

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	Case No. 23-0023-EL-SSO
Power Company for Authority to Establish)	
A Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of an Electric Security)	
Plan.)	
)	
In the Matter of the Application of Ohio)	Case No. 23-0024-EL-AAM
Power Company for Approval of Certain)	
Accounting Authority.)	

POST-HEARING REPLY BRIEF OF THE OHIO ENERGY LEADERSHIP COUNCIL

I. INTRODUCTION

Ohio Energy Leadership Council (“OELC”) respectfully submits this post-hearing reply brief to the Public Utilities Commission of Ohio (the “Commission”) in support of the joint Stipulation and Recommendation (“Joint Stipulation”) filed by Ohio Power Company d/b/a AEP Ohio (“AEP Ohio”) on September 6, 2023, in these matters related to AEP Ohio’s fifth electric security plan (“ESP V”).

This reply brief addresses a limited argument raised by the Office of the Ohio Consumers’ Counsel (“OCC”) in its December 1, 2023 post-hearing brief related to the proposed level of credits negotiated among the signatory parties to the Joint Stipulation for the long-standing IRP-L interruptible rate program. Significantly, OCC does not oppose the proposal by the signatory parties that the Commission should approve the continuation of that interruptible program or any other aspect of the IRP-L program. In fact, OCC’s witness on the issue, Robert Fortney, acknowledged that the Commission has previously found that the IRP-L program provides reliability benefits for AEP Ohio’s customers and also supports the important policy goal of economic development in Ohio. Rather, OCC’s sole argument is that, even though the Joint

Stipulation significantly phases down the credits for IRP-L participants, OCC believes the credits should be phased down even more.

No less than *seventeen* signatory parties, including Staff of the Commission, stipulated to the specific proposed phase down of the IRP-L interruptible credits during the term of ESP V, as a part of the comprehensive settlement package before the Commission for approval. Under the Commission's well-established three-part test for evaluating stipulated settlements, the Commission among other things considers whether the settlement package as a whole conveys benefits to ratepayers and does not violate any important regulatory practices or principles. OCC has failed to show that the heavily negotiated credit phase down for the IRP-L program does not satisfy the Commission's three-part settlement test, and thus OCC's countervailing arguments on the appropriate credit phase down should be rejected.

II. ARGUMENT

a. The Joint Stipulation proposed by the seventeen signatory parties recommends the continuation of the IRP-L program at negotiated credit levels during the ESP V term, with some modifications.

As part of the proposed settlement reached in this ESP V case after a lengthy bargaining process, among other IRP-L program modifications the seventeen signatory parties, including Commission Staff, are recommending a specific phase down of the credits provided to IRP-L customers. AEP Ohio's current tariff provides that the customers in that program must be available to interrupt their consumption of electricity within a very short notice period of 10-minutes in the event of a local emergency determined by AEP Ohio or if an interruption notice is issued by PJM, and further the tariff provides that AEP Ohio can "interrupt service immediately" if an emergency situation requires immediate action by AEP Ohio.¹ IRP-L customers must also bid their eligible

¹ See Ohio Power Company Tariff No. 21, Sheet No. 470-1.

interruptible capacity into either the PJM Base Residual Auction or a PJM Incremental Auction and pay all net capacity and emergency energy revenues to AEP Ohio for distribution in the Economic Development Rider.² The penalties for non-compliance are robust, with the tariff providing that if an IRP-L customer fails to timely interrupt all of its load the customer will be required to refund all rate discounts during the preceding twelve months for the uninterrupted demand, and AEP Ohio can also terminate IRP-L program participation for a second infraction in a twelve-month period.³ IRP-L participants currently receive a monthly credit of \$9.00 per kW of interruptible load.⁴

The Joint Stipulation negotiated in this ESP V case proposes to continue the IRP-L program, with several modifications. First, the Joint Stipulation provides that the IRP-L tariff will include “language to clarify that IRP program curtailments may be made by AEP Ohio for operational reasons outside of a PJM emergency, including for localized load constraints.”⁵ Second, IRP-L participants must continue to provide reasonable evidence that they can be interrupted within 10 minutes of receiving an interruption notice.⁶ Third, the Joint Stipulation clarifies that IRP-L participants can be interrupted with “no annual or daily limitations on interruption hours or events.”⁷ In this way, there is no uncertainty that the IRP-L program participants must not only be available upon extremely short notice to entirely curtail their interruptible load, but also be available for an unlimited number of potential interruption events with unlimited potential duration. All of these provisions work in favor of ensuring that these interruptible customers are available for curtailment of their power during grid emergencies and

² *Id.* at Sheet No. 470-2.

