

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Ohio)
Power Company For New Tariffs Related to) Case No. 2025-1458
Data Centers and Mobile Data Centers.)
) Appeal from the Public Utilities
) Commission of Ohio
)
) Public Utilities Commission of Ohio
) Case No. 24-508-EL-ATA

MERIT BRIEF SUBMITTED ON BEHALF OF APPELLEE

PUBLIC UTILITIES COMMISSION OF OHIO

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**MERIT BRIEF
SUBMITTED ON BEHALF OF APPELLEE
PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

This case arises from the Public Utilities Commission of Ohio's (Commission or PUCO) consideration of a novel and increasingly consequential development in the state's electric-utility landscape: the rapid growth of large-scale data centers seeking service. Faced with projected demand from customers in Ohio Power Company d/b/a AEP Ohio's (AEP Ohio) territory whose energy usage far exceeds that of traditional commercial or industrial consumers, the Commission was asked to determine whether a new tariff was necessary to address the operational and cost implications of that growth.

AEP Ohio filed an application proposing a tariff applicable to new data center and mobile data center customers designed to accommodate the potential for unprecedented load growth, driven almost exclusively by data centers locating within its service area. At issue below was whether a special tariff was needed to address the unique needs of data centers. The Commission made the correct factual determination that data centers are different from other large loads and that a distinct tariff for data centers is appropriate to address the unique load characteristics, cost allocation, and infrastructure concerns presented by the unprecedented scale and nature of data center demand.

In the Order now under review, the Commission resolved several contested legal and procedural issues, executing its responsibilities fairly and in full accordance with Ohio's public-utility administrative law. The Commission determined that the application did not constitute an increase to existing rates but instead proposed a tariff applicable to a distinct class of new

customers. It allowed a temporary moratorium on certain data center contracts to continue during the pendency of the proceedings, until the effective date of the new tariff. The Commission upheld the Administrative Law Judges' (ALJ) rulings on challenges concerning notice and service and sustained the ALJs' evidentiary rulings made during the presentation of testimony. And the Commission made detailed findings of fact grounded in extensive evidence, all within the scope of its statutory authority and regulatory discretion.

The Commission's decision, concluding that data centers pose unique, systemic risks that do not exist for other large energy intensive customers, and adopting the stipulation and tariff accounting for that, was reasonable and supported by the evidence and should be affirmed.

STATEMENT OF FACTS AND CASE

On May 13, 2024, AEP Ohio filed an application, pursuant to R.C. 4909.18, requesting approval of the following tariffs to establish two new customer classifications: (1) a Data Center Power tariff for new data center customers that will use a monthly maximum demand of 25 megawatts (MW) or greater at a single location; and (2) a Mobile Data Center tariff for new mobile data center customers (such as cryptocurrency miners) that will use a monthly maximum demand of 1 MW or greater at a single location. AEP Ex. 1, Appellant's App. at 329-340.¹

In addition to Appellant OMAEG, the ALJs granted intervention to twenty intervenors, including numerous companies supporting data center interests, trade groups, and consumers representatives. Order at ¶ 10, Appellant's App. at 145.

After several months of settlement negotiations, two stipulations were ultimately filed in the case below: one signed by OMAEG and others who predominantly represented data center

¹ References to Appellant's Appendix are denoted as "Appellant's App. at ____."

interests (the 10/10 Stipulation), and one signed by AEP Ohio, the PUCO Staff, the Office of the Ohio Consumers' Counsel, and others (the 10/23 Stipulation), which included Schedule DCT. Order at ¶¶ 11-12, 20, Appellant's App. at 145.

A 13-day hearing was conducted after which the parties submitted post-hearing initial and reply briefs. Order at ¶¶ 14-15, 19-20, Appellant's App. at 146; Entry on Rehearing at 36, Appellant's App. at 250. After consideration of all the evidence and the post-hearing briefs, the Commission issued an Opinion and Order (Order)² on July 9, 2025, approving and adopting Schedule DCT with slight modification. Order at ¶ 158, Appellant's App. at 237.

With this finding, the Commission directed AEP Ohio to file updated tariffs for Schedule DCT, under which applicable data centers are subject to a specified load ramp period, minimum duration contracts, adjusted minimum demand charges, collateral requirements, capacity reassignment limitations, and a new service enrollment process, amongst other 10/23 Stipulation provisions. *See* Schedule DCT Provisions B, D, E, F, J, Appellant's App. at 408, 413-418, 422. AEP Ohio was also directed to cease its temporary service moratorium. Order at ¶ 158, Appellant's App. at 237.

Applications for rehearing were filed by Appellant and others. Entry on Rehearing at ¶ 22, Appellant's App. at 244. On September 3, 2025, the Commission's Entry on Rehearing³ denied the applications for rehearing. Entry on Rehearing at ¶ 62, Appellant's App. at 267. Appellant filed a Notice of Appeal to this Court on November 3, 2025. No other intervening

² *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA (Opinion & Order) (July 9, 2025).

³ *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA (Entry on Rehearing) (Sept. 3, 2025).

party, including the corporations building billions of dollars of data centers in Ohio and their trade group, the Data Center Coalition, appealed or moved to intervene in this appeal.

STANDARD OF REVIEW

R.C. 4903.13 provides that a final order made by the Public Utilities Commission shall be reversed, vacated, or modified by the Supreme Court on appeal only when, upon consideration of the record, the Court is of the opinion that such order was unlawful or unreasonable. The Court does not “reweigh the evidence or second-guess the PUCO on questions of fact.” *Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, ¶ 35. The Court “will not reverse or modify a commission decision as to questions of fact when the record contains sufficient probative evidence to show that the commission’s decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty.” *In re Application of Ohio Power Co.*, 2018-Ohio-4698, ¶ 9 (citing *Monongahela Power Co. v. Pub. Util. Comm.*, 2004-Ohio-6896, ¶ 29). “The application of the relevant legal standards to the facts is one that is best left to the PUCO in the first instance.” *Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 2020-Ohio-5583, ¶ 26.

This Court has “consistently refused to substitute [its] judgment for that of the commission on evidentiary matters.” *AK Steel Corp. v. Pub. Util. Comm.*, 2002-Ohio-1735, ¶ 13; citing, *Cincinnati Gas & Electric Co. v. Pub. Util. Comm.*, 86 Ohio St.3d 53 (1999); also citing, *Dayton Power & Light Co. v. Pub. Util. Comm.*, 4 Ohio St.3d 91 (1983); also citing, *Columbus v. Pub. Util. Comm.*, 170 Ohio St. 105 (1959). “The burden is on the appellant to show that the commission’s decision is against the manifest weight of the evidence or is clearly unsupported by the evidence.” *Id.* at ¶ 20. “This burden is difficult to sustain because the court has consistently found it proper to defer to the commission’s judgment in matters that require the commission to

apply its specialized expertise and discretion ... with regard to factual matters now on appeal.” *Monongahela Power Co.* at ¶ 29. Further, this Court will not reverse a Commission order absent a showing by an appellant that it has been or will be harmed or prejudiced by the order. *Myers v. Pub. Util. Comm.*, 1992-Ohio-135, ¶ 18.

As to questions of law, this Court has “complete and independent power of review” in appeals from the Commission. *Ohio Edison Co. v. Pub. Util. Comm.*, 78 Ohio St. 3d, 466, 469 (1997). Even so, this does not prevent the Court from drawing upon the specialized expertise of the Commission in interpreting the law when “dealing with highly specialized issues and where agency expertise would, therefore, be of assistance in discerning the presumed intent of our General Assembly.” *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110 (1979). While the Court does not give deference to administrative agencies in matters of statutory interpretation, this case does not involve the construction of ambiguous statutes. *TWISM Ents., L.L.C. v. State Bd. of Registration for Prof’l Eng’rs & Surveyors*, 2022-Ohio-4677. Moreover, the Court has recognized that an agency has considerable discretion regarding the implementation of a statute within its jurisdiction. The agency’s exercise of its authority need only fall within a zone of reasonableness. *In re Application of Firelands Wind L.L.C.*, 2023-Ohio-2555, ¶ 15.

The record contains sufficient probative evidence demonstrating that the Commission’s decisions were lawful, reasonable and supported by the manifest weight of the evidence. The Commission properly determined that data centers are fundamentally different from other large load customers, and for that reason, Schedule DCT is a just, reasonable, and lawful pathway for data center customers to receive service from AEP Ohio while ensuring that other customers are

protected from the potential financial risks associated with the massive influx of data center load to the Ohio grid.

ARGUMENT

Proposition of Law 1: The Commission lawfully and reasonably approved Schedule DCT, which is based on actual, material differences in service and is neither unduly discriminatory nor unlawful.

In its First Proposition of Law, Appellant argues that the Commission’s decision was against the manifest weight of the evidence and discriminated against data centers in violation of R.C. 4905.32, 4905.33, 4905.35, due process, and the Equal Protection Clause. Appellant also briefly argues under its proposition that the Commission’s decision was not based upon sufficient findings supported by the record in violation of R.C. 4903.09. The Court should reject Appellant’s arguments because the treatment of data center customers under Schedule DCT is reasonably based on unique risks posed by data center load and the Commission’s Opinion and Order and Entry on Rehearing contained ample detail on the factual basis and reasoning supporting the Commission’s decision.

- A. Schedule DCT is consistent with R.C. 4905.32, 4905.33, and 4905.35 because different customer classes may be established based on justifiable and reasonable distinctions, and those statutes do not prohibit discrimination when the classes are reasonably based.**

R.C. 4905.32 directs that no public utility shall “refund or remit directly or indirectly, any rate ... or charge except such as are specified in such schedule and regularly and uniformly extended to all persons ... under like circumstances for like, or substantially similar, service.” R.C. 4905.33 prohibits utilities from charging different rates for customers who receive “like and contemporaneous service under substantially the same circumstances and conditions.” R.C.

4905.35 prohibits utilities from providing service in a manner that would create “any undue or unreasonable prejudice or disadvantage.”⁴

Interpreting these statutes, this Court has consistently held that a utility tariff is considered unduly discriminatory only if it treats similarly situated customers differently without justification. *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 207 (1994) (holding that under R.C. 4905.32 and R.C. 4905.35(A), “discrimination is not prohibited per se but is prohibited only if without a reasonable basis”); See *Weiss v. Pub. Util. Comm.*, 2000-Ohio-5 at ¶ 11 (holding that R.C. 4905.33 prohibits discriminatory pricing for “like and contemporaneous service” rendered “under substantially the same circumstances and conditions,” but does not prohibit differences in prices charged or collected where the utility services rendered are different or if they are rendered under different circumstances or condition). Thus, these statutes do not prohibit all discrimination in service and rates; only “undue or unreasonable” discrimination is prohibited. See *Weiss*, 2000-Ohio-5 at ¶ 11; *Allnet*, 70 Ohio St.3d at 207.

In *Mahoning County v. Pub. Util. Comm.*, 58 Ohio St. 2d 40, 44 (1979), this Court confirmed:

⁴ Although not cited by the Commission, Schedule DCT is also consistent with R.C. 4905.31, which explicitly empowers the Commission to consider the end use of electricity when separating customers into separate tariffs. R.C. 4905.31(D) provides the following: “[a] classification of service based upon the quantity used, the time when used, *the purpose for which used*, the duration of use, and any other reasonable consideration.” (Emphasis added.). This Court has recognized that a classification based on factors listed in R.C. 4905.31(D) is not prohibited if it is reasonable. See, *Weiss*, 2000-Ohio-5 at ¶ 9. R.C. 4905.31 does not apply exclusively to reasonable arrangements or natural gas special contracts. See, e.g., *In re Commission Investigation into the Resale and Sharing of Local Exchange Telephone Service*, Pub. Util. Comm. 85-1199-TP-COI, 1986 Ohio PUC LEXIS 26, Entry on Rehearing (October 14, 1986). R.C. 4905.31 can be considered by the Court as alternative authority for supporting the Commission’s decision when there is no need for additional findings of fact. See *Long v. Vill. Of Hanging Rock*, 2011-Ohio-5137 at ¶ 33; *Ford v. Bernard Fineson Dev. Ctr.*, 81 F. 3d 304, 307.

Absolute uniformity in rates or prices is not required by statute or case law. A reasonable differential or inequality of rates may occur where such differential is based upon some actual and measurable differences in the furnishing of services to the consumer.

Ohio law thus allows differentiation between customers and customer groups. Customers can be treated differently if there is a reasonable basis for the differing treatment. *Allnet*, 70 Ohio St.3d at 207. “Differences reasonably affecting the expense or difficulty of performing the same or similar service in different areas or circumstances” may be reflected in cost recovery variations/differences, which would not be deemed unlawful nor discriminatory. *Migden-Ostrander v. Pub. Util. Comm.*, 2004-Ohio-3924 ¶ 311 (citing *Buckeye Lake Chamber of Commerce v. Pub. Util. Comm.*, 161 Ohio St. 306, 312 (1954))

The record establishes that the Court’s well-established holdings in these cases are applicable to the Commission’s Order here. *See, e.g., Allnet*, 70 Ohio St.3d at 207. Here, the Commission properly found that the facts established on the record indicate reasonable distinctions between data center customers and other large-load customers. Order at ¶¶ 124-128, Appellant’s App. at 217-219.

Appellant OMAEG aptly summarizes the collective effect of R.C. 4905.32, R.C. 4905.33 and 4905.35: “In other words, similar customers *must* be treated similarly and charged like rates for utility services.” (Emphasis in original.) Appellant Brief at 11. But Appellant’s summary highlights why its argument fails: data centers are *not* similar to other large load customers—as demonstrated by extensive record evidence of their differences—and thus, there is no legal requirement that they be subject to the same tariff terms and conditions as other large-load customers, like traditional manufacturers.

The distinctions that justify Schedule DCT are well-established in the record. Data center customers present differences that impact AEP Ohio’s difficulty of delivering service to data

center customers compared to other large energy-intensive customers. Order at ¶ 129, Appellant's App. at 220. The Commission properly determined that AEP Ohio "has proven that there is a real, pending transmission constraint concern that stems from data centers' significant load growth, and that the 10/23 Stipulation is a proactive solution to address these challenges." Order at ¶ 121, Appellant's App. at 215. The Commission's Order specifically identifies and discusses key distinctions of data centers that differ from all other Ohio electric customers, each supported by evidence in the record. Order at ¶¶ 122, 152, Appellant's App. at 215, 233. Data centers bring unique challenges to the electricity network in Ohio, including unprecedented hypergrowth, extreme load concentration, unique systemic risks, and demonstrated cost causation.

The Commission's Order explained that it is not just the volume and highly intensive pattern of electric usage that distinguishes data center customers from other large energy customers, like manufacturers. Order at ¶ 129, Appellant's App. at 220-221. Testimony established that individual data centers are expected to be the largest customers in AEP Ohio's service territory. Additionally, data centers are materially and distinctly different from other large customers in various ways, including their impact on the grid in the quantity used, the purpose for which used, and the duration of use. *Id.*

Data centers do, in fact, have load profiles that differ from other large customers. Data centers can run at or near maximum capacity all day and every day, unlike traditional manufacturers. *Id.* citing OEG Ex. 1 at 7. Not only are data centers larger than other customers like traditional manufacturers, but they have the ability to scale up their operations and increase their load more readily than many other industries. *Id.* The size and scalability of individual data centers form a reasonable basis to distinguish them from other large load customers. *Id.*

Moreover, the data center industry is a riskier proposition than other large load customers operating in more established industries—data centers are more mobile than other industries and can more easily change locations and thus necessitate a more tailored solution to prevent non-cost causing customers from paying to overbuild AEP Ohio’s transmission system. *Id.*, citing Staff Ex. 1 at 17, Direct Testimony of Christopher Healey, Nov. 26, 2024, Appellee App. at 17.

The record establishes that data center load is experiencing unique and unprecedented hypergrowth, unseen for other types of large loads. AEP Ohio witness Ali testified that there is contracted new load of existing and additional customers totaling 4,400 MW in the central Ohio areas by 2030, of which only 400 MW of use is from non-data center customers, which represents only eight percent of the growth. Order at ¶ 94, Appellant’s App. at 197; Order at ¶ 122, citing AEP Ohio Ex. 2 at 3-6; Appellant’s App. at 215-216. Testimony established that there were over 30,000 MW of unsigned data center load requests looking to connect to the transmission system in the greater Columbus area. *Id.*

Based on a series of studies run by the AEP Transmission Planning organization, the Commission found that even a fraction of the anticipated 30,000 MW load would result in numerous overload and voltage violations throughout central Ohio. *Id.* This data center hypergrowth is the predominant cause of projected transmission capacity constraints that would require costly transmission investment.

In addition, the Commission found that data centers pose unique, systemic risks that do not exist for other large-scale customers. Order at ¶ 108, Appellant’s App. at 206-207. As the proportion of AEP Ohio's load dedicated to data centers increases, the risk of significant underutilization of infrastructure built to serve data center load increases exponentially. *Id.* Unlike non-data center load, which consists of a diverse array of customers from various

industries where risks can be mitigated by marginal fluctuations across different sectors, data center risk is concentrated and industry specific. *Id.*

The Commission properly recognized that AEP Ohio's transmission infrastructure is at a tipping point, where significant infrastructure investment is needed to meet demand in excess of approximately 10,000 MW in central Ohio. Entry on Rehearing at ¶ 45, Appellant's App. at 256. The Company has already committed to 5,000 MW of new data center load, bringing the system dangerously close to this threshold. *Id.* Thus, there is a timely need for a proactive solution to address potential reliability issues in the AEP Ohio central Ohio region, which is specifically driven by data centers. *Id.* Documented in testimony and exhibits, these concerns create actual, material differences in the risk posed by data centers. The evidence also established that data centers, not other classes of customers, are driving the costly transmission upgrades. Order at ¶152, Appellant's App. at 233-234.

