load was a process established over six years ago. R.C. 4928.54, which was newly amended at the time, requires the Ohio Department of Development ("ODOD") to aggregate PIPP customers "for the purpose of establishing a competitive procurement process for the supply of competitive retail electric service for those customers." Upon written request by the director of ODOD, the Revised Code also provides that the "public utilities commission shall design, manage, and supervise the competitive procurement process required by section 4928.54 of the Revised Code." R.C. 4928.544(A). Upon receiving such request from ODOD, the Commission opened a docket to establish a process and invited two rounds of comments from all stakeholders, including OCC and the electric distribution utilities. *In Re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order at ¶¶ 3, 5 (Mar. 2, 2016) ("*16-247 Order*").

The Commission issued an Opinion and Order adopting a modified version of the Second Staff Recommendation for securing PIPP SSO load. Pursuant to that Opinion and Order, electric distribution utilities ("EDUs") are to conduct a competitive RFP process whereby every registered CRES may submit a bid to provide generation to the entire PIPP SSO load for a twelve-month period at a price lower than the SSO auction. *Id.* at ¶ 7. In the event there are no qualifying RFP bids, then the distribution utilities are directed to conduct a supplemental auction to secure generation for the PIPP SSO load at the best available price. *Id.* The Commission acknowledged that "[w]hile this may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the

PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542." *Id.*

The appropriate mechanism for taking issue with a Commission decision would have been to file an application for rehearing "set[ting] forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." R.C. 4903.10(A). But an application for rehearing must be filed within thirty days of the entry of the respective Order. R.C. 4903.10(B). OCC did not file an application for rehearing challenging the *16-247 Order*. Thus, OCC's arguments on this matter are nothing more than yet another improper collateral attack via an untimely application for rehearing on the Commission's *16-247 Order*. Furthermore, OCC's argument is barred by the doctrines of res judicata and collateral estoppel that have been routinely briefed in prior cases.

OCC has raised this exact same argument on at least five other occasions in dockets where AEP Ohio was a party, which were duly rejected by the Commission. Below is a summary of each of those attempts and the Commission's resolution:

- Case No. 22-556-EL-USF – October 5, 2022 Opinion and Order –finding that OCC's objections to the USF rate design was an "untimely and impermissible collateral attack on the PIPP RFP Case and the electric distribution utilities' ("EDUs") RFP PIPP auction cases which the Commission will not entertain."
- Case No. 22-556-EL-USF – OCC's November 4, 2022 Application for Rehearing – denied by operation of law because the Commission did not grant or deny such application for rehearing within thirty days from the date of filing thereof. *See* R.C. 4903.10
- Case No. 22-556-EL-USF – December 14, 2022 Opinion and Order – finding that the USF rates have been determined in compliance with the 2022 NOI Order and that the Commission considered but rejected OCC's claims raised in the NOI phase of the USF case.
- Case No. 22-556-EL-USF – OCC's January 13, 2023 Application for Rehearing – denied by operation of law because the Commission did not grant or deny such application for rehearing within thirty days from the date of filing thereof.

- Case No. 17-2391-EL-UNC – OCC's December 2, 2022 Application for Rehearing – denied by operation of law because the Commission did not grant or deny such application for rehearing within thirty days from the date of filing thereof

Moreover, OCC's suggested solution of allowing the PIPP rate to default to the SSO rates if the competitive process does not result in a lower rate for any given specific year does not account for numerous legal and logistical questions and concerns. Do the SSO contracts permit adding the PIPP load to the already completed SSO auction? If so, wont this add additional risk to SSO bidders, thereby increasing SSO cost for all customers? If there is no guarantee that the PIPP auction bidders will serve the PIPP load (because it may default back to the SSO suppliers), won't auction bidders have to bid increased risk premium thereby resulting in a self-fulfilling prophecy? Moreover, in its initial Order creating the PIPP SSO auction process, the Commission acknowledged that the process "may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542(B)." *In Re the Application of The Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF, Opinion and Order at ¶ 41 (Oct. 5, 2022), quoting *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order at 5 (Mar. 2, 2016).

OCC does not contest that AEP Ohio has followed the PIPP auction process set forth in the 16-247-Order. (Tr. II at 280.) And OCC recognizes that the PIPP rate of $0.07216/kWh for this current year is dramatically lower than the SSO rate of $0.10589/kWh. (Tr. II at 283-284.) For these many reasons, the Commission should uphold its many prior decisions and reject OCC's argument accordingly.

2. The proposed low-income programs in the Company's Energy Efficiency Plan benefit customers and the public interest.

OCC argues that the Energy Efficiency Rider plan does not benefit the public interest, first taking issue with the 10% administrative fee set forth in Section III.L.39. of the Stipulation that is based upon a complete misunderstanding of the Stipulation. Specifically, OCC's witness incorrectly believes that the 10% administrative fee is to be awarded to whatever party wins the request for proposal to administer the e3Smart and HELP programs. (OCC Ex. 5 at 5; OCC Brief at 12). As clarified in the Company's Initial Brief (see AEP Ohio Brief at 60), however, the 10% administrative fee will go to AEP Ohio not the program administrator that wins the competitive bid. As a benefit to the public interest, the Stipulation caps the administrative fee for AEP Ohio at the lowest threshold from the Company's Application (10%), which reduces the amount that customers would otherwise pay in total for the Energy Efficiency Rider program. (Tr. III at 501- 502.) OCC's other arguments, such as the program administrator competitive bidding process lacking oversight and transparency such that it will not get the best value (OCC Brief at 12), are built upon this false premise that the 10% administrative fee is for the program administrator. Accordingly, OCC's arguments, as well as its recommended criteria for the competitive bidding process, fall like a house of cards.

OCC also asserts that the Stipulation falls short because, despite Staff's plenary ability to review any PUCO filings as well as an express reference to Staff's right to evaluate the programs through an independent auditor (Jt. Ex. 1 at III.L.39.), it does not mandate the robust (and likely costly) additional audit described by OCC witness Shutrump. (OCC Brief at 13-15.) To be clear, OCC proposes that the additional mandatory review should be charged to customers through the Energy Efficiency Rider. (OCC Ex. 5 at 8; OCC Brief at 13). As discussed in Section 10 of AEP Ohio's Brief (AEP Ohio Brief at 61-62), OCC has not analyzed the costs, (Tr.

III at 510-511), or identified any additional benefits that will be acquired as a result of this additional audit let alone benefits that will outweigh the blank check for the audit that is to be paid for by customers. Afterall, the stipulated energy efficiency program is significantly trimmed down from the as filed version, focused nearly exclusively on traditional low-income programs. (Tr. II at 481-482.)

At the root of OCC's misguided arguments and requests, appears to be a desire to find ways to streamline administrative and operational costs and leverage funding sources to maximize the value of the programs. (OCC Brief at 14.) That is exactly what AEP Ohio seeks to do, despite OCC's inflammatory and unfounded rhetoric that AEP Ohio "do not evaluate programs to determine recommendations on general guidelines that either protect consumer funding or lower administrative costs." (OCC Brief at 13.) Indeed, AEP Ohio is acutely aware of customer bill impacts, which were a paramount consideration in arriving at this settlement that results in reasonable bill impacts by reducing expected earnings while maintaining cash flows to make investments in the distribution system. (AEP Ohio Ex. 2 at 19-20.) To that end, AEP Ohio capped its administrative fee at the lowest proposed threshold and withdrew its requirement to recover lost distribution revenues. (Joint Ex. 1 at III.L.39. & 41.) Moreover, AEP Ohio has over a decade of experience successfully running low-income programs like the HELP program, (Tr. II at 511-512.), which included maximizing the cost-benefit value of such programs. And no party is prohibited from filing comments or otherwise requesting a hearing in response to any Staff or third-party auditor findings. (See OCC Brief at 15.)

Finally, OCC seeks an amendment of the stipulated Energy Efficiency Rider programs removing the commitment of $400,000 for the Neighbor-2-Neighbor program. (OCC Brief at 15.) It is worth noting that OCC is hypocritically arguing to reduce customer-funded bill assistance while simultaneously advocating for a customer-funded additional audit of the programs that has no demonstrable or quantifiable benefits. Instead, OCC advocates for the Company to fund the Neighbor-to-Neighbor program with shareholder funding, which should be denied as further discussed in Section II.B.7. To support this recommendation, OCC cites to an inapposite decision ruling on a settlement from a gas utility. In that case the Commission found that Columbia Gas' commitment was part of a comprehensive settlement package. Moreover, finding that Columbia's commitment of shareholder funding for a bill assistance program as part of a larger package benefits the public interest does not correspondingly mean that customer funding of a bill assistance program like the Neighbor-to-Neighbor program fails to benefit the public interest. To the contrary, the Neighbor-to-Neighbor program provides bill assistance to those at or below 200% of the poverty level. (Tr. III at 514.) This helps protect those customers that OCC witness Shutrump agreed at at-risk (Tr. III at 514.), which satisfies one of the express state policies. *See* R.C. 4928.02(L). It would be misguided and inappropriate to start haphazardly converting provisions of a widely supported stipulation to shareholder funding; especially, without any consideration or analysis of the impact on the Company's ability to maintain safe and reliable service.

Irrespective of OCC's attempt to affect changes to the Stipulation through litigation rather than negotiation, it is uncontested that the Energy Efficiency Rider programs benefit the public interest as admitted by OCC witness Shutrump. (Tr. III at 484). As such the Commission should approve the Energy Efficiency Rider program commitments set forth in Section III.L of the Stipulation as part of the total negotiated package.

3. The DIR, with its built-in caps, balances reliability and affordability and benefits customers and the public interest.

OCC argues that the stipulated DIR amounts will create "rate shock" for customers such that the rate caps should be held close to the currently approved DIR revenue caps. (OCC Brief at 21.) As set forth in the testimony of Company witness Mayhan, however, the stipulated DIR caps will result in a total average monthly rate impact of $1.12 (AEP Ohio Ex. 2 at 20), which can hardly be characterized as rate shock. Moreover, there is no indication that OCC witness Williams conducted an analysis on whether the current DIR level would be sufficient of the Company to maintain, let alone improve, its reliability metrics about which witness Williams complains. Afterall, the current DIR caps were adopted under a 3-4% growth rate – a concept that was established over ten years ago. Not only did OCC witness Williams fail to consider such a growth percentage, but he also agreed that there has been subsequent inflation. (Tr. II at 406-407.) And OCC witness Williams was unaware of whether upgrades or expansion for new load qualified under the DIR (Tr. II at 387) – a pivotal omission for a witness opining on the DIR caps when it is known that the Company has spent beyond its current caps (Tr. II at 411) and that there is growth within the service territory over the past ten years. (Tr. II at 222.)

Nevertheless, OCC makes the argument that AEP Ohio has an unqualified "require[ment] to provide adequate and reliable service regardless of the level of the DIR revenue caps" (OCC Br. at 22), ignoring the fact that an ESP may contain "single issue ratemaking . . . regarding distribution infrastructure and modernization incentives for the electric distribution utility." R.C. 4928.143(B)(2)(h). OCC would rather see AEP Ohio invest funds at a loss than see bills raise.

OCC also argues that the Stipulation does not benefit the public interest because it permits the Company to collect the DIR revenue caps "regardless of whether any improvement is made in reliability or even if AEP fails to meet its minimum PUCO reliability standards." (OCC Brief at 22). OCC further cites to a separate pending action where AEP Ohio has requested to update its current reliability metrics of CAIDI and SAIFI. (OCC Brief at 22-23.) As discussed in AEP Ohio's Initial Brief, however, it is only logical to presume that the DIR spending levels in the Stipulation will be considered and reflected in the outcome of the 20-1111 case. Even OCC witness Williams conceded that a refresher would be necessary. (Tr. II at 391.) While OCC may have liked to see DIR caps tied to reliability performances as it has been in previously settlements, OCC has not cited any example where the Commission ordered that result outside of a utility-supported settlement nor should this case serve as the exception. OCC attempts to mischaracterize the Commission's recent decisions in AES Ohio and Duke Energy Ohio cases, claiming that the Commission "prescribed" certain reliability improvements to collect their fully authorized DIR-equivalent rider caps. (OCC Brief at 23-24, citing *In the Matter of the Duke Energy Ohio, Inc. for Authority to Establish a Standards Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 17-1263-EL-SSO, Opinion and Order at 39 (Dec. 19, 2018); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 21-887-EL-AIR, Opinion and Order at 21 (Dec. 14, 2022); *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, Opinion and Order at 26 (Aug. 9, 2023).) OCC neglects to mention that in all three of those cases the Commission was simply approving commitments that the two respective utilities agreed to as part of a comprehensive stipulation package – it was not, as OCC attempts to suggest, that the Commission unilaterally "prescribed" that the revenue caps be conditioned on certain reliability performance. Nor should the Commission choose to do so for the first time in this case. Instead, the Commission should allow the reliability metrics case to proceed to its rightful conclusion as the appropriate avenue to address AEP Ohio's reliability metrics going forward.

As such, the Commission should reject OCC's arguments and approve the DIR as stipulated, which allows the Company to proactively invest in reliability, grid resilience to address aging infrastructure, and providing service to AEP Ohio's growing service territory, which benefits the public interest. (AEP Ohio Ex. 2 at 21-22.)

4. The ESRR, along with its caps, allows AEP Ohio to continue addressing one of the greatest threats to reliability in a moderate and balanced manner and benefits customers and the public interest.