³ *Id.* at Sheet No. 470-1.

⁴ *Id.* at Sheet No. 470-2.

⁵ *Joint Stipulation* at ¶ 19.

⁶ *Id.* at ¶ 20.

⁷ *Id.* at ¶ 21.

reliability events to help AEP Ohio and PJM keep power flowing to other customers during such events.

The other modification recommended by the seventeen parties to the Joint Stipulation is a gradual phase down of the monthly credits provided to IRP-L customers for their interruptible load and compliance with the provisions of the tariff. Under the Joint Stipulation, those monthly credits will be reduced to \$8 per kW of interruptible load on the effective date of ESP V, then down to \$7 per kW in the second year of ESP V, and to \$6 per kW in the third and fourth years of ESP V.⁸ This gradual phase down of the IRP-L credits recommended by the signatory parties is consistent with the Commission's well-established regulatory principle of gradualism by ensuring that it avoids rate shock to participating customers while providing for a period of transition to lower credit levels.⁹ Even while *decreasing* the credits, the Joint Stipulation also *increases* the penalties for non-compliance for IRP-L participants to 150% of the current penalty levels.¹⁰

This specific phase down, with increased non-performance penalties, was part of a heavily negotiated settlement package that was reached following lengthy and exhaustive settlement discussions among capable and knowledgeable parties.¹¹ Settlement negotiations included over ten breakout meetings and fourteen all-party meetings that included all parties in this ESP V case, including OCC.¹² Further, the signatory parties that negotiated the specific provisions of the Joint Stipulation, including the phase down of the IRP-L credits, included a broad and diverse cross-

⁸ The Joint Stipulation also provides a minimum credit of 70% of the PJM Base Residual Auction. *See* Joint Stipulation at ¶ 16.

⁹ *See, e.g., In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, PUCO Case No. 10-176-EL-ATA, May 25, 2011 Opinion and Order at pp. 18, 20.

¹⁰ *Joint Stipulation* at ¶ 17.

¹¹ *See* PUCO Staff Exhibit No. 1, *Direct Testimony of Christopher Healey in Support of the Joint Stipulation and Recommendation*, filed September 11, 2023 ("Healey Testimony"), at p. 3, lines 3-5.

¹² *See* AEP Ohio Exhibit No. 2, *Direct Testimony of Jaime L. Mayhan in Support of the Joint Stipulation and Recommendation*, filed September 11, 2023 ("Mayhan Testimony"), at p. 19, lines 9-12.

section of different customers, interests and advocacy groups, including PUCO Staff, low income customer advocates, industrial and commercial advocates, commercial customers, competitive retail electric suppliers, a non-profit organization representing Ohio competitive retail suppliers, environmental advocates, and other groups.¹³ Further, compromises were reached as part of the settlement package, and no party received everything it wanted because the Joint Stipulation balanced the diverse interests of the signatory parties and was the result of numerous compromises.

b. OCC does not oppose the IRP-L program, but only the agreed phase down of the IRP-L credits during the term of ESP V.

OCC now wants to effectively nullify the laborious negotiation process that resulted in the Joint Stipulation and undo compromises that led to the settlement package, specifically by substituting in OCC's own judgment of what should be an appropriate phase down for the IRP-L interruptible credits. In its brief opposing the Joint Stipulation, at pages 34 through 37, OCC argues that the credit phase down "does not go far enough nor fast enough" and should be lower than what was negotiated between the seventeen parties to the settlement. OCC recommends instead a phase down of the IRP-L credits of \$1.25 per year, that would immediately reduce the per kW credit to \$7.75 in year 1 of ESP V, then to \$6.50 in year 2, \$5.25 in the year 3, and finally \$4.00 in year 4 of ESP V.

