Supreme Court of Ohio Clerk of Court - Filed June 20, 2023 - Case No. 2023-0464

IN THE SUPRME COURT OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates	**Case No. 2023-0464**
In the Matter of the Application of Ohio Power Company for Tariff Approval	**Appeal from the Public Utilities Commission of Ohio**
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods	**Public Utilities Commission Case Nos. 20-585-EL-AIR, 20-586-EL-ATA, and 20-587-EL-AAM**

Interstate Gas Supply, LLC,
Appellant,

v.

Public Utilities Commission of Ohio,
Appellee

APPENDIX TO INITIAL BRIEF

OF

INTERSTATE GAS SUPPLY, LLC

VOLUME 2 (Pages 301-460)

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committed to the program from the current level. The Legacy Customer program will continue through May 31, 2024. (Joint Ex. 1 at 22.)

{¶ 84} Expanded IRP: In addition to the 200 MW of Legacy Customers IRP capacity, commencing with Commission approval of tariffs to implement the Stipulation, an additional amount of up to 160 MW of interruptible capacity will be made available as set forth below to existing AEP Ohio customers with at least 1 MW of interruptible load (Expanded IRP program). The Expanded IRP program capacity will be allocated as follows: IEU-Ohio – 82 MW; OEG – 48 MW; and OMAEG – 30 MW. (Joint Ex. 1 at 23.)

{¶ 85} If the 160 MW of Expanded IRP is not fully subscribed, IEU-Ohio, OEG, and OMAEG members may exceed their respective group participation limits set forth above, provided the total subscription remains below the aggregate limit of 160 MW. If less than 160 MW of Expanded IRP load is applied for, the expansion will be limited to the amount of interruptible load that has been subscribed to as of the close of the application period set forth below.

a. To apply to participate in the Expanded IRP, IEU-Ohio, OEG, or OMAEG shall submit an application to AEP Ohio. The application shall designate the account or accounts that the trade association requests to be placed in the Expanded IRP and the curtailable load for purposes of the Expanded IRP as well as whether the customer is a member of one of the trade associations listed above.

b. The application process for the Expanded IRP program for existing customers shall be conducted by AEP Ohio commencing when the tariff becomes effective. The application process shall extend for 30 days after the tariff sheet implementing the Expanded IRP becomes effective. Any one of the three named trade associations may submit an application at any time within the application period. Staff will oversee this process and mediate any disputes. Applications filed after the application period shall be rejected.

c. All Expanded IRP participants shall sign an agreement to follow the terms and conditions of the Expanded IRP program, including curtailment when AEP Ohio declares an emergency or when PJM issues a curtailment order to the AEP Zone.

d. The customer and AEP Ohio will enter a contract that states the customer's firm service level no later than 60 days after the tariff sheet implementing the Expanded IRP becomes effective. AEP Ohio will apply the credit as provided by the tariff to the customer's bill beginning with the first billing month that the contract becomes effective.

e. AEP Ohio shall maintain a notice procedure for emergency curtailments as provided for in the Expanded IRP tariff. Failure to follow the terms and conditions of the Expanded IRP program tariff may result in a participant being dropped from the Expanded IRP program.

f. Each customer participating in the Expanded IRP may elect to suspend participation for one or more years at its election. A customer electing to suspend participation shall provide notice to AEP Ohio of its election by April 1 prior to the beginning of the PJM Delivery Year. If a customer does not provide notice of its election to suspend participation by the deadline, its participation shall be deemed to continue for the succeeding delivery year.

g. The Expanded IRP credit shall be calculated by multiplying the quantity of the monthly interruptible capacity times the Reliability Pricing Model (RPM) BRA market clearing price for the AEP Zone in the applicable PJM Delivery Year times 0.7.

h. A participating Expanded IRP customer's monthly credit shall be calculated as the product of (1) the difference between the Expanded IRP customer's monthly billing demand and its firm load and (2) the Expanded IRP credit.

i. Total AEP Ohio retail payment for the Expanded IRP shall be capped at $28.5 million in the aggregate. The Expanded IRP program shall end the earlier of May 31, 2024, or the time that AEP Ohio has paid out $28.5 million in credits to Expanded IRP participants.

j. An Expanded IRP customer shall also have the option to participate in any PJM or contractual demand response program and to retain all associated proceeds, so long as such participation does not prevent the customer from meeting the terms and conditions of the IRP program tariff. (Joint Ex. 1 at 23-25.)

{¶ 86} New Industry IRP: In order to attract new business to Ohio, AEP Ohio shall offer an IRP program of up to 120 MW for new industrial operations. The New Industry IRP shall operate in the context of a reasonable arrangement that could include other terms and conditions beyond those outlined for the Expanded IRP program. The IRP credit payment for each participant in the New Industry IRP program shall be calculated by multiplying the quantity of the customer's monthly interruptible capacity times the RPM BRA market clearing price for the AEP Zone in the applicable PJM Delivery Year times 0.7. The customer's participating IRP load shall be the difference between its monthly billing demand and its firm load. The New Industry IRP program shall be capped at a total expenditure by AEP Ohio of $22.2 million in credits paid in the aggregate to New Industrial IRP program participants. (Joint Ex. 1 at 26.)

10. SUBMETERING RIDER

{¶ 87} The Submetering Rider is withdrawn. AEP Ohio is not prohibited from seeking recovery of the appropriate value of distribution facilities acquired in connection with submetering either through the distribution rate case or other appropriate Commission proceeding. (Joint Ex. 1 at 26.)

11. Plug-in Electric Vehicle Tariff

{¶ 88} AEP Ohio will create a placeholder PEV tariff, which, through a separate filing, may be populated pursuant to the findings of PowerForward or the SCR information. By agreeing to this provision, no Signatory Party gives up any right to challenge any aspect of such a future filing. (Joint Ex. 1 at 26.)

12. LED Tariff

{¶ 89} The LED tariff is withdrawn but AEP Ohio is not prohibited from filing a proposed LED tariff in a separate docket. By agreeing to this provision, no Signatory Party gives up any right to challenge any aspect of such a future filing. (Joint Ex. 1 at 27.)

13. Generation Energy and Generation Capacity Riders

{¶ 90} The Generation Energy (GENE) Rider and Generation Capacity (GENC) Rider will continue through the extended ESP term (Joint Ex. 1 at 27).

14. Auction Cost Reconciliation Rider

{¶ 91} The Auction Cost Reconciliation Rider (ACRR) will continue through the extended ESP term. AEP Ohio will not implement the proposed modification to the ACRR addressed by Company witness Moore. To the extent not otherwise recovered, AEP Ohio may seek recovery of any net credit paid to customers based on the net metering tariff in a distribution rate case. (Joint Ex. 1 at 27).

{¶ 92} AEP Ohio may seek recovery of payments to customers with cogeneration (COGEN) facilities related to the COGEN schedule through a separate proceeding and such costs, if approved in that separate proceeding, could be recovered through the ACRR (Joint Ex. 1 at 27).

15. GRIDSMART PHASE 2 RIDER

{¶ 93} The gridSMART Phase 2 Rider will continue through the extended ESP term (Joint Ex. 1 at 27).

16. BASIC TRANSMISSION COST RIDER

{¶ 94} The Basic Transmission Cost Rider (BTCR) will continue through the extended ESP term. AEP Ohio agrees to amend the Master SSO Supply Agreement included in Company witness Weiss's testimony to classify Generation Deactivation Charges (PJM Billing Line Item 1930) as an electric distribution company responsibility, which is currently the way those costs are allocated. AEP Ohio will recover those costs through the BTCR. The BTCR will be updated annually with rates effective 75 days after filing unless the Commission orders otherwise. (Joint Ex. 1 at 27.)

17. BTCR PILOT

{¶ 95} The BTCR Pilot will continue in operation as set forth in the Stipulation until the effective date of new rates in the upcoming distribution rate case (and associated BTCR filing), which, in accordance with the Stipulation, will be filed no later than June 1, 2020. The subject of transmission rates will be reevaluated at that time utilizing the information and experience gained during the pilot program. (Joint Ex. 1 at 28.)

{¶ 96} Currently, enrollment in the BTCR Pilot is limited to 19 participants with specific set asides for sponsoring groups.[16] With respect to the BTCR Pilot enrollment available to specific sponsoring groups during the ESP period, the parties agree that the 19 eligible participation slots for the sponsoring groups will be maintained and will be increased by 15 for a total of 34 participation slots. Those 34 participation slots will be divided amongst the specific sponsoring groups as follow: ten for OMAEG members; ten

16 *See* Section IV.G.2 of the Joint Stipulation and Recommendation (December 21, 2016) in Case No. 10-2929-EL-UNC, et al.

for OEG members; nine for IEU-Ohio members; three for public school customers of Direct Energy Services, LLC and Direct Energy Business, LLC; and two for IGS customers. (Joint Ex. 1 at 28.)

{¶ 97} A participant that is currently enrolled in the BTCR Pilot shall remain enrolled unless the participant elects to terminate its participation. For the first year only, customers will be eligible for early enrollment beginning 60 days after a Commission order approving the Stipulation. Sponsoring groups will provide preliminary notice to AEP Ohio of an eligible member's intent to participate in the BTCR Pilot by December 1 of each year, but that preliminary notice will not be binding upon the customer. The individual customer's final, binding election to take service under the BTCR Pilot will be made annually by February 15 with notice provided on behalf of the customer by the sponsoring group. AEP Ohio will provide relevant billing information to the sponsoring group prior to the election deadline to enable individual customers to evaluate the economics of the pilot program versus standard transmission billing. The decision by an eligible participant to not participate in the pilot for any year shall not affect its right to participate in future years, subject to the relevant sponsoring group's participation limits. (Joint Ex. 1 at 28-29.)

{¶ 98} The parties agree that enrollment in the BTCR Pilot will be kept open for the 34 eligible participants from the specific sponsoring groups. Total participation of the specific sponsoring groups in the program may equal or exceed 400 MW in 2018 or 500 MW in 2019 and 2020, plus an additional 20 MWs for schools in all three years (MW Cap),[17] subject to the reallocation described below if the enrollment exceeds the MW Cap. The additional 20 MW of BTCR Pilot enrollment will be available to schools with no specific number of participation slots being established. Enrollment in the BTCR

[17] Staff and the Signatory Parties will review whether the 2020 cap of 500 MW should be adjusted or eliminated and will formulate a timely recommendation for the Commission's consideration.

Pilot will similarly be kept open for schools. Total participation of schools may equal or exceed 20 MW, subject to the reallocation described below if the enrollment exceeds 20 MW.[18] If the aggregate enrollment by the specific sponsoring group participants exceeds the MW Cap, the excess over the cap will be allocated among the specific sponsoring group participants on a pro rata basis. If the enrollment by schools exceeds the separate 20 MW Cap for schools, the 20 MW Cap will be allocated among the school participants on a pro rata basis. For example, if in 2018 the total specific sponsoring group subscription is 440 MW, the 1 Coincident Peak (1CP) billing factor will be increased so that total estimated savings under the BTCR Pilot for that year are approximately equal to what would have occurred if the subscription was 400 MW. AEP Ohio will notify the sponsoring groups regarding the effect of any pro rata allocation as soon as reasonably practicable. For purposes of the application of this paragraph to establish the level of participation and the allocation of the MW Cap, MW is defined as a participating customer's average monthly billing demand. (Joint Ex. 1 at 29-30.)

{¶ 99} The terms and conditions of the BTCR Pilot program shall be subject to the following:

a. The rate design and other terms and conditions of the BTCR Pilot will remain consistent with the compliance tariff filed on March 31, 2017, in Case No. 17-679-EL-ATA.

b. AEP Ohio will report certain monthly data, as described in the Stipulation, to Staff and the sponsoring groups on a quarterly basis for the shorter of the term of the BTCR Pilot[19] or the extended ESP term. Staff and the sponsoring groups will

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[18] The April 2017 enrollment stands at 282 MW.

[19] Sponsoring groups shall receive only their own members' data and the program data in the aggregate.

maintain individual customer data as confidential, subject to any Commission ruling on the subject. (Joint Ex. 1 at 30-31.)

18. Fairground Accounts Transmission Tariff

{¶ 100} This proposal will be adopted per the Company's amended application and supporting testimony (Joint Ex. 1 at 31).

19. Optional Demand Metered Residential Tariff

{¶ 101} This proposal will be adopted per the Company's amended application and supporting testimony (Joint Ex. 1 at 31).

20. Automaker Credit Rider Tariff

{¶ 102} This proposal will be adopted per the Company's amended application and supporting testimony. The credit will be recovered through the EDR. (Joint Ex. 1 at 31.)

21. Competition Incentive Rider/SSO Credit Rider

{¶ 103} On a temporary basis until the next base rate case, the bypassable CIR will be $1.05/megawatt hour (MWh) and the non-bypassable SSOCR is estimated for a residential customer to be $0.48/MWh (net $0.57/MWh). The non-bypassable rider will be trued up annually for over/under recovery and the new non-bypassable rates will be effective upon Commission approval. The cost will be subject to an annual audit for prudency. The SSOCR shall be used to collect the discount rate costs related to the supplier consolidated billing (SCB) pilot program and the requirement for revenue neutrality as between the CIR and SSOCR does not apply to recovery of those costs. The collection fee/discount rate will be tracked separately from the CIR revenue neutrality cost for the purpose of evaluating the SCB pilot program. In accordance with the PPA stipulation in Case No. 14-1693-EL-RDR, et al., "AEP Ohio will provide an analysis as part of its next distribution rate case to show all of the actual costs required to provide

SSO generation service that are included in the Company's cost of service study" and the Company agrees to propose in the rate case that these costs should be allocated to the default service. Except as explicitly modified above, all terms and conditions of the CIR remain as agreed upon in Case No. 14-1693-EL-RDR, et al. (Joint Ex. 1 at 31-32.)

22. PILOT THROUGHPUT BALANCING ADJUSTMENT RIDER

{¶ 104} The Pilot Throughput Balancing Adjustment Rider (PTBAR) will be adjusted, if necessary, to account for customer participation in the demand metered residential tariff. AEP Ohio may propose continuation of the PTBAR in the AIR filing. Absent an extension as part of the AIR rate case order, the PTBAR will expire when new rates are effective in the next AIR case.

23. EE/PDR RIDER AND EDR

{¶ 105} These riders will continue for the extended ESP term with the provision that 50 percent of normal EE/PDR costs for transmission and sub-transmission customers will be transferred to the EDR and 50 percent of IRP credits will be transferred to the EDR (Joint Ex. 1 at 32).