Evidence established that: (a) data center load is projected to grow by around 5,000 MW by 2030; (b) non-data center load is projected to grow by only 400 MW in the same period; and (c) the transmission constraints requiring investment are driven by the data center growth. Neither Appellant nor the nearly 19 other intervening parties in this case presented any evidence contradicting these fundamental facts.

Appellant argues that AEP Ohio should have provided more detailed cost-of-service studies or additional quantified data to support adoption of Schedule DCT. Appellant's Brief at 19-20. This argument, however, ignores the unique and proactive nature of this proceeding.

AEP Ohio initiated this proceeding to address the concern that this unparalleled load growth will require significant transmission investments, as its application was intended to address the risk of stranded investments necessary to support future data center load growth

before those costs were fully incurred. Order at ¶ 122, Appellant's App. at 216. The Order recognized that AEP Ohio's filing and proposal to address data center-specific issues is proactive and takes steps to protect existing customers. Order at ¶ 131, Appellant's App. at 223.

As the Commission explained in its Entry on Rehearing, there is a timely need for a proactive solution to address potential reliability issues in the AEP Ohio central Ohio region, which is specifically driven by data centers. Entry on Rehearing at ¶ 45, Appellant's App. at 256. At this stage of load growth expansion for AEP Ohio, detailed cost-specific information is not yet available, and the specific costs to serve individual data centers will vary on a case-by-case basis depending on their location, timing, and specific service needs. *Id.* Schedule DCT accounts for this fact by including detailed provisions to ensure that specific rates applicable to each customer are sufficient to cover the Company's cost of service. *Id.* This approach is both reasonable and necessary given the forward-looking nature of the proceeding.

Without Schedule DCT, transmission owners might make massive transmission investments to serve projected data center load, with the risk that if data centers fail to materialize or underutilize the infrastructure, AEP Ohio's existing customers would bear the cost of stranded investments. Order at ¶¶ 121-129, Appellant's App. at 215-221. The DCT Schedule addresses this risk by ensuring that data center customers bear appropriate responsibility for the infrastructure investments their load requires. *Id.*

This cost causation principle is fundamental to utility regulation. Customers who drive the need for infrastructure investment should bear the costs of that investment. The record establishes that data centers are overwhelmingly the drivers of projected transmission investment in central Ohio. Requiring them to assume appropriate financial responsibility for that investment is equitable cost allocation.

The Commission also found that rapidly increasing data center load poses challenges for the state’s grid reliability for all customers. Order at ¶ 123, Appellant’s App. at 216. The Commission found the evidence AEP Ohio presented at hearing to be substantial and credible. In addition to witness Ali’s testimony regarding load projections, transmission constraints, and system impacts, AEP Ohio provided documentary evidence including responses to discovery containing summaries of transmission analyses. Sidecat Ex. 10, Appellant’s App. at 797 (summary of transmission planning studies).

The Commission is not alone among public utility regulators in recognizing that the unique traits of data center customers provide a reasonable basis for different treatment. Order at ¶ 131, Appellant’s App. at 222-223. Idaho, Arkansas, and Wyoming have approved data center-tailored proposals to address the unique traits of data center and/or blockchain customers. *Id.* The Idaho Public Utilities Commission authorized the Idaho Power Company to establish a new customer classification applicable to high-density load customers noting that the utility was proactively mitigating potential stranded asset costs to its core customers. See, *In the Matter of the Application of Idaho Power Company for Authority to Establish a New Schedule to Serve Speculative High-Density Load Customers*, Idaho Public Utilities Commission Case No. IPC-E-21-37, Order No. 35428 (June 15, 2022). The Arkansas Public Service Commission approved a crypto-tariff, noting that it was sensitive to the “flexible nature of cryptocurrency mining installation and the inherent unpredictability of crypto mining operations.” See, *In the Matter of the Application of Entergy Arkansas, LLC for a Proposed Tariff Regarding Large Power High Load Density (“Crypto-Mining”)*, Arkansas Public Service Commission Docket No. 22-032-TF, Order No. 7 (November 14, 2022) at 8. In Wyoming, Black Hills Energy proposed a tariff applicable to blockchain customers. The Wyoming Public Service Commission recognized it as a

“proactive approach to balance the economic opportunity for the State of Wyoming by attracting these new industries with the risk posed to existing customers.” See, *In re Cheyenne Light, Fuel, and Power d/b/a Black Hills Energy to Implement a Blockchain Interruptible Service Tariff*, Docket No. 20003-173-ET-18, Record No. 15104, Memorandum Opinion, Findings, and Order Approving Stipulation (July 22, 2019) at 2.

Consistent with the regulatory commissions from those jurisdictions, the Commission found that “AEP Ohio’s filing and proposal to address a data center-specific issue is proactive and takes steps to protect existing customers and non-data center customers from risks posed by future significant and unprecedented buildout required to serve the data center load.” Order at ¶ 131, Appellant’s App. at 222-223. The Commission’s approach is consistent with regulatory practices nationwide in recognizing data centers as a distinct customer class requiring specialized treatment, keeping Ohio competitive with other states in data center growth.

The Commission lawfully determined that the creation of Schedule DCT is consistent with applicable statutes and the Court’s rulings regarding undue discrimination. And with that finding, the Commission “underscore[d] that differential treatment is not unreasonably discriminatory, such that a variation in cost recovery rates for data centers would be lawful and just in this specific situation.” Order at ¶ 129, Appellant’s App. at 221.

Schedule DCT protects other non-data center customers and appropriately apportions the risk of underused investments by requiring the cost-causers to bear an appropriate share of investment costs. Order at ¶ 123, Appellant’s App. at 216. Schedule DCT “ensures the cost-causers are held accountable for the significant investments the Company would have to construct to ensure that all of its customers receive safe and reliable electrical service.” Order at ¶ 152, Appellant’s App. at 234.

Data centers represent a quantum leap in load size, growth rate, and concentration compared to any other customer type in AEP Ohio's history. These are not marginal differences but fundamental differences in magnitude, scale, and system impact. The potential for 30,000 MW of new data center load in a matter of years is not "substantially the same circumstances and conditions" (R.C. 4905.33) as the load growth expected from non-data centers, which is negligible by comparison. And R.C. 4905.35 only prohibits "undue or unreasonable prejudice or disadvantage." It is not unreasonable or undue to place the financial burden of the growth caused by data centers on data centers. Quite simply, Schedule DCT is entirely consistent with Ohio law, and the Court should reject any arguments to the contrary. OMAEG's argument that Schedule DCT violates R.C. 4905.32, 4905.33, and 4905.35 lacks merit and should be rejected.

B. Appellant's constitutional arguments have no merit.

Appellant argues that, in addition to violating provisions of Chapter 4905 of the Revised Code, the Commission's decision violated "due process and Equal Protection Clause" by treating similarly situated customers differently without a rational basis. Appellant's Brief at 11-12.

Appellant's argument fails on both procedural and substantive grounds.

These claims are procedurally defective because they lack the specificity required by R.C. 4903.10 and fail to establish any discrete basis separate from the statutory discrimination arguments. Grounds for rehearing must specifically allege in what respect the Commission's order was unreasonable or unlawful. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 2007-Ohio-53 at ¶59. The Court has strictly construed this specificity requirement, holding that the General Assembly intended to deny the right to raise issues on appeal where an appellant used a shotgun instead of a rifle approach. *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 248 (1994). Appellant raises a due process violation but does not make arguments about either

procedural or substantive due process that are distinct from their equal protection or prior statutory violation claims. *See* Appellant’s Brief at 11-12.

Second, in assessing whether a ruling is consistent with the Equal Protection Clause, the governmental action need only have a rational basis to be upheld. *TriHealth, Inc. v. Bd. of Comm’rs Hamilton County*, 430 F.3d 783 (6th Cir. 2005). As discussed thoroughly above, there was ample evidence justifying the Commission’s approval of Schedule DCT, which treats a distinct customer class differently, when such a distinction is reasonable. Here, the record establishes multiple rational bases for Schedule DCT: unprecedented load growth driven by data centers, extreme concentration of demand, unique systemic risks, and cost causation principles. Data center customers are materially different from other large industrial customers in ways directly relevant to utility service provision. The differential treatment is rationally related to these legitimate differences.

C. The Commission’s findings comply with R.C. 4903.09.

Appellant also argues briefly in its First Proposition of Law that the Commission’s decision was not based on sufficient findings supported in the record, in violation of R.C. 4903.09. The Court should reject Appellant’s argument. The Commission’s Order contained extensive findings of fact and citations to the record to support its decision.

R.C. 4903.09 requires the PUCO to file “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.” R.C. 4903.09. Although strict compliance is not required, a Commission order “must contain sufficient detail for [the Court] to determine the factual basis and reasoning relied on by the [PUCO].” *In re Complaint of Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc.*, 2020-Ohio-5221, ¶ 19. The Court recently explained and applied R.C. 4903.09 in *In re Ohio Power*

Co. for an Increase in Elec. Distrib. Rates, 2024-Ohio-2890. There, the Court stated, “R.C. 4903.09 requires the Commission to provide this Court with an adequate record so that we may determine how the Commission reached its decision. The Commission’s orders must contain sufficient detail for us to determine the factual basis and reasoning relied on by the Commission.” *Id.* at ¶ 32. The Court continued, “the Commission’s orders in this case contain ample record citations for this court to determine the factual basis for the Commission’s findings.” *Id.* In finding that the Commission’s order satisfied R.C. 4903.09, the Court noted that the Commission explained its reasoning for rejecting certain evidence and cited support for this reasoning from the evidentiary record. *Id.* at ¶ 37. “And that is all that R.C. 4903.09 requires.” *Id.*

The Commission’s Order goes into great detail on the unprecedented hypergrowth of data center load (Order at ¶¶ 94, 105, 122, 152; Appellant’s App at 197-198, 203, 215-216, 233-234), the concentration of demand at individual sites (Order at ¶ 129, Appellant’s App. at 219-220), the unique systemic risks (Order at ¶ 108, Appellant’s App at 206-207), transmission infrastructure constraints (Order at ¶ 122, Appellant’s App. at 215-216), and the cost causation principles justifying the tariff structure (Order at ¶ 152, Appellant’s App. at 233-234). Each of these findings is supported by citations to witness testimony and exhibits. The Commission complied fully with R.C. 4903.09. For these reasons, the Court should reject Appellant’s first proposition of law and affirm the Commission’s Order.

Proposition of Law No. 2: The Commission lawfully and reasonably found that AEP Ohio’s temporary moratorium was reasonable and necessary and declined to impose penalties.

In its second proposition of law, Appellant contends that AEP Ohio's temporary moratorium on new data center connections violated R.C. 4933.83 and R.C. 4905.22 and that the Commission erred in failing to find AEP Ohio in violation of these statutes and failing to impose

penalties on AEP Ohio for those violations. Appellant's argument again fails on multiple grounds. It fails because AEP Ohio's temporary moratorium was a reasonable, necessary, and lawful response to unprecedented data center load growth that threatened the reliability and adequacy of service to all customers and did not violate R.C. 4933.83 or 4905.22. It also fails because Appellant has not suffered any particularized harm.

R.C. 4905.22 requires utilities to provide service that is "necessary and adequate" and "in all respects just and reasonable." Similarly, R.C. 4933.83(B) requires electric utilities to furnish adequate facilities to meet the "reasonable needs" of consumers within their certified territory and to provide "physically adequate service."

These statutes do not impose an unlimited obligation to connect any and all loads regardless of system conditions. The Commission recognized that the obligation to serve is bound by reasonableness and physical feasibility which includes not only service but the ability to provide enough electricity to meet customer load. *In re Application of Ohio Power Co. for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corp.*, PUCO No. 96-999-EL-AEC, et al., 2006 Ohio PUC LEXIS 359, Opinion and Order *11 (June 14, 2006). If a utility cannot extend service without jeopardizing reliability or risking voltage collapse and blackouts, the obligation to serve does not compel immediate, insufficiently planned system expansion.

In the *Ormet* case, the Commission found that where a utility could not take on a customer's load without risking the ability to provide reliable and sufficient service to other customers, the utility was not able to provide physically adequate service. *Id. at* *11. The circumstances here are analogous. AEP Ohio faced a situation where committing to serve the full extent of requested data center load would jeopardize reliable service to existing customers due

to transmission system constraints. Under *Ormet*, AEP Ohio was not required—and arguably was prohibited—from making commitments that would compromise its ability to provide physically adequate service. Here, the issue is that AEP could not safely serve all the data center load that was expressing interest in Central Ohio. AEP Ohio has a duty to provide safe and reliable service. The utility took this reasonable step, then filed the data center case with the Commission. Now with the Commission’s Order, the moratorium is over and AEP has a clear process. AEP is not trying to deny any data center from connecting to the grid.

The record contains substantial evidence that the moratorium was a temporary, justified and proactive measure to protect system reliability. AEP Ohio witness Ali, the transmission planning expert in the case, provided detailed testimony regarding transmission system constraints and the risks posed by unprecedented data center load growth. Mr. Ali testified that AEP Transmission Planning studies performed in the summer of 2023 indicated that adding more load without significant reinforcement to the grid could cause a voltage collapse, resulting in brownouts and blackouts for customers. Entry on Rehearing at ¶ 45, Appellant’s App. at 256-257 citing Tr. Vol. I at 149-151, 265; Tr. Vol. III at 581, Appellant’s App. at 265.

Mr. Ali explained that the Central Ohio transmission network faces a tipping point where significant infrastructure investment is needed to meet demand in excess of approximately 10,000 MW. Order at ¶ 122, Appellant’s App. at 215. The Company has already signed agreements to add 5,000 MW of new data center load by 2030, bringing the system dangerously close to this threshold. *Id.*, citing AEP Ex. 2 at 3-6.

If AEP Ohio had committed to serving the full extent of requested data center load without transmission system reinforcement, it could have jeopardized its ability to provide reliable and sufficient service to existing customers. Whereas, if AEP Ohio only committed to

serving a portion of the requested data center load, it would not have been providing physically adequate service to those customers. Order at ¶ 113, Appellant’s App. 210. The Company instead implemented a temporary moratorium, notified affected customers, and initiated a Commission proceeding to develop a long-term solution. The Commission found that this temporary measure was implemented “to mitigate the Company’s load from escalating too quickly.” Order at ¶ 130, Appellant’s App. at 221.

Moreover, upon the effective date of Schedule DCT, the Commission directed AEP Ohio to cease the moratorium and to process the queue of customer service requests. Order at ¶ 130, Appellant’s App. at 221-222. Therefore, with the lifting of the temporary moratorium, coupled with the implementation of 10/23 Stipulation’s provisions, the Commission properly concluded that “it should be abundantly apparent that the State of Ohio and its EDUs are open and willing to invest in their transmission infrastructure to serve the unique load data centers pose, while also instilling into these customers that they must make a commitment to bear a fair share of the cost of such buildouts.” *Id.*

Since the Commission concluded that the moratorium was reasonable and did not find AEP Ohio in violation of R.C. 4905.22 or 4933.83, the Commission reasonably declined to impose penalties. Penalties are discretionary and appropriate only where a violation of law is established. R.C. 4905.54. There was no violation of law and, therefore, no imposition of a penalty.

Imposing penalties for a temporary action undertaken to prevent voltage collapse and protect system reliability would have also directly undermined Ohio’s express state policy to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.” R.C. 4928.02(A). AEP Ohio’s proactive approach

here served the interests of both data center customers and existing customers. Penalizing this approach would discourage utilities from bringing novel issues to the Commission for resolution. The Commission reasonably concluded that penalizing AEP Ohio for acting to protect grid reliability would not serve the public interest. Entry on Rehearing ¶ 48, Appellant's App. at 258-259. Faced with an unprecedented influx of load requests from data center customers, AEP Ohio had to strike a balance between providing reliable and adequate service to existing consumers and the duty to make service available to new consumers. Order at ¶ 130, Appellant's App. at 221, Entry on Rehearing at ¶ 51, Appellant's App. at 261.

The Commission correctly supported AEP Ohio's temporary moratorium. However, even if the Commission had erred, Appellant's argument would fail because Appellant has not shown that it suffered any particularized harm. The Court has recently reiterated that a "party seeking reversal of a Commission order cannot meet its burden of establishing prejudicial error without furnishing an argument or citing evidence showing that it has suffered a particularized harm." *In re the Application of Ohio Power Co., for Authority to Establish a Std. Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Slip Opinion No. 2025-Ohio-3034, ¶ 16-18, citing *In re Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Co.*, 2014-Ohio-1532, ¶¶ 23-24. Generalized claims of harm are not enough. Entry on Rehearing at ¶ 51, Appellant's App. at 261. At no point has Appellant demonstrated that it or any of its members attempted to connect to the grid and were prevented from doing so by the moratorium, which applied only to data centers and only to Central Ohio. Further, the Commission's Order explicitly ended the moratorium and approved a clear and transparent process for new data centers to obtain service in AEP Ohio's service territory. Order at ¶¶ 130, 158, Appellant's App. at 221-222,

237. Where, as here, Appellant’s merit brief fails to demonstrate that it was harmed by the moratorium imposed, there is no prejudicial error.

Proposition of Law No. 3: The Commission lawfully and reasonably found that AEP Ohio demonstrated a real, pending transmission capacity constraint supported by substantial, competent evidence.

Appellant contends that the Commission erred by finding that AEP Ohio demonstrated an actual transmission capacity constraint without sufficient evidence in the record, in violation of R.C. 4903.09. However, the record does contain substantial, competent evidence, including expert testimony, transmission planning study summaries, and documented load growth projections, that establishes that AEP Ohio faced a real transmission capacity constraint driven by unprecedented data center load growth.

As discussed above, R.C. 4903.09 requires that the Commission file “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.” R.C. 4903.09. The Commission’s Order thoroughly evaluated this evidence, provided detailed findings supported by specific record citations, and complied fully with R.C. 4903.09. Appellant’s disagreement with the Commission’s weighing of the evidence does not constitute legal error.