In response to the ESRR, OCC raises the same three arguments that AEP Ohio already addressed in its Initial Brief – (1) the danger tree program was intended to end in 2023 and there is no justification for the increased ESRR expense in this case, (2) the Company has not included an updated vegetation management plan, and (3) the Stipulation has no required reliability improvements associated with vegetation spending. (OCC Brief at 24-25.) (*See* AEP Ohio Brief at 48-51.) As set forth in AEP Ohio's Initial Brief, OCC misleadingly ignores that the Commission order approving the rate case Stipulation specifically considered AEP Ohio taking prudent actions to address danger trees after 2023, including additional investment. (AEP Ohio Brief at 49.) Moreover, providing an updated vegetation plan as part of the Stipulation does nothing to undermine the benefits of vegetation management and ignores the annual requirement under Ohio Adm. Code 4901:1-10-26(B) to file an annual system improvement plan that includes vegetation management. (AEP Ohio Brief at 50.) Finally, projections of reliability impacts are not necessary to justify the ESRR spend as many factors outside of vegetation management can impact reliability and the Commission has never previously required such metrics to approve a vegetation management rider. (AEP Ohio Brief at 50.) Afterall, OCC witness Williams conceded that vegetation work is beneficial. (Tr. II at 394-395.)

Additionally, OCC nonsensically argues that the Stipulation does not benefit the public interest because it does not include a provision "requir[ing] AEP [Ohio] to examine the impact of including all tree-trimming expenses in the test year for the distribution rate case that it is required to file by June 1, 2026." Such a requirement, however, is unnecessary seeing as a distribution rate case requires a full look at the Company's operation and maintenance expenses in its test year, which will necessarily include tree-trimming.

The ESRR as Stipulated provides a streamlined regulatory approach that promotes rate gradualism and certainty to customers allowing AEP Ohio to proactively support reliability and reduce outages caused by vegetation from both inside and outside of the right-of-way. (AEP Ohio Ex. 2 at 16-17, 21-22.) Thus, the Commission should find that it benefits the public interest and duly reject OCC's arguments to the contrary.

5. The various settlement commitments that are designed to be recovered through the gridSMART rider, with limitations on the amount that can be added to the rider, provide numerous public benefits to customers and the public.

OCC misleadingly argues that some of the new programs that will be recovered through the gridSMART rider will "***essentially*** issue AEP a blank check" allowing the Company to have "***near*** 'cart blanche'" to charge customers. (OCC at p. 26) (emphasis added). OCC's hedging language of "essentially" and "near," however, indicates the consternation in the argument. Many of the costs to which OCC has cited as the basis for the argument are expressly capped by the Stipulation. For instance, the only remaining portion of the ETP plan – education, outreach and analytical costs associated with EVSE installation requests and tariff provisions – is expressly capped at no more than $300,000 annually. (Jt. Ex. 1 at III.F.9.) Similarly, the Smart

Thermostat Demand Response program contains "an annual cap of $5,000,000 for the term of the ESP." (Jt. Ex. 1 at III.I.34.) While the ADMS does not have a specific cap, the Application controls, and the Application estimated the ADMS at approximately $25.5 million. Nevertheless, the Stipulation does ensure that there will be no double-recovery, ergo, the Company will only be entitled to recover prudent investment that is use and useful, (Jt. Ex. 1 at III.I.30.), which is no different than what would happen in a rate case. OCC also points to the commitment to explore a "heat map," but there is no express commitment to actually implement and incur costs associated with the heat map. To the contrary, the Company is first required to conduct an analysis and evaluation, which will be shared with the PEV rate design group." (Jt. Ex. 1 at III.F.11.) The Company expressly acknowledged the need to make a "filing under the gridSMART Rider for implementation and cost recovery" of the heat map. (Jt. Ex. 1 at III.F.11.)

OCC further cites to language from the gridSMART Phase 3 stipulation in a non-sensical application of Commission precedent. Specifically, OCC appears to take the position that the gridSMART Phase 3 Stipulation caps are applicable to any future technologies, investments, or expenses, including those that are set forth in the ESP V Stipulation. (OCC Brief at 26.) But the gridSMART Phase 3 caps on capital cost and O&M expense were "for the technology being implemented under the Phase 3 Stipulation." *In Re the Application of Ohio Power Company to Initiate Phase 3 of its gridSMART Project*, Case No. 19-1475-EL-RDR, Opinion and Order at ¶ 23 (Dec. 1, 2021) ("*gridSMART Phase 3 Order*"). This is not applicable to future gridSMART investments. Indeed, the gridSMART Phase 3 Stipulation itself contemplates recovery of additional investments and expenses approved through future filings such as the DACR Phase 3. *gridSMART Phase 3 Order* at ¶ 24. Witness Williams even admitted that "in each ESP proceeding there's an opportunity to create or modify riders and other alternative regulation mechanisms for the Company." (Tr. II at 399.) The gridSMART Phase 3 Stipulation that was signed by OCC, also includes a provision that prohibits the terms being cited as a precedent in any future proceeding for or against any Signatory Party. *In Re the Application of Ohio Power Company to Initiate its gridSMART Phase 3 Project*, Case No. 19-1475-EL-RDR, Joint Stipulation and Recommendation at 13 (Oct. 27, 2021). Moreover, by OCC's logic, rates are never permitted to be changed by subsequent Commission rulings, which makes little sense in the regulatory world. In fact, such a conclusion would harm customers as rates would stay the same even if the cost justification reduces. OCC's argument is contrary to Commission precedent and Ohio law such that it should be duly rejected.

OCC generically asserts that "AEP Ohio has failed to provide any evidence that it would be beneficial for consumers or in the public interest for the ADMS, ETP, and Smart Thermostat Rebate Program." (OCC Brief at 27.) As an initial matter, these are all parts of a larger comprehensive settlement that benefits customers in its totality. (AEP Ohio Ex. 2 at 22-24; Staff Ex. 1 at 5.) Nevertheless, the record reflects the benefits associated with each of these projects. The Company's Application, which is adopted unless otherwise amended by the Stipulation (Joint Ex. 1 at 3), explains the benefits and needs for the ADMS, including but not limited to the current vendor sunsetting the Outage Management System, and Distribution Management System. (AEP Ohio Ex. 1 at 15.) The ETP has been significantly reduced to simply $300,000, which will be used for "education, outreach, and analytical costs associated with the EVSE installation requests and tariff provisions." (Joint Ex. 1 at III.F.10.) This includes costs for the "table top" review and consideration of a capacity "heat map" "that might help facilitate the development of distributed energy resources, and offering time-of-use rates that encourage customers to charge electric vehicles during off-peak periods for the benefit of the grid." (Staff

Ex. 1 at 8; see also, AEP Ohio Ex. 2 at 23.) With respect to the Smart Thermostat Demand Response program, AEP Ohio witness Mayhan testified that the "program will help to lower coincident peaks and stress on AEP Ohio's delivery networks, which can lower costs for all customers." (AEP Ohio Ex. 2 at 18.) Similarly, Staff witness Healey agreed that the Smart Thermostat Demand Response program "giv[es] AEP Ohio a tool that can aid in improving grid reliability, for the benefit of all customers." (Staff Ex. 1 at 10.) Specifically, the program will "allow[] the Company to call on customers to curtail load during times of high demand, and usually higher cost, as well as incentivizing peak load shifting in order to put less stress on the distribution grid and avoid potential outages to other customers. These programs can be powerful tools to avoid more widespread customer outages and reduce system costs." (AEP Ohio Ex. 2 at 23.) Thus, the record is replete with support for each of the respective components that will be recovered through the gridSMART rider.

6. The Stipulation package reflects an affordable plan that results in a nominal increase that allows investment in the system to maintain reliability and therefore benefits customers and the public interest.

OCC argues that the Stipulation does not benefit consumers or the public interest because it does not address affordability of bills or the rate of disconnection for AEP Ohio customers. (OCC Brief at 27-30.) To the contrary, however, affordability is at the forefront of the Stipulation, yielding nominal increases to customer bills of less than 1% year-over-year, which are further discussed in AEP Ohio's Initial Brief (AEP Ohio Brief at p. 77) and the testimony of AEP Ohio witness Mayhan (AEP Ohio Ex. 2 at 20-21.) OCC's witness Tinkham however, did not conduct his own bill impact study nor does he contest AEP Ohio witness Mayhan's bill impacts. (Tr. II at 211, 214.) Despite not having talked to any customers that were disconnected, conducting any studies on why AEP Ohio customers are not able to pay their electric bills, or having insight into the personal finances of any of AEP Ohio's 1.3 million residential customers, (Tr. II 205-207) OCC cites OCC witness Tinkham as an authority on whether AEP Ohio's customers can afford the bill impacts associated with the Stipulation. (OCC Brief at 27-28.) Moreover, OCC and its witness Tinkham overlook the various portions of the Stipulation that provide support to the very customers over which it is concerned, such as the Neighbor-2-Neighbor and HELP programs. In an ironic twist, OCC attempts to undermine the some of these specific portions of the Stipulation while proposing to add various other costs to the Stipulation package. (*See infra*.)

OCC goes on to raise concerns about the current disconnection rates of AEP Ohio's residential customers without any true nexus to how they are related to this ESP V other than a generic statement that the Stipulation does not benefit the public interest because it fails to address AEP Ohio's disconnections. (OCC Brief at 30.) It can be assumed that OCC raises the disconnection concerns in this section to support its nondescript, and discriminatory proposal to reduce disconnections raised later in its Brief. Despite a lack of clarity over the purpose of OCC's disconnection discussion, OCC's arguments lack important accuracy and context.

For instance, OCC argues that AEP Ohio's disconnection rates are "increasing at an alarming rate" citing to disconnection rates over the past 2 years as reported in the Company's Annual Report of Service Disconnections for Non-Payment. (OCC Brief at 28.) But OCC concedes that a dramatic increase in the standard service offer coincided with this very timeframe. OCC recognizes that the SSO has increased from 4.355 to 6.622 to 10.977 over the past three years – an increase of over 250%. (OCC Brief at 28, citing Case No. 22-482-EL-RDR and Case No. 22-486-EL-RDR). OCC further recognizes that AEP Ohio has no control over the competitive auction and makes no money from the associated generation. (Tr. II at 384-386).

And while there were extenuating circumstances that took place during the 2022 auction period, the SSO has otherwise served as an incredibly successful tool that has benefitted customers. To that end, the competitive auctions have subsequently plummeted. *See, In Re the Procurement of Standard Service Offer Generation for the Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC, Opinion and Order at ¶ 7 (Mar. 29, 2023); *In Re the Procurement of Standard Service Offer Generation for the Customers of Ohio Power Company*, Case No. 23-1097-EL-UNC, Opinion and Order at ¶ 8 (Nov. 30, 2023). In fact, the Stipulation retains the very successful descending clock auction to source the SSO that is part of a package that includes additional tweaks to the competitive process designed to produce more stable SSO generation rates and reduce volatility. (Joint Ex. 1 at III.B; AEP Ohio Ex. 2 at 5, 21.)

OCC also suggests that based upon the Annual Service Disconnection reports that approximately 18,820 customers were never reconnected (OCC Brief at 29), which overlooks a few obvious points. First, the annual disconnect report, as suggested in its title, looks at a snapshot of only that year. It does not account for customers that were disconnected between June 1, 2022 through May 31, 2023 that could have been reconnected beginning June 1, 2023. Second, AEP Ohio's reporting of disconnections includes each disconnection even if multiple times for one customer, while the reconnections only report the individual customers. (Tr. II at 225.) Third, OCC disregards real life circumstances where such customers leave the service territory or choose to have service taken out of their name when facing the threat of disconnection. OCC witness Tinkham admitted that he had not considered the specific reasons that customers did not pay their electric bills resulting in disconnection, which could have been the result of other rising costs such as gas and groceries. (Tr. II at 206-208). Finally, OCC witness Tinkham conceded that AMI, which is substantially rolled out in the AEP Ohio territory, allows the Company to reconnect customers faster than when involving a meter technician and had no reason to contest that reconnection could be done in a matter of minutes. (Tr. II at 230.)

OCC also points to OCC witness Tinkham's analytical comparison to other EDUs as a reason that the Commission should not approve the settlement. (OCC Brief at 29.) As discussed in AEP Ohio's Brief, however, OCC witness Tinkham's analysis of a small sample size without important context is woefully inadequate and incomplete thereby overlooking key obvious circumstantial explanations. (AEP Ohio Brief at 78.) Notably, OCC witness Tinkham was not involved with the preparation of the other EDUs' disconnection reports, does not know if they are reported consistently, and is not aware of socioeconomic differences between the EDUs. (Tr. II at 218, 223-26).

A nominal increase of less than 1% each year of the ESP for distribution rates is not to blame for increased costs or potential disconnections. Additionally, the Stipulation contains numerous forms of assistance to compliment a suite of assistance programs that already exist in the law, administrative code, and Commission decisions. As such the Commission should reject OCC's barren argument that "failure to address disconnections" means the Stipulation does not benefit the public interest.

7. The Neighbor-2-Neighbor program benefits low-income customers and the public interest.

The Neighbor-to-Neighbor program provides a benefit to all customers by providing bill assistance to at-risk customers that are below 200% of the federal poverty level, which will be funded by the annual $400,000 amount set forth in the Stipulation as well as by further leveraging customer donations that are matched by AEP Ohio's shareholder funds. (AEP Ohio Ex. 2 at 12; Tr. III at 514, 518-519.) Despite this positive program to help those at-risk customers, OCC finds fault by talking out of both sides of its mouth – arguing on one side that the Neighbor-to-Neighbor program should not be charged to customers while arguing out of the other side that the assistance to at-risk customers should be increased exponentially as paid for by AEP Ohio's shareholders. (OCC Brief at 31). OCC, however, relies upon witness Tinkham who admitted that he did not do any analysis about whether the Company could make such funding commitments or what kind of impact that would have on AEP Ohio or its ability to serve its customers with safe and reliable service. (Tr. II at 275.) Indeed, OCC witness Tinkham appeared to suggest that the Commission demand such contribution from AEP Ohio's unregulated parent, demonstrating a profound misunderstanding that AEP Ohio is not the publicly traded Fortune 500 company. (Tr. II at 275.) OCC further alleges that the $400,000 will increase bills for PIPP customers. (OCC Brief at 31.) This is a red herring, however, because PIPP customers abiding by the rules of the program and making timely payments only pay a percentage of their income regardless of what their billed amount. Moreover, the $400,000 capped amount to be charged through the Energy Efficiency Rider will only result in $0.03 per month on a typical 1,000kWh bill;[1] hardly the burdensome increase that OCC attempts to depict.