Significantly, OCC does not oppose the continuation of the IRP-L program or any other provision of the interruptible program, nor does OCC dispute that the IRP-L program provides important reliability and economic development benefits. Indeed, the testimony and evidence in the record establishes that the IRP-L program provides important benefits that merit the Commission's approval of the proposed settlement package. Specifically, the testimony and evidence in the record specifically cites the grid reliability benefits provided by continued support

¹³ *Id.* at p. 3, lines 10-22. *See also*, Healey Testimony, at p. 3, lines 17-22.

for and expansion of AEP Ohio's interruptible rate programs, including the fact that the IRP program is part of demand response programs that "will provide a means of calling upon customers to curtail during certain events that stress AEP Ohio's system" and in this way "prepare [AEP Ohio] for the future of the electric distribution grid and have operational benefits to the Company, as well as benefits for customers."¹⁴ In addition, in accordance with the testimony in the record, "these programs allow [AEP Ohio] and customers to provide benefits to the grid by allowing [AEP Ohio] 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."¹⁵ Significantly, these programs including the IRP program can be "powerful tools" to help avoid "more widespread customer outages and reduce system costs."¹⁶ Further, PUCO Staff witness Chris Healey testified that the IRP programs have the effect of "enhancing reliability" by requiring IRP participants to curtail their usage at times when the electric grid is stressed.¹⁷

As structured in the Joint Stipulation, the IRP-L is a unique interruptible program in Ohio with industrial customers required to be available to curtail significant load on exceptionally short notice (if any), which translates into a potentially critical reliability tool in AEP Ohio territory. OCC takes no issue with this testimony in support the IRP-L program or the fact that it provides reliability and economic development benefits. In fact, nowhere does OCC claim that the proposed settlement related to the IRP-L's credit levels does not satisfy the first and second prongs of the Commission's three-part test for evaluating negotiated settlements. Instead, relying only on the testimony of OCC witness Robert Fortney, OCC argues that by having a phase down of \$8.00,

¹⁴ See Mayhan Testimony, at p. 23, lines 11-13.

¹⁵ *Id.* at p. 23, lines 13-17.

¹⁶ *Id.* at p. 23, lines 17-18.

¹⁷ Healey Testimony, at p. 9, lines 15-18.

\$7.00, \$6.00, \$6.00 in credits for Years 1 through 4 of ESP V (as compared to OCC’s more aggressive \$7.75, \$6.50, \$5.25, \$4.00 position) the IRP-L program “violates important regulatory principles and practices” because the credits are too high and do not “result in just and reasonable rates.”¹⁸

As discussed in the following section, OCC’s arguments should be rejected because OCC’s position lacks foundation and evidence, is unsupported by the record, and is based on testimony from OCC witness Fortney that amounts to little more than his own opinion regarding how reliability and economic development benefits should be quantified for purposes of the IRP-L credits for the ESP V term.

c. OCC’s arguments related to the negotiated phase-down of the IRP-L credits should be rejected by the Commission.

In its post-hearing brief, OCC offers no compelling evidence or basis to reject the phase down of the IRP-L credits that is an important aspect of the heavily negotiated settlement package, particularly because OCC has failed to show that the proposal violates any important regulatory practices or principles.

First, OCC does not make any arguments with respect to the first two prongs of the Commission’s three-part test to evaluate proposed settlements. Rather, OCC expressly acknowledges that “the PUCO has previously found that the IRP programs have reliability and economic benefits.”¹⁹ Consistent with the Commission’s prior conclusions on AEP Ohio’s IRP program, the evidence in the record (including the testimony cited above) shows that these programs provide important benefits to other customers and the grid. As succinctly stated by PUCO Staff in its initial post-hearing brief, “[t]he Commission has consistently found that the IRP

¹⁸ OCC’s Dec. 1, 2023 Post-Hearing Brief, at pp. 35-36.

¹⁹ *Id.* at p. 35, fn 194, *citing* Case No. 16-1852-EL-SSO, Opinion and Order (April 25, 2018) at 57, 58.

programs provide flexible options for energy intensive customers, promotes energy efficiency, further Ohio's effectiveness in the global economy, and enhance service reliability.”²⁰

