

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

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**JOINT POST-HEARING REPLY BRIEF  
OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP  
AND  
THE KROGER CO.**

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**I. INTRODUCTION**

The Public Utilities Commission of Ohio (Commission) should adopt the Stipulation and Recommendation filed on September 6, 2023 (Stipulation) without modification.<sup>1</sup> As demonstrated through record evidence, and explained in the initial post-hearing briefs filed by the majority of the parties,<sup>2</sup> the Stipulation, as a package, represents a just and reasonable settlement of this proceeding. The Stipulation addresses issues related to the Ohio Power Company's (AEP)

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<sup>1</sup> See Joint Ex. 1 (Joint Stipulation and Recommendation (Stipulation)) (September 6, 2023).

<sup>2</sup> See Joint Post Hearing Brief of The Ohio Manufacturers' Association Energy Group and The Kroger Co. (December 1, 2023) (OMAEG/Kroger Brief); Initial Post-Hearing Brief of the Ohio Power Company (December 1, 2023) (AEP Brief); Post-Hearing Brief of Staff (December 1, 2023) (Staff Brief); Initial Post-Hearing Brief of the Environmental Law & Policy Center (December 1, 2023) (ELPC Brief); Initial Post-Hearing Brief of the Ohio Energy Group (December 1, 2023) (OEG Brief); Initial Post-Hearing Brief of the Ohio Environmental Council (December 1, 2023) (OEC Brief); Initial Post-Hearing Brief of Direct Energy (December 1, 2023) (Direct Energy Brief); Initial Post-Hearing Brief of Interstate Gas Supply, LLC (December 1, 2023) (IGS Brief); Initial Post-Hearing Brief of Walmart Inc. (December 1, 2023) (Walmart Brief); Initial Post-Hearing Brief of Ohio Energy Leadership Council (December 1, 2023) (OELC Brief); Initial Post-Hearing Brief of Citizens' Utility Board of Ohio (December 1, 2023) (CUB Brief); Initial Post-Hearing Brief of Ohio Partners for Affordable Energy (December 1, 2023) (OPAE Brief); and Initial Brief of Retail Energy Supply Association (December 1, 2023) (RESA Brief).

January 6, 2023 Application<sup>3</sup> to implement a fifth Electric Security Plan (ESP V) and satisfies the Commission's three-part test.

Following months of fair and open settlement negotiations, a large and diverse group of parties agreed upon settlement terms and filed the Stipulation.<sup>4</sup> Signatory Parties to the Stipulation include the Commission Staff, AEP, the Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), Armada Power, Citizens' Utility Board of Ohio (CUB Ohio), Direct Energy Business LLC and Direct Energy Services LLC (Direct Energy), Enel North America, Inc., Environmental Law & Policy Center (ELPC), Interstate Gas Supply, LLC (IGS), Ohio Energy Group (OEG), Ohio Energy Leadership Council (OELC), Ohio Environmental Council (OEC), Ohio Hospital Association, Ohio Partners for Affordable Energy (OPAE), Retail Energy Supply Association (RESA), and Walmart, Inc. (Walmart).<sup>5</sup> Additionally, the Ohio Telecom Association joined the Stipulation as a Non-opposing Party,<sup>6</sup> and the Ohio Cable Telecommunications Association filed a letter stating that it would not oppose the Stipulation.<sup>7</sup> Only the Office of the Ohio Consumers' Counsel (OCC) and Constellation Energy Generation LLC and Constellation NewEnergy Inc. (Constellation) filed testimony opposing the Stipulation.<sup>8</sup>

Following the presentation of evidence in support of the Stipulation at the evidentiary hearing, the Commission directed interested parties to submit initial briefs by December 1, 2023,

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<sup>3</sup> AEP Ex. 1 (AEP Ohio's Application (Application)) (January 6, 2023).

<sup>4</sup> AEP Ex. 2 at 19 (Mayhan Direct); Staff Ex. 1 at 4 (Healey Direct).

<sup>5</sup> OMAEG/Kroger Brief at 4; IGS Brief at 1; Walmart Brief at 1; and OELC Brief at 1. *See also* Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); and Staff Ex. 1 at 3 (Healey Direct).