It is uncontested that the Neighbor-2-Neighbor program benefits customers; thus, the Commission should approve it as part of the Stipulation as a package.

8. The Automaker Credit benefits the public interest.

The Stipulation, by adopting the Application unless otherwise addressed, continues the Automaker Credit economic development provision. Overlooking that it has previously been approved by the Commission over OCC's objection, OCC once again complains that residential customers should not be responsible for the Automaker Credit. (OCC Brief at 33-34.) But OCC provides no new evidence or reasoning other than customers are enduring increasing costs, so

---

[1] Calculated in the same manner as set forth in the Company's Application.

they should not bear the costs of the automaker credit. (Id.) Nor has OCC "argue[d] that the credit is unlikely to operate as intended, as a tool to encourage an automaker to locate or expand its manufacturing facilities in the state or to increase production and, thereby, retain jobs." *In Re 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* ("*ESP IV*"), Case No. 16-1852-EL-SSO, Opinion and Order at ¶ 153 (Apr. 25, 2018). OCC utterly ignores the fact that the Commission previously adopted the Automaker Credit[2] and has been existence since June 1, 2018. In previously approving the Automaker Credit in ESP IV, the Commission specifically took stock of the fact "the annual [$500,000] credit cap on the Automaker Credit balances the cost exposure to other customers."[3] The Automaker Credit as proposed in this case remains unchanged in this proceeding as proposed in the Company's application. (AEP Ohio Ex. 1. at 13-14). With a $500,000 cap, the Automaker Credit will result in a maximum monthly bill impact of $0.02 for the average residential customer using 1,000 kWh.[4] For these reasons, and the reason the Commission has previously approve the Automaker Credit, the Commission should find that it benefits the public interest.

9. The alignment of carrying costs for the capital riders with the rate set in the most recent base rate case provides certainty and stability for the Company and customers alike.

The Joint Stipulation states that "[t]he carrying charge for capital riders will reflect the cost of capital approved in the most recent base rate case." (Jt. Ex. 1, § III.D.7.) Back in June (*see* Tr.

---

[2] *ESP IV*, Opinion and Order at ¶ 102.

[3] *ESP IV*, Opinion and Order at ¶ 153.

[4] Calculating the Automaker Credit in the same way as set forth in Company's Application in this matter as well as the current Economic Development Rider filings that are filed semi-annually as set forth most recently in Case No. 23-793-EL-RDR.

III at 609:15–19), OCC witness Joseph Buckley filed testimony (*see* Tr. III at 608:4–8) in which he recommended that the Commission continue to recover its existing ROE. (Tr. III at 612:2-14, quoting AEP Ohio Exhibit 6, Response to Question 7.) Mr. Buckley further wrote that he did not believe the rate of return should be updated in this ESP because "[t]he current rate of return was approved less than two years ago" and "[t]he national averages for rates of return for distribution only electric companies (such as Ohio Power) have not fluctuated substantially during that timeframe." (Tr. III at 612:2–14.)

Nevertheless, OCC now argues that AEP Ohio's existing ROE is "unreasonably excessive"; that it "takes advantage of Ohio's consumers by forcing them to pay exorbitant profits to their utility"; and that a slightly lower rate of 9.51% should be adopted. (OCC Initial Br. at 3, 10.) The Commission should reject OCC's new position. As Mr. Buckley testified at hearing, it has been the Commission's practice not to recalculate rates of return in-between base rate cases for over 35 years. (*See* Tr. III at 643:11-19 and 644:7-10.) Under that policy, AEP Ohio would not recalculate its return on equity until at least 2026. OCC offers the Commission no reason to deviate from its policy now.

Mr. Buckley developed his alternative proposed ROE using the Discounted Cash Flow (DCF) method and the Capital Asset Pricing Model (CAPM). (Tr. III at 617:10-24.) The result of the DCF model is an ROE of 9.707% (*see* OCC Initial Br. at 6) – almost exactly the ROE that AEP Ohio is currently earning (*see* Tr. III at 616:15-19). What is more important, however, is that Mr. Buckley was attempting to recalculate an ROE for AEP Ohio based on current market conditions. (Tr. III at 620:11-15.) OCC cites nothing in the ESP statute, or in Commission precedent, that requires the Commission to choose a rate of return based on current market conditions in an ESP proceeding. And, as the Supreme Court of Ohio recently held, absent "any authority that requires the commission to adopt a rate of return based on current market conditions" in a particular case, its decision not to do so is neither unlawful nor unreasonable. *In re Application of E. Ohio Gas Co.*, Slip Opinion No. 2023-Ohio-3289, ¶ 32-33.

Regardless, there has been no change in circumstances that would justify a recalculation of AEP Ohio's ROE in-between rate cases. According to Attachment JPB-02 to Mr. Buckley's testimony, 9.71% is the average ROE awarded for *all* electric utilities in the first quarter of 2023. (Tr. III at 636:24-637:11.) And 9.70% – an almost identical rate – is the average ROE awarded in a *distribution-only* electric utility case in the first quarter of 2023 (based on 1 observation). (Tr. III at 642:17-643:5.) Thus, based on Mr. Buckley's own testimony, AEP Ohio's current ROE is consistent with the average ROE earned by other electric utilities in 2023. Additionally, AEP Ohio's credit rating from S&P – a measure of the Company's risk, according to OCC (*see* OCC Initial Br. at 5) – has not changed since April 2021. (Tr. III at 628:7-12.) And while Mr. Buckley opined that AEP Ohio "has become less risky based on the Stipulation and the guaranteed returns of the riders in that Stipulation" (Tr. III at 628:18-20), the two capital riders at issue in this case already exist – and, under the Joint Stipulation, would be continuing with the same guaranteed ROE they currently have (*id.* at 629:8-15).

In short, nothing in the Joint Stipulation would justify a reconsideration of AEP Ohio's existing (and, if the Commission adopts the Joint Stipulation, continuing) ROE in this case. The Supreme Court of Ohio "has consistently deferred to the expertise of the commission in determining rate of return matters." *Ohio Edison Co. v. Pub. Util. Com*, 63 Ohio St.3d 555, 561 n.3, 589 N.E.2d 1292 (1992). Here, the Commission should approve the continuation of the ROE approved in AEP Ohio's last base rate case, as proposed in the Joint Stipulation and consistent with its longstanding policy not to reconsider ROEs in-between base rate cases.

C. *Prong Three*: The Stipulation does not violate any important regulatory principles or practices.

The third prong asks whether the Stipulation package violates any important regulatory principle or practice. The supporting testimony demonstrates that the Stipulation does not violate any important regulatory principles or practices and none of the opposing testimony demonstrates otherwise. In reality, the Stipulation package actually advances Ohio energy policies and is consistent with established practices. Consequently, the Commission should find that the Stipulation satisfies the third prong of the three-part test without any modification.

1. Continuation of the BTCR does not violate any important regulatory principle or practice.

As expected, Calpine relies on testimony that addressed the original Application and did not consider the Stipulation as a basis to challenge the Stipulation's BTCR provisions. Similarly, One Energy attempts to advance its rate design challenge without submitting testimony or subjecting any of its analysis to the rigors of cross examination or the scrutiny that comes with presenting actual evidence at an evidentiary hearing. AEP Ohio already addressed most of these arguments in its Initial Brief (AEP Ohio Br. at 65-67, 86-91, 95), but will summarize the issues and address some incremental points made by Calpine and One Energy on brief regarding the BTCR. Neither challenge has merit and there is no reasonable basis in the evidentiary record for the Commission to modify the Stipulation's BTCR provisions.

On Brief, Calpine claims (at 2) that the established and longstanding BTCR is anti-competitive and "bad policy" that should be discontinued, advocating instead (at 4) for a replacement with AEP Ohio's pre-2015 bypassable transmission charge. Calpine goes on to reveal the root problem that it "strongly disagrees" with the Commission's 2015 *ESP III* decision in Case Nos. 13-2385-EL-SSO *et al*. (Calpine Br. at 5.) Calpine's attack on the *status quo* continuation of the BTCR and Calpine's untimely disagreement with the *ESP III* decision lack merit. Calpine makes four redundant arguments in support of its position, which will be addressed.

First, Calpine argues that the BTCR should be bypassable because "Commission rules contemplate the recovery of transmission charges on a bypassable basis." (*Id*. at 4, 7.) Specifically, Calpine concludes that the Stipulation violates the regulatory principle reflected in OAC 4901:1-36-04(B). That rule provides:

> The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers *and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers*.

Ohio Admin. Code Ann. 4901:1-36-04(B) (2023) (emphasis added). Calpine's position[5] oversimplifies the various transmission services as one competitive service and ignores the latter half of the pertinent sentence in Rule 4(B); competitive transmission services tied to generation supply are bypassable under AEP Ohio's retail rate structure, but AEP Ohio bears the responsibility of providing non-market transmission service to shopping and non-shopping customers under the BTCR and has done so since 2015. There is no conflict with the rule provision since AEP Ohio does "bear the responsibility" under the BTCR – and under its Commission-approved tariff – to provide transmission service to all customers.

The Commission's classification of the BTCR as a non-bypassable wires charge is consistent with its statutory authority and case precedent. Under R.C. 4928.03, the General Assembly declared specific services to be competitive and transmission service is not among those services. Under R.C. 4928.04, the Commission can determine which additional services

5 One Energy also raises a similar challenge based on OAC 4901:1-36-04(B). (OEE Br. at 9-10.) One Energy's claim is equally flawed for the same reasons.

are competitive and which shall remain non-competitive regulated services. And under R.C. 4928.05, Commission authority in the post-restructuring era "shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission." The Commission has not categorically declared transmission services should be competitive as Calpine and One Energy advocate. Those opponents of the Stipulation merely advance policy arguments in favor of their preferred rate design, based on their disagreement with the *ESP III* decision where certain transmission services were deemed non-market services and included in the non-bypassable BTCR at the request of several CRES at that time.

Unlike Calpine's and One Energy's oversimplified and inaccurate view of transmission service as one competitive service, the Commission has recognized the reality that there are actually multiple transmission services that can sorted into market and non-market categories:

> Specifically, as proposed, the BTCR would include charges associated with Network Integration Transmission Service; Transmission Enhancement; Transmission Owner Scheduling, System Control, and Dispatch Service; Reactive Supply and Voltage Control from Generation and Other Sources Service; Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service, as well as credits for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service. AEP Ohio witness Vegas explained that market based transmission charges would be included as part of the auction product offering for SSO customers, while CRES providers would be responsible for paying market based transmission charges for their shopping customers. Mr. Vegas testified that the proposed BTCR would align AEP Ohio's transmission cost recovery mechanism with the other electric distribution utilities in Ohio; enable CRES providers and SSO suppliers to operate and provide product offerings in a similar manner across the state; and ensure that customers only pay the actual costs from PJM through a true-up of the BTCR.

ESP III, Opinion and Order at 65-66. Thus, the competitive transmission services associated with generation supply are bypassable in AEP Ohio's rates and the non-market transmission services are recovered from all customers under the BTCR. The Commission went on to explicitly provide that it was exercising authority under R.C. 4928.05 in declaring that the BTCR is reasonable. (*Id*. at 67.) And as with the current case, where AEP Ohio witness Kelso testified that converting the BTCR to being bypassable without further study would create unknown rate impacts (AEP Ohio Ex. 9 at 9.), the Commission in the *ESP III* case also to a 1 CP rate design would have an unknown impact on customer bills. *See ESP III*, Opinion and Order at 68 ("[a]s AEP Ohio points out, IEU-Ohio's proposals would have an unknown impact on customer bills and, in the absence of any analysis, it is inappropriate to modify the Company's current cost allocation methodology").

Calpine's and One Energy's disagreement with the *ESP III* decision and continuation of the *status quo* with respect to the BTCR is no reason to reverse course on this issue – especially in light of the substantial unknowns not addressed by those opponents who both failed to file testimony raising concerns with the Stipulation supporting their position or substantiating their concerns. By contrast, AEP Ohio witness Kelso explained AEP Ohio's position in response to the Merola Direct testimony:

> The Company believes that the moderate expansion of the BTCR pilot and related study as agreed to in the Stipulation are the most prudent actions. The Company also believes that a change to the process for non-market-based transmission costs warrants a much more in-depth analysis than what was included in Calpine's proposal. In addition, the proposal should be vetted in a docket where others would have the ability to weigh in on the changes. The Commission should adopt the BTCR provisions of the Stipulation without modification.

(AEP Ohio Ex. 9 at 9.) Ms. Kelso went on to elaborate in detail the many unknowns related to Calpine's proposal and what impacts there could be if the BTCR were made bypassable. (*See* AEP Ohio Br. at 89-91.)