In its Order, the Commission expressly found that AEP Ohio proved a real, pending transmission constraint concern stemming from significant and unprecedented data center load growth. Order at ¶ 129, Appellant’s App. 220-221. The Commission found that the central Ohio grid approaches a tipping point near 10,000 MW of load, that AEP Ohio has already signed approximately 5,000 MW of new data center load by 2030, that existing peak demand in central Ohio is approximately 4,000 MW, and that inquiries for an additional 30,000 MW of load have been received. Order at ¶¶ 121–122, Appellant’s App. at 215-216. The Commission found AEP

Ohio witness Ali to be credible when he testified that the Company more than doubled its projected future demand in the central Ohio region, from approximately 4,000 MW to 9,000 MW, driven by new, large data center requests. Order at ¶ 122, Appellant's App. 215-216, citing AEP Ohio Ex. 2 at 3-6. The Commission relied on AEP Ex. 2, (load projections and signed agreements), Sidecat Ex. 10, Appellant's App. at 797-798 (summary of transmission planning studies), and live testimony from AEP Ohio witness Ali subjected to extensive cross-examination over multiple hearing days.

AEP Ohio witness Ali, the transmission planning expert in the case, provided detailed testimony regarding transmission system constraints and the risks posed by unprecedented data center load growth. Mr. Ali testified that the existing peak demand in Central Ohio is 4,000 MW; that AEP Ohio has signed Electric Service Agreements and Letters of Agreement for new load with existing and additional customers to add 5,000 MW of load to the Central Ohio region by 2030; that AEP Ohio has received over 30,000 MW of load requests from data centers that have not yet signed agreements but are seeking to connect to the transmission system in Central Ohio; and that the current Central Ohio transmission system cannot support load in excess of a total of 10,000 MW before needing significant infrastructure enhancements. Order at ¶ 122, Appellant's App. 215-216, citing AEP Ex. 2 at 3-5, Tr. Vol. I at 117, Appellant's App. at 344.

This testimony demonstrates that with 4,000 MW of existing peak demand and 5,000 MW of signed new load, the system will reach 9,000 MW by 2030, which will approach the 10,000 MW threshold that triggers the need for significant infrastructure investment. Order at ¶ 152, Appellant's App. at 233-234.

Witness Ali's testimony was supported by transmission planning studies performed by the AEP Transmission Planning organization. These studies evaluated three different load levels: (1)

the 5,000 MW of signed load that has already gone through the PJM process with all violations addressed; (2) load growth of 750 MW beyond what the system can currently support; and (3) load growth of 1,500 MW beyond what the system can currently support. Sidecat Ex. 10, Appellant's App. at 797-798. Under the second and third scenarios, the studies projected numerous instances of lines overloading as well as voltage drop and voltage magnitude violations. See Tr. Vol. 1 at 181, 227-229, Appellant's App. at 359-361. This evidence directly supports the finding that the transmission system faces capacity constraints when load exceeds certain thresholds.

Moreover, the record establishes that data center load growth vastly exceeds growth from all other customer classes combined. AEP Ohio has signed agreements for 5,000 MW of new data center load by 2030. Appellant's App. at 797-708, AEP Ohio Ex. 2 at 4-5. In contrast, AEP Ohio estimates that load growth from non-data center customers between 2024 and 2030 is approximately 400 MW. Order at ¶ 122, Appellant's App. at 215-216.

This significant difference—5,000 MW versus 400 MW—provides independent support for the Commission's finding that data centers are driving the transmission capacity constraint. The evidence demonstrated that without data center load growth, the transmission system would have ample capacity to serve projected demand. It is only when the massive data center load is added that capacity constraints emerge. *Id.*

Appellant relies on statements that specific future transmission projects are not yet identified, that exact future costs are uncertain, and that reserve capacity must be evaluated case-by-case. Appellant's Brief at 13-16. These statements do not contradict the existence of a pending constraint. Rather, they reflect the forward-looking nature of transmission planning, the

need for load verification before finalizing project scope, and the very purpose of this proceeding—to avoid overbuilding and stranded costs.

The Commission expressly acknowledged that the system could handle up to approximately 10,000 MW, yet that threshold is projected to be reached based on signed load alone. Order at ¶ 71, Appellant’s App. at 181-182. Uncertainty regarding the exact configuration of future facilities does not negate the existence of a planning constraint.

Appellant cites witness McKenzie and discovery responses acknowledging uncertainty about which specific transmission investments may be needed in the future, characterizing this as an admission that no constraint exists. Appellant’s Brief at 19. However, the fact that AEP Ohio cannot precisely predict which specific transmission projects will be needed years in the future does not mean no capacity constraint exists. The specific investments required will depend on which data center projects move forward, where they will be incorporated into the grid, and when they will open. Testimony of Kamran Ali, Intervening Appellee AEP Ohio Supp. at 10-12.

The Commission’s findings are supported by the record, explained in adequate detail, and comply fully with R.C. 4903.09. For these reasons, the Court should reject Appellant’s third proposition of law and affirm the Commission’s Order.

Proposition of Law No. 4: The Commission lawfully and reasonably concluded that AEP Ohio’s application was not for an increase in rates.

In its Proposition of Law No. 4, Appellant argues that the Commission erred by treating AEP Ohio’s Application as an application to establish new rates rather than an application for an increase in rates. Appellant makes this distinction because an application for increase in rates triggers procedural requirements that Appellant argues (in Proposition of Law No. 5) were not met. The Court should reject both propositions of law because the Commission correctly determined that AEP Ohio’s Application was an application to establish *new* rates, not an

application for an increase in *existing* rates under R.C. 4909.18 and R.C. 4909.19. The Application did not seek to increase any rate charged to any existing customer. Instead, it proposed entirely new tariff schedules, applicable prospectively to newly defined data center customer classes, while expressly grandfathering all existing customers.

R.C. 4909.18 distinguishes between (1) applications to *establish* a rate, classification, charge, or regulation, and (2) applications to *increase* an existing rate. The statutory trigger for heightened procedural requirements is an “increase” of an existing rate. As this Court has held, an application constitutes a rate increase only when it seeks “an increase of an existing rate.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 2006-Ohio-5789, ¶ 18. Here, no existing rate has increased.

The Commission found, “The Company’s application did not propose an increase in rates pursuant to R.C. 4909.18 ... [and] does not involve a request to increase rates for existing customers because the proposed tariff involves the emergence of a prominent, new type of customer.” Order at ¶ 25, Appellant’s App. at 148. Further, the Commission noted that there would likely be no impact on existing customer rates due to grandfathering policies. *Id.* Data center customers that had signed service agreements prior to the effective date of the new tariffs were expressly grandfathered and would continue to be served under existing terms.

The Commission explained that “the Company’s proposal should not impact customer rates, but rather, require heightened commitments prior to interconnection and service.” *Id.* This is not a rate increase; instead, it is a prospective framework for a new customer classification. Schedule DCT contains explicit grandfathering provisions, and the Commission noted that there would likely be no impact on existing customer rates due to grandfathering policies. Order at ¶ 25, Appellant’s App. at 148, 408. Customers with executed service agreements prior to the

effective date would continue under existing Schedule GS and would not be subject to *any* of the terms of Schedule DCT. No current customer's authorized tariff rate was modified, amended, or increased. Any potential migration of grandfathered customers would occur only in a future base rate case. Order at ¶ 46, Appellant's App. at 158.

An increase presupposes a baseline. Prospective customers requesting new, specialized service have no existing rate to increase. Establishing initial service terms for a newly defined customer class is not an "increase" within the plain meaning of R.C. 4909.18. The Commission has treated similar filings as "not for increase" where existing customers are grandfathered. *See, e.g., Cincinnati Gas & Electric Co.*, PUCO No. 82-622-EL-ATA (May 12, 1982) (new lighting service with higher rates not considered an increase because existing customers retained their prior service terms).

In sum, AEP Ohio did not seek to increase any existing rate. It proposed new schedules for a newly defined customer class, with express grandfathering of existing customers. Under the plain language of R.C. 4909.18 and precedent, that is not an application for an increase in existing rates. Appellant's fourth proposition of law should be rejected and the Commission's Order affirmed.

Proposition of Law No. 5: The Commission lawfully and reasonably upheld the ALJs' decision regarding statutory notice requirements under R.C. 4909.18.

Appellant argues that the Commission erred by proceeding to hearing without fulfilling the statutory notice requirements of R.C. 4909.18. As discussed above, the Court should reject Appellant's argument because the Commission correctly determined that the application was to establish new rates and R.C. 4909.18 did not apply. Therefore, the notice and procedural requirements of R.C. 4909.18 and 4909.19 were not triggered. Even if those provisions had been triggered, the ALJS substantially complied with those requirements, so that no error occurred.

R.C. 4909.19 establishes two distinct circumstances that trigger *mandatory* notice and hearing requirements: (1) when an application seeks an increase in rates or charges, or (2) when the Commission, upon investigation, determines that an application may be unjust or unreasonable. But the statute does not mandate publication of legal notice for all applications or all hearings. The Commission has discretion to schedule hearings for other purposes, and when it does so, the notice requirements found in R.C. 4909.19 do not apply.

Neither of the circumstances that trigger notice and hearing requirements under R.C. 4909.19 occurred in this case. As discussed under Proposition of Law 4, the Commission expressly determined that AEP Ohio's application did not constitute a request for an increase in existing rates. Order ¶ 25, Appellant's App. at 148. The Commission also made no preliminary finding that the application "may be unjust or unreasonable." Since neither circumstance occurred, the notice requirements of R.C. 4909.19 are inapplicable to this case.

The Court should not conclude that the procedural requirements of R.C. 4909.19 apply simply because the Commission chose to hold a hearing. The matter was set for hearing in the Commission's administrative discretion for this novel proposed tariff in the state of Ohio, given its significance and public interest, not because of any requirement in R.C. 4909.19. Entry on Rehearing at ¶ 58, Appellant's App. at 265; Tr. Vol. I at 37, Appellant's App. at 343. The ALJS correctly recognized that the Commission possesses discretion to hold a hearing even where R.C. 4909.18 does not mandate publication. *Id.* The Court has repeatedly recognized the Commission's broad authority to regulate its proceedings and manage its docket. *See, e.g., Weiss v. Pub. Util. Comm.*, 2000-Ohio-5, ¶ 24; *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 374 (1978). Consistent with that authority, the Commission has exercised its discretion to hold hearings in applications not involving rate increases without requiring statutory publication.

Reversal is also unwarranted because, even though the notice requirements of R.C. 4909.19 did not apply, the Commission substantially complied with the statute. R.C. 4905.09 provides that substantial compliance with Chapter 4909 is sufficient and that Commission orders “shall not be declared inoperative, illegal, or void for an omission of a technical nature.” The purpose of the notice requirements was fully achieved in this case.

The purpose of notice, under R.C. 4909.18 and 4909.19, is to inform interested parties of pending proceedings and provide an opportunity to participate. This proceeding received extensive media coverage from its filing in May 2024. It was widely publicized, attracted intervening parties representing diverse interests, and generated substantial public comment. Order at ¶ 25, Appellant’s App. at 148. As the Commission observed, the proceeding “is one of first impression for this Commission and the state of Ohio,” and “all procedural steps taken in this case have been made publicly, in addition to being covered by several media outlets.” *Id.* Appellant has failed to name any party that has suffered injury because it was unaware of the proceedings or unable to participate.

All procedural steps taken in this case have been made publicly, in addition to being covered by several media outlets, and public interest in the case has been robust, exhibited by the number of filed public comments and intervening parties. Order at ¶ 25, Appellant’s App. at 148. Moreover, upon consideration of the notice concerns raised, the Commission directed AEP Ohio to publish notice of a local public hearing. The evidentiary hearing commenced on December 3, 2024 and continued for four days with full participation from all intervenors. Order at ¶ 14, Appellant’s App. at 146. During an extended continuance of the evidentiary hearing, the Commission scheduled a local public hearing for January 3, 2025 and directed AEP Ohio to publish notice of both that public hearing and the date when the evidentiary hearing would

reconvene. Order at ¶¶ 15-18, Appellant's App. at 146. The hearing then continued on January 6, 2025, again with full participation from a long list of intervenors.

Even if the Court were to find any technical deficiency in the notice procedures, the supplemental notice provided during the continuance of the evidentiary hearing fully remedied any concern. Under these circumstances, the Commission substantially complied with the notice requirements of R.C. 4909.18, and Appellant has not demonstrated any prejudice. For these reasons, Appellant's fifth proposition of law should be rejected and the Commission's Order affirmed.

Proposition of Law No. 6: The Commission lawfully and reasonably upheld the ALJs' reasonable limitations on cross-examination.

In its final Proposition of Law, Appellant contends that the ALJs improperly curtailed cross-examination of AEP Ohio witnesses Ali and McKenzie in violation of due process and R.C. 4903.09. A review of the record, however, shows that the ALJs exercised appropriate procedural discretion under Adm.Code 4901-1-27(B) to prevent cumulative, irrelevant, or improper questioning. The Commission carefully reviewed and affirmed those rulings and found no prejudice.

The Commission did not deprive Appellant of its due process rights. Appellant had notice. A full hearing was conducted. Appellant called witnesses and cross-examined other witnesses. Appellant had the ability to file exhibits, file briefs, and file an application for rehearing. Under these same circumstances, this Court has previously held that due process was afforded. See, *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 2007-Ohio-1386, ¶ 53 (finding that the party had notice, a full hearing, the ability to call its own witnesses, an opportunity to cross-examine other witnesses, the ability to file exhibits, and an opportunity to file briefs and an application for rehearing, and thus, it had due process).

Appellant was not denied due process because of evidentiary rulings made during cross-examination. R.C. 4901.13 provides that the “[C]ommission may adopt and publish rules to govern its proceedings and to regulate the mode and manner of all . . . hearings relating to parties before it.” *Weiss v. Pub. Util. Comm.*, 2000-Ohio-5, ¶ 11. R.C. 4901.13 gives the Commission broad discretion in the conduct of its hearings. *Duff*, 56 Ohio St. 2d at 379 . The Commission has the “discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort.” *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 560, (1982).

Consistent with this authority, the Commission has adopted rules that allow its ALJs to take such actions as are necessary to prevent the presentation of irrelevant or cumulative evidence. Adm.Code 4901-1-25 (C); Adm.Code 4901-1-27 (B)(7)(b). Adm.Code 4901-1-27(B) grants ALJs broad authority to govern the course of proceedings, exclude cumulative or irrelevant evidence, enforce evidentiary standards, and ensure orderly and efficient administration.

Appellant argues that its counsel was limited in questioning AEP Ohio witness, Mr. Ali, regarding his modeling generation resources. However, the record demonstrates that Appellant was permitted to question Mr. Ali regarding the assumptions underlying his modeling. Appellant was permitted to ask whether additional generation resources were considered, whether PJM-controlled resources were included, whether alternative technologies could mitigate constraints, and whether alternatives to the proposed 765 kV line were evaluated. *Id.*; Entry on Rehearing at ¶ 59-60, Appellant’s App. at 266. The ALJs limited repetitive, project-specific questioning regarding prospective generation resources after those topics had already been explored. Order at

¶ 31, Appellant's App. at 151. The Commission properly found that the ALJs appropriately stopped repetitive questioning in the interest of administrative efficiency and clarity of the record. Order at ¶ 28, Appellant's App. at 149-150. Properly limiting the scope of cross - examination and preventing cumulative questioning does not violate due process.

Appellant also argues that its counsel was not able to fully cross examine AEP Ohio witness Mr. McKenzie. The limitation during Mr. McKenzie's cross examination involved a document containing pre-2019 data for which no proper foundation was laid and which witness McKenzie testified he had never seen before and could not authenticate. Order at ¶ 31, Appellant's App. at 151. The ALJs appropriately prevented counsel from reading the document into the record without authentication while permitting questioning regarding its substance. The record further reflects that Appellant proceeded to question Mr. McKenzie extensively regarding economic development, data center growth, transmission capacity, and system support for new load. Order at ¶ 31, Appellant's App. at 151. Based on this record, the Commission appropriately concluded that the ALJs placed "reasonable parameters" on questioning and that Appellant was given "significant leeway." *Id.*

Appellant's due process argument should also be rejected because Appellant has failed to demonstrate any prejudice from the ALJs' rulings. The Court has recently reiterated that a "party seeking reversal of a Commission order cannot meet its burden of establishing prejudicial error without furnishing an argument or citing evidence showing that it has suffered a particularized harm." *In re the Application of Ohio Power Co., for Authority to Establish a Std. Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Slip Opinion No. 2025-Ohio-3034, at ¶ 16-18, citing *In re Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Co.*, 2014-Ohio-1532, ¶ 23-24. Generalized claims of harm are simply not enough. The Commission

appropriately found that Appellant demonstrated no prejudice, particularly considering the ample latitude afforded during cross-examination. Appellant presented its own witnesses, submitted exhibits, filed briefs, and sought rehearing. This Court should uphold the Commission’s decision.

Appellant also argues that the Commission failed to properly articulate in its Order, as required under R.C. 4903.09, the basis for its decision upholding the ALJs’ evidentiary rulings. This argument should again be rejected. As discussed previously, R.C. 4903.09 requires that the Commission file “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.” R.C. 4903.09. The Commission fulfilled this requirement. The Commission identified the specific rulings at issue, explained why the questioning was duplicative or improperly founded, found the ALJs’ parameters reasonable, and reaffirmed those conclusions on rehearing. *See* Order ¶¶ at 28–31, Appellant’s App. at 149-151; Entry on Rehearing at ¶ 61, Appellant’s App. at 267. This issue was thoroughly considered at the Commission level, satisfying the statutory requirements and allowing meaningful appellate review.

The ALJs acted within their discretion under Adm. Code 4901-1-27(B) to appropriately regulate cross-examination. Appellant was afforded extensive opportunity to question witnesses and fully participate in this case. The Commission provided detailed reasoning and found no prejudice. No due process violation and no violation of R.C. 4903.09 occurred. For these reasons, Appellant’s sixth proposition of law should be rejected, and the Commission’s Order affirmed.