<sup>6</sup> OMAEG/Kroger Brief at 4; Walmart Brief at 1; and OELC Brief at 1. *See also* Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); and Staff Ex. 1 at 3 (Healey Direct).

<sup>7</sup> OMAEG/Kroger Brief at 4; Walmart Brief at 1. *See also* OCTA Letter; AEP Ex. 2 at 3 (Mayhan Direct).

<sup>8</sup> OELC Brief at 2. *See also* OMAEG/Kroger Brief at 2; Tr. Vol. I–V. OCC opposed the Stipulation, as well as Constellation, Calpine Retail Holdings (Calpine), and One Energy Enterprises (OEE), each of which opposed specific portions of the Stipulation.

and reply briefs by December 22, 2023. A number of parties, including OMAEG and Kroger, AEP, Staff, ELPC, OEG, OEC, Direct Energy, IGS, Walmart, OELC, CUB Ohio, OPAC, and RESA, filed initial briefs urging the Commission to adopt the Stipulation in its entirety without modification. As explained by these Signatory Parties, the Stipulation resolves issues related to AEP's Application in a manner that, as a package, is just and reasonable, serves the public interest, benefits ratepayers, and does not violate any important regulatory principles or practices.

Only OCC,<sup>9</sup> Constellation,<sup>10</sup> Calpine Retail Holdings,<sup>11</sup> and One Energy Enterprises<sup>12</sup> (collectively, the Opposing Parties) opposed the Stipulation. However, the arguments offered by the Opposing Parties in their initial briefs ignore the extensive, fair, and open bargaining process underlying the Stipulation, and various terms of the Stipulation, which, as a package, provide benefits to ratepayers and the public interest, and comply with Ohio law and Commission regulations. Instead, the Opposing Parties attempt to argue that certain provisions in the Stipulation are unreasonable if considered in isolation. But the focus should be on the Stipulation as a package and whether the Stipulation, as a package, benefits ratepayers and the public interest. That is the Commission's test and the well-established precedent.

The manifest weight of the record evidence in this case demonstrates that the Stipulation, as a package, satisfies the criteria established by the Commission's three-part test for evaluating the reasonableness of a settlement. As such, OMAEG and Kroger respectfully request that the

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<sup>9</sup> Initial Brief by the Office of the Ohio Consumers' Counsel (December 1, 2023) (OCC Brief).

<sup>10</sup> Initial Post-Hearing Brief of Constellation Energy Generation LLC and Constellation NewEnergy Inc. (December 1, 2023) (Constellation Brief).

<sup>11</sup> Initial Brief of Calpine Retail Holdings LLC (December 1, 2023) (Calpine Brief).

<sup>12</sup> Post Hearing-Brief of One Energy Enterprises Inc. (December 1, 2023) (OEE Brief).

Commission adopt the Stipulation in its entirety and issue an order consistent with the recommendations therein.

## II. ARGUMENT

As supported by the initial briefs filed in this case, the record evidence demonstrates that the Stipulation, as a package, is just and reasonable, and benefits ratepayers. The Supreme Court of Ohio has endorsed the Commission's use of this three-part test "to resolve cases in a manner economical to ratepayers and public utilities" and has "affirmed that the Commission may place substantial weight on the terms of a stipulation."<sup>13</sup> As part of its evaluation, the Commission considers the following:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?<sup>14</sup>

As was demonstrated in the initial briefs, a large and diverse group of capable and knowledgeable parties participated in numerous settlement meetings in this proceeding, over the course of several months, where all parties engaged in negotiations regarding AEP's proposed riders, tariffs, and other programs.<sup>15</sup> These settlement meetings ultimately led to the almost unanimous Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding in a way that benefits ratepayers and the public interest, and does not violate any

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<sup>13</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing Consumers' Counsel v. Public Util. Comm.*, Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992).

<sup>14</sup> *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d at 125–26.