{¶ 106} AEP Ohio agrees to explore with Staff whether to segregate IRP costs from peak demand reduction compliance costs for purposes of Ohio Adm.Code 4901:1-10-35 (Joint Ex. 1 at 32).

{¶ 107} For the 2017-2018 period, AEP Ohio will support the concept of a pilot battery storage/demand side management program with Kroger in AEP Ohio's service territory. Kroger will apply for the funding under the existing approved EE/PDR plan with a projected investment of $200,000 per year for the two-year period. AEP Ohio also will provide technical advice relating to the pilot if reasonably requested by Kroger. AEP Ohio will supply metering for the two-year pilot program. The companies will share all

data, with AEP Ohio providing agreed-upon reporting of the data and learnings from the pilot to determine cost benefit and potential future program offerings. (Joint Ex. 1 at 33.)

{¶ 108} For the 2017-2018 period, AEP Ohio will support the concept of a pilot battery storage/demand side management program with Walmart in AEP Ohio's service territory. Walmart will apply for the funding under the existing approved EE/PDR plan with a projected investment of $200,000 per year for the two-year period. AEP Ohio also will provide technical advice relating to the pilot if reasonably requested by Walmart. AEP Ohio will supply metering for the two-year pilot program. The companies will share all data, with AEP Ohio providing agreed-upon reporting of the data and learnings from the pilot to determine cost benefit and potential future program offerings. (Joint Ex. 1 at 33.)

24. Storm Damage Recovery Rider

{¶ 109} The Storm Damage Recovery Rider (SDRR) will remain in effect through the extended ESP term. AEP Ohio will increase the baseline by $120,000, which will be reset as part of the next AIR case. (Joint Ex. 1 at 33.)

25. Alternative Energy Rider

{¶ 110} This proposal will be adopted per the Company's amended application and supporting testimony (Joint Ex. 1 at 33).

26. Enhanced Service Reliability Rider

{¶ 111} AEP Ohio will maintain its current four-year trimming cycle. The Enhanced Service Reliability Rider (ESRR) will sunset December 31, 2020, and be set to zero if no rate case is filed by June 1, 2020. The continuation of the ESRR after the next AIR case will be an issue for determination as part of the next AIR case. If an extension of the ESRR is granted in the next AIR case, the rider shall be reset effective with the implementation of the decision in that case. The proposed 2 ½ percent annual increase

proposal shall be withdrawn by AEP Ohio and recovery will be limited to $27.6 million annually until the next AIR case order. (Joint Ex. 1 at 33-34.)

27. ACCOUNTING

{¶ 112} AEP Ohio agrees to remove the Commission and OCC assessment fees from the GENE Rider, GENC Rider, and ACRR. Issues relating to unbundling of SSO costs will be addressed in the next base rate case. The following riders include an uncollectible gross up: the gridSMART Phase 2 Rider, the PPA Rider, and the SDRR. Any new riders during the extended ESP term may include an uncollectible gross up unless the Commission specifically determines otherwise at the time it authorizes the new rider. (Joint Ex. 1 at 34.)

28. SUPPLIER TERMS AND CONDITIONS AND RELATED AGREEMENTS

{¶ 113} This proposal will be adopted per the Company's amended application and supporting testimony. Specifically, the Signatory Parties recommend approval of the updated CRES-EDU agreement, as reflected in Exhibit SDG-1 and modified in Attachment E to the Stipulation; the electronic data interchange agreement reflected in Exhibit SDG-2; and the supplier tariff, as reflected in Exhibit SDG-3 and as modified by the changes reflected in Attachment F to the Stipulation. (Joint Ex. 1 at 34.)

29. SIGNIFICANTLY EXCESSIVE EARNINGS TEST

{¶ 114} The current Commission methodology of calculating the significantly excessive earnings test (SEET) will continue during the extended ESP term, unless otherwise changed by the Commission (Joint Ex. 1 at 34).

30. MASTER SSO SUPPLY AGREEMENT

{¶ 115} The revised Master SSO Supply Agreement reflected in Exhibit DBW-4 of AEP Ohio witness Weiss's testimony will be adopted except as noted in Section III.J.7 of the Stipulation and as follows (Joint Ex. 1 at 35).

{¶ 116} AEP Ohio shall not redefine the court of competent jurisdiction, for the purpose of binding arbitration, from those situated in the state of Ohio to those situated in the city of Columbus, Ohio (Joint Ex. 1 at 35).

{¶ 117} AEP Ohio shall also commit to advertise each procurement in a widely circulated trade journal or similar publication, in order to elicit maximum participation by eligible bidders (Joint Ex. 1 at 35).

31. Auction Bidding Rules

{¶ 118} The revised auction bidding rules reflected in Exhibit DBW-5 of AEP Ohio witness Weiss's testimony will be adopted (Joint Ex. 1 at 35).

32. Supplier Consolidated Billing Pilot

{¶ 119} The terms and conditions of the Company's SCB pilot, as updated in the December 21, 2016 global settlement in Case No. 10-2929-EL-UNC, et al., will remain effective with the following modifications:

a. Expand total CRES participants from three to five;

b. Expand participants to a maximum of 80,000 customers;

c. Cap expenditures for the pilot at $2 million - $1 million funded by the CRES participants and $1 million funded by customers;

d. Apply a collection fee or discount rate, as applicable, for the Company's receivables of 0.66 percent;

e. The cost associated with the collection fee and the discount rate, upon approval of the settlement, will be recovered through the SSOCR as specified above. Following approval of new rates in the next AIR case, the Bad Debt Rider (BDR) will also be used going forward to recover the difference between the Company's

actual bad debt costs and the level reflected in base rates. AEP Ohio agrees to propose in the rate case that recovery of bad debt associated with default service generation receivables should be collected through a bypassable portion of the rider;

f. The Company may file an application requesting that EDU costs that relate to a CRES provider default that are not collected through security or collateral enforcement be included in the BDR;

g. The additional two suppliers will be selected from certified CRES providers in good standing who submit a formal request in these dockets within 30 days of the approval of the Stipulation. If more than two certified CRES providers in good standing apply by the deadline, the additional two participants will be selected in a random manner;

h. The participating suppliers will provide to Staff an aggregated accounting of customers returned as past due and ultimately credit reported for non-payment. Staff shall use the information to compare and determine the number of customers who moved between SCB providers resulting in non-payment to determine if there is abuse of the program. Based on the information, suppliers and Staff will work on a solution to prevent abuse of the program;

i. AEP Ohio shall maintain records in such a fashion that, should the Commission expand the pilot or convert it into a permanent program, a fee can be calculated to provide recovery of the costs paid by consumers and the initial participants from subsequent participants; and

j . Commencing with implementation of the pilot in 2018 and through the maturity date of outstanding securitization bonds (approximately July 1, 2019), CRES participants in the SCB pilot will enter into agreements that satisfy the collateral

requirements for third-party collectors prescribed under AEP Ohio's securitization program(s)[20] for those portions of the receivables related to the securitization bonds included in the pilot, including any requirements needed to maintain the AAA rating on the Phase-In Recovery Bonds.[21] For that initial time period, the Company will pay the CRES participants a collection fee of 0.66 percent. Starting with the bond maturity date and for such time that the pilot remains in effect, CRES participants will purchase the Company's receivables in exchange for the discount rate of 0.66 percent. (Joint Ex. 1 at 35-37.)

33. Enroll From Your Wallet

{¶ 120} Within nine months of approval of the Stipulation, the Company agrees to implement an Enroll From Your Wallet alternative using AEP Ohio's CRES Portal for authorized CRES providers in lieu of complete retail lists. The CRES participants will be notified by the Company if the customer has opted out of enrollment lists, in lieu of switching that customer. Customers that have opted out of enrollment lists will be initially excluded from this program.[22] CRES providers will supply AEP Ohio with the same information that a customer would supply the Company with in order to release the account number associated to the customer account: (1) the customer's phone number assigned to the account; and (2) either (a) the last four digits of the customer's Social Security Number; or (b) the amount of one of the customer's last three bills, to the extent the Company possesses that information for the affected customer. This functionality

20 The Company's securitization program(s) refers to the Financing Order and rehearing decision in Case Nos. 12-1969-EL-ATS and 12-2999-EL-UNC or similar future program.

21 The Company will propose, subject to rating agency approval, using the Texas collateral requirements to the rating agencies and request re-affirmation of the ratings based on that collateral.

22 Staff, the Company, RESA, and CRES Signatory Parties agree to continue to work towards a solution that allows for the customers who have opted off of their pre-enrollment list to consent to the dissemination of their service delivery identifier number should the restriction on the use of the Enroll From Your Wallet program to those customers prove inconvenient or costly to customers. A Signatory Party may seek a waiver from this provision but other Signatory Parties reserve their right to oppose such waiver.

will allow for batching of information. The CRES provider must have the letter of authorization (LOA), as required by Ohio Adm.Code 4901:1-10-24(E), on file for release of the Service Identification number that AEP Ohio uses in lieu of the account number to enroll customers. AEP Ohio will conduct random audits of the CRES providers using this functionality to verify the CRES providers have and retain the LOA at a minimum of once a year. Staff shall be notified prior to each audit being conducted and offered the opportunity to participate in the process. Staff shall be provided the results of each audit. Nothing in this document precludes Staff from conducting its own random audits to ensure compliance. (Joint Ex. 1 at 37-38.)

{¶ 121} The participating CRES providers will be charged a one-time authorization fee of $5,000 to cover the cost of implementation. Once the cost of implementation has been recovered, AEP Ohio will credit any additional funds through the gridSMART Phase 2 Rider to offset the costs of changes to the supplier portal/electronic data interchange (EDI) protocol. These funds will be recognized as contribution in aid of construction and should be tracked separately for auditing purposes. (Joint Ex. 1 at 38-39.)

34. THREE-PART TEST

{¶ 122} The Signatory Parties agree that the Stipulation satisfies the three-part test traditionally used by the Commission to consider stipulations (Joint Ex. 1 at 39).

35. ESP/MRO TEST RESULTS

{¶ 123} The Signatory Parties agree that the Stipulation preserves and advances the positive results of the MRO versus ESP test under R.C. 4928.143(C) as found in the *ESP 3 Case* (Joint Ex. 1 at 39).

E. Consideration of the Stipulation

{¶ 124} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 125} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

{¶ 126} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public

utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 127} The Signatory Parties contend that the Stipulation complies with the first criterion of the three-part test. AEP Ohio witness Allen testified that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In support of the Signatory Parties' position, AEP Ohio witness Allen states that he participated in the negotiations that led to the Stipulation, attending several individual party meetings, as well as the settlement meetings held at the Commission's offices to which all parties were invited. The Signatory Parties contend that the Stipulation is the result of a lengthy process of negotiation over a five- to seven-month period, involving experienced, competent counsel representing members of many stakeholder groups. According to AEP Ohio, the parties involved in these proceedings also employ experts in the industry regarding the issues raised in these cases, and had the opportunity to participate in significant discovery and to file testimony. AEP Ohio notes that OCC attempts, through its witnesses, to impose a diversity of interests element as a component of the first prong of the three-part test. Citing the Commission's decision in the *PPA Rider Case*, AEP Ohio declares that the test used to evaluate the reasonableness of a stipulation includes no requirement that there be a diversity of interests among the signatory parties. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 52-53. Nonetheless, AEP Ohio notes that, besides the Company and Staff, the Signatory Parties include a low-income residential customer advocate – OPAE; industrial and commercial customer advocates – OEG, IEU-Ohio, and OMAEG; commercial customer – OHA; CRES providers and an association of CRES providers – IGS, Constellation, and RESA; environmental advocates – Sierra Club,

OEC, NRDC, and ELPC; a renewable energy coalition - MAREC; and a trade association - EVCA. Accordingly, the Signatory Parties reason that the Stipulation complies with the first prong of the three-part test. (Joint Ex. 1 at 1; Co. Ex. 1 at 3-4, 19-20; Staff Ex. 3 at 3-4; Co. Br. at 12-13; Staff Br. at 6-9; OEG Br. at 3; OPAE Br. at 2; Tr. I at 168.)

{¶ 128} OCC, the only party opposing the Stipulation, does not directly challenge, either through its witnesses or its briefs, the Stipulation's compliance with the first criterion of the three-part test used to evaluate stipulations. Each of OCC's five witnesses acknowledges the test used by the Commission to evaluate a stipulation but does not expound upon the first criterion. Although OCC admits that diversity of interests is not a component of the three-part test, OCC notes that it is a factor occasionally considered by the Commission. (Tr. IV at 512-513, 515-516.)

{¶ 129} In its reply brief, OCC claims that the Stipulation is the product of a settlement process that gives the utility unfair bargaining power by virtue of its opportunity to veto any Commission modifications to the proposed ESP. To that end, OCC asks that the Commission eliminate ESPs and overhaul the settlement process in order to create a more just and reasonable process to protect consumers. (OCC Reply Br. at 1-2.)

{¶ 130} The record conclusively demonstrates the participation of all parties in the settlement negotiations over several months. No class of customers was intentionally excluded from settlement discussions. *Time Warner AxS v. Pub. Util. Comm.,* 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). The Commission also notes that the vast majority of the parties in these cases are represented by experienced counsel familiar with Commission proceedings. Most of the parties in these matters regularly and actively participate in regulatory and rate matters before this Commission. Many of the parties in these proceedings were also parties in AEP Ohio's *ESP 3 Case* and the *PPA Rider Case* and many of the issues raised in the pending ESP application and addressed in the Stipulation carry

over from the Company's prior ESP proceedings, including the *ESP 3 Case* and the *PPA Rider Case*. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015); *PPA Rider Case*, Opinion and Order (Mar. 31, 2016). Additionally, the Commission notes that the Stipulation is supported by many stakeholder groups.[23] Accordingly, the Commission finds, based upon the record in these proceedings, the Stipulation is the product of serious bargaining among capable, knowledgeable parties. (Joint Ex. 1 at 1; Co. Ex. 1 at 3-4, 19-20; Staff Ex. 3 at 3-4; Tr. I at 168.)

{¶ 131} Regarding OCC's disapproval of the settlement process, the Commission notes that it is a statutory provision, R.C. 4928.143(C)(2)(a), that permits the electric distribution utility to withdraw an ESP modified and approved by the Commission. As OCC is well aware, the authority to eliminate ESPs rests with the legislature, not the Commission. As a creature of statute, the Commission is without the authority to eliminate or waive a statutory requirement. *Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 620 N.E.2d 835 (1993).

2. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 132} Pursuant to the second criterion of the test, the Commission must determine whether the settlement, as a package, benefits ratepayers and the public interest. Although OCC has raised numerous concerns regarding various provisions of the Stipulation, we are persuaded that the Stipulation, as a package, benefits ratepayers and the public interest.

{¶ 133} The Stipulation, according to the Signatory Parties, contains numerous provisions that benefit customers and the public interest. AEP Ohio witness Allen

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[23] We note that the test utilized by the Commission to consider a stipulation, and recognized by the Ohio Supreme Court, does not incorporate a diversity of interests component. We have rejected previous attempts by OCC to revise the test to require consideration of a stipulation based on the diversity of the signatory parties. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 52-53.

testified that the extension of the term of the ESP through May 31, 2024, provides certainty and predictability for the Company's customers, auction suppliers, CRES providers, and CRES customers. The Signatory Parties advocate that the Stipulation supports economic development, innovation, competition, and customer choice and includes some financial benefits for customers, particularly residential customers. As part of the Stipulation, AEP Ohio agrees to continue the current residential customer charge and rate design. AEP Ohio witness Allen testified that the Stipulation would result in an estimated monthly increase of approximately $0.50 for a residential customer using 1,000 kWh per month and a modest decrease in rates for small commercial and industrial customers. According to the Signatory Parties, residential customers also benefit from the continuation of the RDCR, which saves a residential customer using 1,000 kWh per month approximately $11.40 annually, until new base rates become effective. AEP Ohio notes that it will continue to fund the Neighbor-to-Neighbor program, which provides financial assistance to low-income residential customers, in the amount of $1 million annually, until new base rates become effective. As a component of the Stipulation, AEP Ohio has agreed to an ROE of 10.0 percent for all riders with a capital component and, if the Company refinances prior to the next base rate case, AEP Ohio will update its WACC rate within 90 days, if the update is favorable to ratepayers. The Signatory Parties reason that the IRP tariff and the automaker credit encourage economic development in Ohio, particularly for large manufacturers that must compete nationally and internationally, which serves to protect and possibly to increase the number of manufacturing jobs in the state. The Signatory Parties note that the IRP tariff, BTCR, and automaker credit also promote peak-demand reduction, which provides some reliability benefits to the electric system to the benefit of all customers. The Signatory Parties submit that the SCR facilitates AEP Ohio's investment in technologies that support the city of Columbus' Smart City initiative and the Commission's PowerForward initiative to advance and enhance the consumer electric experience, including EV charging station and microgrid demonstration programs. The Signatory Parties contend that the purpose of the EV

charging station pilot is to ensure development of charging station infrastructure and pricing regimes in a manner that benefits and balances the interests of ratepayers, EV customers, the EV market, the utility, and the utility's system. Proponents of the Stipulation believe that the EV charging station program will stimulate innovation, encourage competition among charging station vendors, and facilitate customer choice, as well as provide grid benefits over traditional load management, provide data to better inform utility planning decisions, and help maintain reliability and affordability. (Co. Ex. 1 at 5, 6, 20-22; OEG Br. at 3-4; RESA Ex. 1 at 4; Staff Ex. 1 at 3; Tr. I at 90, 95-96, 105, 172; Environmental Intervenors Br. at 3-5.)

{¶ 134} The Signatory Parties contend that the Stipulation also promotes the advancement of retail competition through the adoption of the Enroll From Your Wallet program, supplier tariff provisions, and other retail competition enhancements. The Signatory Parties advocate that the CIR and the associated SSOCR, as well as the SCB pilot, are positive benefits to the competitive market. As additional benefits, the Signatory Parties mention the pilot battery storage and demand side management program with Kroger and Walmart. According to the Signatory Parties, the RGR advances the use of renewable energy, creating more diverse energy options for customers. (Joint Ex. 1 at 4, 6, 20-26, 28-31; Co. Ex. 1 at 5, 20-22, 26-27; Staff Ex. 3 at 4; Tr. I at 171-172; Tr. II at 283-284; OEG Br. at 3-4; Co. Br. at 35-37; Staff Br. at 9-11.)

{¶ 135} OCC argues that the Stipulation includes a number of provisions that are handouts to certain Signatory Parties that do not benefit consumers and the public interest and, therefore, OCC asserts that the Stipulation should be rejected. More specifically, OCC challenges the following aspects of the Stipulation.

a. Interruptible Power Tariff

{¶ 136} AEP Ohio explains that, as part of the Stipulation, the IRP tariff is revised to expand from 200 MW to 480 MW of interruptible load and will be divided into three

categories of IRP service, including a category to accommodate customers new to the Company's service territory. Total AEP Ohio retail payments for the expanded IRP will be capped at $28.5 million, in the aggregate, and the new industry IRP program will be capped at a total expenditure by the Company of $22.2 million in credits paid in the aggregate to new industry IRP program participants. The Signatory Parties endorse the continuation and modification of the IRP program for the additional program benefits at a lower cost to other customers, its discount to interruptible customers for mitigating system emergencies, and the program's contribution to the reduction of system peak load, as well as economic benefits for Ohio manufacturers (Tr. I at 171; Tr. IV at 521-522). Further, the Signatory Parties contend that, to the extent that interruptible customers reduce their demand, other customers are less likely to experience a reduction in service and service quality. (Joint Ex. 1 at 23, 25, 26; Co. Br. at 25-26, OEG Br. at 4; IEU-Ohio Br. at 4.)

{¶ 137} OCC submits that the IRP program includes existing customers that also participate in the demand response program sponsored by PJM and receive compensation from PJM. OCC notes that the IRP program, as proposed in the Stipulation, provides such customers additional compensation. Pursuant to the Stipulation, OCC notes that customers new to AEP Ohio's IRP program will receive a lower rate than existing IRP customers and may also receive payments from PJM for participating in PJM's demand response program. OCC interprets the Stipulation to afford only Signatory Parties or non-opposing parties the ability to participate in the IRP program funded by AEP Ohio customers. OCC avers that the IRP program has not been demonstrated to provide any benefits beyond the PJM demand response program and contends that AEP Ohio has not called on IRP customers to curtail their load other than events called by PJM since the program commenced in 2012. OCC argues that demand response is a part of PJM's portfolio for reliability and is best managed by PJM as opposed

to the local utility. OCC concludes that the IRP program harms consumers and should be rejected. (OCC Ex. 8 at 7-8; OCC Br. at 4-5.)

{¶ 138} The Signatory Parties declare that OCC's claim that participation in the IRP program is limited to the Signatory Parties is incorrect, as OCC witness Haugh conceded (Tr. I at 56-57; Tr. IV at 523-524). The Signatory Parties note that the Stipulation includes a provision for participation by new industry customers and legacy IRP customers that are not members of a Signatory Party (Tr. I at 56-57; Joint Ex. 1 at 26). Further, AEP Ohio and IEU-Ohio aver that OCC witness Haugh was not aware of any customer that is eligible to participate that would not be permitted to participate under the Stipulation (Tr. IV at 525). Accordingly, AEP Ohio concludes that OCC's argument is misguided and should be rejected. (Co. Br. at 26-28; IEU-Ohio Br. at 5-6; OEG Reply Br. at 2; OMAEG Reply Br. at 4.)

{¶ 139} AEP Ohio states that OCC's claims that there is no incremental value in the IRP program as modified by the Stipulation, and that demand response is more appropriately addressed by PJM, are flawed. AEP Ohio and OEG retort that OCC's position ignores that electric distribution utilities in Ohio have a statutory obligation to meet mandatory peak demand reductions pursuant to R.C. 4928.66 and any peak demand reductions achieved under the IRP count toward the Company's compliance with R.C. 4928.66. Further, the Signatory Parties assert that there are differences in the PJM program and AEP Ohio's IRP program that are beneficial to the Company's customers. Specifically, IEU-Ohio, OMAEG, and OEG note that there are differences in the programs' notice period, load calculation, and penalty structure, as well as other differences in the PJM program as compared to AEP Ohio's IRP program. Further, AEP Ohio and IEU-Ohio explain that an IRP customer may be requested to curtail under the IRP program as a result of a PJM emergency or a local event called by the Company (Tr. IV at 505, 528-529). AEP Ohio, OEG, and IEU-Ohio explain that the PJM program, as effective today, does not permit year-round interruptions (Tr. IV at 527-528). AEP Ohio

declares that the polar vortex curtailments of January 2014 were not mandatory under the PJM program, while the Company's IRP program, as effective in 2014 and currently, required mandatory curtailment (Tr. IV at 528-529). AEP Ohio concludes that the value of the IRP is in the Company's ability to initiate such interruptions in the future to the benefit of all customers. (Co. Br. at 27-28.) AEP Ohio and OEG emphasize that the Commission has previously found the IRP program beneficial to all customers in the Company's two prior ESP proceedings. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 40, citing *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 26, 66. The Signatory Parties assert that the modified IRP promotes economic development, which facilitates the retention of jobs and also enhances system reliability. Based on the Commission's findings in AEP Ohio's prior ESP cases and the record evidence in these proceedings, the Signatory Parties argue that the Stipulation's modification and continuation of the IRP program is beneficial for IRP customers and the Company's other customers as part of the total Stipulation package. (Co. Br. at 28; IEU-Ohio Br. at 5-6; Staff Br. at 10; OEG Reply Br. at 2-4; IEU-Ohio Reply Br. at 3; OMAEG Reply Br. at 5-6; Staff Reply Br. at 3.)

{¶ 140} The Commission has previously determined that the IRP program offers numerous benefits, including the promotion of economic development and the retention of manufacturing jobs. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 40; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 26, 66. Further, the Commission has repeatedly approved interruptible programs for other electric distribution utilities. *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP 4 Case*), Opinion and Order (Mar. 31, 2016) at 14, 26, 70-71; *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, et al., Opinion and Order (Apr. 2, 2015) at 78; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*FirstEnergy ESP 3 Case*), Opinion and Order (July 18, 2012) at 8, 11, 56; *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order

(Nov. 22, 2011) at 36; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 36. Given the modifications to the IRP program, which expand access to the program, enhance the benefits to participating customers, and institute cost controls, the Commission continues to find that the IRP program provides numerous benefits to ratepayers and is in the public interest. We are not persuaded by any of OCC's arguments that the IRP provisions of the Stipulation should be rejected. (Co. Ex. 1 at 11-12; OCC Ex. 8 at 7-8; Tr. I at 56-57; Tr. IV at 505, 523-525, 527-529; Joint Ex. 1 at 22-26.)

b. BTCR Pilot

{¶ 141} The Stipulation continues and modifies the BTCR pilot program initially adopted as part of the global settlement in Case No. 09-872-EL-FAC, et al. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 09-872-EL-FAC, et al. (*Global Settlement Case*), Order on Global Settlement Stipulation (Feb. 23, 2017) at 32-35, 51. The Stipulation modifies the BTCR program to increase the number of participants from 19 to 34 members of the Signatory Parties and non-opposing parties and expands the program to include schools. IEU-Ohio notes that the BTCR pilot allows participants the opportunity to reduce their cost of electricity. Staff endorses the BTCR pilot, in part, for the protection from cost shifts afforded to residential customers, among other benefits. Staff and IEU-Ohio note that the BTCR pilot offers a more efficient use of the transmission grid. The BTCR pilot permits participants to have their basic transmission costs allocated on the basis of their 1CP rather than a customer class allocation. Staff notes that the Commission has previously determined that the BTCR pilot is in the public interest. (Joint Ex. 1 at 27-30; Co. Ex. 1 at 18-19; Co. Br. at 29; Staff Reply Br. at 3; IEU-Ohio Br. at 7.)

{¶ 142} OCC submits that, because a customer's 1CP is determined during the previous year for the current year's transmission allocation, a customer can game the system by participating one year and, if the customer is unable to reduce its load, the customer can elect not to participate the following year. Once a customer enrolls in the

BTCR pilot, OCC recommends that the customer be required to make a commitment to be in the program every year and to demonstrate that it is reducing its load on the 1CP. As proposed, according to OCC, the effectiveness of the BTCR pilot is reduced, non-participating customers are harmed, and the program does not effectuate its intended purpose - to reduce overall system peak load for the AEP Ohio system. OCC asserts that schools already have a lower load during the 1CP and offer no additional value to reducing the load of the system. Finally, OCC argues that the BTCR program is only offered to customers that signed the Stipulation, which also limits the effectiveness of the program. OCC concludes that the BTCR pilot is unduly preferential and discriminatory in violation of R.C. 4905.33 to R.C. 4905.35. (OCC Ex. 8 at 9-10.)

{¶ 143} AEP Ohio states that there is no basis to support OCC's claim that the BTCR pilot violates R.C. 4905.33 through R.C. 4905.35. The BTCR pilot, according to AEP Ohio, is a reasonable incentive rate design to encourage beneficial conduct by individual customers, while R.C. 4905.33 to R.C. 4905.35 are designed to prohibit unduly discriminatory or anticompetitive service offerings. AEP Ohio avers that Ohio law does "not require uniformity in utility prices and rates." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184, ¶ 24. As AEP Ohio interprets the law, the statutes prohibit a utility from charging different rates only when performing "a like and contemporaneous service under substantially the same circumstances and conditions." *Id.* at ¶ 23 (quoting R.C. 4905.33 and construing R.C. 4905.35 as having "the same effect"). AEP Ohio reasons that the BTCR pilot is a rate incentive program that requires a change in usage and, as such, is a matter of rate design. AEP Ohio contends that it is well-settled that matters of rate design are within the Commission's discretion. *See, e.g., Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 20; *Payphone Assn. of Ohio v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 25; *Citywide Coalition for Util. Reform v. Pub. Util. Comm.*, 67 Ohio St.3d 531, 534, 620 N.E.2d 832 (1993). Finally, AEP Ohio states

that the Commission has previously found that the BTCR pilot offers benefits, as part of a stipulation package, to customers and the public interest, and it should reaffirm that conclusion as to the current Stipulation. (Co. Reply Br. at 14-15.)