CONCLUSION

The Commission’s Order approving Schedule DCT should be affirmed. The Commission confronted a significant and emerging issue in Ohio’s public utility landscape—the rapid

upcoming influx of data centers with unprecedented load—and addressed it squarely, thoroughly, and lawfully. The record amply supports the Commission’s finding that data centers are unique and that a distinct tariff, Schedule DCT, is therefore neither unjust nor discriminatory. To the contrary, it is essential for protection of all Ohioans and to ensure the integrity of the grid. Throughout the proceeding, the Commission acted within its statutory authority, adhered to governing administrative law, and exercised its expertise in a reasonable and lawful manner.

The Commission’s decision should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Appellee Brief**, submitted on behalf of Appellee, the Ohio Public Utilities Commission, was served via electronic mail upon the following parties of record, this 24th day of March 2026.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Power Company for New Tariffs Related to	)	Case No. 24-508-EL-ATA
Data Centers and Mobile Data Centers.	)	

**DIRECT TESTIMONY

IN SUPPORT OF OCTOBER 23, 2024
STIPULATION AND RECOMMENDATION**

AND

**IN OPPOSITION TO OCTOBER 10, 2024
STIPULATION AND RECOMMENDATION**

OF

CHRISTOPHER HEALEY

**RATES AND ANALYSIS DEPARTMENT
ACCOUNTING AND FINANCE DIVISION**

STAFF EXHIBIT _____

November 26, 2024

BACKGROUND AND OVERVIEW

1. Q. Please state your name and your business address.

A. My name is Christopher Healey. My business address is 180 East Broad Street, Columbus, Ohio 43215.

2. Q. By whom are you employed and in what capacity?

A. I am employed by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) as Chief of the Accounting and Finance Division within the Rates and Analysis Department.

3. Q. Please briefly summarize your educational background and work experience.

A. I earned a Bachelor of Arts with majors in Mathematics, Economics, and Linguistics from Rutgers University; a Juris Doctor from Duke University School of Law; and a Graduate Certificate in Public and Nonprofit Leadership from the John Glenn College of Public Affairs at the Ohio State University.

I have been employed by the PUCO since June 2023 as Chief of the Accounting and Finance Division in the Rates and Analysis Department. In that role, I manage teams of PUCO staff (“Staff”) analysts responsible for, among other things, base rate cases, electric security plan proceedings, certain natural gas alternative regulation proceedings, various rider audits and reviews, and utility financing cases. Prior to joining Staff, I was Director of Utility Regulatory Affairs

1 for Enervee Corp. from 2022 to 2023, an attorney for the Office of the Ohio
2 Consumers' Counsel from 2016 to 2022, and an attorney for two international law
3 firms from 2008 to 2015. I am a licensed attorney in the State of Ohio.
4

5 **4. Q. Have you previously testified before the PUCO?**

6 A. Yes. I testified on behalf of Staff in Case Nos. 23-23-EL-SSO and 23-301-EL-
7 SSO.
8

9 **5. Q. What is the purpose of your testimony in this proceeding?**

10 A. My testimony serves two related purposes. It supports and recommends approval
11 of the Joint Stipulation and Recommendation filed on October 23, 2024 (the
12 "10/23 Stipulation"), which is signed by Staff, Ohio Power Co. ("AEP Ohio"),
13 Ohio Energy Group ("OEG"), Walmart Inc., the Office of the Ohio Consumers'
14 Counsel, and Ohio Partners for Affordable Energy. And it opposes and
15 recommends rejection of the Joint Stipulation and Recommendation filed on
16 October 10, 2024 (the "10/10 Stipulation"), which was signed by other
17 intervenors, primarily those representing (exclusively or in part) the interests of
18 data centers and retail suppliers.¹ Parties use various terms to identify the two
19 competing stipulations ("First Stipulation" vs. "Second Stipulation"; "AEP Ohio

¹ Parties to the 10/10 Stipulation are Amazon Data Services, Inc.; Microsoft Corp.; Google LLC; Sidecat LLC, an affiliate of Meta Platforms, Inc.; the Data Center Coalition (of which Amazon, Microsoft, Google, and Meta are members); the Ohio Blockchain Council (whose membership includes cryptocurrency miners/mobile data centers); the Ohio Manufacturers' Association Energy Group ("OMAEG") (whose membership includes at least one data center/mobile data center); Ohio Energy Leadership Council (whose membership includes data centers and/or mobile data centers); Enchanted Rock, LLC (a company that partners with data centers on behind the meter solutions); One Energy Enterprises Inc. (now known as One Power); Interstate Gas Supply; Constellation Energy Generation, LLC/Constellation NewEnergy, Inc.; and the Retail Energy Supply Association (of which IGS and Constellation are members)

1 Stipulation” vs. “Data Center Stipulation”; etc.). To avoid unnecessary disputes
2 about naming, Staff recommends using the neutral terms “10/10 Stipulation” and
3 “10/23 Stipulation.”
4

5 **6. Q. Can you briefly summarize AEP Ohio’s application to provide context for**
6 **the Commission’s consideration of the stipulations?**

7 A. Yes. Through its May 13, 2024 application (“Application”) and supporting
8 testimony, AEP Ohio proposed approval of two tariffs: a tariff for large data
9 center customers (the “Data Center Power” or “DCP” tariff) and a tariff for
10 mobile data centers/cryptocurrency miners (the “Mobile Data Center” or “MDC”
11 tariff, and together, the “Proposed Tariffs”). The following is a summary of the
12 more material terms of AEP Ohio’s Application proposal.
13

14 For each of the Proposed Tariffs, AEP Ohio proposed a minimum contract term of
15 ten years. After five years, a data center can terminate its contract by paying an
16 exit fee equal to three years of minimum charges.
17

18 The DCP tariff applies only to data centers with contract capacity above 25 MW,
19 and the MDC tariff applies to mobile data centers/cryptocurrency miners with
20 contract capacity above 1 MW. Neither of the Proposed Tariffs would apply to
21 non-data-center customers.
22

1 Under the DCP tariff, data centers would pay a minimum demand charge equal to
2 90% of their contract capacity, whereas data centers under the MDC tariff would
3 pay a minimum demand charge of 95%.²

4
5 The Proposed Tariffs included a “load ramp” that would allow data centers to
6 gradually increase their contract capacity over a period of years before reaching
7 their final contract capacity.

8
9 The Application included a proposal to modify the process for data centers to
10 obtain default generation service, rather than serving them through the existing
11 Commission-approved standard service offer (“SSO”).

12
13 **7. Q. What are the primary policy objectives of this proceeding?**

14 A. This case is about reliability, certainty, and accountability, all of which are
15 important for the protection of ratepayers. The electric utility industry is at a
16 crossroads in planning for the future of the grid. After many years of essentially
17 flat load growth, there is the potential for monumental increases in demand,
18 driven almost exclusively by the energy needs of data centers. As it stands today,
19 the AEP Ohio service territory cannot reliably accommodate the needs of every
20 data center that has expressed interest in locating in Central Ohio. So steps must
21 be taken to increase grid capacity, reduce the size of the queue of potential data

² Technically, it is 90%/95% of “the greater of (a) the customer’s Contract Capacity, or (b) the customer’s highest previously established monthly billing demand during the past 11 months.” See McKenzie 5/13 Testimony at MSM-1, Page 2 and MSM-2, Page 2. Section (b) would apply if a customer exceeds its contract capacity. Because many witnesses in this case have filed multiple pieces of testimony, I cite them as “NAME DATE Testimony.”

1 centers, or both. Thus, any result in this case should be aimed at ensuring a
2 reliable grid for all customers, data center or otherwise.

3
4 Maintaining electric reliability requires, among many other things, accurate
5 forecasts of future loads. The challenge is that forecasting future data center load
6 is difficult, if not impossible, because in the existing regulatory environment,
7 there is no good way to identify which data centers are serious about locating in
8 Ohio for the long term and which are not. Thus, any result in this case should be
9 aimed at improving the ability to accurately forecast data center load.

10
11 Accountability is also paramount in this proceeding. Grid investments to
12 accommodate future data center load could be substantial, with a significant
13 impact on utility customers' rates. AEP Ohio's current tariffs do not adequately
14 account for the risks that data centers bring. Customers are required only to sign
15 short-term contracts, and their financial exposure is relatively limited. Without a
16 tariff change, data centers could cause billions of dollars of costs for infrastructure
17 upgrades and end up paying for little of it if they go out of business, leave Ohio,
18 or use less capacity than they ask for. Thus, any result in this case should ensure
19 that new data centers are accountable for the costs that they cause.

20
21 The Commission must balance the interests of data centers and non-data-center
22 customers. Data centers should have a fair opportunity to continue building in
23 Ohio, on terms and conditions that are just and reasonable when considering the

1 unique nature of data centers and the data center industry. Data centers must also
2 be accountable for costs that they cause. Non-data-center customers (like
3 residential and small business customers) should not unreasonably bear the risk of
4 investments made to accommodate data centers.

5
6 **8. Q. What parts of AEP Ohio’s original proposal are modified by the 10/23**
7 **Stipulation?**

8 A. The 10/23 Stipulation improves upon the Application through various
9 modifications. Among other things, and as described in more detail below, the
10 10/23 Stipulation modifies the following provisions of AEP Ohio’s Application:

11
12 **Tariff Applicability (Section III.A).** The DCP and MDC tariffs are merged into
13 a single “Data Center Tariff.” The Data Center Tariff applies to all new data
14 centers, including mobile data centers and cryptocurrency miners, with demand
15 greater than 25 MW.

16
17 **Minimum Demand Charge (Section III.D).** Whereas the Application proposes a
18 minimum demand charge of 90% for data centers and 95% for mobile data
19 centers, the 10/23 Stipulation proposes a sliding scale with larger data centers
20 paying a higher minimum demand charge. Smaller data centers would pay a 60%
21 minimum demand charge, and the largest data centers would pay a minimum
22 demand charge of 85%.

1 **Load Ramp (Section III.E).** The 10/23 Stipulation increases the load ramp
2 period from three years to four years and introduces a minimum contract capacity
3 (50% in year 1, 65% in year 2, 80% in year 3, 90% in year 4) during the load
4 ramp period.

5
6 **Contract Term (Section III.B).** The minimum contract term is the load ramp
7 period plus eight years, compared to the fixed ten-year term in the Application.

8
9 **Termination and Exit Fee (Section III.J).** Under the 10/23 Stipulation, Data
10 Center Tariff customers are eligible to terminate their contract and pay an exit fee
11 five years after the end of the load ramp period, compared to five years inclusive
12 of the load ramp period under the Application. The 10/23 Stipulation also requires
13 all exit fees to be credited for the benefit of ratepayers.

14
15 **Process for Signing up New Data Center Customers (Section III.F).** The 10/23
16 Stipulation provides a detailed, transparent process for new data centers to locate
17 in AEP Ohio's service territory.

18
19 **Assigning Retail Capacity to Another Customer (Section III.G).** The 10/23
20 Stipulation establishes a process for data centers with excess capacity to assign
21 some of that capacity (up to 25%) to another data center customer.

Transmission Pilots (Section III.A.6). Customers taking service under the Data Center Tariff are not eligible to participate in AEP Ohio’s 1CP or 6CP Basic Transmission Cost Rider (“BTCR”) pilot programs or successor programs.

Alleviating Transmission Constraints for Current Customers (Section III.H).

AEP Ohio will contact existing large nonresidential customers to see if there are opportunities to reduce their contract capacity, which could make transmission available for new customers or reduce the need for new investments.

Withdrawal of Standard Service Offer Modifications (Section III.K). The Application proposed various changes to the SSO procurement process that would apply to data center customers. The 10/23 Stipulation withdraws these proposals without prejudice.

9. Q. In what ways does the 10/10 Stipulation modify the Application?

A. The 10/10 Stipulation modifies many aspects of the Application. While the 10/10 Stipulation speaks for itself, I will highlight some of the major changes it makes to the Application.

The 10/10 Stipulation (section III.B) eliminates the MDC tariff and converts the DCP tariff to a new “Electricity-Intensive Customer” (“EIC”) tariff. This new EIC tariff applies broadly to all types of large load customers—not just data centers, but also Ohio manufacturers and other businesses.

1
2 The EIC tariff applies only to new customers above 50 MW, as compared to 25
3 MW for large data centers in the Application. Further, customers with load above
4 50 MW, including new data centers, are exempt from the tariff unless AEP Ohio
5 provides proof of a capacity constraint specific to that customer.
6

7 The 10/10 Stipulation (section III.C) gives EIC customers an option to select a
8 contract term of the load ramp period plus eight years, ten years, or twelve years.
9 Depending on the term that the EIC customer chooses, the exit fee is either
10 reduced to one year or eliminated altogether. The 10/10 Stipulation (section
11 III.M) requires exit fees to be credited to AEP Ohio's transmission rider or
12 deferred as a regulatory liability. It also (section III.G) increases the load ramp
13 period from three years to four years and introduces a minimum contract capacity
14 during the load ramp period, though the minimums under the 10/10 Stipulation
15 (30%, 50%, 70%, 90%) are lower than those under the 10/23 Stipulation (50%,
16 65%, 80%, 90%).
17

18 Like the 10/23 Stipulation, the 10/10 Stipulation (section III.E) includes a sliding
19 scale for the minimum demand charge. Because the EIC tariff only applies to
20 customers above 50 MW, any data center below 50 MW would pay a 60%
21 minimum demand charge. And depending on the length of the contract that an
22 EIC customer chooses, its minimum demand charge would be capped at 75%,

1 80%, or 85% (with longer contracts paying the lower 75% minimum demand
2 charge).

3
4 The 10/10 Stipulation (section III.I) includes a process for new data centers to
5 locate in AEP Ohio's service territory, though it differs from the 10/23
6 Stipulation.

7
8 The 10/10 Stipulation (section III.J) allows EIC customers with excess capacity to
9 assign some of that capacity (up to 50%) to other EIC customers, though the
10 eligibility and process are different from what is included in the 10/23 Stipulation.

11
12 The 10/10 Stipulation (section III.O) modifies the SSO proposals from AEP
13 Ohio's Application such that new data center and other large load customers—
14 and *existing* data center customers who would not be served under the proposed
15 EIC tariff—will not be eligible for the SSO. Instead, they would pay real-time
16 market prices if they don't shop with a supplier.

17
18 Finally, the 10/10 Stipulation (section III.Q) asks the Commission to initiate a
19 Commission Ordered Investigation regarding transmission capacity constraints.

20
21 **10. Q. What standard does the Commission apply when assessing a stipulation?**

22 A. The ultimate issue for the Commission to consider is whether the agreement is
23 reasonable and should be adopted. The Commission has long used a three-part

1 test to evaluate stipulations: (i) Is the stipulation the product of serious bargaining
2 among capable and knowledgeable parties? (ii) As a package, does the stipulation
3 benefit ratepayers and the public interest? (iii) Does the stipulation package
4 violate any important regulatory principles or practices? The Commission may
5 reject a stipulation, approve a stipulation in its entirety, or modify a stipulation
6 and approve it as modified.

7
8 **11. Q. Can you summarize your conclusions regarding the application of the three-**
9 **part test to the stipulations?**

10 A. Yes. The 10/23 Stipulation was the product of serious bargaining, benefits
11 ratepayers and the public interest as a package, and is consistent with regulatory
12 principles and practices. The 10/10 Stipulation, in contrast, fails the three-part test
13 because it does not, as a package, benefit ratepayers and the public interest and
14 because it violates important regulatory principles and practices. Moreover, when
15 evaluated side-by-side, the 10/23 Stipulation is more beneficial to ratepayers and
16 more favorably supports the public interest compared to the 10/10 Stipulation.
17 This further supports approval of the 10/23 Stipulation.

THREE-PART TEST – THE 10/23 STIPULATION

12. Q. Is the 10/23 Stipulation the product of serious bargaining between capable and knowledgeable parties?

A. Yes. There were ten all-party settlement meetings over the course of several months, with all parties invited to each meeting. Three of these meetings took place after the 10/10 Settlement was filed, with signatory parties to the 10/10 Settlement invited and actively participating. No party was excluded from these meetings, and all parties were consistently offered the opportunity to provide feedback during these meetings, via email, and through separate phone calls and meetings. Staff also met with parties individually and in small groups. Any time a party approached Staff with a request to meet regarding this case, Staff agreed to meet and carefully considered the party's feedback in developing its own positions. Feedback from numerous parties—including 10/10 Stipulation signatories—influenced and was incorporated into the 10/23 Stipulation. These all-party meetings and individual/small group meetings were productive and ultimately led to the development and filing of the 10/23 Stipulation. Finally, all parties who actively participated in settlement negotiations are capable and knowledgeable. All signatories to the 10/23 Stipulation are represented by experienced counsel who actively participate in matters before the Commission.

1 **13. Q. Certain data center witnesses testify that the 10/23 Stipulation was not the**
2 **product of serious bargaining because no data center customers signed it. Do**
3 **you agree?**

4 A. No. In assessing the first prong, Data Center Coalition witness Higgins says that it
5 is a “glaring deficiency” of the 10/23 Stipulation that no data center signed it.³
6 Ohio Blockchain Council witness Robertson similarly claims that the 10/23
7 Stipulation does not pass the first prong because no data center signed it.⁴ The
8 Commission should reject these arguments. The data centers’ argument
9 contradicts the Commission’s rules, which allow “*any* two or more parties” to
10 enter into a stipulation.⁵ No stakeholder has veto power over a stipulation.

12 **14. Q. OMAEG argues that the 10/23 Stipulation was not the product of serious**
13 **bargaining because Staff and the other signatory parties lack the ability to**
14 **evaluate the data presented to them and thus were not knowledgeable when**
15 **they signed the 10/23 Stipulation. Do you agree?**

16 A. No. OMAEG believes that AEP Ohio has not provided adequate information to
17 demonstrate that there is any concern with capacity constraints in its service
18 territory,⁶ which (according to OMAEG) demonstrates that the signatory parties

³ Higgins 11/8 Testimony at 5.