<sup>15</sup> OMAEG/Kroger Brief at 4; IGS Brief at 1; Walmart Brief at 1; and OELC Brief at 1. *See also* Joint Ex. 1 at 38–39 (Stipulation); AEP Ex. 2 at 3 (Mayhan Direct); and Staff Ex. 1 at 3 (Healey Direct).

important regulatory principles or practices.<sup>16</sup> Therefore, as demonstrated at the evidentiary hearing and as supported by the Signatory Parties’ initial briefs, the Stipulation satisfies the Commission’s three-part test and should be adopted by the Commission in its entirety.<sup>17</sup>

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

When considering whether the parties to a stipulation are capable and knowledgeable, the Commission acknowledges that the parties involved in the proceeding are in the best position to evaluate their own best interests and costs, and “expects that parties to Settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation.”<sup>18</sup> There is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory.<sup>19</sup> Additionally, the Commission has consistently considered “knowledgeable” in terms of whether parties are knowledgeable about the Commission’s processes, regulatory matters, and the terms of the settlement being negotiated.<sup>20</sup>

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<sup>16</sup> OMAEG/Kroger Brief at 6–7; AEP Brief at 2–19; Staff Brief at 1; ELPC Brief at 4–8; OEG Brief at 3–4; OEC Brief at 9–10; Direct Energy Brief at 5; IGS Brief at 8–13; Walmart Brief at 5–7; OELC Brief at 4–8; CUB Brief at 4; OPAE Brief at 4–5; and RESA Brief at 3–14.

<sup>17</sup> OMAEG/Kroger Brief at 7; AEP Brief at 1; Staff Brief at 1; ELPC Brief at 1; OEG Brief at 2; OEC Brief at 13; Direct Energy Brief at 4; IGS Brief at 1; Walmart Brief at 3; OELC Brief at 2; CUB Brief at 2; OPAE Brief at 2; and RESA Brief at 1.

<sup>18</sup> *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (December 30, 2020).

<sup>19</sup> *Id.*

<sup>20</sup> *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR et al., Opinion and Order at ¶ 100 (December 14, 2022) (“all parties, both signatory and non-signatory, are represented by capable and knowledgeable counsel familiar with Commission proceedings”); *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (December 30, 2020) (“each of the parties is represented by competent, capable, and knowledgeable counsel familiar with Commission proceedings and with access to technical experts”).

The record in this case, as well as the initial briefs, clearly demonstrates that the Stipulation resulted from an extensive and robust bargaining process between a large and diverse group of parties, who were represented by experienced and knowledgeable counsel.<sup>21</sup> All of the parties are capable and knowledgeable as they were represented by attorneys, most if not all of whom have years of experience in regulatory matters before the Commission and who possess, or their clients possess, extensive information.<sup>22</sup> Over the course of several months, these parties engaged in “no fewer than 14 global settlement meetings in which all parties were invited to participate”<sup>23</sup> and “over ten breakout meetings to focus on certain topics.”<sup>24</sup>

Numerous email and phone communications took place between the parties, and numerous versions of the term sheet language were circulated amongst the parties, which allowed parties many opportunities to share their perspectives, ask questions, and engage in productive discussions about issues.<sup>25</sup> These settlement negotiations were conducted at arm’s length, and all intervening parties “were invited to these meetings, and no party was left out of the opportunity to negotiate” the proposed Stipulation provisions.<sup>26</sup> Notably, all of the Opposing Parties were involved in the

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<sup>21</sup> OMAEG/Kroger Brief at 6–7; AEP Brief at 2–19; Staff Brief at 1; ELPC Brief at 4–8; OEG Brief at 3–4; OEC Brief at 9–10; Direct Energy Brief at 5; IGS Brief at 8–13; Walmart Brief at 5–7; OELC Brief at 4–8; CUB Brief at 4; OPAE Brief at 4–5; and RESA Brief at 3–14.

<sup>22</sup> AEP Ex. 2 at 19 (Mayhan Direct); Staff Ex. 1 at 3 (Healey Direct).

<sup>23</sup> Staff Ex. 1 at 4 (Healey Direct). *See also* AEP Ex. 2 at 19 (Mayhan Direct); OMAEG/Kroger Brief at 9; AEP Brief at 23–24; Staff Brief at 6; OEC Brief at 10; Direct Energy Brief at 4; Walmart Brief at 4; OELC Brief at 3; CUB Brief at 4; and OPAE Brief at 3–4.