Next, Calpine asserts the flipside to the bypassable BTCR coin by advocating that CRES providers' ability to directly offer (non-market) transmission services to shopping customers as they were permitted to do prior to 2015 when the former bypassable transmission charge was in place. (Calpine Br. at 8-9.) In addition to ignoring the same points stated above in response to the bypassable BTCR proposal, this position also ignores AEP Ohio's Commission-approved tariff provisions as introduced into evidence at the hearing in this case. Calpine Ex. 2 is an excerpt from AEP Ohio's current terms and conditions of service tariff dealing with coordination between AEP Ohio and CRES Providers for transmission service to shopping customers. This tariff ensures that transmission service is provided pursuant to the Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission (FERC). (Calpine Ex. 2 at 1.) After referencing the same non-market transmission charges referenced above in the *ESP III* Opinion and Order (at 65), the tariff provides:

> Upon notification by the Company, all CRES Providers shall approve the Company's prepared Billing Line Item Transfers through PJM's Billing Line Item Transfer Tool to allow charges and credits for the above transmission services to be assigned to the Company. All other transmission service charges and credits shall be the responsibility of the CRES Provider.

(Calpine Ex. 2 at 2.) Hence, contrary to the claims of Calpine and One Energy, AEP Ohio's retail tariff does not conflict with the OATT but actually ensures compliance with the FERC-approved OATT and PJM billing procedures to coordinate the provision of non-market transmission services on a non-bypassable basis, while leaving all competitive transmission services to be provided to shopping customers directly by the CRES Provider.

As a related matter, Calpine argues that there needs to be more competition in managing these costs, not less and it elaborates on its perceived benefits of a regime with competitive transmission services. (Calpine Br. at 7, 10-11.) One Energy expounds similar policy points as well, referencing R.C. 4928.02 and arguing, among other things, that recognition of emerging competition should result in the BTCR being bypassable. (OEE Br. at 11-12.) But the opposite is true. As referenced above, the Commission adopted the non-bypassable BTCR based on broad agreement among CRES providers in the *ESP III* cases. Elsewhere, Calpine acknowledges that the current BTCR reduces wholesale market risk and the need to manage that risk for all CRES providers. (Calpine Br. at 9.) Similar to the *ESP III* cases, there is broad CRES support for the Stipulation's continuation of the BTCR – including the CRES trade association (RESA) and several individual CRES Providers (IGS, Direct, Armada Power) as Signatory Parties that all recommend adoption of the Stipulation without modification. In any case, as demonstrated above, the classification of retail transmission service has not been classified as competitive under R.C. 4928.03- 4928.05.

One Energy even attempts to argue that it is unlawful for AEP Ohio to block customers from having access to transmission on the same terms AEP Ohio obtains such services at the wholesale level, citing to the non-discrimination principles established in the FERC's *Order 888* and *Order 2000* decisions and attempts to extrapolate those decisions to retail rates. (OEE Br. at 13-16.) Calpine makes a more ethereal, albeit logically equivalent, argument that CRES provider rights under the OATT "should be restored." (Calpine Br. at 8-9.) Of course, the FERC's decisions – as with its jurisdictional authority under the Federal Power Act in general – only apply to wholesale transmission services. Rather, under the Federal Power Act, States retain near plenary authority to determine the *retail* rates paid by end-use customers. *See* 16

U.S.C. § 824(b); *see also, e.g.*, *FERC v. Elec. Power Supply Ass'n*, Nos. 14-840, 14-841, 2016 WL 280888, at *14 (U.S. Jan. 25, 2016) (explaining that § 824(b) "reserv[es] regulatory authority over retail sales . . . to the States"); *Fed. Power Comm'n v. S. Cal. Edison Co*., 376 U.S. 205, 214 (1964) (in the Federal Power Act, Congress preserved "state regulation of a sale at local retail rates to ultimate consumers"). And *retail* rates are the only issue in this proceeding.

Indeed, AEP Ohio witness Kelso explained the background and steps of how wholesale transmission costs end up being charge to AEP Ohio retail customers: step one is to allocate OATT costs to AEP East affiliates as a group based on 1CP, step two is to allocate those costs to each AEP-East operating utility based on 12CP in accordance with the FERC-approved Transmission Agreement, step three begins the retail/BTCR treatment by allocating the AEP Ohio share to customer classes based on 1CP, and the final step is to design individual customer rates based on billing demand for non-residential customers and kWh for residential customers. (Tr. V at 875, 876, 887-888.) The FERC's wholesale jurisdiction ends with Steps One (OATT rates) and Step Two (allocation of costs among the AEP East Companies' allocation) and this Commission has exclusive jurisdiction over Step Three (retail rate design and recovery).

In a similar vein, One Energy attempts to disparage AEP Ohio's retail recovery of wholesale transmission costs as "protecting transmission profits and enhancing earnings growth" – wrongly characterizing the Company's capital investment business model as a "profits at any cost" strategy. (OEE Br. at 2-3.) In reality, as a regulated utility that needs to attract substantial capital from shareholders and the financial markets, the Supreme Court has long recognized a utility's right to collect a reasonable return on equity and that is what FERC-approved OATT rates reflect. *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). Merely passing those wholesale costs through in retail BTCR rates is ordinary and avoids unlawful federal cost trapping. *See Nantahala Power*, 476 U.S. at 972. In this regard, Ms. Kelso also confirmed that the BTCR is a pass-through rider to collect no more and no less than what AEP Ohio is billed through the FERC-approved OATT and Transmission Agreement. (Tr. V at 880.) OEE's misguided points in this regard should be ignored or rejected.

At bottom, the question of whether the BTCR is bypassable or non-bypassable is a rate design issue that involve policy considerations and substantial discretion by the Commission (typically advanced and debated by expert witnesses); they are not legal matters determined by examining statutes and binding legal precedents. And the Supreme Court has frequently acknowledged that decisions about how rates are designed—including which customers pay and under what circumstances—are matters within the Commission's discretion. *Green Cove Resort Owners' Ass'n. v. Pub. Util. Comm.*, 103 Ohio St.3d 125, 2004-Ohio-4774, 814 N.E.2d 829, ¶ 1 (recognizing the Commission's "unique rate-design expertise"); *Citywide Coalition for Util. Reform v. Pub. Util. Comm.*, 67 Ohio St.3d 531, 533, 620 N.E.2d 832 (1993) (affording the Commission "considerable discretion" in matters of rate design); *see also Consumers' Counsel*, 32 Ohio St.3d at 268 (ratemaking involves extensive hearings, voluminous testimony, and technical questions which must be resolved on the basis of complex and often disputed evidence; the Court's function is not to weigh the evidence or choose between debatable rate structures). The Commission has already spoken to this issue and the Stipulation merely retains the *status quo* of a non-bypassable BTCR that has been in place for nearly a decade. Calpine and One Energy merely disagree and cannot point to any legal requirement to make the BTCR bypassable. No analysis, study or details of any kind were included to support Ms. Merola's assertions or assumptions. The fact that Calpine and One Energy espouse a minority policy view does not establish any legal rights or otherwise require the Commission to agree with their dissenting opinion. More to the point under the three-part test, the record in this case does not support a conclusion that the current BTCR violates any important regulatory principle or practice.

Finally with respect to the BTCR, Calpine also objects to the Stipulation's provision for an independent third-party study to determine next steps with the 1 CP BTCR program (Jt. Ex. 1 at ¶ III.N.44), criticizing its perceived scope of the proposed study and arguing that the study should be required now before any additional participation in the 1CP program should be allowed. (Calpine Br. at 13.) In reality, Calpine merely wants to dictate its own desired audit scope to bias the study outcome in favor of a bypassable BTCR into the study and thwart the efforts of Signatory Parties by halting additional participation until the study is done. Calpine's position on the third-party audit also ignores the practical reality that this ESP proceeding needs to be resolved without further delay to enable AEP Ohio to transition to its next SSO plan in an orderly fashion – so waiting and further studying now is simply not feasible.

Calpine also advocates that the audit should explicitly consider other PJM states that have adopted 1 CP transmission billing programs. (*Id*. at 11, 13.) The third-party Auditor may wish to consider such matters . Indeed, the experience of other PJM states on 1 CP transmission billing programs may well prove the benefit – or the mistake – of doing so. But the Stipulation need not be modified in order for those matters to be considered. The Stipulation already provides for all interested parties to have input and an opportunity to comment: "The Company and other interested parties will be given an opportunity to comment on or contest the audit findings and assumptions prior to the Commission considering any audit recommendations." (Jt. Ex. 1 at ¶ III.N.44.)

Through rebuttal testimony, AEP Ohio witness Kelso explained AEP Ohio's overall position on the BTCR 1 CP program in response to the Merola Direct testimony:

> The Company believes that the moderate expansion of the BTCR pilot and related study as agreed to in the Stipulation are the most prudent actions. The Company also believes that a change to the process for non-market-based transmission costs warrants a much more in-depth analysis than what was included in Calpine's proposal. In addition, the proposal should be vetted in a docket where others would have the ability to weigh in on the changes. The Commission should adopt the BTCR provisions of the Stipulation without modification.

(AEP Ohio Ex. 9 at 9.) Ms. Kelso went on to elaborate some of the many unknowns related to Calpine's proposal and what impacts there could be if the BTCR were made bypassable.

AEP Ohio witness Kelso pointed out is that the 1 CP rate design is inherently less stable for individual customers because it measures each customers' load in only one hour of the year. (*Id*. at 8.) When applied to individual customers, the 1CP method can result in cost allocations reflecting anywhere from zero to 100% of a customers' annual peak load. The 1CP method can produce significant variability year over year, in particular at times when the annual peak shifts from summer to winter or *vice versa*. (*Id*.) Consequently, Ms. Kelso concluded that it would be prudent to further study and consider how different types of customers, especially those that are limited in their ability to manage their load and/or that have seasonality, such as hospitals, retail stores, and schools, could be impacted by the expansion of 1CP billing. It is also unknown what the impact this 1CP volatility could have on customer migration between shopping and the SSO. (*Id*.) In addressing these points during cross examination, AEP Ohio witness Kelso testified that the Stipulation's approach of a modest expansion followed by a careful study to determine next steps strikes the right balance by moderately expanding the 1CP BTCR Pilot and committing to a third-party study to evaluate changes to transmission billing in detail. (Tr. V at 852-854, 858.)

In sum, as AEP Ohio witness Kelso explained on cross examination, AEP Ohio is opposed to adopting a bypassable transmission rider in this case because it would be a modification to the Stipulation and because there are many unknowns that should be resolved before making such a decision, including potential volatile rate impacts if 1CP billing is utilized and ensuring customers understand their choices relative to generation and transmission shopping decisions; the Stipulation strikes the right balance by moderately expanding the 1CP BTCR Pilot and committing to a third-party study to evaluate changes to transmission billing in detail. (Tr. V at 852-854, 858.) Because of the potential impacts on customers, Ms. Kelso testified that making transmission charges bypassable is a drastic and very significant change that should be carefully studied, but the Company is not saying it cannot happen after careful consideration in another case. (Tr. V at 861, 877.) Calpine's (and One Energy's) recommendation would be a modification of the Stipulation that is unjustified and could result in the settlement being unwound. In sum, the record in this case does not support a conclusion that the current BTCR violates any important regulatory principle or practice.

2. The Stipulation's SSO/CBP provisions do not violate any important regulatory principle or practice.

Constellation raises limited points under Prong Three of the test arguing that the Stipulation violates important regulatory principles or practices in three related ways by: (1) including provisions that support continuing jurisdiction for additional SSO reforms during the ESP term beyond the capacity proxy/pass-through proposal, (2) recommending dismissal without prejudice of intervenors' additional SSO proposals, and (3) including standard boilerplate language that allows for Signatory Party withdrawal from the Stipulation for material modifications made by the Commission. (Constellation Br. at 7-12.) None of these reasons support a conclusion that the Stipulation violates important regulatory principles or practices. Each of Constellation's arguments under Prong Three should be rejected.

Constellation's initial argument under Prong Three is that non-stipulated changes to the CBP outside of the primary ESP docket violate R.C. 4928.141 and 4928.143. (Constellation Br. at 8-10.) Its second point under Prong Three is merely the corollary argument that dismissal of intervenor proposals without prejudice here is actually prejudicial since the Commission cannot modify the CBP in other dockets. (*Id.* at 10.) But there is no caselaw – and Constellation does not claim such precedent exists – supporting the notion that all SSO requirements be established in a singular proceeding under R.C. 4928.141 or 4928.143. And in reality, there are many proceedings outside of an ESP where the Commission makes significant and substantive decisions that define implementation of an ESP. Rider proceedings are a good example; many significant decisions are made in EL-RDR proceedings that do not trigger the litany of filing requirements and statutory procedures that are attached to an SSO proceeding (*e.g.*, MRO test, EDU consent, ESP filing requirements, *etc*.). Further, audit cases and tariff cases are examples where the Commission can make subordinate decisions involving the implementation and scope of an ESP outside of the SSO proceeding. Filling in the blanks established in an ESP case and implementing all aspects of the approved plan are clearly permissible outside the scope of an ESP case.

To be sure, the Commission cannot modify a material term or condition of the ESP. For example, AEP Ohio successfully opposed the Commission's inquiry into whether auction products that extend beyond the term of the ESP should be considered for adoption outside of the ESP. (*In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC, August 14, 2020 AEP Ohio Application for

Rehearing.) And AEP Ohio successfully challenged an order where the Commission subsequently modified an ESP without the Company's consent. *In re Ohio Power Co.*, 2015-Ohio-2056. But these limitations do not mean that the Commission is prevented from modifying CBP processes outside of the ESP docket – especially where the utility consent and potential withdrawal of Signatory Parties based on a material modification are fully resolved through the Stipulation's provisions in Paragraph III.B.2.