⁴ Robertson 11/8 Testimony at 4.

⁵ Ohio Adm. Code 4901-1-30(A) (emphasis added).

⁶ *See, e.g.*, Seryak 11/8 Testimony at 10 (“AEP Ohio has refused to produce data and pertinent information regarding the alleged transmission constraint and AEP Ohio’s or its affiliate’s transmission systems, ensuring that the parties to the [10/23] Stipulation are not knowledgeable about the underlying transmission constraints on its system and the impact of the proposed [Data Center Tariff] on customers.”).

1 were not knowledgeable for purposes of the first prong of the Commission's
2 three-part test.⁷

3
4 Staff rejects OMAEG's claims that Staff was not knowledgeable when it signed
5 the 10/23 Stipulation. As the Commission is aware, Staff is highly knowledgeable
6 with numerous regulatory subject matter experts. Staff performed independent
7 research, extensively reviewed all information provided to it by AEP Ohio and
8 every other party in this case, and reasonably and independently concluded that
9 there is more than enough evidence to be concerned with capacity constraint
10 issues in AEP Ohio's service territory. Consequently, Staff was knowledgeable
11 about the facts and evidence at issue in this case and freely negotiated and signed
12 the 10/23 Stipulation.

13
14 **15. Q. Does the 10/23 Stipulation, as a package, benefit ratepayers and the public**
15 **interest?**

16 A. Yes. The 10/23 Stipulation, as a package, balances numerous interests and in
17 doing so, it benefits ratepayers and the public interests. Broadly speaking, it
18 achieves the most important policy goals of the proceeding. It supports the
19 continued development of a reliable grid in AEP Ohio's service territory. It
20 enhances the accuracy of load forecasts, thus creating more certainty when
21 planning for large-scale grid investments. It reasonably assigns the risk of such
22 investments to cost causers, which are data centers, while providing a clear and

⁷ Seryak 11/8 Testimony at 9-10.

transparent path for data centers to locate in Ohio. And it protects non-data-center ratepayers (residential customers, small businesses, other non-data-center commercial and industrial customers) from unreasonably paying for stranded investments if data center load does not materialize.

16. Q. The 10/23 Stipulation recommends approval of a new tariff that applies only to data centers. Does this benefit ratepayers and the public interest?

A. Yes. A central premise of the opposition to the 10/23 Stipulation is the flawed argument that the proposed Data Center Tariff is discriminatory and thus cannot be approved. The Data Center Tariff, however, is not discriminatory because it reasonably distinguishes between data centers and non-data-centers based on factors that are pertinent for ratemaking purposes.

First, the sheer size of data center load—both at individual data center locations and in the aggregate—is unique. The data centers industry could have an unprecedented impact on the electric grid. Utilities that have planned for relatively flat load growth over the past few decades are now faced with the prospect of doubling or tripling the demand on their systems on a short timeframe. AEP Ohio already has signed contracts for around 5,000 MW of data center load (600 MW for current data centers plus 4,400 MW of new data center load expected by 2030).⁸ This is more than the entire current peak demand in Central

⁸ See Kelso 5/13 Testimony at 8.

1 Ohio, which, according to AEP Ohio, is about 4,000 MW.⁹ It is also more than ten
2 times the amount of expected non-data-center load growth.¹⁰ AEP Ohio also has
3 another 30,000 MW of data center load that has expressed interest in locating in
4 Central Ohio.

5
6 Second, individual data centers have the potential to affect the grid in ways that
7 are distinguishable from other customers. The total load at a single site can be
8 substantially more than even the largest industrial customers, with expectations
9 that individual data centers could soon be as large as 1,000 or even 2,000 MW.¹¹

10
11 Third, there is substantial uncertainty regarding the data center industry. While
12 there are various projections regarding future data center load, the projections
13 seem to change daily, and it is difficult to know how much data center load will
14 materialize or where. It is sometimes difficult to assess how serious a potential
15 data center customer is about a given project. Prospective data center owners may
16 test the waters by expressing interest to multiple utilities, or interest in multiple
17 sites with the same utility, but with plans to build at only one or a few sites. Each

⁹ See Ali 5/13 Testimony at 3. The term “Central Ohio” is sometimes used colloquially to refer generally to the City of Columbus and surrounding areas. Here, it has a more technical definition that relates to a customer’s location on the grid. See Ali Testimony at 4 (defining “Central Ohio” as “the interconnected transmission system that encompasses the greater Columbus Area and its suburbs” that is “highly interconnected to and dependent upon the same transmission network”).

¹⁰ See Attachment CMH-1 (AEP Ohio response to Staff DR 1-5, stating that expected load growth from non-data-center customers is about 400 MW).

¹¹ See Rich Miller, *The Gigawatt Data Center Campus is Coming* (April 29, 2024), available at <https://www.datacenterfrontier.com/hyperscale/article/55021675/the-gigawatt-data-center-campus-is-coming>. See also Electric Power Research Institute, *Utility Experiences and Trends Regarding Data Centers* (Sept. 2024) (48% of surveyed utilities have had a request for a data center in excess of 1,000 MW).

1 site might be counted in the utility's queue, thus resulting in double (or triple, or
2 quadruple...) counting when looking at the data center industry in the aggregate.

3
4 Fourth, the uncertainty problem is exacerbated by unique data center features.
5 Some data centers have the potential to move from one location to another in
6 ways that other customers do not. Mobile data centers especially can more readily
7 move their operations compared to other industries. Some mobile data centers
8 operate out of shipping containers, which can be moved by train or truck. Other
9 data centers are even more mobile, with new modular or prefabricated designs
10 that can be moved by a forklift. Further, even larger data centers can more easily
11 change location than businesses in other industries because their core asset is
12 computing equipment that can be removed from an existing building and
13 reinstalled elsewhere. Thus, a utility might plan for new data center load, only to
14 have that load disappear after a relatively short period of time (assuming it shows
15 up in the first instance). Data center load can also disappear if companies go out
16 of business, are forced for economic reasons to scale back their operations, or
17 their energy needs change due to technological advances or other market
18 developments. Given the unknowns about future data center use cases, like
19 artificial intelligence, this type of business sector volatility would not be
20 surprising.

21
22 Fifth, the load at a single data center site can increase more readily than other
23 industries. The driving force behind data center electric load is computing power.

1 It is relatively straightforward for a data center to increase its capacity needs by
2 buying more computers and installing them in its data center facility, or by
3 incrementally adding new data center units in shipping containers or similar
4 modular buildings. In contrast, the process of increasing capacity at a
5 manufacturing facility can be much more involved and take more time, given the
6 custom nature of individual businesses' operations.

7
8 Finally, many large data centers run at near maximum capacity all day, every day
9 (*i.e.*, they have a high load factor). According to AEP Ohio, there are only two
10 non-data customers with a load factor greater than 95%.¹²

11
12 The 10/23 Stipulation aims to address these challenges. A data center tariff should
13 be designed to ensure that data centers are serious and committed to locating in
14 Ohio for the long run, and pay their fair share of any costs that they cause. A
15 primary goal in this case is to protect other ratepayers from unreasonably
16 subsidizing data centers or being responsible for the cost of stranded assets.

17
18 The 10/23 Stipulation provides for both certainty and accountability. The
19 commitment to long-term contracts and minimum demand charge should reduce
20 speculative data center load. Neither AEP Ohio nor other market participants can
21 adequately and accurately plan for the future of the grid until there is greater
22 certainty about how much of the 30,000 MW of potential data center load is real

¹² See Attachment CMH-2 (AEP Ohio's response to Staff DR 1-1).

1 and how much is speculative or illusory. AEP Ohio will be able to more
2 accurately forecast its load by removing from the queue those data centers that are
3 not willing to make a serious commitment to Ohio. Likewise, longer-term
4 contracts, minimum demand charges, and other financial commitments are
5 designed to ensure that data centers remain accountable. Adding substantial load
6 to the grid could come at a significant cost. If grid upgrades are made to
7 accommodate new data center load, it is essential that data centers pay their fair
8 share of the costs that they cause, whether for transmission upgrades or otherwise.
9 Likewise, other ratepayers should not be solely responsible for the cost of
10 stranded assets if the data center load fails to materialize or materializes and then
11 disappears in short order. The 10/23 Stipulation accomplishes these objectives
12 through a data center specific tariff.¹³

13
14 **17. Q. Has the Commission previously considered a customer's end use or type of**
15 **business/operations when establishing tariffs and rates?**

16 A. Yes. The Commission has approved tariffs that apply to customers based on the
17 purpose for which they use electricity. In AEP Ohio's service territory, there are
18 approved tariffs for area lighting and street lighting, electric heating, schools and
19 churches, public authorities, electric vehicles, automakers, and agriculture. These
20 tariffs apply to customers with certain businesses, operations, or electricity end
21 uses; they are not strictly based on energy-related factors like load profile, peak

¹³ These factors also demonstrate why a data center specific tariff is consistent with regulatory principles and practices.

usage, or energy consumption. Other Ohio electric distribution utilities have similar tariffs for end uses.¹⁴

In fact, one of the most basic rate class distinctions—residential vs. nonresidential—is based on end use. AEP Ohio’s residential tariff requires a residential customer to be (among other things) “a single or double occupancy dwelling” that “consists of a kitchen, bathroom, and heating facilities connected on a permanent basis.”¹⁵ None of these conditions have anything to do with load profiles or energy usage. In short, there is nothing radical, unusual, or unreasonably discriminatory about establishing a rate class based on the type of customer, including its end use.

18. Q. Under section III.A of the 10/23 Stipulation, the Data Center Tariff applies to data center customers with load greater than 25 MW. Does this 25 MW minimum benefit ratepayers and the public interest?

A. Yes. A 25 MW minimum is reasonable and should be approved. It’s important to recognize just how big a 25 MW customer is. A 25 MW data center running at 90% capacity 24 hours a day would use more than 16 million kWh of electricity in a month.¹⁶ Average nonresidential customer usage in AEP Ohio’s territory, in contrast, is less than 14 thousand kWh monthly.¹⁷ In other words, a 25 MW data

¹⁴ See, e.g., Ohio Edison Tariff (lighting, schools, electric heating); AES Ohio Tariff (electric heating, lighting, churches); Duke Energy Ohio Tariff (electric heating, lighting, schools and churches).

¹⁵ AEP Ohio Tariff Sheet No. 210-1.

¹⁶ $25,000 * 24 * 0.9 * 365 / 12 = 16,425,000$.

¹⁷ Average nonresidential customer information is based on AEP Ohio’s 2023 FERC Form 1, which states that in 2023, 191,669 commercial and industrial customers collectively used 30,769,276 MWh, for an average monthly usage of about 13,378 kWh.

1 center would use more than **a thousand times** the average nonresidential usage.
2 By another metric, a single 25 MW customer would be more than half a percent
3 of the current load in Central Ohio.¹⁸ Fewer than 200 such customers could more
4 than double the load in Central Ohio. In short, a 25 MW customer is very large
5 and would need to be accounted for in grid planning.

6
7 Further, it is important that the threshold be set low enough to deter gaming.
8 Under the 10/10 Stipulation, which proposes a 50 MW minimum instead of 25
9 MW, some data centers could potentially modify their operations to run at a
10 contract capacity of 49.9 MW to avoid the tariff. Large data centers would likely
11 not find it feasible to downsize below 25 MW when their typical size is 50 MW or
12 more. Thus, to ensure that large data centers are subject to the tariff, it is
13 reasonable to set the threshold at a level (25 MW) that is lower than many typical
14 large data centers.

15
16 A 25 MW minimum is also a reasonable compromise compared to the
17 Application. Under the Application, any mobile data center with load above
18 1 MW would be subject to the MDC Tariff. Increasing that to 50 MW for mobile
19 data centers would exempt an even greater number of mobile data
20 center/cryptocurrency mining customers from the tariff.

21

¹⁸ See Ali 5/13 Testimony at 3 (approximately 4,000 MW of total load in Central Ohio).

1 For these reasons, the 25 MW threshold found in the 10/23 Stipulation benefits
2 ratepayers and the public interest. A higher threshold—like the 50 MW minimum
3 found in the 10/10 Stipulation—would assign too much risk to non-data-center
4 customers and thus is unreasonably high.

5
6 **19. Q. Section III.D of the 10/23 Stipulation includes a sliding scale of minimum**
7 **demand charges for data center customers, ranging from 60% to 85%,**
8 **compared to the Application, which included a 90% minimum demand**
9 **charge for all new large data centers. Is this a reasonable compromise that**
10 **benefits ratepayers and the public interest?**

11 A. Yes. A minimum demand charge higher than 60% serves several purposes. It
12 encourages prospective data centers to accurately assess their energy needs. With
13 AEP Ohio's current 60% minimum demand charge, prospective data center
14 customers would have an incentive to overstate their expected capacity. A
15 customer that is reasonably sure that it will use around 60 MW might request
16 contract capacity of 90 or 100 MW, since in either case, its demand charge would
17 be approximately the same. This could cause overbuilding of transmission
18 capacity, with higher bills for ratepayers. It could also cause capacity to be
19 unnecessarily tied up, with AEP Ohio reserving the extra capacity to provide firm
20 service to a customer at a level far beyond the customer's actual need. The higher
21 demand minimum also ensures that if transmission is built to meet prospective
22 data centers' requested contract capacity, those data centers pay more of their fair
23 share of such costs. If transmission is built assuming a data center will use 100

1 MW, but the customer only pays for 60 MW of capacity, other customers could
2 unfairly pay higher rates for costs that they did not cause.

3
4 Under the 10/23 Stipulation, new data center customers would pay a minimum
5 demand charge using a sliding scale, similar in concept (mathematically) to
6 Federal income tax brackets. Exhibit B to the 10/23 Stipulation provides the
7 minimum demand charge for all customers subject to the new Data Center Tariff
8 in 1 MW increments. Thus, any prospective data center can look at Exhibit B and
9 determine exactly what its minimum demand charge will be.¹⁹ For example, a 30
10 MW data center would pay a minimum demand charge of 63.45%. The
11 percentage gradually increases but is capped. All Data Center Tariff customers
12 with contract capacity of 117 MW or more would pay a minimum demand charge
13 of 85%. The sliding scale balances the interests of smaller and larger data centers,
14 requiring only the largest data centers to pay the highest minimum demand
15 charge, while also protecting other ratepayers by increasing the minimum amount
16 that data centers will pay.

17

¹⁹ In other words, while the minimum demand charge is based on a bracket concept found in section III.D of the 10/23 Stipulation, Exhibit B to the 10/23 Stipulation avoids any confusion by calculating the mathematical result at all possible contract capacities, in 1 MW increments.

1 **20. Q. Under the 10/23 Stipulation, the minimum demand charge applies to the**
2 **aggregate load of companies and their affiliates. Does this benefit ratepayers**
3 **and the public interest?**

4 A. Yes. Section III.A.5 of the 10/23 Stipulation provides that “[a]ll new load of
5 affiliate companies and companies with common ownership will be considered in
6 the aggregate for purposes of calculating the minimum demand charge that will be
7 included for the full term of each [electric service agreement] for new projects
8 under this tariff.” This provision is intended to prevent a data center company
9 from paying a lower minimum demand charge by building a series of smaller data
10 centers.

11
12 For example, as shown in Exhibit B to the 10/23 Stipulation, a 50 MW data center
13 would pay a minimum demand charge of 72.5%, whereas a 100 MW data center
14 would pay a minimum demand charge of 82.5%. A data center company might try
15 to avoid the higher 82.5% demand charge by building two 50 MW data centers
16 instead of one 100 MW data center. The aggregating provision of the 10/23
17 Stipulation prevents this by summing the total contract capacity across a single
18 data center company. In other words, if it were to build two 50 MW data centers,
19 together they would pay a minimum demand charge of 82.5%—the same as if the
20 company had built a single 100 MW data center.²⁰ This applies to affiliated
21 companies as well. Otherwise, a parent company could game the system and
22 avoid the tariff by creating a new legal entity for each data center.

²⁰ AEP Ohio witness McKenzie provides an example of how this would work through “stacking” if a data center company builds one data center and then later builds another one. See McKenzie 11/1 Testimony at 13-14.

1
2 The 10/10 Stipulation, in contrast, does not provide for aggregation in this
3 manner. Thus, it suffers from the loopholes I've identified here and does not
4 benefit ratepayers or the public interest.
5

6 **21. Q. OMAEG claims that section III.A.5 of the 10/23 Stipulation would combine**
7 **multiple customer accounts into a single account. Is this accurate?**

8 A. No. OMAEG witness Seryak misconstrues this section of the 10/23 Stipulation.
9 He states that section III.A.5 of the 10/23 Stipulation would "aggregate multiple
10 accounts into a single customer bill without the consent of the customer."²¹ This is
11 not accurate. The 10/23 Stipulation keeps individual customer accounts separate.
12 It only aggregates them for purposes of establishing each customer's minimum
13 demand billing component, as explained in the example on page 13-14 of AEP
14 Ohio witness McKenzie's November 1, 2024 testimony. Each customer account
15 will continue to separately pay its own bill based on its own billing determinants.
16

17 **22. Q. Section III.E of the 10/23 Stipulation addresses load ramps. What is a load**
18 **ramp?**

19 A. Generally, a load ramp is a period over which a customer's contract capacity
20 gradually increases before reaching the final contract capacity. It is designed to
21 account for the fact that a new business might phase in its operations over a
22 period of a years before reaching full operational status. In the context of a data

²¹ Seryak 11/8 Testimony at 20.

1 center, a data center might build the basic infrastructure and periodically add
2 more computing power, thereby increasing its load until reaching its full contract
3 capacity.