Rather, OCC's argument against the negotiated phase down amounts to OCC's opinion that it “does not go far enough nor fast enough”²¹ and that “such high” IRP-L credits “do not benefit consumers and the public interest.”²² OCC argues that the credit should reflect the lower PJM capacity prices established through PJM's Base Residual Auctions.²³ However, the main flaw with OCC's argument is an issue that OCC itself recognizes in its brief, which is how to quantify “the unquantifiable benefits of reliability and economic benefits that the interruptible credits provide[.]”²⁴ OCC assigns some incremental value to those reliability and economic benefits, by suggesting a \$1.25 per year phase down instead of the more gradual one in the Joint Stipulation, but OCC does not explain why it's own values are more commensurate with the reliability and economic development benefits that it acknowledges are part of the IRP-L program. Instead, the testimony on cross-examination from OCC's witness on this issue, Mr. Fortney, illustrates that OCC is merely substituting its own “judgment” for what those values should be for the values selected through prolonged negotiations by the seventeen signatory parties to the settlement:

²⁰ PUCO Staff's Dec. 1, 2023 Post-Hearing Brief, at p. 16, citing *In the Matter of the Application of Columbus Southern Power Company and 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 Nos. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012), p. 26, 66; *In the Matter of the Application of Ohio Power Company to Establish a Standard Service Offer Pursuant to Section 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018) at ¶ 140.

²¹ OCC's Dec. 1, 2023 Post-Hearing Brief, at p. 35.

²² *Id.* at p. 36.

²³ Importantly, Mr. Fortney admitted on cross examination that PJM capacity prices for the term of ESP V beyond year 1 will not be set for “several more years” and that capacity prices could change “substantially” between now and the final year of ESP V. *Hearing Transcript*, Vol. II, p. 359 line 7 - p. 360 line 12.

²⁴ OCC's Dec. 1, 2023 Post-Hearing Brief, at p. 35

Q. [By OELC's counsel] You then recommend a phase-down instead of \$1.25 per kilowatt per year of the four-year Stipulation, correct?

A. Correct.

Q. Did you come up with that \$1.25 per year?

A. Purely judgment on my part, purely judgment on my part.²⁵

The “judgment” of this one witness should not outweigh the collective agreement among a diverse and large group of seventeen intervening parties that all agreed on the recommended IRP-L credits, including PUCO Staff and all of the commercial/industrial trade groups and commercial customers in Ohio that were part of this ESP V case. Doing so would undermine the entire collective negotiation process, as the IRP-L credit phase down in the Joint Stipulation was precisely the result of compromise in view of the entirety of the settlement package, and certainly no party obtained everything they wanted on the issues set forth in the settlement. Accordingly, it would set bad precedent for Commission cases to allow OCC or any other party opposing a settlement to “cherry pick” a single rate or credit issue out of a comprehensive and heavily negotiated settlement based on little more than the “judgment” of one witness opposing the settlement.

Further, it is evident from the testimony of Mr. Fortney that, in proposing the \$1.25 per year credit reduction, he was driven by his ultimate end goal of getting the credits down to \$4.00/kW by the end of the ESP V term:

Q. So if I could summarize, you were trying to get to \$4 by the end of the four-year term and that's how you chose \$1.25 per year?

A. Yes.²⁶

²⁵ *Hearing Transcript*, Vol. II, p. 355, lines 17-23.

²⁶ *Id.* at p. 356, lines 17-20.

Further, Mr. Fortney admitted on cross examination that this results-driven position failed to account for what OCC's proposal would mean for the IRP-L participants and Ohio's economy:

Q. **** Now, did you conduct any analysis or assessment of what impact that credit reduction would have on the IRP-L tariff participants for Ohio State or local economies?

A. No, I did not.²⁷

On the other hand, the interests of IRP-L participants were represented in this proceeding through several intervening parties, including OELC, and the negotiated resolution of the IRP-L credit levels after extensive negotiations on the Joint Stipulation takes into account the impacts on those participants of the proposed credit reductions. Further, by joining the settlement, PUCO Staff also agreed that the proposed credit phase down is appropriate for Commission approval. The Commission should approve the collective position of the signatory parties on the agreed IRP-L credit phase down, representing many different interests and compromises, instead of OCC's cursory results-driven position that fails to account for either the rate impacts on IRP-L participants or the possible effects on Ohio's economy and the local economies where IRP-L participants operate.