The Commission's governing statutes then require the Commission to follow a specific process when reviewing ESP applications. Under that statutory process, the Commission should issue an order "not later than two hundred seventy-five days after the application's filing date." R.C. 4928.143(C). And in issuing that order, the Commission has three options: "approve," "modify and approve," or "disapprove" the application. *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 45 (quoting R.C. 4928.143(C)(2)(a)). However, once the ESP Order is adopted, the Commission has some authority to subsequently modify it, "provided that the Commission provides an explanation and that the modification is lawful and reasonable." *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, ¶ 16). Importantly, the statutory powers granted the Commission under R.C. Chapter 4928 do not include the authority to modify and approve an ESP, then *sua sponte* revisit and materially modify the ESP outside of the ESP case. *In re Ohio Power Co.*, 2015-Ohio-2056, ¶ 24. And it is contrary to R.C. 4928.143(C)(2)(a) to conclude that the Commission has authority to require EDUs to accept any subsequent modifications to their ESPs. But through Paragraph III.B.2, AEP Ohio has conveyed its consent to continuing jurisdiction to SSO/CBP changes and agrees to waive its right to withdraw under the ESP statute provided that such modifications apply only during the ESP term, allow for timely and adequate cost recovery along with a reasonable time to implement the modification.

Contrary to Constellation's claim that it is an important principle/practice to conduct all SSO business inside the primary ESP docket, the Commission itself has established its desire to address SSO reforms in a uniform way that involves all of the four EDUs. *See e.g.*, *In the Matter of the Proposed Modifications to the Electric Distribution Utilities' Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC; *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC *et al*. In those dockets, substantial disagreements have been raised about the scope of the Commission's authority to make such changes outside of a proceeding under R.C. 4928.142 or R.C. 4928.143. The key barriers to the Commission making significant SSO changes during the term of an approved ESP are the lack of utility consent under R.C. 4928.143(C)(2)(a) and such SSO changes being modifications to the approved ESP or underlying Stipulation.

Paragraph III.B.2 of the Stipulation actually facilitates an important Commission policy and does not thwart it as Constellation suggests. Thus, Constellation's notion that it violates an important regulatory principle or practice to facilitate modifications outside of the primary SSO proceeding is without merit – especially where the utility consent and potential withdrawal of Signatory Parties based on a material modification are fully resolved through the Stipulation's provisions in Paragraph III.B.2. In any case, Constellation's challenge is unripe and academic until such time in the future that the Commission modifies the SSO in a proceeding outside of the primary ESP docket.

Constellation's third and final point under Prong Three argues the Stipulation violates an important principle or practice by allowing for withdrawal of Signatory Parties from the

Stipulation if material modifications are made by the Commission. (Constellation Br. at 10-12.) This is just an end around argument for modifying the three-part test: Constellation wants to make changes to the Stipulation without having to prove that the Stipulation fails the three-part test. In any case, Constellation fails to establish any valid basis to circumvent or discard such standard boilerplate language in Commission settlements.

Staff witness Healey explained his view of the provision during cross examination:

> I would say that that concept is inherent in virtually every Stipulation and that Stipulation seeks to resolve a case in its entirety. And, therefore, anything that's not in the Stipulation, including other parties' recommendations, would be, therefore, excluded and rejected by approval of the Stipulation, so I think this sentence is merely acknowledging what a Stipulation does with respect to other parties' litigation positions.

(Tr. I at 125-126.) Mr. Healey went on to explain that "every Commission order approving the Stipulation as a matter of fact is, therefore, rejecting any proposals that are contrary to the Stipulation so that order would have that exact effect in any case in which there was a Stipulation approved by the Commission." (Tr. I at 126.)

The obvious purpose is to ensure that when parties work hard to resolve difficult issues through serious negotiation and compromise package of terms, they can rest assured that a "deal is a deal" – any material changes can trigger withdrawal by a Signatory Party. The judgment of what changes are material is a personal choice for that Signatory Party and needs to be made in its own discretion. Otherwise, the Commission could re-trade the deal in a way that the Signatory Party would have never accepted to begin with. This is exactly what Constellation is advocating and that approach should be rejected as creating a hostile environment for settlements.

3. Far from a policy violation, the Stipulation's demand response program, a unique and innovative way of addressing distribution grid congestion, is not only legally permitted, it is encouraged by Ohio law.

OCC argues that the Smart Thermostat Demand Response program violates R.C. 4928.02(H) by not ensuring effective competition because "it will be used to help electric marketers market and sell their product." (OCC Brief at 37.) But 4928.02(H) does not prohibit the utility from offering a program that can be used to benefit the distribution grid, especially when that program is competitively neutral. The Smart Thermostat Demand Response program is designed to be a benefit flowing from the utility to its customers and vice versa, not a competitive subsidy from AEP Ohio to the CRES. While the CRES can be a conduit for signing up customers to the demand response program, as discussed in AEP Ohio's Initial Brief, it is also designed competitively neutral insofar as it is charged through the non-bypassable gridSMART rider applicable to all customers and because both AEP Ohio and CRES can enroll customers in the program to encourage higher participation. (AEP Ohio Brief at 83; Jt. Ex. 1 at III.I.34.; Tr. II at 527.) Allowing additional vendors beyond AEP Ohio to sign customers up for the program will further advance the demand response capabilities of AEP Ohio's distribution grid. (*See* AEP Ohio Brief at 83).

OCC also argues that the Smart Thermostat Demand Response program violates 4928.02(D) because smart thermostats are readily available in the competitive marketplace. (OCC Brief at 83-84.) As discussed in AEP Ohio's Initial Brief, however, OCC's position overlooks a key component of the Demand Response Smart Thermostat program that materially distinguishes it from the thermostats available at Lowes, Home Depot, Amazon, etc. – enrollment in a demand response program whereby AEP Ohio, as the exclusive controller of the distribution network, is able to call demand response events to benefit the distribution grid.

(AEP Ohio Initial Brief at 84; Tr. III at 530.) The record does not contain any evidence of the competitive channels to which OCC refers offering such a demand response program. (Tr. III at 528-530.) Directly contrary to OCC's position, by opening up the program to shopping and non-shopping customers alike, the Smart Thermostat Demand Response program "encourage[s] innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management." R.C. 4928.02(D).

OCC also argues that the Smart Thermostat Demand Response program violates regulatory principles by vaguely arguing that it violates the state's policy to "[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment." (OCC Brief at 39, citing R.C. 4928.02(G)). OCC bases this conclusion on its assumption that "consumers that already have a smart thermostat (or choose to purchase a smart thermostat in the market) can participate in this program and benefit from the rate design that allows consumers to reduce their usage and AEP to reduce demand in times when the grid is stressed." (OCC Brief at39-40.) But this doesn't just magically happen. Customers don't enroll in demand response programs to reduce their demand when they are charged on an all-energy rate without some sort of other incentive. Nor has OCC described or otherwise proposed what rate design would allow customers to reduce their usage during times when the grid is stressed. More importantly, however, the Smart Thermostat Demand Response commitment as designed in the Stipulation provides flexible regulatory treatment as demonstrated by a commitment to further explore competitive involvement in the program, including potential expansion to other demand response capable devices and a commitment to host a collaborative where there will be discussion and implementation of changes to eliminate limitations to CRES provider programs. (Jt. Ex. 1 at III.I.34.)

Albeit unclear, OCC also points to a prior inapposite Commission decision in what appears to be an argument that the Smart Thermostat Demand Response program violates those decisions and therefore the regulatory principles articulated therein. (OCC Brief at 39.) Confusingly, OCC cites to Duke's 2020 voluntary energy efficiency portfolio filing for two apparent reasons – the Commission struck Duke's shared savings provision and issued dicta that "the future for EE programs in this state will be best served by reliance upon market-based approach." (OCC Brief at 39); *In Re the Application of Duke Energy Ohio, Inc. for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 20-1013-EL-POR, Entry at ¶ 6 (June 17, 2020). Duke's proposed energy efficiency portfolio, however, does not contain a demand response program even remotely similar to the Smart Thermostat Demand Response program set forth in the Stipulation. And as explained in AEP Ohio's Initial Brief, the Stipulation in this matter does not contain a shared savings mechanism; therefore, the Entry in the 20-1013-EL-POR Duke case is inapposite. (AEP Ohio Initial Brief at 85.) Moreover, the Commission expressly reserved judgment on the remaining provisions of Duke's application, which have yet to be ruled upon. Since then, however, as set forth in AEP Ohio's Initial Brief (AEP Ohio Brief at 84-85), the Commission has more recently acknowledged that "[p]ursuant to [R.C. 4905.70], we have long recognized that energy efficiency and DSM programs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with this state's economic and energy policy objectives." *In Re the Application of Columbia Gas of Ohio Inc. for Authority to Amend its Field Tariffs and to Increase the Rates and Charges for Gas Services and Related Matter*s, Case No. 21-637-EL-AIR, Opinion and Order ¶ 53 (Jan. 26, 2023) (internal citations omitted).

For these reasons the Commission should reject OCC's argument that the Smart Thermostat Demand Response program violates state law when it, in fact, promotes the very policies set forth in Ohio law.

4. The previously-approved Alternative Energy Rider does not violate regulatory practices or principles.

Acknowledging that it is not a part of the ESP V settlement, OCC argues that the AER should not be allowed to continue until the Staff can evaluate AEP Ohio's AER rates. (OCC Brief at 40.) Failing to articulate how this argument establishes that the Stipulation violates important regulatory practices or principles; OCC all but admits to an impermissible collateral attack on another docket. OCC concedes that AEP Ohio is requesting an increase to the AER as part of Case No. 20-1745-EL-RDR. The Commission should not permit OCC to thrust that separate rider action, which is not related to the ESP V, into the forefront of this ESP settlement; especially, when the AER is currently stayed and subject to an ongoing audit as OCC further admits in its Brief. (OCC Brief at 40); *See also, In Re the Application of Ohio Power Company to Update its Alternative Energy Rider and Auction Cost Reconciliation Rider*, Case No. 15-1052-EL-RDR, Entry at ¶ 11 (Dec. 22, 2020). Because it is seeking an advisory opinion granting relief that has already been granted, an impermissible collateral attack on a separate docket, and not germane to consideration of the Stipulation, the Commission should disregard OCC's arguments regarding the AER.

5. The previously-approved Automaker Credit does not violate regulatory practices or principles (including R.C. 4905.31).

AEP Ohio proposed to continue the previously-approved Automaker Credit, which remained unaffected by the Stipulation. The Automaker Credit was established to support increased utilization or expansion of automaker facilities "to incent manufacturers to maintain and increase production and encourage economic development." *In Re 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*, Case No. 16-1852-EL-SSO, Opinion and Order at ¶¶ 148 (Apr. 25, 2018). OCC argues that continuation of the Automaker Credit violates regulatory principles because it should only be considered if it qualifies for consideration under R.C. 4905.31. (OCC Brief at 42.) OCC raised the exact same argument in ESP IV – that "the automaker credit is more appropriately considered as part of an economic development project where the eligible customer can apply for a reasonable arrangement pursuant to R.C. 4905.31" – which was duly rejected. *Id.* at ¶¶ 149, 153. Moreover, R.C. 4905.31 is not the exclusive vehicle for establishing such economic development. The ESP statute expressly permits "economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system." R.C. 4928.143(B)(2)(i). For these reasons, and consistent with prior precedent, the Commission should find that the Automaker Credit Rider does not violate regulatory practices or principles.

6. Contrary to OCC's claim, there is no establishment of "excessive disconnection of customers" let alone a legal requirement that the Stipulation address disconnections.

OCC argues the Stipulation does not ensure adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service or protect at-risk populations. (OCC Brief at 44.) To that end OCC argues that a reduction in disconnections is necessary because "over half of all low-income households engage in some coping strategies." (OCC Brief at 43). But OCC bases this assertion upon a third-party article cited in OCC witness Tinkham's testimony in which he had no part in preparing, researching, or analyzing. (Tr. II at 267.) In fact, OCC witness Tinkham was not aware of the vintage of that very statistical information, which could have possibly been from decades ago. (Tr. II at 268.) Nor was OCC witness Tinkham familiar with what was considered "low income households" for this bold statement – whether it was referring to information analyzed at a global, national, state, or local level. (Tr. II at 271.) One thing is for certain – the analysis in the article upon which OCC relies was not referring to AEP Ohio's service territory; therefore, OCC witness Tinkham "had no idea if the same statistics are applicable to AEP Ohio's service territory." (Tr. II at 271-272.)

Aside from the factual shortcomings of OCC's premise, nothing in the Ohio Revised Code or the Ohio Administrative Code require a specific reduction in disconnection rates – a fact that OCC witness Tinkham conceded. (Tr. II at 243.) To the contrary, AEP Ohio is expressly permitted to disconnect customers in accordance with Ohio Adm. Code 4901:1-18 and as otherwise amended via the Commission's waiver(s) of certain provision(s). This includes disconnection for non-payment of bills. And OCC witness Tinkham did not disagree that disconnection is one of the few tools that AEP Ohio has to ensure that customers pay and receivables don't continue to climb as customers continue to use energy without paying. (Tr. II at 259.) OCC witness Tinkham also conceded that AEP Ohio is following the rules and laws on disconnection. (Tr. II at 252.) It naturally follows, therefore, that the Stipulation does not violate any regulatory practices or principles when there is no requirement to reduce disconnections; in fact, AEP Ohio is abiding by the laws and rules that permit disconnection. OCC's argument should be duly rejected accordingly.