4
5 In terms of ratemaking, a load ramp might work as follows. A new business
6 customer expects to build a new facility that will eventually need 100 MW of
7 load. But in the first few years of operation, it will use less than 100 MW. Under
8 the terms of its electric service agreement (“ESA”) with AEP Ohio, these early
9 years, known as the “load ramp period,” would have a contract capacity below
10 100 MW. It could be something like 60 MW in year 1, 80 MW in year 2, and then
11 100 MW in year 3 and thereafter. This would be a two-year load ramp because the
12 customer operated for two years before reaching its full contract capacity.

13
14 **23. Q. Section III.E of the 10/23 Stipulation allows a load ramp for customers under**
15 **the Data Center Tariff. Does this benefit ratepayers and the public interest?**

16 A. Yes. Under the 10/23 Stipulation, data centers are permitted a load ramp period of
17 up to four years. In other words, they must begin paying minimum demand
18 charges based on their full contract capacity no later than year five of their
19 contract. This benefits data centers by acknowledging that a new data center may
20 take time to scale up its operations. It allows the data center to pay less than it
21 would if it were required to pay based on its full contract capacity immediately.

1 The 10/23 Stipulation also provides minimums for the contract capacity during
2 the load ramp period. The minimum is 50% of contract capacity during year one,
3 65% during year two, 80% during year three, and 90% during year four. In other
4 words, for a data center that eventually wants 100 MW of contract capacity, its
5 contract would include a contract capacity of at least 50 MW in year one, 65 MW
6 in year two, 80 MW in year three, and 90 MW in year four. The data center's
7 minimum demand charge would be based on these minimum contract capacity
8 amounts during the respective load ramp period years.

9
10 The minimum contract capacity amounts found in the 10/23 Stipulation are
11 designed to protect non-data-center ratepayers. Under the Application, AEP
12 Ohio's Proposed Tariffs permitted a load ramp period but with no minimums.
13 Thus, AEP Ohio and the data center could have agreed to any contract capacity
14 during the load ramp period, no matter how low. For example, the Application
15 would have allowed AEP Ohio to agree that a 100 MW customer can have a
16 three-year load ramp of just 5 MW in each of the first three years before
17 increasing to 100 MW in year four. This customer might make only de minimis
18 payments during the load ramp period, despite ultimately adding substantial load
19 to the grid. The contract capacity minimums included in the 10/23 Stipulation
20 correct this issue by requiring a more substantial commitment from data centers
21 during the load ramp period. In the absence of such minimums, costs could be
22 unreasonably shifted to non-data-center customers.

1 **24. Q. Section III.B of the 10/23 Stipulation proposes a minimum contract term of**
2 **the load ramp period plus eight years. Does this benefit ratepayers and the**
3 **public interest?**

4 A. Yes. A longer contract term helps address an important goal in this proceeding. It
5 increases certainty because only data centers that are serious about locating in
6 Ohio will be willing to make a long-term commitment of eight to twelve years.
7 And it increases data center accountability because they will not be able to
8 quickly exit the market. If data centers were permitted to sign short-term
9 contracts, other ratepayers could be left paying for stranded costs when a data
10 center leaves AEP Ohio's service territory, which would be inequitable.

11
12 Under the Application, AEP Ohio proposed a ten-year fixed contract. The 10/23
13 Stipulation's proposal for the load ramp period plus eight years improves on
14 Application. A data center with no load ramp (meaning it pays based on its full
15 contract capacity from the start) would have an eight-year contract. Similarly, a
16 data center with a four-year load ramp would have a 12-year contract. An eight-
17 to-twelve-year term makes data centers accountable for the costs that they cause,
18 including grid upgrades that are necessary to serve data center load. Further, any
19 data center that is unwilling to make this type of commitment will choose to
20 locate elsewhere, which will reduce the need for additional grid upgrades in AEP
21 Ohio's service territory—upgrades that might otherwise be paid for in whole or in
22 part by other non-data-center customers. A long-term contract also provides
23 benefits to data centers. With a minimum contract of eight years, the data center

1 gains certainty about its long-term ability to obtain electric service at its contract
2 capacity.

3
4 **25. Q. Section III.J of the 10/23 Stipulation requires all exit fees and revenue**
5 **collected from customer collateral to be credited to ratepayers, with carrying**
6 **costs. Does this benefit ratepayers and the public interest?**

7 A. Yes. The 10/23 Stipulation requires Data Center Tariff customer to pay a
8 three-year exit fee if it terminates its contract early. This provides accountability
9 for new data centers and protects non-data-center customers by ensuring that they
10 will not be required to foot the bill for charges that would otherwise be paid by
11 data centers.

12
13 Further, all exit fees and revenue collected from customer collateral will be used
14 for the benefit of ratepayers. The purpose of the exit fees and collateral
15 requirements is to protect non-data-center ratepayers by ensuring additional
16 revenues if a Data Center Tariff customer terminates its contract early or
17 otherwise fails to pay its utility charges. AEP Ohio should not be permitted to
18 retain any such revenues for the benefit of its shareholders. The Application was
19 silent as to what AEP Ohio would do with any exit fees or revenue from
20 collateral. Thus, the 10/23 Stipulation requirement that all such dollars be booked
21 as a regulatory liability, with carrying costs, benefits ratepayers and the public
22 interest.

1 Further, payment of the minimum demand charges under section III.D of the
2 10/23 Stipulation would automatically inure to the benefit of other customers
3 because these charges would be applied to the Rider BTCR revenue requirement,
4 thus reducing the amount that other customers would pay on a dollar-for-dollar
5 basis.

6
7 **26. Q. Section III.A.6 of the 10/23 Stipulation provides that Schedule DCT**
8 **customers are not eligible to participate in AEP Ohio's transmission pilots or**
9 **successor programs. Does this benefit ratepayers and the public interest?**

10 A. Yes. Under AEP Ohio's BTCR 1CP pilot program, pilot participants pay for
11 transmission based on their demand during the single zonal transmission peak.
12 This means that AEP Ohio measures the customer's demand during that single
13 peak hour in a prior 12-month period, and the customer pays transmission costs
14 every month for 12 months based on that demand. Pilot participants can then seek
15 to lower their demand as much as possible (for example, by curtailing their load
16 or relying on behind-the-meter generation or storage) whenever they think the
17 peak might occur.

18
19 For example, suppose a new data center has a contract capacity of 200 MW. New
20 transmission with significant costs might be built to accommodate this load.

21 Suppose, however, that this data center is a cryptocurrency miner that can reduce
22 its load to zero or close to zero. If the cryptocurrency miner is successful in
23 reducing its load to nearly zero during the zonal transmission peak, it would pay

1 almost no transmission costs. This would undermine one of the core purposes of
2 the Data Center Tariff, which is to ensure that new data center customers pay their
3 fair share of costs. Thus, there is a substantial benefit to ratepayers and the public
4 interest if Data Center Tariff customers are not eligible for AEP Ohio's 1CP pilot
5 programs or any successor programs. The same logic applies in prohibiting data
6 centers from participating in AEP Ohio's 6CP pilot.

7
8 **27. Q. The 10/23 Stipulation eliminates AEP Ohio's proposed changes to the SSO**
9 **procurement process for data centers. Does this benefit ratepayers and the**
10 **public interest?**

11 A. Yes. In the Application, AEP Ohio proposed various changes to the SSO process
12 for data centers. Recently, the Commission has declined to adopt changes to the
13 SSO (other than implementing a capacity proxy price) and has stated that changes
14 to the SSO process would likely be considered in a single proceeding for all
15 electric distribution utilities "to promote consistency and fairness."²² Thus,
16 removal of AEP Ohio's proposed SSO modifications benefits customers and the
17 public interest. Any changes to the SSO procurement process for data centers or
18 others can be addressed, if the Commission deems it prudent, in a separate
19 proceeding.

20

²² See *In re Application of [FirstEnergy] for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Opinion & Order ¶ 77 (May 15, 2024); see also *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Opinion & Order ¶ 82 (Apr. 3, 2024); *In re Application of the Dayton Power & Light Co. d/b/a AES Ohio for Approval of its Electric Security Plan*, Case No. 22-900-EL-SSO, Opinion & Order ¶ 247 (Aug. 9, 2023).

1 **28. Q. Under the 10/23 Stipulation, the Data Center Tariff would apply throughout**
2 **AEP Ohio’s service territory. Does this benefit ratepayers and the public**
3 **interest?**

4 A. Yes. In the context of the 10/23 Stipulation package, this is a reasonable
5 compromise. In its testimony supporting the Application, AEP Ohio discusses its
6 concerns regarding capacity constraints in Central Ohio. For this purpose, AEP
7 Ohio defined “Central Ohio” as “the interconnected transmission system that
8 encompasses the greater Columbus Area and its suburbs, stretching to the west
9 through Marysville, north through Delaware, southwest through Grove City, east
10 through Newark to the areas of Conesville and Dresden, and southeast to
11 Lancaster.”²³ According to AEP Ohio witness Ali, the Central Ohio region “is
12 highly interconnected to and dependent upon the same transmission network and
13 changes in any one part of this area directly impacts [sic] transmission facilities in
14 another. ... [T]he transmission lines connecting stations together throughout this
15 area are all dependent on each other.”²⁴ Further, as AEP Ohio explained in the
16 Application, the existing data center moratorium applies only to Central Ohio as
17 so defined.²⁵

18
19 Thus, one might believe that the Data Center Tariff should only apply in Central
20 Ohio. The 10/10 Stipulation takes a related approach, recommending that its

²³ Ali 5/13 Testimony at 4.

²⁴ *Id.*

²⁵ Application at 6 (emphasis added). *See also* Ali 5/13 Testimony at 6-7 (noting that the moratorium was “to allow AEP’s transmission planning group time to study the impacts that the additional data center load requests will have on the electrical delivery system in central Ohio AEP [sic] to ensure that the grid can reliably serve the new and existing load”).

1 proposed Schedule EIC only apply to customers where AEP Ohio “provides Proof
2 of a Transmission Capacity Constraint.”²⁶ There are good reasons, however, to
3 apply the Data Center Tariff in AEP Ohio’s entire service territory, rather than
4 limiting it to Central Ohio or requiring proof of capacity constraints on a
5 customer-by-customer basis.

6
7 First, it is consistent with Commission practice to apply tariffs throughout a
8 utility’s service territory. The Commission could conceivably approve a data
9 center tariff that only applies to Central Ohio, but this would be atypical when
10 compared to other electric utility tariffs, almost all of which apply throughout a
11 utility’s service territory.²⁷

12
13 Second, applying the tariff throughout AEP Ohio’s service territory is more
14 administratively efficient. Applying the tariff only in Central Ohio would require
15 a customer-by-customer assessment of whether the location is part of the
16 “interconnected transmission system” around Columbus. Similarly, the 10/10
17 Stipulation would require a study for each customer to determine if there is a
18 capacity constraint. Either of these options could lead to disputes about whether
19 the tariff should apply. Applying the tariff throughout AEP Ohio’s service
20 territory eliminates the potential for such disputes.

²⁶ 10/10 Stipulation at 3 (providing that AEP Ohio would be required to provide proof of a capacity constraint “through the completion of a study by AEP Ohio which identifies the transmission load capacity at the proposed customer location, and confirms that the proposed customer location has insufficient transmission load capacity, thereby requiring significant transmission system upgrades”).

²⁷ There have been examples where tariffs were different based on whether a customer was in AEP Ohio’s “Columbus Southern” area or “Ohio Power” area. These are primarily historical anomalies that date back to before Columbus Southern Power Company and Ohio Power Company merged.

1
2 Third, it is not always clear whether a specific customer is causing a capacity
3 constraint. Suppose two new 75 MW data center customers want to locate in an
4 area where AEP Ohio determines it has 100 MW of available capacity. Should
5 they both be subject to the new tariff? Only one of them? Neither? Applying the
6 Data Center Tariff throughout AEP Ohio's service territory avoids the challenges
7 associated with this type of situation—a situation that could be increasingly likely
8 to occur if many thousands of MW of data centers all seek to congregate in a
9 relatively small geographic area.
10

11 Fourth, as AEP Ohio witness McKenzie explained, while the impetus for this case
12 was the enormous interest from data centers in locating in Central Ohio,
13 “transmission constraints are emerging outside of Central Ohio as well.”²⁸ Thus,
14 applying the Data Center Tariff throughout AEP Ohio's service territory has the
15 benefit of fending off transmission constraint issues outside of Central Ohio,
16 rather than waiting for them to emerge and seeking a solution later. Applying the
17 Data Center Tariff outside of Central Ohio could also avoid a “freeze” like the
18 one AEP Ohio imposed in Central Ohio, which would be in the public interest.
19

²⁸ McKenzie 10/31 Testimony at 29.

1 Ultimately, it is reasonable, especially in the context of the many benefits to
2 ratepayers and the public interest under the 10/23 Stipulation package, to apply
3 the Data Center Tariff throughout AEP Ohio’s entire service territory.²⁹
4

5 **29. Q. Does the 10/23 Stipulation include any other benefits for ratepayers and the**
6 **public interest?**

7 A. Yes. Section III.F memorializes AEP Ohio’s existing data center freeze and
8 provides a clear and transparent path for data centers in the queue to obtain
9 service in AEP Ohio’s service territory.
10

11 Section III.G gives Data Center Tariff customers an opportunity to transfer some
12 of their contract capacity to another customer, thus giving them flexibility, while
13 protecting non-data-center ratepayers who will be assured that another data center
14 is assuming the financial obligations.
15

16 Section III.H requires AEP Ohio to reach out to its largest existing customers to
17 determine if there are opportunities to reduce their contract capacity, which could
18 help make additional capacity available to new data center or other customers and
19 could reduce the need to build new infrastructure.
20

²⁹ If the Commission were to rule that the Data Center Tariff should only apply in Central Ohio, the tariff would need to be modified accordingly to define “Central Ohio” and establish a process for determining whether a proposed customer location is or is not in Central Ohio.

1 **30. Q. Is the 10/23 Stipulation consistent with important regulatory principles or**
2 **practices?**

3 A. Yes. The 10/23 Stipulation actively advances important regulatory principles and
4 practices. It is consistent with the important regulatory principle of cost causation.
5 It adds certainty to load forecasts, which protects customers from paying for
6 unnecessary or overbuilt grid infrastructure. And it is consistent with state policies
7 under R.C. 4928.02, including supporting economic development in Ohio and
8 encouraging development of behind-the-meter generation.

10 **31. Q. What is the regulatory principle of cost causation?**

11 A. The principle of cost causation is that those who cause a cost to be incurred
12 should pay for such costs. The principle does not require perfect apportionment of
13 all costs to the cost causer. Practically speaking, perfect cost causation is rarely
14 achieved, for several reasons. Among other things, (i) there are often many causes
15 for a cost, (ii) precisely identifying who caused a cost may be impossible, a
16 judgment call, or administratively infeasible, (iii) it might be impossible or
17 administratively burdensome to design rates that perfectly mimic cost causation,
18 (iv) cost causation can be assessed in the short run, long run, or something in
19 between, with different results, (v) cost causers may cease to be customers before
20 they have paid for all costs that they have caused, and (vi) other important
21 regulatory principles can conflict with cost causation. Thus, the goal is to assign
22 costs to cost causers as best as possible, taking into account these limitations and
23 balancing other important regulatory principles.

1
2 **32. Q. Is the 10/23 Stipulation consistent with the principle of cost causation?**

3 A. Yes. The 10/23 Stipulation is consistent with the principle of cost causation
4 because it requires new, large data centers to pay for a substantial portion of the
5 costs of new grid infrastructure that they cause to be built. Given the potential
6 magnitude of new data center load coming to AEP Ohio’s service territory, it is
7 possible (if not likely) that substantial new capital investments will be made to
8 accommodate new data center load. The 10/23 Stipulation makes it more likely
9 that the cost causers—data centers—will be responsible for such costs by
10 (i) requiring them to sign long-term contracts, (ii) requiring higher minimum
11 demand charges, (iii) aggregating data centers with common ownership when
12 determining the minimum demand charges, (iv) increasing the amount that new
13 data centers pay during the load ramp period, (v) applying the Data Center Tariff
14 to new data centers above 25 MW, (vi) prohibiting Data Center Tariff customers
15 from participating in AEP Ohio’s transmission pilot programs, and (vii) requiring
16 exit fees if a data center terminates its contract early.

17
18 These financial commitments reasonably assign costs to data center cost causers.
19 In doing so, they protect non-data-center ratepayers from paying for the costs.
20 This demonstrates that the 10/23 Stipulation is consistent with the cost causation
21 principle.

1 33. Q. **How does the 10/23 Stipulation protect customers from paying for**
2 **unnecessary or overbuilt grid infrastructure?**

3 A. It is an important regulatory principle that customers should only pay for utility
4 investments that are used and useful in providing utility service. Utilities need to
5 “right size” their investments. In other words, ratepayers should not be required to
6 pay higher charges if a utility over builds or gold plates its capital investments
7 (regardless of whether the utility does so prudently and with good intent).

8
9 As I explained above, this proceeding arose because AEP Ohio is facing the
10 potential for unprecedented load growth, driven almost entirely by new data
11 centers. AEP Ohio knows that it has 5,000 MW of signed data center load, and it
12 should be able to reasonably plan for that load growth. But the speculative nature
13 of the additional 30,000 MW of potential data center load is a different story.
14 Without a data center tariff, it would be challenging, if not impossible, to
15 accurately forecast load growth in AEP Ohio’s service territory. In a worst-case
16 scenario, AEP Ohio or other transmission owners might pursue transmission
17 upgrades designed to accommodate the entire 30,000 MW—even if it is highly
18 unlikely that all 30,000 MW of potential data center load materializes—at
19 potentially astronomical cost to customers. Transmission could be overbuilt, and
20 AEP Ohio ratepayers, including residential consumers, small businesses, and
21 other non-data-center business customers, could pay for these unnecessary
22 transmission projects.