<sup>24</sup> AEP Ex. 2 at 19 (Mayhan Direct). *See also* Staff Ex. 1 at 3 (Healey Direct); OMAEG/Kroger Brief at 9; AEP Brief at 23–24; Staff Brief at 6; OEC Brief at 10; Direct Energy Brief at 4; Walmart Brief at 4; OELC Brief at 3; CUB Brief at 4; and OPAE Brief at 3–4.

<sup>25</sup> Staff Ex. 1 at 3 (Healey Direct). *See also* AEP Ex. 2 at 19 (Mayhan Direct); OMAEG/Kroger Brief at 9; AEP Brief at 23–24; Staff Brief at 6; OEC Brief at 10; Direct Energy Brief at 4; Walmart Brief at 4; OELC Brief at 3; CUB Brief at 4; and OPAE Brief at 3–4.

<sup>26</sup> AEP Ex. 2 at 19 (Mayhan Direct). *See also* OMAEG/Kroger Brief at 9; AEP Brief at 23–24; Staff Brief at 6; OEC Brief at 10; Direct Energy Brief at 4; Walmart Brief at 4; OELC Brief at 3; CUB Brief at 4; and OPAE Brief at 3–4.



negotiations,<sup>27</sup> and none of them contested at the hearing or in their briefs the fact that the parties involved are capable and knowledgeable.<sup>28</sup>

As such, the record in this case clearly demonstrates that the Stipulation resulted from an extensive fair and open bargaining process in which representatives of varied and diverse interests were able to participate. All of the parties involved in this case engaged in serious bargaining, and were represented by experienced and knowledgeable counsel. As such, the Stipulation satisfies the first prong of the Commission's three-part test.

**B. The Stipulation, as a package, benefits ratepayers and the public interest.**

As the Signatory Parties noted in their initial briefs, the second prong of the settlement test requires the Commission to evaluate the settlement “as a package.”<sup>29</sup> The Commission does not focus on individual settlement provisions because “[t]he question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest.”<sup>30</sup> As such, the Commission has rejected arguments that focus on whether individual provisions could be “more or less” beneficial because the Commission views provisions “within the context of the remaining

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<sup>27</sup> OMAEG/Kroger Brief at 8–9; AEP Brief at 2; Staff Brief at 6; OEC Brief at 8; Direct Energy Brief at 5; IGS Brief at 4–5; Walmart Brief at 4; OELC Brief at 3–4; and CUB Brief at 4. *See also* AEP Ex. 2 at 19 (Mayhan Direct); Staff Ex. 1 at 3–4 (Healey Direct).

<sup>28</sup> *See* OCC Brief, Constellation Brief, Calpine Brief; and OEE Brief.

<sup>29</sup> OMAEG/Kroger Brief at 10; AEP Brief at 2; Staff Brief at 7; OEC Brief at 2; Walmart Brief at 5; and CUB Brief at 2.

<sup>30</sup> *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

provisions of the Stipulation.”<sup>31</sup> Any focus on individual provisions, rather than the Stipulation as a whole, is contrary to the Commission’s precedent.<sup>32</sup>

Through the record evidence<sup>33</sup> and their initial briefs,<sup>34</sup> the Signatory Parties highlighted a number of the Stipulation’s provisions, which, as a package, benefit ratepayers by lowering the costs to customers, obtaining other concessions from AEP, and enabling AEP to invest in reliability improvements and encourage economic development. These include a shorter ESP term,<sup>35</sup> lowering the overall return on equity,<sup>36</sup> expanding participation in the Basic Transmission Cost Rider (BTCR) Pilot and Interruptible Power Discretionary – Expanded (IRP-E) programs,<sup>37</sup> eliminating various proposed riders,<sup>38</sup> decreasing the costs that can be collected through other

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<sup>31</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-El-AIR et al., Opinion and Order at ¶ 137 (December 14, 2022), citing *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

<sup>32</sup> See *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

<sup>33</sup> AEP Ex. 2 at 19–24 (Mayhan Direct); Staff Ex. 1 at 4–10 (Healey Direct).