This is of particular import seeing as there are a wide variety of programs and solutions that are available and designed to assist the very customers that OCC references. These include bill assistance programs such as the HEAP program and the PIPP Plus program that is available for customers at 175% of the federal poverty level. (Tr. II at 261.); R.C. 4928.54 *et seq*.; 42 U.S.C. § 8621-8630. They also include the annual winter reconnect order, payment plan options set forth in Ohio Adm. Code 4901:1-18-05, and the medical certificate protections set forth in Ohio Adm. Code 4901:1-18-06, where customers themselves of other means that postpone or prevent disconnection. (Tr. II at 265.) This Stipulation provides even further benefits in the form of low-income energy efficiency programs to help lower bills. (Joint Ex. 1 at III.L.) The Stipulation also provides additional funding for the Neighbor-2-Neighbor fund, beyond that which is donated by customers and matched by AEP Ohio shareholder funds, which provides bill assistance to customers at or below 200% of the poverty level thereby reducing disconnections. (Joint Ex. 1 at III.L.38; Tr. II at 263-264.)

While OCC has not established that the Stipulation violates important regulatory principles; ironically, OCC's solution of arbitrarily reducing disconnections by 15% overall and 15% in the twenty zip codes with the highest amount of disconnections violates regulatory practices and principles. (OCC Brief at 44.) As discussed in detail in AEP Ohio's Initial Brief, OCC's disconnection reduction proposal is unprecedented, not required by the law or Commission rules, and lacked proper supporting analysis. (AEP Ohio Brief at 78-79.) Additionally, OCC's proposal lacks specificity necessary to effectively implement; accordingly, it will necessarily result in discriminatory treatment of customers that are randomly passed over for disconnection or live in certain zip codes despite no other distinguishing characteristics. (AEP Ohio Brief at 79; Tr. II at 242.) Nor did OCC consider the negative impacts that would be sustained by other customers as a result of allowing non-paying customers to continue to receive electric service that would be socialized through the Company's bad debt rider. (AEP Brief at 79; Tr. II at 259, 286-287).

Finally, while AEP Ohio is not opposed to OCC's final suggestion of a collaborative discussion to explore ways to reduce disconnections, failure to include such an express commitment does not render the Stipulation in violation of the three-prong test. Rather than achieving such solutions through settlement, OCC chooses to bring them up in litigation while overlooking, either intentionally or unintentionally, the robust efforts that AEP Ohio makes on a daily basis to serve its customers and reduce disconnections. In fact, despite lobbing grenades about AEP Ohio's disconnection practices that he admits are lawful, OCC witness Tinkham admitted he was unaware of what efforts AEP Ohio makes to ensure that as many people receive electricity as possible. (Tr. II at 253-254.) And while OCC witness Tinkham demands shareholder dollars be magically reallocated to reducing disconnections without understanding the financial impact to the Company, he was quick to accept the challenges of finding sufficient resources within OCC's budget to educate customers and prevent disconnections. (Tr. II at 254-255, 257, 275.)

For these reasons the Commission should find that the Stipulation as a package does not violate any important regulatory practices or principles and reject OCC's requests to arbitrarily and discriminatorily reduce disconnections.

7. The plug-in electric vehicle rates do not violate regulatory practices or principles.

The Stipulation provides for new optional plug-in electric vehicle ("PEV") time-of-use rates as well as a commitment to share data from the associated PEV rates with a newly established working group, which will "discuss and analyze cost of service impacts." (Joint Ex. 1 at III.F.13.) Despite the implementation of these PEV rates designed to shift peak EV load and the ongoing commitment to data sharing, OCC raises two concerns that should be duly rejected as described below and in more detail in AEP Ohio's Initial Brief (see AEP Ohio Brief at 80-81.)

OCC argues that there is no evidence that the settlement is consistent with the regulatory principle of cost causation (OCC Brief at 46-48), as if it is the paramount and/or sole regulatory practice or principle. OCC concedes, however, that there are other regulatory practices and principles such as "providing strong incentives for electric vehicle owners to shift their electric vehicle-charging demands." (OCC Brief at 47; OCC Ex. 6 at 5.) OCC witness Sioshansi further agreed that there are numerous regulatory principles, some of which might not be aligned with each other. (Tr. III at 563.) In other words, accommodating one regulatory principle (e.g. incentivizing EV peak shifting) could be mutually exclusive to another regulatory principle (e.g. cost causation).

OCC also argues that there is no evidence that the PEV rates set forth in the Stipulation provide a sufficient incentive for EV owners to shift their peak usage or account for rebound peaks. (OCC Brief at 47.) In other words, OCC argues that the rates are not guaranteed to reduce peaks caused by EV usage without causing other peaks. This concern is a red herring for a number of reasons, which are further addressed in AEP Ohio's Initial Brief. (AEP Brief at 15-16.) First, the Stipulation is a legal agreement that is not designed nor required to include "evidence" to support the individual components contained therein; that is what the testimony and hearing is for. Moreover, the stipulated PEV rates are designed to shift demand-intense EV load while maintaining a revenue neutral structure and saving customers money (Joint Ex. 1 at ¶ III.F.; AEP Ohio Ex. 2 at 8, 23.)

Confoundingly, however, OCC's recommended "fix" to both of these issues is for the Commission to "request and scrutinize information regarding the design of the aforementioned rates and modify them accordingly" which could be by requiring AEP Ohio and signatories to "provide empirical studies or other data to demonstrate that the proposed rates meet cost-causation, incentive, rate-stability, and other regulatory principles." (OCC Brief at 48.) This is precisely what is contemplated and provided in the Stipulation. AEP Ohio committed to "sharing data associated with the PEV rates" through the creation of a newly established working group specifically tasked with "discussing and analyzing the PEV rates and their cost-of-service impacts." (Jt. Ex. 1 at ¶ III.F.13.) The working group is further tasked with "consider[ing] additional TOU rate offerings" whereby AEP Ohio "can file an EL-ATA application to change the PEV TOU rates." (Jt. Ex. 1 at ¶ III.F.13.) This is an appropriate approach to take for an experimental time-of-use rate design that is consistent with past experimental time-of-use rate designs, which is precisely the relief that OCC seeks. OCC's redundant recommendations are not surprising, however, seeing as OCC witness Sioshansi was unaware of the data sharing and tariff filing commitments set forth in the Stipulation. (Tr. III at 546.)

Contrary to the assertions of OCC, the optional time-of-use rates contained in the stipulated PEV tariffs, coupled with robust data sharing commitments and optionality for revisiting the PEV rates through an ATA filing, support numerous enumerated regulatory policies, including but not limited to encouraging innovation for cost-effective demand-side retail electric service through time-differentiated pricing. R.C. 4928.02(D).

8. The contribution in aid of construction provision does not violate any important regulatory practice or principles.

OCC raises three issues with respect to the CIAC commitments set forth in the Stipulation – (1) they are premature; (2) they are not germane to the ESP V; and (3) they create a perverse cross-subsidy – all of which were addressed in AEP Ohio's Initial Brief. (AEP Ohio Brief at 81-83.) The Commission has plenary power over its rules, including those pertaining to CIAC; therefore, this Stipulation will not prematurely "tie the Commission's hands" as asserted by OCC. (OCC Brief at 51.) Furthermore, AEP Ohio's commitment to advance a position for the Commission's consideration related to the assignment of CIAC is directly germane to the issues in this case and is a commitment that the Company likely would not have otherwise made but-for the serious bargaining that took place in this matter. This is a bargained for exchange of a nature that is often seen in settlements before the Commission. For instance, OCC has previously agreed to a settlement containing commitments to take certain positions in a separate matter. *See*, *e.g. In Re the Application of the Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR, Opinion and Order at 23-24 (Sept. 26, 2018).

Finally, with respect to the "subsidy" argument, it is important to note that the CIAC position will only come to fruition if the Commission first amends its rules accordingly. This will give the Commission ample opportunity to hear concerns about potential subsidies, or any other concerns, including OCC's incendiary injection of socioeconomic issues. (OCC Brief at 49.) Notably, OCC's concerns about socioeconomic cross-subsidies are based solely upon an article from over a decade ago and one that OCC witness Sioshansi was not involved with preparing or vetting the completeness or accuracy of the information contained therein. (Tr. I at 589-590.) This information is neither relevant nor probative of the facts for which it is offered when OCC witness Sioshansi admitted that he did not examine the data compared to current demographics, nor is he aware of the current socioeconomic makeup of EV ownership, let alone in AEP Ohio's service territory. Moreover, the capital reservation in the Stipulation is only appliable 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." (Jt. Ex. 1 at ¶ III.F.14-15.) This benefits all customers as it is designed to reduce and/or defer the need for additional distribution plant in service that would not otherwise occur absent such an incentive.

9. The Interruptible Program (IRP) provisions do not violate any important regulatory principle or practice.

OCC argues that the Stipulation's IRP credits are too high and should be phased down more quickly – claiming this subjective difference of opinion somehow means that the Stipulation violates an important regulatory principle or practice. (OCC Br. at 34-36.) The Stipulation proposed IRP provisions balance the benefits to the distribution grid by encouraging large commercial users to curtail during times of need on the distribution grid while "phasing down" the amount of the incentive and allowing additional customers to participate. The Stipulation's IRP provides modestly expand the programs while managing the cost impact by phasing down the credit earned by participating customers over the course of the ESP term, as detailed in AEP Ohio's initial brief. (AEP Ohio Initial Br. at 11, 62-62.)

The Stipulation's provisions that continue and modify the IRP are part of a comprehensive package that benefits customers and advances the public interest (Jt. Ex. 1 at ¶ III.G.) Yet, OCC remains unsatisfied with AEP Ohio's focused effort to balance the expansion of the IRP with the cost impact. OCC continues to argue that the phase-down approach does not go far enough nor fast enough by reciting OCC witness Fortney's arguments made during the hearng. Ironically, OCC's own witness supports the IRP program and acknowledges the economic development and demand response benefits of the program, additionally he asserts that the credit phase down is good, but not good *enough*. Mr. Fortney provides no additional information as to why the credit phase down is not good enough. OCC carefully evades having to explain the need for a modification of the Stipulation under the three-part test. Clearly, the IRP provisions of the Stipulation contribute to a package that benefits customers and advances the public interest.

10. The Customer Information System (CIS) provisions do not violate any important regulatory principle or practice.

Finally with respect to Prong Three, OCC also argues that the Stipulation violates important regulatory principles and practices by authorizing AEP Ohio to collect certain costs of a new CIS from consumers through its next distribution case or future rider. (OCC Br. at 41-42.) This argument is unsupported. It is unclear from OCC's brief which regulatory principle and practice this term supposedly violates because OCC, itself, failed to reference or include one.

The CIS commitments made in the Stipulation address and satisfy the standards of review of a rate case, because any cost recovery will first require that the CIS investment is *used and useful* and the associated costs are *prudently incurred*. OCC ignores that the ESP statute explicitly authorizes deferral provisions. R.C. 4928.143(B)(2)(d) and Ohio Adm.Code 4901:1-35-03(C)(9)(c)(ii). Furthermore, it is clear that the language of the Stipulation that the Signatory Parties, made up of 17 capable and knowledgeable individual entities with varying interests, mutually agreed the amount of CIS expenditures for future recovery are subject to a reasonableness and prudence review and committed to that review through a future distribution rate case or rider. This treatment is effectively what OCC wants; yet, it continues to argue for the sake of arguing. There is nothing in the record that prevents any evidence or even a suggestion that such a review would not occur. The Commission should reject OCC's premature and unsupported, superficial attempt to claim to claim the proposed CIS recovery is in violation of important regulatory principle or practice.

D. One Energy's Procedural Arguments Lack Merit.

1. One Energy's dismissal arguments should be rejected.

One Energy makes two procedural arguments seeking dismissal or rejection of the Stipulation. First, One Energy claims that the ESP is incomplete under the SSO filing requirement rule, OAC 4901:1-35-03(A) and (C). (One Energy Br. at 4-6.) Second, One Energy claims that AEP Ohio failed to meet its burden of proof. (One Energy Br. at 6-8.) Both of these procedural claims are misguided and should be rejected.

First, the SSO filing requirements were met in this case. It is untimely to make this claim for the first time in post-hearing briefs. But the Commission already accepted the Application as being properly filed and has processed and litigated the case at this point. In reality, One Energy merely challenges the sufficiency of the supporting evidence and has different opinions about the propriety of the Stipulation terms than the Signatory Parties. The Commission accepted the Company's application as being properly filed, approved the case for public notice and set a procedural schedule to hear the case. Entry (March 2, 2023); Entry (March 21, 2023). Thus, it is too late for One Energy to now claim for the first time in post-hearing briefs that the filing requirements were not met.

Regarding its second procedural argument, One Energy should have made any motion to dismiss after the hearing as a separate motion under Ohio Admin.Code 4901-1-12. One Energy fails to acknowledge that the Company's Application was entered into evidence as AEP Ohio Ex. 1 to demonstrate the scope of the initial filing and supporting testimony was admitted in support of the Stipulation. (AEP Ohio Exs. 1 and 2; Staff Ex. 1; RESA Ex. 1; Direct Ex. 1.) One Energy's challenge of the sufficiency of the Company's supporting evidence rings especially hollow since One Energy chose not to ask a single question of AEP Ohio witness Mayhan and waived cross examination. (Tr. I at 34.) In particular, Staff's testimony as the independent regulator acts as cogent evidence in support of the Stipulation – equivalent to a Staff Report being filed. Again, One Energy voluntarily waived cross examination for Staff witness Healey and decided to lie in wait without filing a proper motion to dismiss. (Tr. I at 117.)

Indeed, the Attorney Examiner denied One Energy's oral motion to dismiss during the hearing after the Stipulating parties argued that a written motion should be filed. (Tr. 1 at 157.) One Energy's own counsel stated his understanding that a motion must be filed:

> As I understand PUCO rules, we are obligated to make the motion during the course of the proceedings, or otherwise we are obligated to file a separate motion and memorandum at the conclusion of these proceedings hence the reason we are stating them orally for the benefit of your Honors now.