1 The 10/23 Stipulation is designed to avoid overbuilding of grid infrastructure by
2 improving the accuracy of load forecasts. The terms of the proposed Data Center
3 Tariff—higher minimum demand charges, long-term contracts, exit fees,
4 minimum load ramps—ensure that only data centers who are truly committed to
5 Ohio will sign up for service, and that data centers sign up for load in the amount
6 that they will actually use. This should improve the accuracy of load forecasts as
7 speculative data center projects drop out of the 30,000 MW queue and data
8 centers avoid signing up for more capacity than they need. Transmission and
9 other infrastructure projects should then be built based on a reasonable forecast of
10 future data center load, rather than being overbuilt to account for speculative data
11 center projects. This supports the regulatory principle that customers only pay for
12 capital investments that are right-sized to the needs of customers.

13
14 **34. Q. OMAEG claims that the 10/23 Stipulation will allow AEP Ohio to inflate its**
15 **load forecasts. Do you agree?**

16 A. No. OMAEG witness Seryak testified that he believes AEP Ohio is attempting to
17 use this proceeding, and the 10/23 Stipulation, to inflate its load forecasts for the
18 benefit of its own or its affiliates' financial interests.³⁰ And while Staff can't

³⁰ See Seryak 11/8 Testimony at 10 (AEP Ohio “is explicitly attempting to use its settlement in this case to inflate its load forecast to PJM”); at 13 (“The [10/23] Stipulation gives AEP Ohio the ability to modify and increase the load forecast it is submitting to PJM”); at 14 (“An increased load forecast could financially benefit AEP Ohio’s parent company, AEP Inc.”); at 15 (“AEP Ohio thus stands to benefit financially or benefit its parent corporation or affiliates financially from approval of the [10/23] Stipulation, as the stated aim of the [10/23] Stipulation is to increase the load forecast to PJM, with the explicit purpose to trigger the construction of a multi-billion-dollar transmission line.”); at 16 (“Again, AEP Ohio’s stated aim of its proposal and the [10/23] Stipulation is to modify and increase its load forecast at PJM, with the explicit goal of triggering transmission expansion, which would then be constructed by its transmission affiliate.”); at 24 (the 10/23 Stipulation would allow AEP Ohio to “manipulate its load forecast in order to excuse additional, unnecessary transmission spending”).

1 speak to AEP Ohio's or its affiliates' internal motivations, OMAEG's reasoning is
2 flawed. As I explained above, the end result of approving the proposed Data
3 Center Tariff is that load forecasts should be lower, not higher. Without the Data
4 Center Tariff, load forecasts could include substantial amounts of speculative load
5 that might never materialize, and transmission could be built to accommodate this
6 speculative load. The Data Center Tariff protects against the very concern that
7 OMAEG claims is a flaw in the 10/23 Stipulation.

8
9 **35. Q. How does the 10/23 Stipulation support economic development in Ohio?**

10 A. It is an important regulatory principle that regulation of electric utilities should
11 "facilitate the state's effectiveness in the global economy." *See* R.C. 4928.02(N).
12 The 10/23 Stipulation supports economic development in Ohio. It provides a
13 clear, transparent process (*see* 10/23 Stipulation § III.F) for data centers to
14 continue building in Ohio under terms and conditions that fairly balance the
15 interests of data centers and non-data-center customers. Further, by assigning
16 more costs to cost causers (new large data centers), it protects other ratepayers
17 from paying higher rates for costs that they do not cause.

18
19 The Data Center Tariff in the 10/23 Stipulation also includes language designed to
20 protect non-data-center ratepayers, including traditional Ohio manufacturers. For
21 example, AEP Ohio's Application included proposed tariff language that could
22 have had negative consequences for non-data-center manufacturers. As filed, the
23 proposed data center tariff included the following language: "If the customer

1 facility operates one or more Data Centers and has non-Data Center load (that
2 would otherwise be billed under the General Service Tariff) at a Single Location,
3 [the Large Data Center Tariff] will apply to all electric distribution service
4 provided for that customer account.”³¹ If this language were approved, a
5 traditional manufacturer might inadvertently be subjected to the data center tariff.
6 For example, a customer with a 100 MW manufacturing facility that also operates
7 a 2 MW data center at the same location could have had its entire manufacturing
8 operation treated as a data center for purposes of the tariff. This would be a bad
9 result for economic development in Ohio.

10
11 The 10/23 Stipulation corrects this oversight. Under the proposed terms of the
12 Data Center Tariff, a manufacturing customer that also operates a smaller data
13 center has two protections. First, if its data center operations are 25 MW or
14 smaller, it would be entirely exempt from the Data Center Tariff.³² Second, the
15 manufacturer would have the option of separately metering its non-data-center
16 and data center operations so that only the data center is subject to the Data
17 Center Tariff.³³ This supports economic development by ensuring that only data
18 centers take service under the Data Center Tariff while traditional manufacturers
19 and other large business customers continue to take service under Commission-
20 approved General Service tariffs.

31 McKenzie 5/13 Testimony, Exhibit MSM-1, Page 1.

32 See 10/23 Stipulation, Exhibit A, Page 2 of 7.

33 *Id.*

1 **36. Q. How does the 10/23 Stipulation support the development of behind-the-meter**
2 **generation in Ohio?**

3 A. Section III.I of the 10/23 Stipulation addresses behind-the-meter generation and
4 provides that data center customers, like all other customers, are required to
5 follow the Commission’s interconnection rules (Ohio Adm. Code 4901:1-22) for
6 behind-the-meter generation. The 10/23 Stipulation supports the development of
7 behind-the-meter generation in a manner that ensures grid safety and reliability by
8 requiring customers to maintain and repair their equipment and to take steps to
9 ensure that if their equipment fails, they do not overload the grid by substantially
10 exceeding their contract capacity. These reasonable protections allow data centers
11 to benefit from behind-the-meter generation in a safe manner that protects other
12 customers and the integrity of the grid.

13
14 **37. Q. Section III.A.3 of the 10/23 Stipulation “grandfathers” current data center**
15 **customers such that they are exempt from the Data Center Tariff. Is this**
16 **consistent with regulatory principles and practices?**

17 A. Yes. Under the 10/23 Stipulation, data center customers that sign a letter of
18 agreement or electric service agreement with AEP Ohio before the effective date
19 of the Data Center Tariff will not be subject to the Data Center Tariff. This is
20 consistent with regulatory principles and practices because the current proceeding
21 is not for an increase in rates, and it is therefore reasonable for existing customers
22 to take service, for the time being, under existing tariffs. That being said, there are

1 two caveats to such grandfathering in the 10/23 Stipulation that are necessary to
2 ensure consistency with regulatory principles and practices.

3
4 First, if an existing data center expands its contract capacity by more than 25 MW
5 after the Data Center Tariff goes into effect, it should be required to either
6 (i) separately meter that load (if feasible), with the new load served under the
7 Data Center Tariff, or (ii) lose its grandfathering status such that its entire load,
8 old and new, is served under the Data Center Tariff. For all the reasons explained
9 throughout my testimony, new data center load above 25 MW should be required
10 to make the financial commitments found in the Data Center Tariff. It would be
11 bad regulatory policy for new data centers to be treated differently from
12 expansions of existing data centers when they have substantially the same impact
13 on the grid.

14
15 Second, the grandfathering should be temporary, and the Commission should
16 reserve its ability to revisit the issue in a future AEP Ohio case. Earlier in this
17 proceeding, some intervenors suggested that not only should existing data centers
18 be exempt from a new data center tariff in this proceeding, but that the
19 Commission should rule that they will *never* be subject to it, even in a future rate
20 case.³⁴ Likewise, the 10/10 Stipulation provides that existing data center
21 customers are not subject to its proposed EIC tariff, but it does not include a
22 reservation that this topic can be revisited in AEP Ohio's next rate case. This

³⁴ See, e.g., Baatz 8/29 Testimony at 15-16; Higgins 8/29 Testimony at 19-20.

1 would be unreasonable and would violate regulatory principles. The Commission
2 has the authority to set new rates for all customers in a base distribution rate case
3 or other case involving a request for increase in rates. Customers have no right or
4 expectation that they can use contracts to trump the Commission's authority to
5 change their rates.

6
7 Existing customers understand at the time of signing a contract with AEP Ohio
8 that their rates are subject to change based on Commission orders and that they
9 are not perpetually grandfathered into the current rates or terms and conditions.³⁵
10 It would violate regulatory principles and practices if the Commission were to
11 predetermine the results of a future rate case by giving existing data centers a
12 perpetual grandfathering. By reserving parties' rights to address the issue in a
13 future rate case (*see* 10/23 Stipulation at 4, footnote 1), the 10/23 Stipulation is
14 consistent with important regulatory principles and practices.

15
16 **38. Q. If the Commission approves the 10/23 Stipulation, would new Data Center**
17 **Tariff customers pay just and reasonable rates, as required by R.C. 4905.22?**

18 A. Yes. There is an important point that might get overlooked: if data centers
19 accurately forecast their load and honor their contracts for the full term, they will
20 pay *the same amount* for electric distribution and transmission service as they
21 would under AEP Ohio's General Service tariff. In this situation, they will not
22 pay any increased minimum demand charges because their demand charge will be

³⁵ See Attachment CMH-3 (typical Electric Service Agreement).

1 based on their actual demand, which will be at or very close to their contract
2 capacity. And they will not pay exit fees because they will continue to operate and
3 pay their electric bills through the full term of their contract. A Data Center Tariff
4 customer would pay more than it otherwise would under General Service tariffs if
5 it (i) uses materially less capacity than it asks for, which would trigger the
6 minimum demand charge, or (ii) terminates its contract before the full term,
7 which would trigger an exit fee. In each of these situations, it would be just and
8 reasonable for the data center to pay more because it will have contributed to the
9 concerns identified throughout my testimony regarding stranded assets and
10 unreasonably shifting risk to non-data-center customers.

11
12 **39. Q. Based on your analysis of the three-part test as applied to the 10/23**
13 **Stipulation, what do you conclude?**

14 A. The 10/23 Stipulation passes all three prongs of the test. Staff recommends that
15 the Commission approve it without modification.
16
17

THREE-PART TEST – THE 10/10 STIPULATION

40. Q. Is the 10/10 Stipulation the product of serious bargaining among capable and knowledgeable parties?

A. While the 10/10 Stipulation should be rejected under prongs two and three of the Commission’s three-part test, and the 10/23 Stipulation is substantially more beneficial to ratepayers and the public interest, Staff does not dispute that the 10/10 Stipulation was the product of serious bargaining among capable and knowledgeable parties.

41. Q. AEP Ohio argues that the 10/10 Stipulation was not the product of serious bargaining because AEP Ohio is not a signatory to it. What is Staff’s position on this?

A. AEP Ohio witness McKenzie testifies that the 10/10 Stipulation was not the product of serious bargaining “because it imposes multiple significant commitments on AEP Ohio without the Company’s consent.”³⁶ This argument fails because the 10/10 Stipulation does not impose anything on AEP Ohio without Commission approval. The 10/10 Stipulation is a recommendation to the Commission, jointly sponsored by its signatory parties, and nothing more. Nothing is imposed on AEP Ohio unless and until the Commission says so.

³⁶ McKenzie 10/31 Testimony at 11.

1 AEP Ohio witness McKenzie also argues that “it is bad policy in a tariff case like
2 this to even entertain a settlement without the utility-Applicant’s agreement.”³⁷
3 (OEG witness Wellborn similarly argues that the 10/10 Stipulation was not the
4 product of serious bargaining because “neither Commission Staff nor the
5 applicant utility agreed” to it.³⁸) This argument is equivalent to saying that the
6 utility can unilaterally veto any stipulation that it does not sign. Staff disagrees
7 with this as contrary to public policy because it contradicts the Commission’s
8 rules, which allow “any two or more parties” to enter into a stipulation.³⁹ No
9 party—including Staff—is required to be a signatory party for the Commission to
10 approve a stipulation.

11
12 **42. Q. Does the 10/10 Stipulation, as a package, benefit ratepayers and the public**
13 **interest?**

14 A. No. While the 10/10 Stipulation does include some terms that are directionally
15 similar to those found in the 10/23 Stipulation, and some that improve upon the
16 proposals found in the Application, the 10/10 Stipulation, as a package, does not
17 benefit ratepayers or the public interest.

18
19 The overarching flaw with the 10/10 Stipulation package is that it unduly favors
20 the interests of data centers and does not provide enough protection for non-data-
21 center customers. If the Commission were to adopt the 10/10 Stipulation, non-

³⁷ McKenzie 10/31 Testimony at 11-12.

³⁸ Wellborn 10/31 Testimony at 4.

³⁹ Ohio Adm. Code 4901-1-30(A).

1 data-center customers would bear too much risk and could shoulder too much of
2 the costs that data centers cause. The 10/10 Stipulation likewise would not solve
3 the problem of ensuring the accuracy of load forecasts, and thus, it could result in
4 overbuilding transmission infrastructure, which would negatively impact utility
5 bills for all customers.

6
7 **43. Q. Section III.B of the 10/10 Stipulation proposes a new Energy-Intensive**
8 **Customer tariff (“Schedule EIC”) that applies to all new large customers**
9 **with loads greater than 50 MW, not just data centers. Does this benefit**
10 **ratepayers and the public interest?**

11 A. No. Under the 10/10 Stipulation, new Schedule EIC would apply not only to data
12 centers but to other large load customers, like Ohio manufacturers. But as I
13 explained above, the concerns in this case regarding certainty and accountability
14 are unique to data centers. The 10/23 Stipulation’s approach of adopting a new
15 tariff that applies only to new data centers (with loads greater than 25 MW) is
16 narrowly tailored to address the specific grid concerns that are being caused by
17 data centers. It would be unreasonable and contrary to the public interest to
18 subject Ohio manufacturers and other business customers to the terms and
19 conditions of a new tariff that is designed to address a data-center-specific
20 problem.

1 **44. Q. Under section III.B of the 10/10 Stipulation, Schedule EIC only applies to**
2 **nonresidential customers with load greater than 50 MW. Does this 50 MW**
3 **minimum adequately protect non-data-center customers?**

4 A. No. A 50 MW minimum only captures the biggest data centers. As I explained
5 above, data centers between 25 MW and 50 MW are very large customers, and
6 they cannot be ignored for purposes of load forecasts and grid planning. With a 50
7 MW minimum, AEP Ohio could potentially be faced with a slate of 49.9 MW
8 data centers, which could materially impact the grid. But if these customers are
9 exempt from Schedule EIC, they would be served under AEP Ohio's existing
10 tariffs, which include a 60% minimum demand charge, no mandatory minimum
11 contract length, no exit fees, no minimum load ramp, and no restrictions on
12 participating in AEP Ohio's transmission pilots. In this scenario, non-data-center
13 customers would bear a substantial portion of the risk associated with increased
14 data center load, which would not benefit ratepayers and the public interest.

16 **45. Q. The 10/10 Stipulation contains a sliding scale of minimum demand charges.**
17 **Does this benefit ratepayers and the public interest?**

18 A. No. While Staff, as a signatory party to the 10/23 Stipulation, supports minimum
19 demand charges that are lower than the 90% and 95% minimums found in the
20 Application, the 10/10 Stipulation goes too far by proposing demand minimums
21 that are too low to sufficiently protect non-data-center customers.

1 First, because Schedule EIC under the 10/10 Stipulation applies only to customers
2 larger than 50 MW, all data centers below 50 MW would pay the standard 60%
3 minimum demand charge. The financial risk of this lower minimum demand
4 charge would be shifted to other ratepayers.

5
6 Second, in my opinion, the 80% minimum demand charge for option “B”
7 customers and 75% minimum demand charge for option “C” customers under the
8 10/10 Stipulation are too low to sufficiently protect other ratepayers and do not
9 assign adequate costs to the cost causer, which is the data center. As I explained
10 above, the lower the minimum demand charge, the less incentive a data center has
11 to accurately assess its contract capacity needs. A customer with a 75% minimum
12 demand charge might overstate its capacity needs by a substantial amount, with
13 other customers bearing much of the risk associated with that decision. A 75%
14 minimum demand charge could also result in overbuilding of transmission
15 infrastructure because AEP Ohio or other transmission operators might include
16 the full contract capacity in forecasts that are used in PJM’s transmission planning
17 process.

18
19 Further, while it remains to be seen which of the three options data centers would
20 choose if given the options provided by the 10/10 Stipulation, I would expect
21 most of the largest data centers to choose Option C, which includes the 75%
22 minimum demand charge. I anticipate that large data centers would find Option C
23 most beneficial because it not only includes the lowest minimum demand charge

1 but also requires no exit fee. Thus, when assessing the 10/10 Stipulation, it is
2 reasonable to project that few of the new data center customers would pay an 80%
3 or 85% minimum demand charge. This is further support for the conclusion that
4 the 10/10 Stipulation does not benefit ratepayers or the public interest.
5

6 **46. Q. Section III.G of the 10/10 Stipulation allows a load ramp period for**
7 **customers under Schedule EIC. Are these load ramp provisions reasonable?**

8 A. No. There are similarities between the load ramp in the 10/10 Stipulation and the
9 load ramp in the 10/23 Stipulation, and Staff supports the concept of a load ramp
10 in general and the inclusion of a minimum contract capacity during the load ramp
11 period. The load ramp minimums in the 10/10 Stipulation would also be an
12 improvement over the Application, which allowed for a load ramp with no
13 minimums. But the minimum contract capacities included in the 10/10 Stipulation
14 are too low and therefore shift too much risk to non-data-center ratepayers.
15

16 Under the 10/10 Stipulation, the minimum contract capacity is only 30% in year
17 one of the load ramp period, 50% in year two, 70% in year three, and 90% in year
18 four. The 30% and 50% minimums in years one and two are particularly
19 problematic. A 30% contract capacity minimum coupled with a minimum demand
20 charge of 75% would mean that a large data center customer might pay demand
21 charges of just 22.5%⁴⁰ of its final contract capacity—even if transmission
22 infrastructure is built to accommodate the full contract capacity. That means other

⁴⁰ 30% of contract capacity * 75% minimum demand charge = 22.5%

1 non-data-center customers, which did not cause these costs, could assume the risk
2 of the remaining 77.5%. A key to this case is reasonably assigning risk to cost
3 causers—data centers—and the load ramp minimums in the 10/10 Stipulation fail
4 to do this, to the detriment of non-data-center ratepayers and the public interest.
5 The higher load ramp minimums found in the 10/23 Stipulation, in contrast,
6 require a greater financial commitment from new data center customers, which
7 benefits all ratepayers and the public interest.