{¶ 144} IEU-Ohio and OEG retort that there is no justification to require customers to commit to the BTCR program, as proposed by OCC. IEU-Ohio states that any cost shift as a result of the BTCR pilot is limited to commercial and industrial customers because any revenue not recovered from BTCR pilot participants is collected within the class of the pilot participants. According to IEU-Ohio and OEG, OCC's concern that participants will game the program is unlikely to present a harm, as customers in the BTCR pilot will remain economically motivated to reduce load in response to system peaks and the incentives assure that the customers are motivated not to game the system. Nor is OCC's concern regarding schools' participation in the BTCR pilot warranted, according to IEU-Ohio and OMAEG. IEU-Ohio and OMAEG argue that, over the last nine years, AEP Ohio's zonal peak has alternated between summer and winter, as opposed to only occurring in the summer, as OCC assumes (Tr. IV at 503-504). According to the Signatory Parties, schools add value to the BTCR program because AEP Ohio's zonal peak sometimes occurs in the winter and schools may, therefore, need to reduce their load to benefit from the BTCR pilot program. (IEU-Ohio Br. at 7-9; OEG Reply Br. at 4; OMAEG Reply Br. at 6-7.)

{¶ 145} The Commission finds that the BTCR pilot annual application process, as reflected in the Stipulation, does not nullify the effectiveness of the BTCR pilot, as OCC claims. Pilot participants will likely be incentivized to reduce their load consistent with the BTCR program requirements. If for some reason a participant cannot reduce its load, the participant will have the opportunity to reevaluate the benefits of the pilot and decide whether or not to participate. The pilot participant or former participant is required to continue to pay its applicable transmission costs. For these reasons, the Commission concludes that the BTCR pilot process does not promote gaming.

{¶ 146} OCC claims that the BTCR pilot program is unduly preferential and discriminatory. We disagree. The nature of any pilot program is to keep the number of participants manageable in order to make a determination regarding the efficacy of the program. In these proceedings, the Stipulation increases the number of participants from 19 to 34 and expands the program to include schools (Co. Ex. 1 at 14; Joint Ex. 1 at 28). No school or association of schools is a party to these proceedings. The other designated BTCR pilot participants are members of Signatory Parties or non-opposing parties to the Stipulation (Co. Ex. 1 at 14; Joint Ex. 1 at 28). It is the BTCR participant that must adjust its consumption of energy to directly obtain the benefits of the pilot. R.C. 4905.33 prohibits discriminatory pricing for "like and contemporaneous service" rendered "under substantially the same circumstances and conditions." Where the utility services rendered to customers are different or if they are rendered under different circumstances or conditions, differences in the prices charged and collected are not proscribed by R.C. 4905.33. Similarly, R.C. 4905.35 prohibits a utility from making or giving "any undue or unreasonable preference or advantage" or imposing "any undue or unreasonable prejudice or disadvantage." The statute does not prohibit all preferences, advantages, prejudices, or disadvantages – only those that are undue or unreasonable. *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 16-17, 734 N.E.2d 775 (2000). We find a BTCR pilot participant's adjustment in consumption to constitute a difference in the service received in comparison to a non-BTCR pilot participant. The Commission finds the limitation on the number of participants to be reasonable, key to controlling the cost of the pilot, and to facilitating an evaluation of the efficacy of the pilot.

{¶ 147} The purpose of the BTCR pilot is to lower the overall demand at peak times and, in so doing, to reduce AEP Ohio's total transmission costs incurred from PJM and possibly to avoid the need for transmission system upgrades. Participating customers have the opportunity to reduce their consumption and their bill and, to the extent that the BTCR pilot reduces AEP Ohio's overall transmission costs and the need

for transmission upgrades, all customers receive the benefit (IEU-Ohio Br. at 7-9; OMAEG Reply Br. at 6-7; OEG Reply Br. at 4). The Commission also notes that the Stipulation insulates residential customers from incurring additional costs as a result of the BTCR pilot. Accordingly, the Commission finds that the BTCR pilot complies with the second prong of the test used by the Commission to evaluate stipulations.

c. *Automaker Credit Rider Tariff*

{¶ 148} As part of the stipulation approved in the *PPA Rider Case,* AEP Ohio agreed to propose, as part of these ESP proceedings, an automaker credit rider to support increased utilization or expansion of automaker facilities in the Company's service territory. *PPA Rider Case,* Opinion and Order (Mar. 31, 2016) at 28, 84. To incent manufacturers to maintain and increase production and encourage economic development, the automaker credit provision will provide a $10/MWh credit for all kilowatt hour consumption above the customer's 2009 baseline consumption level. Total credits under the automaker credit provision shall not exceed $500,000 annually, to be recovered through the EDR. (Joint Ex. 1 at 31; Co. Ex. 3 at 17; Tr. I at 55-56, 72-73.)

{¶ 149} OCC opposes the automaker credit rider's use of the 2009 calendar year as a baseline without any justification. OCC offers that a report released by the Ohio Development Services Agency demonstrates that 2009 was the lowest point of auto production in Ohio over the past nine-year period evaluated. OCC argues that, when 2009 is used as a baseline for a consumption credit, it greatly increases the amount of the credit to be funded by customers and, therefore, is an unfair baseline to use. Further, OCC submits that the automaker credit is more appropriately considered as part of an economic development project where the eligible customer can apply for a reasonable arrangement pursuant to R.C. 4905.31. OCC notes that, in such a proceeding, the applicant bears the burden to demonstrate that the arrangement would be just, reasonable, and not discriminatory and interested parties are able to review and assess whether the arrangement appears to be just and reasonable. OCC states that the

reasonable arrangement process allows for a comprehensive evaluation that balances the benefits of the discount with the cost to customers, which the automaker credit provision of the Stipulation fails to do. According to OCC, the Stipulation does not require any commitment by the recipient of the discount to retain or increase jobs or any investment in Ohio. Therefore, OCC contends that the automaker credit harms consumers and should be rejected. (OCC Ex. 8 at 10-12; OCC Br. at 7-9.)

{¶ 150} AEP Ohio notes that, while OCC criticizes the 2009 baseline used in the automaker credit provision, OCC admits that its criticism assumes that production since 2009 has increased, while OCC also admits that selecting a different base year may or may not increase the credit (Tr. IV at 540-541). According to AEP Ohio, OCC witness Haugh agreed that the amount of the automaker credit would not be affected if an automaker did not increase its production since 2009 (Tr. IV at 540-541). AEP Ohio notes that Mr. Haugh also admitted that the baseline would be zero for any new automaker that locates in the Company's service territory (Tr. IV at 541-542). The Company reasons that the automaker credit provision may incent an automotive manufacturer to locate in AEP Ohio's territory or expand production, which provides economic development benefits to customers and the community. (Co. Br. at 31-32.)

{¶ 151} OEG states that OCC's concerns overlook that the automaker credit is capped at a total of $500,000 annually, which limits the cost exposure for other customers. Further, OEG reasons that the automaker must increase its production to receive any credit. Accordingly, OEG advocates that the automaker credit reasonably balances the need to offer the credit for economic development against the potential rate impact on AEP Ohio customers. (OEG Reply Br. at 5.)

{¶ 152} OEG and Kroger argue that economic development, job retention, and energy efficiency programs, like the automaker credit, are permissible provisions of an ESP, pursuant to R.C. 4928.143(B)(2)(i). OEG notes that the Commission has previously

approved an automaker credit provision as part of an ESP. *FirstEnergy ESP 4 Case*, Opinion and Order (Mar. 31, 2016). Kroger declares that the statute permits the cost of the programs to be allocated across all customer classes of the utility. Further, Kroger submits that the Commission has previously approved economic development incentives for various parties as a part of another ESP case. *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 22. In addition, Kroger notes that the Commission has approved a stipulation that included economic development incentives for large employers as part of an ESP. *In re Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, et al., Opinion and Order (Oct. 20, 2017) at 41. On this basis, the Signatory Parties conclude that the economic development, job retention, and energy efficiency provisions of the Stipulation benefit ratepayers and the public interest. (Kroger Reply Br. at 3-5; OEG Reply Br. at 5.)

{¶ 153} OCC opposes the 2009 baseline because, in OCC's view, as the lowest point of automotive production in Ohio, using the 2009 baseline could greatly increase the amount of the credit. We note, however, that the amount of the automaker credit is capped at $500,000 annually. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) 28, 107. Therefore, even if an automaker increases production to take advantage of the credit, the annual credit cap on the automaker credit balances the cost exposure to other customers. The Commission notes that we have previously approved the 2009 production baseline in a similar automaker credit provision in the ESP of other electric distribution utilities. *FirstEnergy ESP 3 Case*, Opinion and Order (July 18, 2012) at 15, 30, 57; *FirstEnergy ESP 4 Case*, Opinion and Order (Mar. 31, 2016) at 14, 26, 71, 94, 121. The Commission notes that, while OCC opposes the baseline year used and the process to receive the automaker credit, OCC does not argue that the credit is unlikely to operate as intended, as a tool to encourage an automaker to locate or expand its manufacturing facilities in the state or to increase production and, thereby, retain jobs. OCC's preference for a different process for a customer to obtain the automaker credit does not negate the benefits that the

provision offers to ratepayers and the public interest. Accordingly, the evidentiary record supports the proposed automaker provision of the Stipulation, which will provide economic development benefits. (Co. Ex. 3 at 17; OCC Ex. 8 at 10-12; Tr. 55-56, 73.)

d. *Enroll From Your Wallet*

{¶ 154} To make it easier for customers to quickly, safely, and effectively enroll with a CRES provider, the Stipulation includes a process by which a customer may enroll using information more familiar to the customer. The Signatory Parties have agreed to facilitate a customer's ability to enroll with a CRES provider via the Enroll From Your Wallet alternative (Joint Ex. 1 at 37-39). Currently, a customer must provide the CRES provider with a unique service delivery identifier (SDI), a number listed on the customer's bill, or contact AEP Ohio directly for the SDI number, as an authorization to enroll with a CRES provider. The Enroll From Your Wallet alternative included in the Stipulation permits the customer to provide information to a CRES provider that is more readily accessible - the telephone number associated with the account and either the last four digits of the customer's social security number or the amount of one of the last three bills, to the extent that AEP Ohio possesses that information for the particular customer. The Stipulation provides that the CRES provider would continue to be required to maintain a letter of authorization, pursuant to Ohio Adm.Code 4901:1-10-24(E), on file for release of the SDI number that AEP Ohio uses in lieu of the account number to enroll customers. The Enroll From Your Wallet provision of the Stipulation also requires AEP Ohio to conduct random audits of CRES providers, at least once annually, to ensure the CRES provider has the letter of authorization for enrolled customers, in addition to any random audits by Staff to ensure compliance. The Signatory Parties proclaim that customers do not normally have their electric bill or SDI number available outside of their homes, thus complicating their ability to enroll with a CRES provider, diminishing the customer experience, and creating a barrier for the customer to participate in the competitive market. Participating CRES providers would pay a one-time authorization

fee of $5,000 to cover AEP Ohio's implementation costs and, once all costs of implementation have been recovered, the Company will credit any additional funds through the gridSMART Phase 2 Rider to offset the cost of changes to the supplier portal/EDI protocol. The Signatory Parties reason that, with the implementation of the Enroll From Your Wallet program, AEP Ohio ratepayers will benefit from an improved customer experience and a simplified process to select a generation supplier, thereby serving as an additional catalyst to advance competitive generation service in Ohio. (Joint Ex. 1 at 38; Co. Ex. 1 at 16; RESA Ex. 1 at 15-16; Co. Br. at 32-34; RESA/IGS Br. at 8.)

{¶ 155} OCC posits that customers should consult their bills before enrolling with a CRES provider because the bill includes useful information, such as the price to compare, usage data, and information regarding the customer's current supply choice. If customers are allowed to enroll without having their AEP Ohio bill in hand, OCC believes customers will not have a complete picture of their current situation and could easily enroll with a marketer for a service that does not result in any savings to the customer. Further, OCC states that the Signatory Parties have not conducted any studies or analysis to support the claims that the current enrollment process is inefficient and leads to an unsatisfactory experience for customers, or that customers ultimately do not enroll with a CRES provider because of the enrollment process. OCC advocates that making it easier for customers to enroll with a CRES provider will likely harm customers and, therefore, OCC requests that the Commission reject the Enroll From Your Wallet provision. (Tr. IV at 419, 423; OCC Ex. 8 at 13-14; OCC Br. at 9-10; OCC Reply Br. at 18-19.)

{¶ 156} AEP Ohio and RESA/IGS contend that OCC has focused solely on the CRES provider's price for service. While AEP Ohio acknowledges that the cost of service is important to many customers, the Company notes that there are other reasons why a customer may elect to receive service from a competitive supplier in addition to the price. AEP Ohio reasons that some customers may be interested in selecting a CRES provider that offers an all-renewables generation option, or that has a unique charitable aspect to

its business or a public interest outlook. RESA/IGS offer that the customer may have considered enrolling before actually signing up with the CRES provider. AEP Ohio submits that customers have access to facts and information and the ability to make informed and well-reasoned decisions about their choice of electric service supplier. Accordingly, the Signatory Parties encourage the Commission to adopt the Stipulation, including the Enroll From Your Wallet provision as a more flexible enrollment process for customers. (Co. Reply Br. at 17-18; RESA/IGS Reply Br. at 3.)

{¶ 157} The Commission finds the Enroll From Your Wallet provision of the Stipulation to be a convenient and customer-friendly benefit for customers that elect to shop. The Enroll From Your Wallet program does not affect the customer's access to information to evaluate the SSO and the offers of CRES providers, in addition to other factors that customers may consider. Once the customer elects to shop, the program eliminates a step in the process for the customer, if the customer does not have the electric bill with the SDI readily available. The program facilitates the customer's election of a CRES provider and maintains consumer protections. The Enroll From Your Wallet program is a more consumer-oriented means of enrollment and, thus, improves the customer experience. The Commission is not persuaded that studies and analysis are necessary to implement this type of change that reduces the number of steps or the information necessary to allow a customer to purchase the product of a CRES provider, provided there are adequate consumer protections in place, which we find in this instance. (Tr. IV at 412-420, 423; RESA Ex. 1 at 3, 15-17; Co. Ex. 1; RESA/IGS Br. at 8-9.) Accordingly, the Commission rejects OCC's request to eliminate the Enroll From Your Wallet provision from the Stipulation.

e. Smart City Rider and PowerForward Rider

{¶ 158} In the Stipulation, the Signatory Parties have agreed to the establishment of the new SCR to recover the costs associated with two technology demonstration projects, EV charging stations and microgrids. The SCR will be capped at a total of $21.1

million over four years. The Signatory Parties advocate that the SCR will allow AEP Ohio to conduct research and development around the technologies and to produce data and information to better inform the Company, the Commission, stakeholders, and decision makers on policies related to the technologies. The Signatory Parties contend that the SCR will promote the development of the EV market and promote microgrids by encouraging adoption of these technologies. (Co. Ex. 1 at 8; Joint Ex. 1 at 12-20, Att. C; Staff Ex. 1 at 3.)