(Tr. I at 154.) One Energy never followed up with a timely motion to dismiss.

Beyond the fact that One Energy's dismissal argument is procedurally flawed, it ignores the controlling standard for contested settlements. One Energy fails to honor the well-established and accepted practice of serious bargaining amount capable, knowledgeable parties in order to come to a workable resolution (*i.e.*, stipulation) for complex issues as contemplated in this case. Every party to this case was afforded the opportunity to opine on the Stipulation, as outlined in the attorney examiner entry dated August 15, 2023; yet One Energy failed to file testimony for or against the Stipulation. One Energy used the initial briefing stage as an opportunity to simply relitigate its position and advance the same arguments it made in the pre-settlement phase of the case. Merely repeating one's litigation position is an inappropriate basis for contesting a settlement. The approach of only advancing one's litigation position in opposition of the Stipulation does not address and is not an appropriate application of the three-part test, and such arguments (or lack thereof) cannot form the basis for rejecting the Stipulation. *Cf. Ohio Partners for Affordable Energy v. Pub. Util. Comm'n (In re E. Ohio Gas Co.*), 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32 (holding that "[t]he fact that [a] stipulation did not resolve all of [an intervenor]'s opposition arguments does not mean that the commission's approval of the stipulation was unlawful.").

As discussed during the hearing, the testimony in support and against the Application filed earlier this year *is* part of the record, but it is not part of the evidentiary record established at the October 2023 hearing for purposes of the Stipulation. The testimony in support and against the Application provides context, background, and a benchmark for comparison of items that the Signatory Parties addressed in the Stipulation. In fact, the Application was the starting point for which to begin the settlement discussions. The Stipulation modified many of the terms introduced by the Application as a result of the negotiations between stakeholders, including low-income customer advocates; industrial and commercial advocates; commercial customers; competitive retail electric suppliers; environmental advocates; and Commission Staff. One Energy apparently does not want the Commission to give any weight to the Stipulation.

It was made patently clear during the hearing, numerous times, that the purpose of the October 2023 evidentiary hearing was only to enter into the record evidence relating to the terms of the Stipulation and provide information appropriate to address the three-prong test. One Energy had the same opportunity as every other party to this proceeding to make arguments for or against the Stipulation, and here, it has completely missed the mark by doing neither. Accordingly, the Commission should reject One Energy's arguments in total as they only continue to contemplate the proposed terms of the Application rather than the negotiated terms of the Stipulation.

2. One Energy's challenges to the Attorney Examiner's protective order ruling should be rejected.

One Energy also asks the Commission to revisit a discovery-related dispute in which the Commission's Attorney Examiners have already rejected One Energy's arguments twice. The gist of the dispute is that One Energy objected to a protective agreement that AEP Ohio proposed to govern its disclosure of highly confidential discovery information. The provisions of the agreement that One Energy challenged involved, in part, access to "restricted access confidential" (RAC) material by employees of a CRES provider who are also witnesses in the case. The protective agreement allowed CRES witnesses to review all levels of protected information, including "competitively-sensitive confidential" and RAC material, so long as they are outside witnesses and *not* employees of the CRES Intervenor. (*See* Ex. C to One Energy's Motion, AEP Ohio's Protective Agreement ¶ 3.) However, the Company's proposed agreement imposed reasonable and necessary limits on *inside* witnesses who are employees of the CRES. Under AEP Ohio's proposed protective agreement, in-house counsel could view RAC information, which is the highest level of protection, but non-counsel employees could not. (*Id.*) Those employees also could not view "competitively-sensitive" information if they are "engaged in competitive pricing, sales, or marketing" or otherwise "involved with the CRES-related business activities" of the Intervenor. (*Id.*) And, CRES intervenors were required to notify AEP Ohio of any individuals designated to receive protected information, so that AEP Ohio could object, if necessary, and bring any dispute to the Commission for resolution. These terms were unacceptable to One Energy.

Accordingly, One Energy filed a motion on July 31, 2023 (the "One Energy Motion") asking the Commission to require AEP Ohio to use One Energy's preferred protective agreement instead. One Energy intended to use its Chief Executive Officer, Jereme Kent, as its expert witness, and felt that the Company's proposed agreement would "essentially block[ ] One Energy from fully informing its expert witness in this case." (One Energy's Motion at 3.) One Energy also believed the limitation on CRES employees viewing "competitively-sensitive" information was overbroad, and that the objection provision could "potentially allow[ ] AEP-

Ohio to stymie One Energy[‘s discovery] efforts” and its evaluation of AEP Ohio’s proposals. (*Id.* at 4.)

The Attorney Examiner denied One Energy’s Motion, finding that “the protective agreement proposed by AEP Ohio * * * impose[d] reasonable limits on competitor employee-witnesses viewing highly sensitive and confidential data.” Entry ¶ 17 (Aug. 16, 2023). The Attorney Examiner agreed that “the type of access which One Energy seeks for its employee-witness, in the case of RAC material, and for CRES-related employees for viewing competitively-sensitive material, is precisely what the protective agreement is intended to prevent.” *Id.* ¶ 16. The Entry noted that Mr. Kent is “the president of a CRES provider that actively competes in the marketplace.” *Id.* The Attorney Examiner agreed with AEP Ohio that Mr. Kent would be unable “to completely forget or disregard the type of information requested by One Energy in discovery” once he had reviewed it for purposes of this proceeding. *Id.* And the Entry found “the proposed objection process and dispute resolution in the agreement” reasonable as well. *Id.*

One Energy filed an Interlocutory Appeal, asserting, with little explanation, that it was entitled to “an immediate interlocutory appeal” under Ohio Adm.Code 4901-1-15(A)(1). (One Energy’s Interlocutory Appeal at 4 and 7.) Attorney Examiner Addison denied the Interlocutory Appeal, holding that One Energy was not entitled to “an immediate interlocutory appeal as of right” or under Ohio Adm.Code 4901-1-15(B). Entry ¶ 26 (Sept. 18, 2023). But One Energy refuses to let this issue lie.

In its post-hearing brief, One Energy repeats its prior failing arguments and asks the Commission, post-hearing, to “adopt One Energy’s reasonable edits to AEP Ohio’s * * * protective agreement and provide One Energy with such relief as may be warranted to remedy the harm [purportedly] imposed on One Energy." (One Energy Initial Br. at 17.) In particular, One Energy asks the Commission for a modified protective agreement that grants its "employee-witnesses * * * and officers * * * access to all levels of confidential information" and deprives AEP Ohio of the ability to object to any employee's review of such information. (*Id.* at 18.) In effect, One Energy asks the Commission to re-open discovery and, presumably, the hearing. One Energy also asks the Commission to reverse the Attorney Examiner's ruling on the Interlocutory Appeal and find that One Energy was entitled to an automatic appeal. (*Id.* at 23.)

On this last point – One Energy's entitlement to an automatic interlocutory appeal – the issue is moot. The Commission's rules allow One Energy to "raise the propriety" of the Attorney Examiner's denial of One Energy's Motion "in its initial brief" despite the denial of One Energy's interlocutory appeal. Ohio Adm.Code 4901-1-15(F). Thus, if One Energy's arguments had any merit, the Commission could grant One Energy relief without reversing the interlocutory appeal ruling. Regardless, Attorney Examiner Addison was correct. Denying a "motion to establish a reasonable protective agreement" is not "akin to the denial of a motion for a protective order * * * ." Entry ¶ 26 (Sept. 18, 2023). A motion for protective order is a motion from a "party or person *from whom discovery is sought*," requesting an "order * * * to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Ohio Adm.Code 4901-1-24(A) (emphasis added). One Energy did not move for a protective order against any discovery request. And the Commission did not deny any motion for protective order. Accordingly, One Energy was not entitled to an interlocutory appeal as a matter of right.

Mootness aside, One Energy's arguments do not have merit, and the Commission should affirm the Attorney Examiners' rulings denying One Energy's Motion. *First*, One Energy argues, again, that "Mr. Kent is an employee of One Energy Enterprises Inc., not the One Energy subsidiary that is a registered broker in the State of Ohio." (One Energy Initial Br. at 19.) As explained before, this factual distinction between parent and subsidiary is profoundly misleading and formalistic, and it is easily dismissed. The CRES provider applications submitted by One Energy's CRES subsidiary show that One Energy manages its CRES subsidiary, and that Mr. Kent manages One Energy. (*See* AEP Ohio's Memorandum Contra One Energy's Interlocutory Appeal), Attachment A, Exhibits A-12 and B-2, and Attachment B, Exhibits A-12 and B-2 (Aug. 28, 2023).) Those who "manage" a CRES obviously should not have access to competitively sensitive information that they can use to gain a competitive advantage.

Second, One Energy argues that the protective agreement did not need to restrict anyone's review of highly confidential information because the agreement prohibited persons receiving such information from using it to their commercial advantage. (One Energy Initial Br. at 20.) But there was no way to ensure that Mr. Kent or others would refrain from using confidential information to gain a competitive advantage. As the Attorney Examiner stated, "Even with a protective agreement in place, it would be impossible for any individual to completely forget or disregard the type of information requested by One Energy in discovery." Entry ¶ 16 (Aug. 16, 2023). That point is manifestly correct: once confidential information is released, there is no way to un-ring the bell

Third, One Energy argues that it is not a competitor because AEP Ohio is not a CRES provider. (One Energy Initial Br. at 21.) Effectively, One Energy is arguing that AEP Ohio cannot possess competitively sensitive information because it is a regulated electric distribution utility. This generalization and oversimplification misses the point entirely. Even if EDUs do not provide competitive retail electric services, they still possess considerable confidential information that could cause competitive harm to the EDUs themselves and others if disclosed without appropriate protection. For instance, as AEP Ohio noted in its Memorandum Contra One Energy's Motion, One Energy's requests for production sought information about AEP Ohio customers, including "applications . . . to AEP Ohio's new business portal for data centers or digital currency mining since 1/1/2020" (OEE-RPD-01-009), and its request for all "applications . . . to AEP Ohio's new business portal for projects greater than 10W since 1/1/2020" (OEE-RPD-01-010). This kind of information would obviously give One Energy an unfair competitive advantage over other competitive providers if Mr. Kent or anyone else involved in CRES activities were to have access to this detailed customer information. And producing such competitively sensitive information to CRES providers without the reasonable restrictions AEP Ohio proposed could harm both AEP Ohio's and its customers' interests.

Fourth, One Energy argues that the practical effect of the Commission's ruling is that intervenors in AEP Ohio proceedings will be "forced to hire outside experts to get access to information unilaterally restricted by AEP Ohio," thereby depriving intervenors "from benefiting from the in-house expertise" of their employees or officers. (One Energy Initial Br. at 22.) But AEP Ohio's proposed protective order allowed parties to use internal witnesses. In fact, One Energy filed testimony from Mr. Kent. The proposed protective agreement simply, and reasonably, restricted Mr. Kent's access to certain highly confidential information. One Energy's proposed approach, in comparison, would allow a CRES provider (or, here, a corporate parent that "manages" the CRES provider) to access its competitors' most competitively sensitive information in discovery, simply by naming one of its employees as a witness. If the Commission were to mandate such a giant loophole in AEP Ohio's protective orders, AEP Ohio's competitors would be certain to drive through it.

Lastly, One Energy fails to identify any harm from the Attorney Examiners' rulings. As noted above, "Mr. Kent has already pre-filed his direct testimony in this case." Entry ¶ 16 (Aug. 16, 2023). Mr. Kent was apparently able to make all his points without the use of confidential material. And although One Energy asserts that the Attorney Examiners' rulings harmed it, One Energy has never explained how access to confidential material would have changed Mr. Kent's testimony, or the manner in which One Energy opposed the Joint Stipulation. For all of these reasons, the Commission should affirm the Attorney Examiners' Entries.

II. The Amended ESP proposed in the Stipulation satisfies the statutory MRO Test.

The Commission must approve an ESP proposal if it finds that the ESP, "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 [an MRO authorized under] section 4928.142 of the Revised Code." R.C. 4928.143(C)(1). This statute, R.C. 4928.143(C)(1), "'does not bind the commission to a strict price comparison. On the contrary, * * * the statute instructs the commission to consider "pricing and all other terms and conditions"' in evaluating whether the ESP is more favorable in the aggregate than an expected MRO." *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 22, *quoting In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, ¶ 27.

AEP Ohio's initial post-hearing brief summarized the statutory test for approving an ESP. Under R.C. 4928.143(C)(1), the Commission must approve a proposed ESP if it finds that the ESP, "including its pricing and all other terms and conditions, * * * is more favorable in the aggregate as compared to the expected results that would otherwise apply under [an MRO authorized under] section 4928.142 of the Revised Code." R.C. 4928.143(C)(1). Applying this "more favorable in the aggregate" test requires considering the "ESP as a total package." *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 17-1263-EL-SSO, *et al*., Opinion and Order ¶ 288 (Dec. 19, 2018). In particular, "the Commission will look at the *relative* price to be paid by SSO customers for generation service under both the proposed ESP and a hypothetical MRO, whether there are *quantitative benefits* to the ESP that would not exist in an MRO, and whether there are *qualitative benefits* to the ESP that would not exist in an MRO." *In the Matter of the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case Nos. 22-900-EL-SSO, Opinion and Order, ¶ 208 (Aug. 9, 2023).