8
9 **47. Q. Under the 10/10 Stipulation, data centers would be permitted to participate**
10 **in AEP Ohio’s transmission pilots. Does this benefit customers or the public**
11 **interest?**

12 A. No. Whereas the 10/23 Stipulation prohibits Data Center Tariff customers from
13 participating in AEP Ohio’s 1CP and 6CP transmission pilots (or successor
14 pilots), large data centers would be permitted to participate in these pilots under
15 Schedule EIC. This would be problematic.

16
17 Customers that participate in these pilots can take steps to reduce their
18 transmission charges to zero or very close to zero. This defeats one of the core
19 purposes of this proceeding—to ensure that data centers pay for costs that they
20 cause. Allowing participation in these transmission pilots would materially harm
21 other ratepayers and is not in the public interest.

1 **48. Q. Does the 10/10 Stipulation violate any important regulatory principles or**
2 **practices?**

3 A. Yes. The 10/10 Stipulation violates the important regulatory principle of cost
4 causation. It would also increase the likelihood of overbuilding grid infrastructure,
5 which would violate the regulatory principle that utility investments should be
6 right-sized so that customers do not pay for investments that are not used and
7 useful. Further, the 10/10 Stipulation would materially modify SSO procurement
8 for data centers and other large customers. This contradicts recent Commission
9 precedent.

11 **49. Q. In what ways is the 10/10 Stipulation inconsistent with the important**
12 **regulatory principle of cost causation?**

13 A. The 10/10 Stipulation is inconsistent with cost causation because it would place
14 too much risk on non-data-center customers for costs that data centers are
15 causing. As explained throughout my testimony and the testimony of other
16 witnesses, serving load at anywhere near the magnitude of potential future data
17 centers in AEP Ohio's service territory will likely require substantial capital
18 investments, and these investments will be paid for by customers through their
19 utility rates. Data centers are causing these costs. The 10/10 Stipulation, however,
20 assigns too much of the costs to non-data-center customers.

22 The 50 MW threshold under Schedule EIC allows all data centers under 50 MW
23 to avoid long-term contracts, exit fees, higher minimum demand charges, and

1 minimum load ramps. Non-data-center customers, including residential and small
2 business customers, could end up bearing nearly all the risk associated with data
3 centers of this size.

4
5 The 75% minimum demand charge under Schedule EIC, which is likely to apply
6 to many of the largest data centers, allows too much of a “cushion” for data
7 centers when choosing their contract capacity. Large scale infrastructure
8 investments could be made to accommodate nearly 100% of data center contract
9 capacity, so it would be unreasonable to allow large data centers to pay a
10 minimum demand charge of only 75%.

11
12 The 10/10 Stipulation’s failure to restrict participation in AEP Ohio’s
13 transmission pilots is also inconsistent with cost causation because, as explained
14 above, it could potentially allow data centers to pay little or no transmission costs
15 whatsoever.

16
17 In short, the 10/10 Stipulation does not require sufficient financial commitments
18 from data centers when accounting for the substantial capital investments that are
19 likely necessary to serve new data center load.

20
21 **50. Q. How could the terms of the 10/10 Stipulation, if adopted, result in**
22 **overbuilding of grid infrastructure?**

1 A. As I explained above, one of the key objectives in this case is increasing certainty
2 in load projections so that transmission can be built based on load that is likely to
3 materialize, rather than for speculative load that might never show up. Load
4 forecasts could be wildly inaccurate if data centers are allowed to request contract
5 capacity that substantially exceeds what they actually need.

6
7 The terms of the 10/23 Stipulation require substantial financial commitments from
8 prospective data centers, including commitments that are specifically tied to their
9 contract capacity. This would induce data centers to accurately forecast their
10 capacity needs—and to pay accordingly, even if those forecasts are ultimately
11 inaccurate. The 10/10 Stipulation, in contrast, could allow large data centers to
12 substantially overestimate their capacity needs without material financial
13 consequences. Again, the 50 MW minimum threshold for applicability of
14 Schedule EIC would allow smaller data centers (those under 50 MW) to request
15 contract capacity that is far greater than their actual needs without any long-term
16 commitment, exit fee, or minimum load ramp. They would have minimal
17 incentive to accurately forecast their load. Likewise, large data centers paying a
18 75% minimum demand charge under Schedule EIC would be able to over-
19 forecast by 25%. As explained by AEP Ohio witness McKenzie, this could be
20 hundreds of MW for a very large data center, with transmission or other
21 infrastructure potentially being built to accommodate this additional load—load
22 that might not materialize.

1 **51. Q. Section III.O of the 10/10 Stipulation makes changes to the SSO for data**
2 **centers and other large customers. Is this inconsistent with important**
3 **regulatory principles and practices?**

4 A. Yes. Under the 10/10 Stipulation (section III.O), Schedule EIC customers *and*
5 *existing* data center customers over 25 MW would become ineligible for the SSO.
6 Instead, a new default option would be created for these customers (with some
7 details to be determined later) where competitive suppliers would “provide
8 electric power and energy that is based on real time energy and a pass through of
9 capacity plus an adder for ancillary costs and the supplier’s costs.”

10
11 In recent ESP cases, parties have proposed various changes to the SSO process,
12 including proposals similar to the one included in the 10/10 Stipulation. The
13 Commission has declined to adopt such proposals (other than implementing a
14 capacity proxy price) and has stated that changes to the SSO process would likely
15 be considered in a single proceeding for all electric distribution utilities “to
16 promote consistency and fairness.”⁴¹ Thus, adopting the SSO changes found in
17 the 10/10 Stipulation would be inconsistent with recent Commission precedent,
18 which violates regulatory principles and practices.

19

⁴¹ See *In re Application of [FirstEnergy] for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Opinion & Order ¶ 77 (May 15, 2024); see also *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Opinion & Order ¶ 82 (Apr. 3, 2024); *In re Application of the Dayton Power & Light Co. d/b/a AES Ohio for Approval of its Electric Security Plan*, Case No. 22-900-EL-SSO, Opinion & Order ¶ 247 (Aug. 9, 2023).

1 **52. Q. AEP Ohio witness McKenzie testifies that the 10/10 Stipulation fails the third**
2 **prong simply because AEP Ohio is not a signatory to it.⁴² Does Staff agree?**

3 A. Staff disagrees. While the 10/10 Stipulation fails the third prong of the three-part
4 settlement test for other reasons, there is no regulatory principle that all
5 settlements must be signed by the utility or anyone else. As I explained above, the
6 Commission’s rules explicitly allow any two parties to enter into a stipulation,
7 and no party—not the utility, not Staff, not anyone other than the Commission—
8 can unilaterally veto a stipulation.

10 **53. Q. Based on your analysis of the three-part test as applied to the 10/10**
11 **Stipulation, what do you conclude?**

12 A. The 10/10 Stipulation package does not benefit ratepayers or the public interest,
13 and it violates important regulatory principles or practices. The Commission
14 should reject it.

⁴² McKenzie 10/31 Testimony at 48-50.

1 **SUMMARY AND CONCLUSIONS**

2

3 **54. Q. Can you briefly summarize why the 10/23 Stipulation should be approved**
4 **and the 10/10 Stipulation should be rejected?**

5 A. Yes. As I explained above, Staff has been guided in this case by a desire to
6 improve reliability, certainty, and accountability, all for the benefit of ratepayers,
7 in addressing the challenges of new data center load. As is often the case in
8 Commission proceedings, competing interests must be balanced. The 10/23
9 Stipulation is a reasonable compromise that balances the interests of data centers
10 and non-data-center customers. Data centers want to locate in Ohio on terms and
11 conditions that are fair and reasonable to them. Non-data-center customers want
12 protection and assurances that their bills will not become unaffordable because
13 they are paying for new infrastructure that is built to accommodate data center
14 projects.

15

16 The 10/23 Stipulation provides a substantially better balance of interests than the
17 10/10 Stipulation:

- 18 • By proposing a tariff that applies only to data centers, the 10/23
19 Stipulation seeks a data-center-specific solution to an issue being driven
20 by data centers. The 10/10 Stipulation, in contrast, casts a wider net,
21 subjecting Ohio manufacturers and other non-data-center industrial
22 customers to a new tariff and its new obligations.

- The 10/23 Stipulation includes long-term contracts, coupled with a three-year exit fee. The 10/10 Stipulation, in contrast, includes long-term contracts with either a one-year exit fee or no exit fee at all.
- The 10/23 Stipulation increases minimum demand charges for data center customers, with the largest data centers paying a minimum demand charge of 85%. To borrow a phrase from AEP Ohio, this gives data centers appropriate “skin in the game.” In contrast, many large data centers under the 10/10 Stipulation could pay a minimum demand charge of just 75%, which shifts too much risk to non-data-center customers.
- Under the 10/10 Stipulation, every data center under 50 MW would be exempt from the new tariff. This shifts too much risk to non-data-center ratepayers and creates substantial uncertainty in load forecasting. The 10/23 Stipulation’s 25 MW threshold is more reasonable.
- The 10/10 Stipulation has a massive loophole allowing data centers to participate in AEP Ohio’s transmission pilots, which could allow data centers to avoid the minimum demand charges that are essential to protect other ratepayers.
- The higher load ramp minimums under the 10/23 Stipulation (50%, 65%, 80%, 90%) compared to the 10/10 Stipulation (30%, 50%, 70%, 90%) more reasonably assign costs to the cost causers: data centers.

When viewed as a package, the 10/10 Stipulation is skewed toward the interests of data centers. It allows them to avoid financial responsibility for the costs that

1 they cause and shifts far too much risk to non-data-center customers. The 10/23
2 Stipulation, in contrast, tends to the needs of both data centers and non-data-
3 center customers alike. It should be approved without modification because it
4 passes the Commission's three-part test and is superior to the 10/10 Stipulation.
5

6 55. **Q. Does this conclude your testimony?**

7 A. Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Testimony of Christopher Healey has been served upon the below-named counsel via electronic mail, this 26th day of November, 2024.

/s/ Ambrosia Wilson

Ambrosia Wilson

Assistant Attorney General

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**OHIO POWER COMPANY’S RESPONSE TO
THE PUBLIC UTILITIES COMMISSION OF OHIO’S
DATA REQUEST
PUCO CASE NO. 24-0508-EL-RDR
FIRST SET**

DATA REQUEST

Staff-DR 1-5

Page 8 of the McKenzie testimony states, “AEP Ohio has signed ESAs with customers planning to build approximately 5,000 MW of data center load by 2030. Growth from other customers is on a much smaller scale.” What is the expected additional load by 2030 for non-data center load?

RESPONSE

AEP Ohio’s distribution planning team currently estimates that known and expected Central Ohio load growth from customers *other than data center customers* between 2024 and 2030 is approximately 400 MW.

**OHIO POWER COMPANY’S RESPONSE TO
THE PUBLIC UTILITIES COMMISSION OF OHIO’S
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FIRST SET**

DATA REQUEST

Staff-DR 1-1

The Application 2 states that “the load profile of data centers is unique because, unlike other commercial or industrial businesses that run varying shifts of production or only operate during normal business hours, they require high levels of demand – operating 24 hours a day, 7 days a week, 365 days a year with no natural cycling. Consequently, data center customers often have load factors that exceed 95%.” Does AEP Ohio have non-data center customers with a similar load profile? If so, what types of businesses fit this description?

RESPONSE

AEP Ohio witness McKenzie’s testimony supports the Company position that data centers form a unique customer class. Regarding non-data center customers with “similar” load profiles, AEP Ohio has one three-shift refinery customer and one three-shift foundry customer with load factors greater than 95%.

This Contract, entered into this **1st day of November, 2023** by and between **Ohio Power Company**, hereafter called the Company, and [REDACTED], or his or its heirs, successors or assigns, hereafter called the Customer,

Witnesseth:

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

The Company agrees to furnish to the Customer, during the term of this Contract, and the Customer agrees to take from the Company, subject to Company's standard Terms and Conditions of Service as regularly filed with the **Public Utilities Commission of Ohio**, distribution service of the character specified herein that shall be purchased by the Customer in the premises located at [REDACTED].

The Company is to furnish and the Customer is to take distribution service under the terms of this Contract for an initial period of [REDACTED] month(s) from the time such service is commenced, and continuing thereafter until terminated upon [REDACTED] days' written notice given by either party of its intention to terminate the Contract. The date that service shall be deemed to have commenced under this Contract shall be **in accordance with Addendum A: Build-Up Clause**.

The electric energy delivered hereunder shall be alternating current at approximately [REDACTED] volts, **3-wire, 3-phase**, and it shall be delivered [REDACTED], which shall constitute the point of delivery under this Contract. The said electric energy shall be delivered at reasonably close maintenance to constant potential and frequency, and it shall be measured by a meter or meters owned and installed by the Company and located [REDACTED].

The Customer acknowledges that the Customer may be eligible to receive service under more than one of the Company's schedules and that such options have been explained to the Customer. The Customer and Company agree that the Customer has chosen to receive service under the provisions of the Company's Schedule **GENERAL SERVICE TRANSMISSION**. The Customer agrees to pay the Company monthly for electric energy delivered hereunder at the rates and under the provisions of the Company's Schedule **GENERAL SERVICE TRANSMISSION**, as regularly filed with the **Public Utilities Commission of Ohio**, as long as that schedule is in effect. In the event that the Schedule chosen by the Customer is replaced by a new or revised Schedule incorporating different rates or provisions, or both, the Company and Customer understand and agree that the Company will continue to provide service, and the Customer will continue to take service, under this Contract, subject to such changed provisions, and that the Customer will pay for such service at the new rates on and after the date such rates become effective.

The Customer's contract capacity under the Schedule named herein is hereby fixed at [REDACTED] **kW**. The minimum billing demand for this agreement shall be [REDACTED] **kW**. If a time-of-day demand is available under the Schedule and is selected by the Customer, the reservation of capacity aforementioned shall be the peak period reservation of capacity.

This Contract is for distribution service only and does not prohibit the Customer from exercising its option to purchase its electrical energy from a Competitive Retail Energy Services (CRES) provider. Additionally, the tariff schedule referenced in this contract applies to either the Standard Service schedule or its companion Open Access Distribution (OAD) schedule.

There are no unwritten understandings or agreements relating to the service hereinabove provided. This Contract cancels and supersedes all previous agreements, relating to the delivery of energy by the Company at Customer's premises as referred to above, on the date that service under this Contract commences. This Contract shall be in full force and effect when signed by the authorized representatives of the parties hereto.

Addendum A: Build-Up Clause**Ohio Power Company**

By: 
15022CFF14E44F...

Angela M Rybalt

Title: **Director, Customer Experience**

Date: **October 30, 2023**

By: [REDACTED]

Title: [REDACTED]

Date: **October 30, 2023**

Account Number:

Addendum A

ADDENDUM TO CONTRACT FOR ELECTRICAL SERVICE-Build-Up Clause

This Addendum is a part of the Agreement entered into this **1st day of November, 2023**, by and between **Ohio Power Company** (the Company) and [REDACTED] (the Customer) for electric service to the Customer's facilities located on [REDACTED].

Section 1

It is mutually agreed the target date for service connection shall be **the date service is energized**. However, service under this agreement shall commence on the date the Customer's facilities are connected to the Company's facilities; but in any event, billing under this Agreement will commence no later than [REDACTED] provided the Company is ready to make the service connection.

Section 2

It is mutually agreed that the capacity contracted for by the Customer under this Agreement is [REDACTED] kW. However, the Company recognizes that the Customer is completing the project on a schedule that will require some period of time for the operation to transform to its full operating capacity. Therefore, the Company agrees that the contract capacity as it relates to determination of minimum monthly charges shall be in accordance with the following schedule:

1. Effective with the service commencement date of this Agreement to the end of the **twelve** full billing period, the contract capacity shall be the greater of [REDACTED] kW or the highest **30-minute** integrated demand actually recorded since the commencement date. Billing will be under **General Service (GS) Transmission** tariff.
2. Effective with the **thirteenth** full billing period to the end of the **twenty-fourth** full billing period, the contract capacity shall be the greater of [REDACTED] kW or the highest **30-minute** integrated demand actually recorded since the service commencement date. Billing will be under **GS Transmission** tariff.
3. Effective with the **twenty-fifth** full billing period to the end of the **thirty-sixth** full billing period, the contract capacity shall be the greater of [REDACTED] kW or the highest **30-minute** integrated demand actually recorded since the service commencement date. Billing will be under **GS Transmission** tariff.
4. Effective with the **thirty-seventh** full billing period to the end of the **forty-eighth** full billing period, the contract capacity shall be the greater of [REDACTED] kW or the highest **30-minute** integrated demand actually recorded since the service commencement date. Billing will be under **GS Transmission** tariff.
5. Effective with the **forty-ninth** full billing period, the contract capacity shall be the greater of [REDACTED] kW or the highest **30-minute** integrated demand actually recorded since the service commencement date. Billing will be under **GS Transmission** tariff.

Ohio Power Company

DocuSigned by:

By Angela M Rybalt
15D22CFFF14E44F...Angela M RybaltTitle: Director, Customer ExperienceDate: October 31, 2023By: _____

Title: _____
Date: _____

Account Number:

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Case No(s). 24-0508-EL-ATA

Summary: Testimony Direct Testimony in Support of October 23, 2024 Stipulation and Recommendation and in Opposition to October 10, 2024 Stipulation and Recommendation of Christopher Healey, Rates and Analysis Department Accounting and Finance Division electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO.