

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**POST-HEARING REPLY BRIEF
BY THE CITIZENS' UTILITY BOARD OF OHIO**

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I. INTRODUCTION

On September 6, 2023, Ohio Power Company (“AEP Ohio” or “Company”) submitted the Joint Stipulation and Recommendation (“Stipulation”) in the above captioned proceeding now before the Commission for consideration. The Stipulation resolves the issues in this proceeding in a manner that is supported by Commission Staff and a diverse group of stakeholders (“Signatory Parties”), as seen through the initial briefs filed in this docket on December 1, 2023. Citizens Utility Board of Ohio (“CUB Ohio”) submits the following reply brief to acknowledge and provide further context to the supportive arguments made by fellow Signatory Parties, and to address certain criticisms of the Stipulation made by Ohio Consumers’ Counsel (“OCC”) in its initial brief.

The evidence in this case and the initial post hearing briefs show widespread support of the Stipulation and meet the burden to show that this Stipulation passes the three-prong test. This Stipulation was agreed to by a diverse set of parties, it harnesses technology through an innovative smart thermostat demand response program, electric vehicle time-of-use rates, and energy efficiency and weatherization, benefits customers by reducing the costs of electricity and allowing residential customers to take control of their energy use and furthers the policies of the state codified in R.C. 4928.02 and other important principles and practices.

Opponents, such as OCC, while well-meaning, fail to provide valid reasons why the Stipulation fails the Commission’s test for settlements. OCC’s attack on certain provisions in a vacuum, while forcefully articulated, fails to address the ultimate issue for the Commission’s consideration as to whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. The Commission’s analysis of a stipulation does not consider provisions in isolation, but rather, the Commission determines whether a stipulation, **as a package**, benefits ratepayers and the public interest. We argue that the Stipulation,

as a package, passes this reasonableness standard. As with our initial post-hearing brief, CUB Ohio has chosen to focus on just a few of the many provisions of this Stipulation, and OCC's arguments in opposition to the same, as emblematic of the Stipulation as a whole. CUB Ohio's decision not to respond to other arguments in opposition to the Stipulation raised in this proceeding should not be construed as implicit agreement with those arguments.

II. ARGUMENT

A. The Smart Thermostat Program Benefits Ratepayers and the Public Interest

The demand response programs (as well as the time-varying rate programs in the Stipulation) empower customers to take a more active role in the electric service reliability in their community and compensate customers for the benefits they provide to the grid. As ELPC states, the Smart Thermostat Demand Response Program promotes state policies in Ohio Revised Code Sections 4905.70 to “promote and encourage conservation of energy and a reduction in the growth rate of energy consumption,” by reducing energy usage during Demand Response Events.¹ The incentives for smart thermostats also enable customers to conserve energy at other times, through voluntarily increasing or decreasing their thermostat settings, and thus further reduces energy usage.² On the larger scale, AEP adds that the Smart Thermostat Demand Response Program will “allow the Company and customers to provide benefits to the grid by allowing 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.”³ With the distribution grid issues that occurred in the

¹ ELPC brief at 6.

² *Id.*

³ AEP Ohio Ex. 2 at 23.

Summer of 2022 show, AEP residential customers deserve as many solutions to potential outages resulting from an overstressed grid. These programs, as the Company explains, “can be powerful tools to avoid more widespread customer outages and reduce system costs.”⁴ Staff witness Christopher Healey similarly characterized the program as a “tool that can aid in improving grid reliability[] for the benefit of all customers.”⁵ OCC’s approach, to allow folks to find a smart meter on their own if they want it, does little to provide a systemwide benefit at the scale of a program like this.

OCC alleges that the Stipulation’s demand side management program violates Ohio law and numerous regulatory principles and Practices.⁶ First, OCC alleges that the Settlement violates Ohio Rev. Code 4928.02(H) because it “will be used to help electric marketers market and sell their product (smart thermostat).” To give OCC the benefit of the doubt, CUB believes that this allegation is based on a basic misconception of the program in the Stipulation. The Smart Thermostat program is not the mere marketing campaign that OCC and OCC Witness Shutrump suggest. The program is not designed to merely sell a product, as would be the case if the Commission were to agree with OCC and just go to their nearest big box retailer if they want to purchase a smart thermostat.⁷ The program is designed, instead, to enhance reliability, reduce stress on the grid, save customers money, reduce energy use, and thus provide direct benefits to customers and the public interest. The actual selling of the thermostat (which under the Stipulation can still be chosen in the market by the customer) is a means to the end of reliability and energy reduction and savings.