Regarding several other key aspects of the IRP-L program, Mr. Fortney admitted on cross examination that his testimony on the IRP-L credits does not cite or factor in that AEP Ohio "can interrupt load separate and apart from the PJM emergency event including for localized load constraints,"²⁸ and that IRP-L participants must show that they can interrupt on a 10-minute notice which is "significantly shorter than the PJM demand response program that's usually two hours[.]"²⁹ Further, Mr. Fortney admitted that his testimony did not cite the proposed increased

²⁷ *Id.* at p. 357, lines 1-5.

²⁸ *Id.* at p. 360 line 20 - p. 361, line 4.

²⁹ *Id.* at p. 361, lines 5-18.

penalty provision for the IRP-L program for ESP V as a factor in his conclusions.³⁰ But those are all key aspects of the IRP-L program, both from a benefits perspective and a compliance perspective, and the willingness of signatory parties to accept such aspects of the IRP-L program for the term of ESP V may have been different if lower credit levels were negotiated. By picking on one aspect of the program, and not factoring in other provisions, if adopted OCC's position would create powerful disincentives for intervening parties to accept compromises in Commission cases that depend on many different parts of a program as multifaceted as the IRP-L program.³¹

Finally, OCC argues that having IRP-L credits "above and beyond a comparable, market-based price does not result in just and reasonable rates to consumers in violation of Ohio law."³² But the problem with OCC's remaining argument, aside from not considering the reliability and economic benefits of the IRP-L program, is that OCC has introduced no evidence whatsoever to support this argument. At no point in opposing the negotiated IRP-L credit phase down has OCC put forth evidence or testimony demonstrating the rate impact to residential customers of the credit levels proposed for the term of ESP V, and OCC neglects to put anything in record regarding how rate impacts would be different if OCC's more aggressive \$1.25 per year phase down on the credits were adopted.

³⁰ *Id.* at p. 362, lines 10-13.

³¹ In its post-hearing brief at the top of p. 36, OCC also mentions the cost causation principle in passing, but OCC does not offer any evidence, argument or even explanation of OCC's position, and thus OCC has effectively waived the argument. In any event, the IRP-L program credit level is not a "cost causation" issue which may arise, for example, when the Commission considers rate design or cost allocations; rather, the program concerns credits for the benefits provided by customers willing and able to interrupt load on extremely short notice to maintain grid reliability for other customers.

³² OCC Post-Hearing Brief at p. 36.

Mr. Fortney admitted on cross-examination that his testimony in opposition to the IRP-L credit phase down had no such evidence or analysis related to OCC's alternative proposal:

Q. Does your testimony within its four corners provide any rate impact analysis to show what your recommendations would mean for a typical residential consumer in terms of rate impact?

A. My testimony does not show that.³³

In other words, OCC cites nothing in the evidentiary record that supports OCC's conclusory and unfounded statement that the negotiated IRP-L credit phase down does not result in "just and reasonable rates to consumers." OCC's argument amounts to nothing more than a catchphrase that is devoid of support, and thus should be rejected by the Commission.

Accordingly, OCC has failed to establish that the negotiated IRP-L credit phase down for ESP V violates any of the Commission's regulatory principles or practices. To the contrary, the IRP-L program advances many of the public policies and principles codified in Ohio Revised Code § 4928.02, including grid reliability benefits that "[e]nsures the availability to consumers of ... reliable ... retail electric service" and economic development benefits that "[f]acilitates the state's effectiveness in the global economy."³⁴

III. CONCLUSION

The Commission should approve the settlement package without modification, including the negotiated IRP-L credit phase down for the term of ESP V, achieved after significant and lengthy negotiations on the Joint Stipulation.³⁵ The settlement package strikes the appropriate balance between all signatory parties in this proceeding as the product of judicious, serious and protracted bargaining between capable parties, it will benefit ratepayers and the public interest,

³³ *Hearing Transcript*, Vol. II, p. 363 line 22 - p. 364 line 1.

³⁴ O.R.C. § 4928.02(A) and (N).

³⁵ See Healey Testimony, at p. 5, lines 8-9 ("Adoption of the Stipulation in its entirety **and without modification** would provide substantial benefits to ratepayers and public interest.") (emphasis added).

and it does not violate any regulatory principles or practices. As such, the Joint Stipulation meets the Commission's three-part test, and it should be approved without modification.

Date: December 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify on this 22nd day of December 2023, that the foregoing document was filed using the Commission's Docketing Information System and was served by electronic mail on the following:

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