{¶ 159} AEP Ohio has agreed, as part of the Stipulation, to initiate and operate an EV charging station rebate program. The program will offer up to $10 million in rebates, including AEP Ohio administrative fees, on a competitively neutral basis, for up to 375 network-connected, smart EV charging stations. AEP Ohio has committed to ensuring that at least ten percent of the charging stations will be reserved for low-income geographic areas. AEP Ohio will access or receive data from the charging stations installed as part of the program and the data will be shared with the Signatory Parties and in a final report to be available to the public. The Signatory Parties assert that the EV charging station project will provide AEP Ohio, the Commission, and other interested stakeholders with information regarding siting considerations, pricing, and affordability, in order to optimize resources, ensure system reliability, and facilitate well informed utility planning decisions. EVCA and Staff endorse the charging station rebate program for its ability to foster a scalable and sustainable competitive market for electric vehicles and charging stations in Ohio. According to EVCA, the rebate program facilitates a competitive market among charging station participants, limits utility development risk, and enhances innovation, competition, and customer choice. Environmental Intervenors support this provision of the Stipulation for its potential load growth and the potential to lower the average cost of electric service by utilizing idle distribution and transmission capacity to the benefit of all utility customers. (Joint Ex. 1 at 14-20, Att. C; Co. Ex. 1 at 8,

10-11; Staff Ex. 1 at 3-4; EVCA Ex. 1 at 4, 13-14, 16-17; Tr. I at 95-96; Environmental Intervenors Br. at 5.)

{¶ 160} OCC argues that the Stipulation, without any justification, provides for the use of ratepayer funds to support the ownership and operation of EV charging stations by unregulated entities. OCC submits that AEP Ohio failed to identify any statutory obligation, policies, studies, or analysis relied on to justify the development of the EV charging station market with customer funds. OCC declares that none of the proponents of the Stipulation discusses the reasonableness of the distribution utility in a restructured state promoting electric vehicles or the impact of the associated load growth during peak hours. Further, OCC witness Alexander states that the purpose of the project is unknown and that the Stipulation does not impose a requirement that the time-based and demand functionalities of the charging stations be used in any particular manner. Therefore, OCC contends that there is no obvious benefit to AEP Ohio's distribution customers. In OCC's opinion, it is likely that EV owners will use the charging stations funded through this program, in a manner that does not take into account the impact of their usage on the costs and benefits to the electric grid. (OCC Ex. 5 at 26, 30-31, 32-33, Att. BRA-14.)

{¶ 161} OCC witness Alexander testified that, as of September 2017, there are 348 EV charging stations in Ohio, of which 282 are public and 65 are private,[24] with 46 located in Columbus, all of which are public (OCC Ex. 5 at 31). OCC argues that it is unreasonable for AEP Ohio customers to subsidize 375 new charging stations, increasing the number by a factor of eight, when the number of electric vehicles in Columbus is unknown. OCC asserts that there is no record evidence of the number, type, and location of electric vehicles in AEP Ohio's service territory or the number and types of charging stations that currently exist in the Company's service territory. There is no evidence in the record,

24 The Commission recognizes that 282 plus 65 equals 347, not 348.

according to OCC, supporting the implication by proponents that more charging stations will lead to more EV usage and ownership. (OCC Ex. 5 at 31-32.)

{¶ 162} Further, OCC argues that the Stipulation does not include any plan or criteria for evaluating the EV charging station project or how the data collected will be evaluated and for what purpose, no definition of a "low-income geographic area," and no evidence of the penetration of electric vehicles in such "low-income geographic areas" (OCC Ex. 5 at 34-35, Att. BRA-20, BRA-21).

{¶ 163} It is significant, according to OCC, that the Stipulation does not identify how AEP Ohio will charge for the use of the EV charging stations or account for the resulting revenues, the rate design, or pricing, and, further, it is not clear to OCC whether the Commission would exercise oversight over the rebate program, including the pricing schedule for usage of the charging stations. Further, OCC is troubled that the Stipulation does not account for the incremental revenues and AEP Ohio has no projection of estimated revenues from the charging stations. This raises two concerns for OCC. First, AEP Ohio has no commitment to offset the revenues from the charging stations in the gridSMART Rider, to the benefit of AEP Ohio's shareholders as opposed to its customers. Second, with no provision to dictate the pricing scheme for charges associated with the use of the EV charging stations, the potential exists for unregulated third parties to benefit from customer subsidies, without any oversight or accountability. OCC concludes that the EV charging station project is not consistent with the criteria for an ESP, does not reflect a proper distribution modernization plan related to an improvement in reliability, and does not conform to the Commission's process for considering grid modernization investments. OCC submits that the record fails to provide any basis to find that the proposed SCR, including the EV charging station provision, provides any benefit to AEP Ohio customers or the public interest and, therefore, it fails to comply with the test used to approve a stipulation. (OCC Ex. 5 at 36-39, Att. BRA-22.)

{¶ 164} OCC proposes that, if the Commission adopts the EV charging station component of the Stipulation, AEP Ohio should be required to submit its selection of the business to receive a rebate to the Commission for approval (OCC Reply Br. at 6). Further, OCC argues that the charging station proposal is not required to benefit the entity that the Stipulation purports to assist (governmental entity, public agency, or low-income area), as the charging station may be used by others or the building occupants, including private employers. OCC also opposes the adoption of the EV charging station program because, according to AEP Ohio, the Commission is without authority to establish prices that the owners of EV charging stations can collect from persons using the stations (OCC Reply Br. at 7; Tr. I at 96). OCC is concerned that this component of the Stipulation requires ratepayers to fund the market research for AEP Ohio to later own EV charging stations, eliminating the business risk for the Company. OCC reasons that the EV charging station provision of the Stipulation is a bad deal for consumers and the competitive market (OCC Reply Br. at 6-8).

{¶ 165} Regarding OCC's claims as to how AEP Ohio will bill for the use of the charging stations, the Company explains that, under the Stipulation, as is the current practice, the EV charging station site host will be charged for its usage and service as an AEP Ohio retail customer, including usage delivered to the charging station based on the applicable tariffs (Joint Ex. 1 at 18-19). AEP Ohio contends that there is no need to revise this practice in association with this relatively modest demonstration project.

{¶ 166} Environmental Intervenors submit that OCC ignores fundamental elements of the Stipulation and distorts other aspects in its brief. Environmental Intervenors assert that OCC ignores, particularly in regard to pricing, that the EV pilot is designed to balance the role and responsibilities of the regulated utility with the goal of fostering a competitive market for EV charging. Environmental Intervenors state that the Stipulation is flexible and allows for future correction as to charging station pricing, in order to recognize that different pricing modes may be more or less appropriate or

effective for different market segments. Environmental Intervenors state that AEP Ohio will have a critical role in educating charging station site hosts about tariffs and rates, including time-of-use rates and other options to manage charging station load, while the data collected from the associated charging stations will be analyzed for pricing impacts and effects on grid reliability, load growth, and demand response potential. (Joint Ex. 1 at 18-19; EVCA Ex. 1 at 10.)

{¶ 167} The SCR proposed in the Stipulation also includes a microgrid provision. A microgrid is a small-scale power grid that can operate independently, also referred to as islanding, or in conjunction with the electric grid. As AEP Ohio witness Allen described it, the critical components of a microgrid are a battery storage system and smart controls that can island the microgrid and keep the power flowing within the microgrid using energy stored in the batteries. Microgrids may include small-scale generation such as solar arrays, wind turbines, or small gas-fired generators that can supplement the energy and capacity provided by battery storage systems during islanding. Islanding allows electric service to be maintained to critical facilities during an outage. (Co. Ex. 1 at 9-10.)

{¶ 168} As proposed in the Stipulation, the SCR would authorize AEP Ohio to recover the costs of one or more microgrid demonstration projects, not to exceed $10.5 million. The microgrid demonstration project will primarily target non-profit, public-serving AEP Ohio customers. Through the microgrid demonstration project, AEP Ohio will collect data to better inform the Company and the Commission regarding future deployment of microgrids. The Signatory Parties advocate that the microgrid demonstration project will provide interested stakeholders a better understanding of the technology and its impact on the distribution system. (Joint Ex. 1 at 12-14, Att. C; Co. Ex. 1 at 8-9; Staff Ex. 1 at 3; Tr. I at 90, 95-96, 105.)

{¶ 169} OCC argues that the Stipulation lacks details and justification for the microgrid project, including the number of microgrids to be part of the project, the need for the project, a connection to AEP Ohio's statutory duty to ensure reliable service, the purpose of the microgrid program in regard to any reliability plan, and the potential benefits to customers. OCC notes that there is no requirement that the beneficiary of the microgrid project fund any portion of the microgrid, seek funding from the Smart Columbus Plan or federal funding, or obtain a contribution from another governmental or private entity. OCC witness Alexander notes that there are no specific microgrid project design specifications or criteria, no criteria or details regarding how the microgrid project will be evaluated, and no intention by AEP Ohio to perform a cost benefit analysis. Although OCC acknowledges that the Stipulation requires an audit of the SCR, OCC asserts that no schedule for the audit is provided, the scope of the audit is not defined, and the criteria for determining prudence have not been identified. OCC argues that the total cost of the microgrid demonstration and the potential costs to customers are unknown because the Stipulation allows AEP Ohio to incur additional costs related to distribution investments, without any cap on such expenditures, and to collect those costs through the DIR. OCC concludes that the microgrid demonstration project is inconsistent with the criteria for an ESP, does not reflect a proper distribution modernization plan related to an improvement in reliability, and does not conform to the Commission's process for considering grid modernization investments. For these reasons, OCC asserts that the microgrid demonstration project will harm consumers and should be rejected. (OCC Ex. 5 at 21-26, Att. BRA-11, BRA-12, BRA-13.)

{¶ 170} AEP Ohio submits that OCC overlooks many details regarding the microgrids, including that the microgrid demonstration project will be selected through a public process and that the host will own and maintain the microgrid generation and battery storage facilities, among other details set forth in the record (Joint Ex. 1 at 12). AEP Ohio advocates, as the Stipulation proposes, that the Company not be required to

finalize all the details of the proposed microgrid project but rather that the Company be permitted, in consultation with Staff, the time and flexibility to select the best opportunity. (Co. Reply Br. at 10.)

{¶ 171} AEP Ohio argues that OCC's claims regarding an alleged lack of supporting analysis and specific details ignore that the SCR supports demonstration projects for the express purpose of gathering the type of information that OCC requests. AEP Ohio avers, as OCC witness Alexander admits, that the cost of the demonstration projects is relatively modest and the impact on the monthly bill of the average residential customer will be a very small amount (OCC Ex. 1 at 20; OCC Ex. 5 at 14; Tr. III at 391). On that basis, AEP Ohio reasons that the cost of the SCR is justified by the benefits that the data collected on the demonstration projects will provide, in addition to promoting the technologies.

{¶ 172} The Commission recognizes that, in June 2016, the city of Columbus won the Smart City Challenge and received a $40 million grant from the U. S. Department of Transportation to be the model for connected cities of the future. In addition, as the winner of the Smart City Challenge, the city of Columbus received a $10 million grant from Vulcan, Inc., a Paul Allen Company, to focus on decarbonization of the energy and transportation sectors. Despite the name, the Smart Columbus Plan is a region-wide, comprehensive, integrated plan to address an array of urban mobility and transportation challenges faced by central Ohio communities using new technologies, including, but not limited to, connected infrastructure, electric vehicles and EV charging station infrastructure and integrated data platforms, and autonomous vehicles. The purpose of the Smart Columbus Plan is to improve people's quality of life particularly in underserved communities, drive growth in the economy, provide better access to jobs and ladders of opportunity, and foster sustainability. It is the Commission's understanding that AEP Ohio committed to support the Smart Columbus Plan particularly with regard to decarbonization of the power supply and other carbon

emission reduction strategies, to advance the deployment of EV charging stations, and to seek regulatory approval for the associated projects, as necessary. (OCC Ex. 5 at Att. BRA-2 at 4-9, 47, 51; OCC Ex. 1 at 9.)

{¶ 173} The Commission finds that the EV charging station and the microgrid demonstration programs, as proposed in the Stipulation via the SCR, are permissible provisions of an ESP, pursuant to R.C. 4928.143(B)(2)(h). In accordance with R.C. 4928.143(B)(2)(h), an ESP may specifically include incentive ratemaking provisions or distribution infrastructure and modernization incentive provisions. The SCR meets the requirements of either provision—as an incentive for AEP Ohio to support the Smart Columbus Plan and, for the same reasons presented in the Commission's discussion of the DIR below, meets the distribution infrastructure and modernization incentive provisions. The EV charging station and microgrid demonstration programs will be available throughout AEP Ohio's service area (Tr. I at 30). It is important that future technology, such as EV charging stations and microgrids, and their respective impact on the distribution system, be evaluated.

{¶ 174} The Commission notes that the focus for the microgrid project will be non-profit, public-serving entities, including medical facilities and fire and police stations (Co. Ex. 1 at 9). Such facilities are crucial to every Ohio community and particularly critical during widespread emergencies and extended power outages. Over the past several years, the United States has experienced severe, widespread electric service outages due to weather. We agree with Staff that the microgrid demonstration project can provide important information for the expanded use of microgrid technology (Staff Ex. 1 at 3). Certain details that OCC views as critical to the approval of the microgrid demonstration project, such as project design specifications, evaluation criteria, and a requirement to perform a cost benefit analysis, the Commission finds to be overly restrictive and detrimental to the development of the project, at this stage. The microgrids must be designed to serve the needs of the customer recipients. As a demonstration pilot, it is

important that the project be flexible and designed to provide valuable information, with controls in place to protect AEP Ohio's ratepayers. The Commission finds the $10.5 million total for this component of the SCR and the competitive selection process for the microgrid to be sufficient protections for the project, at this stage (Joint Ex. 1 at 12). Per the Stipulation, AEP Ohio must coordinate with Staff on the selection of the public service entity to be selected to receive a microgrid (Joint Ex. 1 at 12). As for the additional distribution infrastructure expenses that may be incurred to install the microgrid, the Commission notes that such costs will flow through the DIR and are subject to the caps approved in these proceedings. In accordance with Ohio Adm.Code 4901:1-10-08, every electric utility's emergency plan must take into account the restoration of electric service to hospitals, fire, and police, usually restoring service to these entities first. The implementation of this microgrid demonstration pilot may afford AEP Ohio a better method to improve service reliability to hospitals, fire, and police stations.