OCC asserts that the proposed ESP fails the "more favorable in the aggregate" test, and points to the testimony of OCC witness Joseph P. Buckley in support of that conclusion. (*See* OCC Initial Br. at 51-60.) But portions of the testimony that OCC cites to support its arguments simply do not exist. According to OCC's Initial Brief, "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." (OCC Initial Br. at 52.) On the next page, OCC repeats its assertion that, with the new riders and rider increases, "consumers would pay $1.1 billion more in costs under the ESP than under an MRO." (*Id.* at 53.) For both assertions, OCC cites Mr. Buckley's testimony "at 13:19-14:5." (*Id.* at 52 n.291 and 53 n.294.) But the "$1.1 billion" figure appears nowhere in Mr. Buckley's testimony. The cited portion of his testimony (page 13, line 19, to page 14, line 5) discusses the energy efficiency portfolio and reliability-related projects proposed in AEP Ohio's *Application*, not the riders and other provisions in the Joint Stipulation, and includes entirely different figures from the ones OCC cites:

> Q25. DID OHIO POWER PROVIDE ANY QUANTITATIVE BENEFITS ***IN ITS APPLICATION***?
>
> A25. The Company is proposing an Energy Efficiency portfolio (with an EE Rider) that includes a plan to help consumers save energy while also managing system demand at peak. As discussed in Company witness Billing's testimony,[12] Ohio Power predicts an annual benefit to consumers of $144.7 million.
>
> [12] Direct Testimony of Brian F. Billings at 3.
>
> ==
>
> Q26. ARE THERE ANY COSTS ASSOCIATED WITH THE ESP?
>
> A25. The company said it would invest roughly $2.2 billion in reliability-related projects over the term of the plan.[13] In addition Ohio Power's consumers will also be charged a return on these investments. So, the purported quantitative benefits of the ESP are dwarfed by the costs.
>
> [13] RRA, "Reliability Investments at Core of ***AEP's Ohio Electric Security Plan Filing" (January 10, 2023)***.

(OCC Ex. 8 at 13:19-14:5 (emphasis added).) Similarly, OCC cites page 14, line 15, through page 16, line 18 of Mr. Buckley's testimony for the proposition that AEP Ohio "relies on general assertions that the 'streamlined recovery mechanism' [for AEP Ohio's proposed energy efficiency portfolio] will allow the company to 'invest in advanced technology.'" (OCC Initial Br. at 53.) But the quoted language appears nowhere in Mr. Buckley's testimony, much less on the cited pages.

OCC also cites testimony that *does* exist, but is irrelevant and not in the evidentiary record. OCC directly cites the January 2023 testimony of AEP Ohio witness Brian Billings for the proposition that the energy efficiency portfolio proposed in AEP Ohio's Application would have provided benefits of $144.7 million to consumers each year. (OCC Initial Br. at 53 and n.298, citing Billings Testimony at 4.) Similarly, it block-quotes the January 2023 testimony of AEP Ohio witness Jaime Mayhan regarding the "qualitative benefits under the Company's application." (*Id.* at 56 and n.315, citing Mayhan Testimony at 28-29.) But the Joint Stipulation differs from the Company's Application in important ways, including its energy efficiency portfolio (*see* Jt. Ex. 1 at 25-27). So OCC is not just citing extra-record evidence; it is citing irrelevant figures from testimony outside the record regarding an application that no party is currently asking the Commission to approve.

This points to a deeper failure on OCC's part: it never meaningfully updated Mr. Buckley's testimony to address the Joint Stipulation. Mr. Buckley's original testimony back in June 2023 opined that AEP Ohio's proposed ESP was not more favorable in the aggregate than an MRO. (*See* AEP Ohio Ex. 6 at 14-20.) That proposed ESP was, of course, modified by the Joint Stipulation. But when OCC filed testimony in opposition to the Joint Stipulation, it refiled Mr. Buckley's testimony more-or-less as-is. OCC simply added a few sentences noting that "the Settlement differs from the Company's application" and offering, as an example, the fact that "the Rural Access Rider has been eliminated." (*See* OCC Ex. 8 at 15:7-9.) AEP Ohio is not exaggerating; Mr. Buckley admitted at hearing that the "ESP v. MRO" portions of his January and September 2023 testimony are practically identical. (Tr. III at 647:20-24.) Even the exhibits are the same. (*Id.* at 648:4-7.) In fact, Mr. Buckley's September 2023 testimony does not actually include an opinion on whether the ESP modified by the *Joint Stipulation* is more favorable in the aggregate than an MRO; it simply repeats his prior opinion that the ESP in AEP Ohio's *Application* was not more favorable in the aggregate than an MRO. (*Id.* at 648:10 – 649:11.)

All of this was brought out at hearing, Yet OCC's post-hearing brief still relies on Mr. Buckley's no-longer-relevant testimony. Like Mr. Buckley, OCC compares the purported annual benefit to consumers from the energy efficiency portfolio proposed in AEP Ohio's *Application* to a third-party's summary of the reliability investments in the *Application*, and asserts that the "purported quantitative benefits of the *ESP* are dwarfed by the costs." (OCC Br. at 53-54 (emphasis added); *compare* OCC Ex. 6 at 13:19-14:5.) And like Mr. Buckley, OCC ignores AEP Ohio witness Ms. Mayhan's discussion of the qualitative and quantitative benefits in the modified ESP under the Joint Stipulation (*see* AEP Ohio Ex. 2 at 16:5-18:9) and, instead, relies on her January 2023 testimony discussing the benefits of the ESP proposed in the Company's *Application* (*see* OCC Br. at 56). This leads OCC to assert, for example, that "AEP does not provide any concrete quantitative benefits regarding its proposed Energy Efficiency portfolio" (OCC Initial Br. at 53), when in fact Ms. Mayhan testified that "[t]he EE programs in the Stipulation provide an annual gross benefit to customers of approximately $22 million." (AEP Ohio Ex. 2 at 17). By all appearances, OCC copied Mr. Buckley's opinions into its post-hearing brief without actually *reading* them or considering whether Mr. Buckley's testimony was still applicable.

OCC's brief also raises arguments that the Supreme Court of Ohio has rejected. OCC suggests, for example, that the Joint Stipulation is not more favorable in the aggregate than an MRO from a quantitative standpoint because the Joint Stipulation includes "a number of new riders and increases to existing riders" that "would not be included in an MRO." (OCC Br. at 52.) But as the Supreme Court of Ohio responded when NOPEC made that argument several years ago, if that were the test, no ESP could be approved:

> [U]nlike an MRO, an ESP will include all sorts of cost-recovery mechanisms at the outset, *see* R.C. 4928.143(B)(2)(a). Therefore, under

> NOPEC's statutory interpretation, the MRO will *always* appear to be quantitatively more favorable but will never reflect the true cost of the MRO over time.

In re Application of Ohio Edison Co., 146 Ohio St.3d 222, 2016-Ohio-3021, ¶ 25. The Court explained that the Commission had appropriately recognized, in that case, that the alternative to an ESP is not an MRO and no riders; it is an MRO and "recover[y of] investment costs by way of a distribution-rate case." *Id.* at ¶ 24. And, as AEP Ohio witness Mayhan testified, allowing AEP Ohio to recover (for example) its distribution investments and vegetation management costs through the DIR and ESRR mechanisms actually *saves* customers money, by allowing streamlined cost recovery. (*See* AEP Ohio Initial Br. at 100-101, citing AEP Ohio Ex. 2 at 16.)

OCC ignores that benefit. Instead, OCC appears to argue that the Joint Stipulation fails the quantitative portion of the "more favorable in the aggregate" test because the Joint Stipulation would allow AEP Ohio to increase spending under the ESRR and DIR without assurances of improved or maintained reliability. (OCC Initial Br. at 54-55.) On the merits, these arguments simply recycle OCC witness Mr. Williams' attacks on the ESRR and DIR programs, which AEP Ohio addressed in its Initial Brief at 41-51. But OCC's critiques are also irrelevant to the statutory "more favorable" test, for multiple reasons. First, as the plain text of the statute suggests, the "more favorable in the aggregate" test does not require the Commission to examine the ESRR and DIR and determine whether each of them, individually, is "more favorable" than having an MRO, as OCC argues (*see* OCC Br. at 55). It requires the Commission to consider "all [of the ESP's] terms and conditions * * * *in the aggregate* * * * ." R.C. 4928.143(C)(1) (emphasis added). Second, OCC is not arguing here that the ESRR and DIR provide *no* quantitative or qualitative benefits. Instead, OCC is arguing that the programs' benefits do not include specific guarantees of improved or maintained reliability. But nothing in

R.C. 4928.143(C)(1) requires an electric utility to guarantee specific reliability improvements to pass the statutory test. Instead, it asks whether the proposed ESP provides "*quantitative benefits* * * * that would not exist in an MRO." *In the Matter of the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case Nos. 22-900-EL-SSO, Opinion and Order, ¶ 208 (Aug. 9, 2023). As discussed in AEP Ohio's initial Brief (at pages 20-21) and witness Mayhan's September 2023 testimony, it clearly does.

OCC's final argument on the "more favorable in the aggregate" test is that the Commission should not consider the Joint Stipulation's qualitative benefits because the benefits promised in AEP Ohio's *last* ESP did not pan out. (*See* OCC Initial Br. at 57 and 60.) OCC cites no statutory text or Commission precedent that requires AEP Ohio to retroactively confirm the expected benefits from its prior ESPs in order to file new ESPs. Regardless, OCC offers no evidence to support its premise. According to OCC, the benefits promised in the last ESP did not "materialize to the degree promised" because "[t]oo many PIPP consumers are struggling to pay their electric bills" and "consumers have not seen noticeable improvements in reliability performance statistics * * * ." (*Id.* at 57.) AEP Ohio addressed OCC's critiques of its reliability performance in its Initial Brief, at pages 43-44. Still, OCC offers no evidence that the parties supporting the stipulation in the last ESP proceeding *promised* significantly reduced costs for PIPP customers, or noticeable improvements in reliability performance statistics. Instead, OCC points to testimony from Staff and AEP Ohio witnesses in the last ESP proceeding that the Stipulation in that case "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." (*Id.*) These aspects of the last ESP have no obvious relationship to costs for PIPP customers or reliability performance. OCC's arguments on this point are a complete *non sequitur*.

For all of these reasons and the reasons provided in AEP Ohio's initial Brief, the Commission should reject OCC's arguments and find that the proposed ESP, as modified by the Joint Stipulation, is more favorable in the aggregate than a hypothetical MRO would be.

CONCLUSION

For the foregoing reasons, the Commission should adopt the Stipulation without modification.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse, Counsel of Record (0046705)
Michael J. Schuler (0082390)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
Telephone: (614) 716-1608 (Nourse)
Telephone: (614) 716-2928 (Schuler)
Facsimile: (614) 716-2950
stnourse@aep.com
mjschuler@aep.com

Eric B. Gallon (0071465)
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street Columbus, Ohio 43215
Telephone: (614) 227-2190
egallon@porterwright.com

Christopher L. Miller (0063259)
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-2339
Fax: (614) 222-4707
christopher.miller@icemiller.com

Matthew S. McKenzie (0091875)
M.S. McKenzie Ltd.
P.O. Box 12075
Columbus, Ohio 43212
Telephone: (614) 592-6425
matthew@msmckenzieltd.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 22nd day of December 2023, via electronic transmission.

/s/ Steven T. Nourse
Steven T. Nourse

E-Mail Service List:
Bojko@carpenterlipps.com;
Easley@carpenterlipps.com;
mkurtz@BKLlawfirm.com;
kboehm@BKLlawfirm.com;
jkylercohn@BKLlawfirm.com;
Alex.Kronauer@walmart.com;
cgrundmann@spilmanlaw.com;
dwilliamson@spilmanlaw.com;
slee@spilmanlaw.com;
sean.mcglone@ohiohospitals.org;
dparram@brickergraydon.com;
rmains@brickergraydon.com;
nbobb@keglerbrown.com;

rdove@keglerbrown.com;
becky.merola@calpinesolutions.com;
Evan.Betterton@igs.com;
mnugent@igsenergy.com;
Joe.Oliker@igs.com;
jlang@calfee.com;
dromig@armadapower.com;
trent@hubaydougherty.com;
brian.gibbs@nationwideenergypartners.com;
ktreadway@oneenergyllc.com;
jdunn@oneenergyllc.com;
little@litohio.com;
hogan@litohio.com;
rkelter@elpc.org;
emcconnell@elpc.org;
paul@carpenterlipps.com;
wilcox@carpenterlipps.com;
knordstrom@theOEC.org;
mpritchard@mcneeslaw.com;

awalke@mcneeslaw.com;
RGannon@mcneeslaw.com;
CEmeterio@mcneeslaw.com;
William.michael@occ.ohio.gov;
angela.obrien@occ.ohio.gov;
connor.semple@occ.ohio.gov;
Alana.Noward@occ.ohio.gov;
donald.kral@occ.ohio.gov;
dproano@bakerlaw.com;
ahaque@bakerlaw.com;
pwillison@bakerlaw.com;
eprouty@bakerlaw.com;
cynthia.brady@constellation.com;
jesse.rodriguez@constellation.com;
mjsettineri@vorys.com;
glpetrucci@vorys.com;
aasanyal@vorys.com;
bryce.mckenney@nrg.com;
Fdarr2019@gmail.com;
dstinson@bricker.com;
gkrassen@nopec.org;
cpirik@dickinsonwright.com;
jlaskey@norris-law.com;
whitt@whitt-sturtevant.com;
kshimp@dickinsonwright.com;
todonnell@dickinsonwright.com;
ambrosia.wilson@OhioAGO.gov;
ashley.wnek@OhioAGO.gov;
Megan.Addison@puco.ohio.gov;
greta.see@puco.ohio.gov;