<sup>34</sup> OMAEG/Kroger Brief at 10–16; AEP Brief at 25; Staff Brief at 10; ELPC Brief at 4–8; OEG Brief at 3–4; OEC Brief at 9–10; Direct Energy Brief at 5–10; IGS Brief at 8–13; Walmart Brief at 5–7; OELC Brief at 4–7; CUB Brief at 4–9; OPAE Brief at 4–5; and RESA Brief at 4–8.

<sup>35</sup> OMAEG/Kroger Brief at 4; AEP Brief at 26–28; Staff Brief at 7–18; OEC Brief at 5; Walmart Brief at 6; and OELC Brief at 4. See also Joint Ex. 1 at 6 (Stipulation); AEP Ex. 2 at 4 (Mayhan Direct); and Staff Ex. 1 at 6 (Healey Direct).

<sup>36</sup> OMAEG/Kroger Brief at 4; AEP Brief at 2–13; Staff Brief at 10; Walmart Brief at 6; and OELC Brief at 4. See also Joint Ex. 1 at 11 (Stipulation); AEP Ex. 2 at 6 (Mayhan Direct); and Staff Ex. 1 at 7 (Healey Direct).

<sup>37</sup> OMAEG/Kroger Brief at 4–5; AEP Brief at 26, 62; Staff Brief at 16–18; OEG Brief at 4; IGS Brief at 12–13; OELC Brief at 6–7; and OPAE Brief at 4. See also Joint Ex. 1 at 15–18, 29–30 (Stipulation); AEP Ex. 2 at 8–10, 13–14 (Mayhan Direct).

<sup>38</sup> OMAEG/Kroger Brief at 5; AEP Brief at 11–12; ELPC Brief at 4–8; OEG Brief at 5–6; and IGS Brief at 8, 10. See also Joint Ex. 1 at 6, 24, 27 (Stipulation); AEP Ex. 2 at 5, 11, 13 (Mayhan Direct).

riders,<sup>39</sup> and ensuring that AEP will file a distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025.<sup>40</sup>

Essentially, the Opposing Parties argue that specific terms of the Stipulation could be changed to benefit a specific subset of customers from a particular rate class.<sup>41</sup> For example, Constellation dedicates its brief to criticizing the current SSO auction process and advocating for a process that Constellation believes is better for non-shopping customers.<sup>42</sup> However, as described above, whether or not specific terms could be “more or less” beneficial to specific classes of customers is not the Commission’s analysis for the second prong of the test.<sup>43</sup> The briefs filed by the Opposing Parties ignore the benefits of the Stipulation as a package, including to customers and suppliers, and whether the Opposing Parties’ proposed changes would have negative impacts on other classes of customers.

The Stipulation, as a package, provides meaningful and valuable benefits to customers and benefits the public interest over the course of the reduced ESP term. The Stipulation lowers costs to customers as compared to the as-filed Application, while still incentivizing AEP to improve

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<sup>39</sup> OMAEG/Kroger Brief at 5; AEP Brief at 41, 47; Staff Brief at 12–17; OEG Brief at 3; Walmart Brief at 6; and OELC Brief at 5. *See also* Joint Ex. 1 at 11, 18 (Stipulation); AEP Ex. 2 at 7, 10 (Mayhan Direct); and Staff Ex. 1 at 6–7 (Healey Direct).

<sup>40</sup> OMAEG/Kroger Brief at 11; AEP Brief at 26; Staff Brief at 22; Walmart Brief at 6; and OELC Brief at 4–7. *See also* Joint Ex. 1 at 16; AEP Ex. 2 at 16 (Mayhan Direct).

<sup>41</sup> *See* OCC Brief at 3–33; Constellation Brief at 12–15; Calpine Brief at 6–14; OEE Brief at 12–16.

<sup>42</sup> *See* Constellation Brief.