{¶ 175} In regard to the EV charging stations, the Commission acknowledges that, at present, electric vehicles are still a very small portion of the market nationwide and EV charging stations are not widely publicly available throughout Ohio (Tr. III at 309; OCC Ex. 5 at 31). The goal of the Smart Columbus Plan is to increase EV adoption to at least 1.8 percent by 2020 or more than 3,200 electric vehicles on the road. It is essential that drivers of electric vehicles be comfortable that there are accessible places to charge their electric vehicles, whether the driver is a resident of Ohio or traveling to or through Ohio. The Commission considers electric vehicles and the charging station pilot, with the right foundation and consumer protections, a key element to decarbonizing the transportation sector, a goal in the Smart Columbus Plan. The Commission is mindful that a significant increase in the number of electric vehicles will have an impact on electric demand. Now is the time to be aware of and prepare for the potential impact on the electric market; the impact on the electric grid, electric distribution, and distribution infrastructure; and the

effect, if any, on other AEP Ohio customers. As we have encouraged AEP Ohio and other electric distribution utilities to be proactive in their implementation of smart grid technologies and the replacement of aging distribution infrastructure to support such technologies, this Commission must also be proactive in recognizing and preparing for new technologies. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al. (*ESP 1 Case*), Opinion and Order (Mar. 18, 2009) at 37; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 46. (OCC Ex. 5 at Att. BRA-2 at 4-9, 47, 51, 62-64, 65.)

{¶ 176} The EV charging station demonstration project will be of sufficient size to allow AEP Ohio, this Commission, and other interested stakeholders to analyze the data from the project regarding load growth at peak and off-peak hours, rates, and rate design criteria, and to determine potential concerns and benefits. Certain elements of OCC's opposition to the charging station demonstration pilot are misguided. OCC argues that there is no definition of low-income geographic area and that the record does not include evidence of the penetration of electric vehicles in such areas. The Stipulation does include a definition of low-income geographic area and such areas are subject to re-evaluation at the mid-point of the demonstration project (Joint Ex. 1 at 16; OCC Ex. 5 at Att. BRA-20). Further, the Commission is not persuaded that the penetration of electric vehicles in a low-income area is definitive of the need for the charging station demonstration pilot in the area. As previously stated, the goal of the Smart Columbus Plan is to increase the number of electric vehicles by approximately two percent over the next two years and drivers of electric vehicles, whether Ohio residents or not, need access to charging stations throughout Ohio.

{¶ 177} Certain details that OCC views as essential to the approval of the charging station demonstration project, including project evaluation criteria, the data to be collected, and the purpose of the data collected, like OCC's opposition to the microgrids, would be overly restrictive and detrimental to the development of the project. Similar to its arguments with regard to the SCR demonstration projects, OCC opposes the

PowerForward Rider, asserting that there is a lack of detail in the record of these proceedings to justify approval of the rider (OCC Reply Br. at 4-5). OCC ignores that the PowerForward Rider, as proposed in the Stipulation, is a zero placeholder rider to be activated, if necessary, to implement findings or directives made by the Commission as a result of its PowerForward initiative. At such time as AEP Ohio pursues cost recovery via the PowerForward Rider, all interested stakeholders will be afforded the opportunity to evaluate the Company's application. (Joint Ex. 1 at 11; Staff Ex. 1 at 4.) Accordingly, the Commission is not persuaded that this provision of the Stipulation should be rejected.

{¶ 178} In light of the modest cost of the demonstration projects, the benefits to be afforded to customers, and the vast array of benefits provided to the public interest as a result of the Smart Columbus Plan, the Commission finds that the SCR should be approved as proposed in the Stipulation. The SCR benefits AEP Ohio customers and the public interest by fostering the goal of increasing the number of electric vehicles locally, facilitating the travel of electric vehicles to and through the state, reducing carbon emissions, and supporting the provision of critical services in emergencies. The SCR demonstration projects will help to prepare Ohio for advances in the transportation and electric market, position the state for new industry, and balance the needs of AEP Ohio's customers throughout the Company's service territory, while supporting the benefits offered in the Smart Columbus Plan. Like other riders, the SCR shall be subject to annual audit for accounting accuracy, prudency, and compliance with Commission-ordered directives for each demonstration pilot.

{¶ 179} The Commission expects that AEP Ohio will incorporate lessons learned from the EV charging station and microgrid demonstration projects into the PEV tariff and other future tariff filings, including rate design that encourages load management to enhance potential reliability benefits to the distribution system as a result of EV charging.

{¶ 180} The Commission notes that the Stipulation provides that AEP Ohio will coordinate the location of EV charging stations as a part of the rebate program with the EV project being administered by the Ohio Environmental Protection Agency. The Stipulation also defines government owned property to include property for which the government has a property interest, such as an easement or lease, and limits the rebates to be received by any individual customer or affiliates to no more than five percent of all rebates available. (Joint Ex. 1 at 14, 17, 18.) The Commission clarifies that "government," as used in Section III.H of the Stipulation, shall include, but not be limited to, a specified division, department, bureau, commission, or agency of the state of Ohio, federal government, local government, or public college or university, each of which constitutes a separate and individual customer for purposes of the EV charging station program. Further, participation in AEP Ohio's EV rebate program shall not prohibit the governmental entity from participating in any other EV program for which the governmental entity is otherwise eligible.

f. Distribution Investment Rider

{¶ 181} As part of the Stipulation, the Signatory Parties propose the continuation of the DIR, provided that AEP Ohio files a distribution rate case by June 1, 2020; otherwise, the DIR expires on December 31, 2020, and the revenue caps for 2021 and beyond will be zero. As agreed to in the Stipulation, the DIR rate caps would be established as follows: $215 million for 2018, $240 million for 2019, $265 million for 2020, and $290 million for 2021. The DIR was initially adopted in the Company's *ESP 2 Case*, as authorized by R.C. 4928.143(B)(2)(h), to facilitate the timely and efficient replacement of aging infrastructure to improve service reliability. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 46-47, Entry on Rehearing (Jan. 30, 2013) at 44-45. The DIR was also approved and extended in the Company's subsequent ESP proceedings, with certain modifications and requirements, recognizing that the DIR also supports the installation of gridSMART technologies. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 45-47,

Second Entry on Rehearing (May 28, 2015) at 23-24. As currently effective, the DIR is updated quarterly and proposed DIR rider rates are automatically approved 60 days after the application is filed, unless the Commission specifically orders otherwise. For any year that the Company's DIR investment results in revenues to be collected that would exceed the cap, the overage would be recovered and subject to the cap in the subsequent period. Symmetrically, for any year that the revenue collected is less than the annual DIR cap, the difference is applied to increase the cap for the subsequent period. The DIR is collected as a percentage of base distribution revenues. The Commission reviews the DIR annually for accounting accuracy, prudency, and for compliance with the program directives. Staff reviewed AEP Ohio's most recent customer perception survey and its performance reliability indices, the System Average Interruption Frequency Index (SAIFI), which measures the average number of interruptions per customer, and the Customer Average Interruption Duration Index (CAIDI), which measures the average time to restore service after an interruption. Staff concluded that the requirements of R.C. 4928.143(B)(2)(h) have been met. (Joint Ex. 1 at 4-5; Staff Ex. 2 at 7-8; OCC Ex. 2A at 3; Co. Br. at 17-19.)

{¶ 182} OCC opposes the continuation of, and the increase in, the DIR caps on the basis that the DIR does not benefit customers and the public interest for several reasons. First, OCC states that, to date, AEP Ohio has spent approximately $1.5 billion through the DIR, which costs the average residential customer $8.10 per month with little if any improvement to distribution reliability. OCC characterizes AEP Ohio's SAIFI and CAIDI performance as poor. While acknowledging that AEP Ohio has met the minimum performance standards each year from 2013 through 2016, OCC asserts that SAIFI performance has been consistently worse each year and CAIDI performance has been worse in two of the three years since 2013. Further, OCC states that AEP Ohio filed an application seeking less stringent performance standards in its most recent reliability standards proceeding. OCC witness Williams claims that, according to the Company's

2015 Service Reliability Perception Survey, AEP Ohio's and customers' expectations for reliability and costs are not aligned. As OCC interprets the perception survey results, the majority of residential customers prioritized the cost of electricity and the quick restoration of power when an outage occurs as their primary concerns at 34 percent and 32 percent, respectively. OCC notes that residential customers expressed less priority in keeping power outages to a minimum (20 percent), receiving timely customer service (eight percent), and having options in paying the bill (four percent). Thus, OCC concludes that the DIR provision in the Stipulation increases the cost of electric service to residential customers when their most important concern is cost. Further, OCC alleges that AEP Ohio admits that none of the reliability projects are intended to improve CAIDI, although customers prioritize the restoration of service after an outage above keeping outages to a minimum (OCC Ex. 2 at 23, Att. JDW-10). OCC also notes that, in a recent J.D. Power Customer Satisfaction Survey, AEP Ohio ranked near the bottom when compared to the customer satisfaction ratings of other large electric utilities in the Midwest. For these reasons, OCC surmises that the DIR is not benefitting customers and continuing the DIR will not benefit customers in the future. OCC advocates that AEP Ohio seek to collect its investments in distribution infrastructure as part of a base rate case, where there is an opportunity for a comprehensive and thorough examination of the Company's investments, financial records, revenues, and expenses. OCC emphasizes that the Stipulation does not obligate AEP Ohio to file a distribution rate case in the near future. Accordingly, OCC concludes that the DIR does not satisfy the second prong of the three-part test for the Commission to approve the Stipulation and requests that the DIR be terminated at the end of the current ESP term on May 31, 2018. (OCC Ex. 2 at 18, 21-25, Att. JDW-9 at 3, JDW-11 at 8; OCC Ex. 2A at 2-3, 4.)

{¶ 183} In reply, AEP Ohio submits that OCC misapplies the perception survey results and the law. The Company notes that OCC interprets the survey results without acknowledging commercial customers and overstates the results as to residential

customers. Summarizing the survey results, AEP Ohio states that commercial customers prioritized electric service as follows: the cost of electricity, 31 percent; keeping power outages to a minimum, 30 percent; and quickly restoring power when outages occur, 30 percent (OCC Ex. 2, Att. JDW-9 at 19). AEP Ohio explains that the survey results do not, as OCC contends, reflect that minimizing power outages is not important to the Company's residential customers; rather, according to the Company, the survey reflects that minimizing outages was not the top priority for the residential customers surveyed. Notably, AEP Ohio points out that minimizing power outages was the most important consideration to 20 percent of residential survey respondents (OCC Ex. 2, Att. JDW-9 at 3). AEP Ohio argues that the fact that DIR reliability programs focus on avoiding outages and the number of customers interrupted, instead of reducing CAIDI, does not mean that the DIR, as a whole, fails to comply with the requirements of R.C. 4928.143(B)(2)(h), as implied by OCC. As to considering the DIR only within the confines of a rate case, AEP Ohio asserts that such arguments are unfounded. The Company points out, as OCC witnesses admitted, that there is an annual financial review of the DIR for accounting accuracy, prudency, and compliance with the DIR plan (Tr. II at 217; Tr. III at 354). AEP Ohio declares that annual audits will continue pursuant to the Stipulation, if approved. (Co. Reply Br. at 4-8; OCC Ex. 2 at 22-23, Att. JDW-9 at 3, 19.)

{¶ 184} OCC also claims that the DIR provision of the Stipulation does not benefit customers to the extent that AEP Ohio failed to take advantage of tax regulations and deductions, specifically the capital repairs deduction effective in 2014, which would reduce the DIR revenue requirement (Tr. III at 349-350). According to OCC, AEP Ohio acknowledged that it had not made the relevant accounting updates and would incorporate the necessary changes with the 2017 tax return. OCC contends that AEP Ohio failed to implement the tax accounting changes to reduce the DIR revenue requirement by, according to OCC, at least $4.5 million. OCC asserts that AEP Ohio admitted that the Company could have implemented the tax treatment sooner but failed to do so because

the computer software would cost between $500,000 and $600,000. OCC infers that the DIR diminished AEP Ohio's incentive to implement the tax treatment because the benefits would automatically pass to customers by way of a reduction in the DIR revenue requirement. OCC reasons that the current DIR proposal reduces or eliminates AEP Ohio's incentive to control costs and may even encourage uneconomic choices, unjustly and unreasonably increasing customers' utility bills. Accordingly, OCC concludes that the DIR, as reflected in the Stipulation, does not benefit customers and the public interest. (OCC Ex. 4A at 3-9, Att. DJE-3; Tr. III at 361; OCC Br. at 26-28.)

{¶ 185} AEP Ohio emphasizes, as OCC acknowledges, that the Company will implement the tax treatment and accounting with the Company's tax return for the 2017 tax year, in order to reflect the reduction to the DIR revenue requirement going forward, along with a catch-up deduction to account for prior tax years. AEP Ohio states that, because its accounting systems did not support the level of detail needed to perform the computations required to implement the tax accounting method, the Company was required to modify its accounting software. To take advantage of the tax accounting change, AEP Ohio states that it had to update its plant accounting software, upgrade its feeder systems to capture the required information, and conduct studies to capture the information relating to the tax accounting method, which were completed in 2016, at a cost of $500,000 to $600,000 (Tr. III at 349-353, 357-359, 362). Further, AEP Ohio notes that its implementation of the capital repairs deduction will be subject to review in the annual audits of the DIR, as OCC agreed.[25] Accordingly, AEP Ohio argues that the Company had good reason for not implementing the tax accounting method earlier, and that OCC witness Effron did not recommend that any of OCC's claims regarding implementation

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[25] AEP Ohio notes that OCC is a party to the 2013, 2014, and 2015 DIR annual audits in Case Nos. 14-255-EL-RDR, 15-66-EL-RDR, and 16-21-EL-RDR, respectively. A stipulation in those audit cases specifically acknowledges that AEP Ohio's implementation of the accounting change will be subject to further review and final approval as part of the annual audits during which the Company's implementation of the change occurred. OCC did not sign but has not opposed the stipulation.

of the tax deductions was grounds for eliminating the DIR. AEP Ohio requests that the Commission reject OCC's arguments and reaffirm that the DIR continues to provide real benefits to customers and the public, which support the adoption of the Stipulation as a package. (Co. Reply Br. at 6-8.)