⁴ *Id.*

⁵ Staff Ex. 1 at 10.

⁶ OCC Brief at 37.

⁷ *Id.*

Secondly, the OCC claims that the Settlement violates Ohio Re. Code 4928.02(D) by forcing consumers to fund smart thermostats that can be readily available at a choice of retailers and a choice of brands.⁸ Again, OCC sees the program, incorrectly, as a way to sell a product. It is not about selling smart thermostat but developing a program that incentivizes customers to reduce energy, save money, and relieve the grid. Further, under OCC's strained application of 428.02(D), there would be no innovation and no market to access. OCC Witness Shutrump's let the peasants eat cake approach leaves residential customers' energy and cost savings on the table, and ultimately hurts residential customers. The scale of a program proposed in the Stipulation that combines the efforts of the utility, CRES providers (and other stakeholders in the program's Working Group) cannot happen if we just suggest that people should just go to Lowes or click on Amazon.com for their needs. As the Company states, and contrary to OCC's testimony, the Smart Thermostat Demand Response program establishes an innovative program that allows non-discriminatory market access to demand side management, which is consistent with, and even encouraged, pursuant to R.C. 4928.02(D).⁹

Finally, OCC alleges that the Stipulation's Smart thermostat Program violates Ohio Rev Code 4928.02(G), which states that it is the policy of the state to "[r]ecognize the continuing emergence of competitive electric markets through the development and implementation of flexible regulatory treatment."¹⁰ To "support" this accusation, OCC cites to statements and dicta in recent Commission orders concerning energy efficiency programs and the Commission's desire to see the competitive market play a larger role in providing energy efficiency programs. These supporting citations however concern issues that are not probative to discussion around the

⁸ *Id.*

⁹ AEP Brief at 17.

¹⁰ OCC Brief at 38.

Stipulation's proposed demand response program. The Orders cited by OCC deal with natural gas and electric energy efficiency programs and shared savings proposals.¹¹

While CUB Ohio respectfully disagrees with the post-HB6 contention that the competitive market is capable of providing the millions of dollars in cost savings and millions of kwh energy savings that utility-scale efficiency provided in the SB221 years (and could still provide today and in the future), that is **not** what is being proposed in the Stipulation. The Stipulation is providing a Smart Thermostat provision designed to facilitate a demand-side management program for residential customers that will provide system wide benefits. Thus it is not a competitive program because it is designed to benefit the distribution system. AEP in its brief aptly describes the benefit of the Smart Thermostat Program, by stating that, "reducing stress on the distribution grid and associated costs while increasing reliability by incentivizing voluntary customer participation benefits all customers and the public interest."¹² Further, this is not a competitive program because any similar service is not available in the service territory. This fact is best expressed by IGS Witness Smith who testified that "although Vistra, a CRES provider, has a smart-thermostat program in another state, a similar program cannot be offered in Ohio because, among other things, of a lack of availability of settlement data."¹³

OCC's argument on unlawful competition is unsubstantiated and is effectively countered by the competitive market representatives themselves. The Signatory Party, Retail Energy Suppliers Association ("RESA") addresses this argument from the competitive suppliers' perspective. RESA states that with the changes made to the Application that they felt unnecessarily hurt the competitive market and could have been deemed against Ohio Policy, "the Stipulation

¹¹ *Id.* at 39

¹² AEP Brief at 59.

¹³ IGS Brief at 10.

conforms with Ohio law and regulatory policies and principles regarding customer choice and the role of an electric distribution utility.”¹⁴ Specifically referring to the smart thermostat program, RESA acknowledges that settlement package embodied in the Stipulation both recommends that AEP Ohio be approved to implement the Smart Thermostat peak demand reduction program, while recognizing that management of individual residential customer demand on the customer’s side of the meter is critically important to customer choice issues and the development and maintenance of a strong competitive market.¹⁵ To support this, RESA points out how the Stipulation includes a requirement that AEP Ohio cannot bid the demand response attributes into PJM capacity auctions, and allowing customers and CRES providers that capability, and also requiring that the enrollment of customers into AEP Ohio’s Smart Thermostat program should occur in a manner that would not restrict customer choice.¹⁶

The smart thermostat demand response program supports customers, the grid, and state policy. Where issues may arise that look to negatively impact Ohio’s policies, the Stipulation also sets up a working group to analyze these impacts and make the needed changes to ensure the success of this program and find ways to enhance the benefits in future cases.¹⁷ Therefore the Commission should reject OCC’s contentions in opposition to the Stipulation on those grounds.