<sup>43</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-El-AIR, et al., Opinion and Order at ¶ 137 (December 14, 2022), *citing In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020); *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-791-GA-ALT, Opinion and Order at ¶ 63 (April 21, 2021).

reliability for customers across all rate classes.<sup>44</sup> Many of the foregoing benefits, both to the public interest and to customers, may not have occurred absent the Stipulation. Therefore, the Stipulation, as a package, benefits customers and the public interest, and satisfies the second prong of the Commission’s three-part test.

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

Lastly, the Signatory Parties, through testimony<sup>45</sup> and initial briefs,<sup>46</sup> demonstrated that the Stipulation, as a package, complies with the Ohio Revised Code, the Ohio Administrative Code, and Commission precedent. When determining whether a stipulation violates any important regulatory principle or practice, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.<sup>47</sup> Overall, the terms of the Stipulation are “just and reasonable . . . in resolving numerous complex issues raised in this proceeding, and consistency with many State policies under R.C. 21 4928.02.”<sup>48</sup>

The Opposing Parties again argue that the Stipulation does not satisfy this prong of the test because they believe that certain provisions of the Stipulation could be changed to promote specific

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<sup>44</sup> OMAEG/Kroger Brief at 15; AEP Brief at 100; Staff Brief at 22; ELPC Brief at 4; OEC Brief at 9; and OELC Brief at 6–7. *See also* Staff Ex. 1 at 13 (Healey Direct).

<sup>45</sup> Staff Ex. 1 at 11 (Healey Direct). *See also* AEP Ex. 2 at 24–26 (Mayhan Direct).

<sup>46</sup> OMAEG/Kroger Brief at 16–18; AEP Brief at 91–92; Staff Brief at 18–22; ELPC Brief at 6–8; OEG Brief at 5; OEC Brief at 10–13; Direct Energy Brief at 9–11; IGS Brief at 13; Walmart Brief at 7; OELC Brief at 7–8; CUB Brief at 9–10; and OPAE Brief at 5–6.

<sup>47</sup> *See, e.g., In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (December 30, 2020) (Where the stipulating parties had “presented adequate justification for the Commission to uphold the precedent” and “no argument presented by opposing Intervenor[s] [convinced] the Commission to change or revise this practice,” the Commission adopted the stipulation.).

<sup>48</sup> Staff Brief at 19.

interests for themselves or for specific subclasses of customers.<sup>49</sup> These arguments ignore many of the Stipulation’s terms and Ohio law and Commission precedent. These arguments also ignore the fact that the Stipulation’s terms do in fact satisfy the principles and practices that the Opposing Parties attempt to focus on.

In this case, the Stipulation satisfies various regulatory principles and practices related to Ohio’s policy towards competitive electric service, as specified in R.C. 4928.02.<sup>50</sup> For example, the Stipulation provides low-income programs to help ensure the availability of reasonably priced retail electric service<sup>51</sup> and protect at-risk populations.<sup>52</sup> R.C. 4928.02(A)’s policy of ensuring the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric retail service is facilitated by the expanded BTCR Pilot and IRP-E programs, as well as the DIR and ESRR caps.<sup>53</sup> These programs, as well as other demand response programs, also encourage innovation and market access for cost-effective supply and demand-side retail electric service.<sup>54</sup> AEP’s commitment to supporting economic development with \$450,000 shareholder dollars, as well as the expansion of the BTCR Pilot both further the state policy of “[f]acilitat[ing] the state’s effectiveness in the global economy.”<sup>55</sup> Moreover, as explained by the Signatory Parties in their

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<sup>49</sup> See OCC Brief at 34–60; Constellation Brief at 7 (arguing against the current SSO auction process); Calpine Brief at 9 (arguing against expanding the BTCR Pilot); and OEE Brief at 8 (arguing against the BTCR).

<sup>50</sup> OMAEG/Kroger Brief at 17; AEP Brief at 92–93; Staff Brief at 19; ELPC Brief at 6–8; OEG Brief at 4; IGS Brief at 13; Walmart Brief at 6; OELC Brief at 7; CUB Brief at 9; OPAE Brief at 5; and RESA Brief at 6. *See also* AEP Ex. 2 at 24–26 (Mayhan Direct); Staff Ex. 1 at 11 (Healey Direct).

<sup>51</sup> OMAEG/Kroger Brief at 16; AEP Brief at 92; ELPC Brief at 6; OEG Brief at 4; Walmart Brief at 6; and OELC Brief at 7. *See also* R.C. 4928.02(A).

<sup>52</sup> OMAEG/Kroger Brief at 16; AEP Brief at 93; and CUB Brief at 9. *See also* R.C. 4928.02(L).

<sup>53</sup> OMAEG/Kroger Brief at 16; AEP Brief at 92; ELPC Brief at 6; OEG Brief at 4; Walmart Brief at 6; and OELC Brief at 7. *See also* R.C. 4928.02(A); Staff Ex. 1 at 9 (Healey Direct).

<sup>54</sup> OMAEG/Kroger Brief at 16; AEP Brief at 92; ELPC Brief at 6; OEG Brief at 4; OELC Brief at 7; and CUB Brief at 9. *See also* R.C. 4928.02(D).

<sup>55</sup> OMAEG/Kroger Brief at 16; AEP Brief at 93; OEG Brief at 4; and OELC Brief at 8. *See also* R.C. 4928.02(N).

initial briefs, the stipulated ESP V, as a package, is more favorable in the aggregate than a hypothetical market rate offer (MRO)<sup>56</sup> because the benefits of the stipulated ESP outweigh any added costs.<sup>57</sup>

Again, the Opposing Parties improperly focus on whether specific terms could individually be changed to satisfy certain regulatory principles, while ignoring the key question of whether the Stipulation, taken as a package, complies with Ohio law and Commission regulations. The record evidence demonstrates that, as compared to AEP's proposals in its Application, the Stipulation, as a package, provides many benefits to customers and serves a variety of important regulatory principles and practices. Therefore, the Stipulation satisfies the third prong of the Commission's three-part test and should be adopted in its entirety.

### **III. CONCLUSION**

The record evidence presented at the evidentiary hearing demonstrates that the Stipulation, as a package, filed on September 6, 2023 satisfies the Commission's three-part test for evaluating stipulations. A large, diverse group of capable, knowledgeable parties participated in a fair and open settlement process where all parties were invited to negotiate the Stipulation's provisions. The Stipulation, as a package, equitably and expeditiously resolves all of the issues in this proceeding and serves the public interest by reducing numerous costs to customers and avoiding costs associated with a fully litigated ESP case. And by being more favorable in the aggregate than a hypothetical MRO, and promoting State policy pursuant to R.C. 4928.02, the Stipulation, as a package, complies with important regulatory principles and practices. Arguments by the Opposing Parties improperly focus on individual provisions of the Stipulation rather than the

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<sup>56</sup> OMAEG/Kroger Brief at 18; AEP Brief at 99–102; Staff Brief at 19–22; OEC Brief at 10–13; CUB Brief at 10; and OPAE Brief at 6. *See also* Staff Ex. 2 at 12–13 (Healey Direct); AEP Ex. 2 at 15–18 (Mayhan Direct).

<sup>57</sup> Staff Ex. 2 at 12 (Healey Direct). *See also* AEP Ex. 2 at 16 (Mayhan Direct).

Stipulation as a package, and ignore the manifest weight of the record evidence, which demonstrates the reasonableness of the Stipulation.

Accordingly, for the foregoing reasons, the weight of the evidence presented by AEP and the other Signatory Parties demonstrates that the Stipulation satisfies the Commission's three-part test for evaluating settlements.<sup>58</sup> As such, the Commission should reject the Opposing Parties' arguments and adopt the Stipulation in its entirety, without modification.

Respectfully submitted,

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<sup>58</sup> OMAEG/Kroger Brief at 7; AEP Brief at 1; Staff Brief at 1; ELPC Brief at 1; OEG Brief at 2; OEC Brief at 13; Direct Energy Brief at 4; IGS Brief at 1; Walmart Brief at 3; OELC Brief at 2; CUB Brief at 2; OPAE Brief at 2; and RESA Brief at 1.



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