{¶ 186} In consideration of whether to approve a distribution infrastructure and modernization provision as part of an ESP, R.C. 4928.143(B)(2)(h) requires that the Commission examine the reliability of the utility's distribution system, ensure that the reliability expectations of the distribution utility and its customers are aligned, and determine whether the utility is placing sufficient emphasis on, and dedicating sufficient resources to, the reliability of its distribution system. R.C. 4928.143(B)(2)(h) does not expressly require the Commission to consider costs.

{¶ 187} AEP Ohio's applicable reliability standards were established at a SAIFI of 1.20 and a CAIDI of 150.0. *In re Ohio Power Co.*, Case No. 12-1945-EL-ESS (*2012 Standards Case*), Opinion and Order (Mar. 19, 2014) at 3, 5, 6, Entry on Rehearing (May 7, 2014). The record evidence demonstrates that AEP Ohio has met its system reliability performance standards for the years 2013 through 2016 (Staff Ex. 2 at 7; OCC Ex. 2 at 19). Further, consistent with the stipulation in the *2012 Standards Case*, AEP Ohio filed an application to update its reliability performance standards in Case No. 16-1511-EL-ESS. In its application, as OCC reports, AEP Ohio initially proposed to make its reliability standards less stringent, from a SAIFI of 1.20 to 1.22 and from a CAIDI of 150.0 to 159.8, where a lower number indicates better performance. *In re Ohio Power Co.*, Case No. 16-1511-EL-ESS (*2016 Standards Case*), Opinion and Order (Feb. 7, 2018) at 3. However, pursuant to a Commission-approved stipulation, AEP Ohio ultimately agreed to more stringent performance standards through calendar year 2020 as follows:

Calendar Year	SAIFI	CAIDI
2018	1.19	149.00
2019	1.18	148.00
2020	1.18	148.00

In addition, AEP Ohio agreed to file an application to establish new reliability standards by June 1, 2020, to be applicable for the calendar year 2021 and beyond. *2016 Standards Case* at 4, 5, 9.

{¶ 188} Pursuant to Ohio Adm.Code 4901:1-10-10(B)(4)(b), a survey is conducted, at least every three years, to measure the reliability expectations of AEP Ohio's customers. Thoroughbred Research Group conducted the 2015 Service Reliability Perception Survey for AEP Ohio.[26] Each quarter, 100 residential customers and 100 commercial customers, for a total survey of 400 residential and 400 commercial customers, were randomly selected and interviewed by telephone to determine customer reliability expectations. Customers were asked which of five options regarding their electric service was most important. Survey results were as follows:

Service Priority	Residential (percent)	Commercial (percent)
Cost of electricity	34	31
Quickly restoring power when outages occur	32	30
Keeping power outages to a minimum	20	30
Options in paying your monthly bill	4	1
Timely customer service	8	5

[26] The margin of error at 95 percent confidence is 4.9 percentage points.

(OCC Ex. 2 at Att. JDW-9 at 2-3, 19.) The survey reveals, as it relates to reliability, that AEP Ohio's customers want power to be restored quickly in the event of an outage and power outages to be kept to a minimum.

{¶ 189} The Commission finds that AEP Ohio's expectations and customers' expectations are sufficiently aligned. As the survey results reveal, the vast majority of customers expect that the number of outages should be kept to a minimum and that, when there is a power outage, service is restored quickly. AEP Ohio is dedicating sufficient resources to reliability and has met its reliability performance standards since 2013. In the *ESP 2 Case*, when the Commission approved the implementation of the DIR, AEP Ohio's reliability performance measures were or had been below its reliability standards for 2010 and 2011. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 45. Further, the survey reveals that 81 percent of residential customers and 92 percent of commercial customers ranked AEP Ohio's ability to provide electricity without interruption at six or better, with an overall average of 8.52 on a scale of zero to ten (OCC Ex. 2 at Att. JDW-9 at 4, 20).[27] The Commission finds that the DIR facilitates the timely replacement of aging infrastructure, improving and maintaining service reliability; supports the installation of gridSMART technologies, including automated meter infrastructure, volt/VAR optimization, and distribution automation circuit reconfiguration; and will serve as the foundation for the installation of other advanced technologies in the future. Accordingly, the Commission finds the DIR to be an appropriate component of ESP 4 that affords the benefit of reliable service to all customers and, for that reason, the Commission approves the continuation of the DIR.

{¶ 190} With respect to the capital repairs deduction, the Commission-approved stipulation filed in AEP Ohio's DIR audit cases, Case No. 14-255-EL-RDR, et al., resolved

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[27] For this series of questions, the survey used a scale from zero to ten, where zero is an extremely poor job and ten is an extremely good job.

the issue of whether the Company should have implemented the deduction before the 2017 tax period. *In re Ohio Power Co.*, Case No. 14-255-EL-RDR, et al. (*DIR Audit Cases*), Opinion and Order (Mar. 14, 2018). While OCC did not sign the stipulation, OCC did not oppose the stipulation. We note that the parties to the stipulation in the *DIR Audit Cases* recognized that AEP Ohio's implementation of the DIR-related accounting change will be subject to further review and final approval as part of the annual audits during which the Company's implementation of the change occurred. *DIR Audit Cases* at ¶ 32. As a result, the Commission finds that the tax deduction issue has been addressed in the *DIR Audit Cases*.

{¶ 191} We reject OCC's claims that the DIR provision of the Stipulation in these proceedings eliminates AEP Ohio's incentive to control costs and encourages uneconomic choices. Since the implementation of the DIR, the Commission has made it clear that the rider's recovery is subject to an annual review for prudency and accuracy and that DIR spending is incremental to projected capital expenditures, among other things. OCC and other interested parties may intervene in future DIR audit cases. We note that, in these DIR audit cases, the burden is on AEP Ohio to demonstrate that its expenditures are incremental, prudent, and consistent with the Commission's orders, rules, and Ohio statutes. Accordingly, we reject OCC's arguments.

g. Enhanced Service Reliability Rider

{¶ 192} The Stipulation reflects the continuation of AEP Ohio's ESRR cost recovery mechanism for the Company's four-year, cycle-based vegetation management program. AEP Ohio states that the vegetation management program is critical to clearing its circuits of trees and vegetation that could pose a danger to the Company's lines and poles and, therefore, the program reduces the risk of weather-related events. According to AEP Ohio, the vegetation management program is essential to securing safe and reliable electric service for its customers. The Stipulation provides that the ESRR will continue at its present level, $27.6 million annually, for actual expenditures and that the

rider will terminate on December 31, 2020, and be set to zero if AEP Ohio does not file a base rate case by June 1, 2020. The Commission will continue to annually review AEP Ohio's ESRR, program costs, and cost recovery for prudency. The Company avers that the benefits of the ESRR are well-established and that this program has been approved by the Commission in each of the Company's prior ESP proceedings. *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 31, 32-34; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 64-65; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 49. (Joint Ex. 1 at 34; Co. Ex. 1 at 13.)

{¶ 193} AEP Ohio states that its electric system spans approximately 31,000 miles. AEP Ohio contends that OCC's opposition to the continuation of the ESRR is based on the unsupported claim that the vegetation management program is not effective in significantly reducing outages caused by trees (OCC Ex. 2A at 8). Further, it is OCC's contention that the cost for any vegetation management program should be addressed as part of a base rate case, not a rider proceeding (OCC Ex. 2A at 9). The Company notes that this is a familiar argument from OCC, which ignores that rate cases are expensive and time-consuming for the utility and all parties and that the cost of a rate case is ultimately passed on to consumers. The Company notes that the ESRR is a verifiable mechanism that alleviates the need for constant base rate cases. AEP Ohio argues that, while OCC asserts that the vegetation management program is ineffective, OCC acknowledged that the Company had exceeded its service reliability performance standards, CAIDI and SAIFI, for the years 2013 through 2016. Further, AEP Ohio points out that OCC's presentation of the interruptions for 2009 through 2016 shows that interruptions have decreased significantly since the first ESP (2009-2011) and have leveled off over the last four to five years (2012-2016) (OCC Ex. 2 at 28; Tr. II at 205-206).

{¶ 194} OCC testified that, since 2009, the number of interruptions has declined by approximately 13.5 percent, customer interruptions have declined by approximately 1.6 percent, and customer outage minutes have declined by approximately 6.6 percent

(OCC Ex. 2 at 28). OCC declares that, at a cost of $450 million since 2009, the costs outweigh any benefits. Noting that AEP Ohio receives $24.2 million annually in base rates and $27.6 million annually through the ESRR, OCC calculates that the ESRR costs a residential customer using 1,000 kWh approximately $2.00 each month (OCC Ex. 2 at 26; OCC Ex. 2A at 8). OCC states that, as reflected in the Company's annual reports in Case Nos. 13-996-EL-ESS, 16-996-EL-ESS, and 17-996-EL-ESS, AEP Ohio failed to comply with the Commission's inspection, maintenance, repair, and replacement provisions at Ohio Adm.Code 4901:1-10-26(B) for distribution vegetation control in 2012, 2015, and 2016 (OCC Ex. 2 at 29). For that reason, OCC asserts that customers have not been receiving the benefit of the vegetation management program, yet the Stipulation seeks to continue to collect ESRR costs from customers during the term of ESP 4. OCC concludes that the ESRR is not a just and reasonable result for customers.

{¶ 195} AEP Ohio states that, pursuant to Ohio Adm.Code 4901:1-10-26(B)(3)(f)(i), the Company is required to submit an annual system improvement plan, including the goals for each program and whether those goals for the prior year were achieved. AEP Ohio states that OCC has mischaracterized the program goals as rule requirements, focused on only the years that the Company did not meet its self-imposed vegetation management goals (2012, 2015, and 2016), and ignored that the Company met its vegetation management goals in the majority of the years since 2009. AEP Ohio reiterates that the vegetation management program is necessary for maintaining safe and reliable service for customers and requests that the Commission approve the ESRR provision of the Stipulation.

{¶ 196} As noted above, AEP Ohio's vegetation management program and the ESRR were adopted, pursuant to R.C. 4928.143(B)(2)(h), in the Company's first ESP proceedings and subsequently approved in each of the Company's following ESP proceedings. *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 31, 32-34; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 64-65; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015)

at 49. In these proceedings, the Signatory Parties to the Stipulation propose to continue the vegetation management program and the ESRR as currently effective, without the 2.5 percent annual cost increase initially proposed by AEP Ohio. The Commission is persuaded that the vegetation management program contributed to the reduction in the number of interruptions, customer interruptions, and customer outage minutes since 2009 and to AEP Ohio's ability to meet its reliability performance standards. Reliable service is a benefit to customers and the public interest. The Commission finds the cost to customers, given the ongoing nature of the program, to be reasonable. The Commission continues to find significant benefit in proactive, cycle-based, end-to-end vegetation management along the Company's circuits and rights of way as an effective means of reducing and preventing outages and service interruptions caused by vegetation. Vegetation management is by its very nature an ongoing process. As noted in the Stipulation, the continuation of the ESRR mechanism and the cost of the program will be considered as part of the Company's base rate case expected to be filed by June 1, 2020, and, if no base rate case is filed, the ESRR will sunset effective December 31, 2020. Accordingly, the Commission finds that the ESRR benefits electric consumers and the public interest, as the program enhances service reliability, particularly the electric system's ability to withstand weather-related events. Accordingly, the Commission finds that the ESRR provision of the Stipulation is beneficial to consumers and the public interest.

h. Significantly Excessive Earnings Test

{¶ 197} OCC submits that the Stipulation requires the Commission to confirm, in advance, that the SEET methodology used in the past will be applicable throughout the ESP 4 period, or until May 2024. According to OCC, the Commission has previously declined to approve a similar request by AEP Ohio. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 87-88. OCC requests that the Commission reject this provision of the Stipulation, as in the *ESP 3 Case*, because adopting the SEET provision will prematurely

restrict the rights of intervening parties in future SEET proceedings and, therefore, the provision is not beneficial for customers or the public interest. (OCC Br. at 28.)

{¶ 198} AEP Ohio interprets the SEET provision in the Stipulation to merely acknowledge that the current methodology of calculating the SEET will continue during the ESP term, unless otherwise changed by the Commission. AEP Ohio submits that the Stipulation proposes that the Commission continue to use the established SEET methodology during the course of the ESP 4 term, in order to permit the Company to operate without undue risk and uncertainty. AEP Ohio emphasizes that nothing in the Stipulation restricts the rights of any intervening party or the Commission in future SEET proceedings. (Joint Ex. 1 at 34; Co. Reply Br. 18-19.)

{¶ 199} In the *ESP 3 Case*, AEP Ohio did not believe it appropriate for the Commission to set a SEET threshold for the ESP period. However, AEP Ohio asserted that, if the Commission elected to prospectively establish a SEET threshold, it should be set at 15 percent. The Commission declined to prospectively establish a SEET threshold for the term of ESP 3. Instead, consistent with the requirements of R.C. 4928.143(F), the Commission concluded that, for each year of AEP Ohio's ESP, the SEET threshold would be determined in the context of the annual SEET proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 87-88. The Commission views the SEET provision in the Stipulation to be different than AEP Ohio's request, in the alternative, to establish a SEET threshold in the *ESP 3 Case*. Therefore, we find OCC's analogy misplaced.

i. Competition Incentive Rider

{¶ 200} Consistent with the Commission-approved stipulation in the *PPA Rider Case*, the present Stipulation proposes to establish the CIR, with some modifications, until the rates in the Company's next base rate proceeding are effective. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 29. The CIR will account for costs associated with providing SSO service that are not fully reflected in the SSO rate, including, for example,

call center and information technology infrastructure and employees, which are currently recovered from all customers via distribution rates. The CIR of $0.00105 per kWh would be added to the SSO rate, trued up annually, and subject to an annual review for prudency. (Joint Ex. 1 at 31-32.)

{¶ 201} CRES providers incur similar expenses for call center infrastructure, information technology infrastructure, software, and employees, which must be incorporated into the CRES providers' retail product offer price. RESA witness White testified that, by his calculation, the CIR should be approximately $0.0046 per kWh, which, according to Mr. White, reflects the amount of costs that shopping customers will be overcharged until the next distribution rate case (RESA Ex. 1 at 8-12). Nonetheless, RESA and IGS endorse the adoption of the CIR as an improvement to the proper allocation of the cost of service for SSO customers. (RESA/IGS Br. at 5-6.)