B. The Stipulation’s Energy Efficiency Programs benefit low-income and at-risk customers and support Ohio law and policy.

Similarly, OCC attacks the Stipulation’s low-income energy efficiency programs by suggesting that they “do not benefit consumers and the public interest.”¹⁸ While a bulk of the OCC’s argument is focused on accusing the entity administrator of the low income programs of

¹⁴ RESA Brief at 4.

¹⁵ *Id.* at 8-9.

¹⁶ *Id.*

¹⁷ *See* Joint Ex. 1. at Paragraph 13.

¹⁸ OCC Brief at 11.

unsubstantiated misdeeds and conflicts, the overall crux of the opposition is that “the funding for the program is paid for by consumers, not shareholders.”¹⁹ While a true statement, the mere statement does not mean that investment in weatherization by consumers does not benefit the consumers or the public interest.

Providing programs designed to save energy and reduce monthly bills, resulting in both short and long-term benefits to residential customers, is essential to implementing Ohio policy—and its implicit promise to consumers—stated in ORC 4928.02(A): to ensure the “availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.”²⁰ As stated by AEP in its Initial Brief, the energy efficiency programs in the Stipulation provide an annual gross benefit to customers of approximately \$22 million, which is far more than the cost of the program at \$12 million.²¹ This not only helps low-income customers reduce their usage and therefore their bill, but it will also help reduce the energy demand placed on the electric grid, which is a benefit to all customers. The Energy Efficiency Rider program is nearly exclusively aimed at assisting customers at or below 300% poverty rate; thereby, “protect[ing] at-risk populations.” thus supporting Ohio Rev. Code. 4928.02(L).²²

Under the EE Rider, low-income and moderate-income households will see direct cost savings and the agency to control their energy consumption to further lower costs and reduce emissions. The Low-Income Energy Efficiency program benefits ratepayers and supports important regulatory policies.

¹⁹ *Id.*

²⁰ ORC 4928.02(A)

²¹ AEP Brief at 11.

²² *Id.*

C. OCC's Service Connection concern, while valid, is not a valid reason to disapprove the Stipulation.

OCC contends that the Stipulation is not in the public interest because it does not expressly “address the affordability of consumers’ essential electric utility service or the unreasonably large number of AEP service disconnections that occurred in previous years.”²³ We, however, disagree that this is a fatal flaw of the Stipulation, and disagree that the rejection of *this* Stipulation is an adequate remedy to this important issue. CUB Ohio shares OCC’s concern about the rise in service disconnections - in the AEP service territory and throughout the state. It is with this concern that CUB Ohio advocates for energy efficiency programs - both low income programs and programs designed to benefit all residential customers. Cost-effective energy efficiency and efficiency related programs reduce the overall energy bill for customers, which is why we support this Stipulation. Weatherization programs, such as those in this settlement, not only protect the low-income consumers from future cost increases by lowering the amount of energy they use, and thus providing some protection from future disconnection.

The disconnection issue, and energy equity issues in general, is one of statewide significance and statewide concern. Therefore, it should be on the state regulators through a statewide investigation and/or state lawmakers through statewide legislation to find solutions to the inequities in our system.

III. CONCLUSION

The Stipulation brings together the interests and efforts of the utility, consumer stakeholders, and competitive suppliers to put into practice the policy of encouraging “innovation and market access for cost-effective . . . demand-side retail electric service including, but not

²³ OCC Brief at 27

limited to, demand-side management, time-differentiated pricing.”²⁴ What is more, in the aggregate, the benefits of the Stipulation demonstrate that it proposed an ESP more favorable than a market rate offer. With the ultimate issue for the Commission’s consideration being whether the agreement is reasonable, and should be adopted, for the reasons explained above and in the initial briefs filed by CUB Ohio and the other Signatory Parties, the Commission should approve the Stipulation in this matter in its entirety.

Respectfully Submitted,

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²⁴ Ohio Rev. Code 4928.02(D).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Public Utility Commission of Ohio's e-filing system on all parties referenced in the service list of the docket.

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Summary: Reply Post-Hearing Reply Brief of Citizens Utility Board of Ohio
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Ohio.