{¶ 202} OCC argues that the CIR does not properly allocate costs but reduces the savings for SSO customers so that CRES providers can increase their price and improve their profits. OCC argues that RESA's method for calculating the CIR is flawed because some costs incurred by AEP Ohio, like meter reading, serve both shopping and SSO customers. OCC submits that, if the Commission determines that the CIR is appropriate, the charge should be determined as part of a base rate case, not through an ESP stipulation. (OCC Reply Br. at 19-22; OCC Ex. 8 at 14-15.)

{¶ 203} The Commission notes that the CIR provision of the Stipulation is intended to acknowledge that, while shopping customers receive generation service from a CRES provider, shopping customers also incur AEP Ohio's distribution charges, which may include costs for services that shopping customers receive from their CRES provider. To the extent that the CIR more appropriately allocates and reflects expenses incurred to provide service to shopping and non-shopping customers, the public interest would be better balanced and served. However, based on the record before us, we find it necessary

to modify the Stipulation's CIR/SSOCR provision, as addressed further below with respect to the third part of the three-part test.

j. Commission Conclusion

{¶ 204} The Commission emphasizes, as the language of the second criterion clearly states, that the benefits of the Stipulation are evaluated as a package. Not all ratepayers will benefit from each and every provision of the Stipulation; some provisions may impose costs on certain ratepayers. Nor are benefits accorded equally to all ratepayers and, therefore, the Commission considers the public interest benefits of the whole Stipulation. The Commission has previously determined that, while many signatory parties receive benefits under a stipulation, the Commission will not conclude that such benefits are the sole motivation of any party in supporting the stipulation. *FirstEnergy ESP 4 Case,* Opinion and Order (Mar. 31, 2016) at 44, Fifth Entry on Rehearing (Oct. 12, 2016) at 104. With these premises in mind, after considering the arguments of the parties and the record in these proceedings, the Commission finds that the Stipulation, as a package, benefits ratepayers and the public interest. We agree with Staff witnesses Schaefer and Turkenton and AEP Ohio witness Allen that the Stipulation is beneficial to the Company's ratepayers and in the public interest. Residential customers benefit from the continuation of the RDCR and low-income residential customers also benefit from AEP Ohio's agreement to continue to fund the Neighbor-to-Neighbor bill assistance program. With the Stipulation, small commercial and industrial customers are expected to experience a decrease in rates. In addition, commercial and industrial customers also benefit from the various economic development provisions of the Stipulation, including the adoption of the automaker credit and the continuation of the IRP program and BTCR pilot. All customers benefit from the renewable generation rider, microgrid deployment through the SCR, and demand side management programs, as well as the provisions of the Stipulation that promote competition, including the institution of the Enroll From Your Wallet process and the SCB program. The EV

charging station and microgrid demonstration projects of the SCR support the Smart Columbus Plan and thereby benefit the public interest to the extent that the projects help to address the urban mobility and transportation issues addressed by the plan. Accordingly, the Commission finds that the record supports our conclusion that the Stipulation meets the second criterion of the three-part test. (Joint Ex. 1 at 21; Co. Ex. 1 at 8-10, 20-22; Staff Ex. 1 at 3-4; Staff Ex. 3 at 4; Tr. I at 91, 92.)

3. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

{¶ 205} AEP Ohio, Staff, OPAE, OEG, RESA/IGS, EVCA, Environmental Intervenors, OMAEG, and Kroger argue that the Stipulation does not violate any important regulatory principle or practice. Staff contends that AEP Ohio witness Allen, Staff witnesses Turkenton and Schaefer, and RESA witness White testified that the Stipulation furthers state policy, specifically R.C. 4928.02(A), (B), (C), (D), (F), (G), (I), (L), and (N). RESA/IGS contend that the provisions in the Stipulation addressing the CIR, SCB pilot program, and the Enroll From Your Wallet program promote state policy, as they will strengthen and enhance the competitive retail electric market in Ohio and allow for innovation in the products offered to customers. EVCA asserts that the EV charging program is consistent with R.C. 4928.143(B)(2)(h) and the Commission's PowerForward initiative, as well as the state policy in R.C. 4928.02(C), (J), and (N) of ensuring diversity of electricity supplies and suppliers, providing appropriate incentives to new technologies, and facilitating the state's effectiveness in the global economy. According to Kroger, the Stipulation's economic development, job retention, and energy efficiency provisions also facilitate the state's effectiveness in the global economy. (Co. Br. at 38; Staff Br. at 11-12; OPAE Br. at 3; OEG Br. at 4; RESA/IGS Br. at 2-9; EVCA Br. at 6-7; Environmental Intervenors Br. at 3; OMAEG Reply Br. at 3; Kroger Reply Br. at 2-5.)

a. Enroll From Your Wallet

{¶ 206} Addressing the assertion from RESA/IGS that the Enroll From Your Wallet program furthers state policy, OCC responds that the program does nothing to protect customers from unfair, misleading, deceptive, or unconscionable practices and violates the regulatory principle of protecting customers as set forth in Ohio Adm.Code 4901:1-21-03 and 4901:1-21-05, which, respectively, prohibit CRES providers from engaging in such practices and require that certain information be made available to consumers so that they can make intelligent cost comparisons. OCC argues that, because the customer would not need to have a copy of the bill when switching to a CRES provider, the program could result in unfair, misleading, deceptive, and unconscionable practices and prohibit the customer from making an informed cost comparison. (OCC Reply Br. at 22-23.)

{¶ 207} The Commission finds that the Enroll From Your Wallet program does not violate any important regulatory principle or practice and is, in fact, consistent with the state policy, as set forth in R.C. 4928.02(C), (D), and (G), to promote customer choice, encourage innovation, and facilitate the development of the competitive retail electric market through flexible regulatory treatment. RESA witness White testified that the existing customer enrollment procedures are inefficient and can result in unsatisfactory consumer experiences, while the streamlined enrollment process contemplated by the Stipulation represents an important step forward for the competitive market and consumers (RESA Ex. 1 at 17). We find that OCC's concerns regarding the potential for unfair, misleading, deceptive, or unconscionable practices as a result of the Enroll From Your Wallet program are premature.[28] If such practices should occur, the Commission has a process in place for consumer complaints. We also note that the Stipulation includes provisions for auditing the program (Joint Ex. 1 at 38).

[28] We note that OCC's arguments were also belatedly raised in its reply brief.

b. Competition Incentive Rider

{¶ 208} OCC argues that, in addition to violating the second part of the Commission's settlement test as discussed above, the proposed CIR also violates the third part of the test. Specifically, OCC contends that the CIR would artificially inflate the SSO, discriminate against SSO customers, and violate the regulatory principle that rates should be just and reasonable. OCC notes that, if the CIR is adopted despite OCC's objection, the amount of the CIR should be determined through a base distribution rate case in which the costs can be fully examined and properly allocated, including examination of any costs associated with CRES providers that are subsidized by customers through distribution rates. (OCC Br. at 28-30.)

{¶ 209} In response, AEP Ohio contends that the just and reasonable standard does not apply in these ESP proceedings, where the Commission is required, pursuant to R.C. 4928.143(C)(1), to approve or modify and approve the ESP if it is more favorable in the aggregate than the expected results under an MRO. AEP Ohio also maintains that, despite OCC's claim that the CIR would artificially inflate the SSO, the bypassable rider would instead reallocate, to default service, certain SSO-related costs that the Company is currently recovering through distribution rates, with the resulting revenue passed back to all customers through the SSOCR. AEP Ohio points out that it has already agreed to analyze, in its next distribution rate case, the Company's actual costs of providing SSO generation service and to propose that such costs be allocated to default service. Finally, according to AEP Ohio, the shopping incentives afforded by the CIR and SSOCR are fully consistent with R.C. 4928.02(B) and (G). (Co. Br. at 39-41; Co. Reply Br. at 19-20.)

{¶ 210} Staff responds that, while adding the CIR to the bills of SSO customers may affect the results of AEP Ohio's competitive auctions, failing to do so may result in inappropriate subsidies. Staff asserts that any such subsidies, or any CRES-associated costs subsidized by customers through distribution rates, will be addressed in AEP Ohio's next rate case, consistent with the terms of the Stipulation. (Staff Reply Br. at 6-7.)

{¶ 211} In response to OCC, RESA/IGS contend that RESA witness White testified that a proper allocation of costs between SSO customers and shopping customers would result in a much higher CIR. RESA/IGS further contend that, because the Stipulation was negotiated as a package, the Signatory Parties agree that the CIR proposed in the Stipulation is a fair allocation until a full accounting can be performed in AEP Ohio's next rate case. According to RESA/IGS, although the negotiated outcome in these proceedings does not negate the need to properly unbundle rates, the Stipulation provides a bridge until the rate case and is the first step toward unbundling rates in AEP Ohio's service territory. RESA/IGS add that OCC ignores the fact that shopping customers are harmed by the current allocation of costs by paying twice for a number of charges. (RESA/IGS Reply Br. at 1-2.)

{¶ 212} In the *PPA Rider Case*, AEP Ohio agreed to propose, in the present proceedings, a pilot program to establish the bypassable CIR, in recognition of the fact that there may be costs associated with providing retail electric service that are not reflected in SSO rates. In conjunction with the CIR, AEP Ohio also agreed to request approval of the nonbypassable SSOCR, in order to refund to all distribution customers the amount collected from the CIR. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 29-30. Consistent with its commitments in the *PPA Rider Case*, AEP Ohio proposed, in the present cases, to establish the CIR and SSOCR. The Signatory Parties, in the Stipulation, have recommended a charge of $1.05/MWh for the CIR, with an estimated residential customer credit of $0.48/MWh for the SSOCR (Joint Ex. 1 at 31). As AEP Ohio, Staff, and RESA/IGS note, the purpose of the bypassable CIR is to reallocate, to SSO generation service, SSO-related costs that the Company is currently recovering from both shopping and non-shopping customers through distribution rates. The resulting revenue would be passed back to all customers through the SSOCR. The Stipulation also provides that, consistent with the *PPA Rider Case*, AEP Ohio agrees to provide an analysis as part of its next distribution rate case to show all of the actual costs required to provide SSO

generation service that are included in the Company's cost of service study and to propose, in the rate case, that these costs be allocated to default service (Joint Ex. 1 at 32).

{¶ 213} Upon review of the proposal, the Commission finds that it should be modified and approved, such that the CIR and the SSOCR should be established as placeholder riders set at zero. AEP Ohio witness Allen testified that the $1.05/MWh charge proposed for the CIR is a negotiated value, because the various parties have differing views as to what it should be. Noting that the CIR is intended to include costs such as bad debt expense and the Commission and OCC assessments, Mr. Allen also explained that the recommended amount is significantly less than what it would be based on RESA witness White's analysis. (Tr. I at 46-47.) Specifically, RESA witness White testified that, although the stipulated amount is a reasonable outcome for the time being, the CIR should be at least $4.60/MWh to reflect uncollectible expenses, the Commission and OCC assessments, legal and regulatory expenses, payroll taxes, call center costs, infrastructure costs, and other costs incurred to support default service (RESA Ex. 1 at 8-9). AEP Ohio, Staff, and RESA/IGS agree that the recommended CIR and SSOCR amounts address, on an interim basis until the next distribution rate case, the potential disparity in the Company's distribution rates.

{¶ 214} Based on the record, we find that it is reasonable to establish the CIR and SSOCR as placeholder riders, until a thorough analysis of AEP Ohio's distribution costs can be conducted by the Commission in the next rate case. Following that review, the Commission will determine whether there are known, quantifiable costs that are collected from all customers through distribution rates and that are clearly incurred by AEP Ohio to support the SSO. We note that many of the costs identified by RESA witness White may be incurred by AEP Ohio to support either the SSO or the customer choice program, as Mr. White acknowledged through his use of an allocation factor (RESA Ex. 1 at 10-11). Additional analysis is needed to determine whether and how AEP Ohio's Customer Accounts Expense, Customer Service and Information Expense,

Administrative and General Expense, and Taxes Other than Income Taxes should be reallocated through the CIR and SSOCR.

{¶ 215} Although we agree that there may be costs recovered through AEP Ohio's distribution rates that are attributable to the SSO, the Company's distribution rates likewise may include call center costs solely incurred to promote competition or other costs related to the customer choice program. The Commission, therefore, finds that AEP Ohio should carry out its commitment to analyze, as part of the rate case, its actual costs of providing SSO generation service. AEP Ohio should also analyze, in the rate case, its actual costs associated with the choice program. Following a thorough analysis of AEP Ohio's distribution rates in the rate case, the Commission will determine whether it is necessary to reallocate costs between shopping and non-shopping customers, in order to ensure that the Company's rates are fair and reasonable for all customers.

{¶ 216} We find that this more measured approach is consistent with our obligations to ensure the availability of reasonably priced retail electric service and to avoid certain types of anticompetitive subsidies under R.C. 4928.02(A) and (H), respectively. Further, the Commission notes that "Competition Incentive Rider" is a misnomer, given that the rider is not directly intended to promote customer shopping. In proposing the CIR and SSOCR, the Signatory Parties only claim to a limited extent that the CIR and the SSOCR will incent shopping. Instead, the Signatory Parties rely on proper allocation of costs between shopping and non-shopping customers as the basis for their support of the CIR and SSOCR. RESA witness White testified that the purpose of the CIR is to ensure that costs are properly reallocated to the SSO (RESA Ex. 1 at 3-4). We, therefore, find that the CIR should be renamed from "Competition Incentive Rider" to "Retail Reconciliation Rider."

{¶ 217} As a final matter, the Commission notes that the Stipulation provides that the SSOCR should be used to collect the discount rate costs related to the SCB pilot

program (Joint Ex. 1 at 31-32, 35-36). In light of our decision to establish the SSOCR as a placeholder rider set at zero, we direct that the discount rate costs associated with the SCB pilot program be collected through the BDR.

c. *Supplier Consolidated Billing Pilot*

{**¶ 218**} OCC maintains that the SCB pilot program violates the principle of cost causation and should not be approved. According to OCC, the SCB pilot program primarily benefits CRES providers and, therefore, all costs should be allocated to CRES providers, in order to ensure that non-shopping customers and customers that do not desire SCB are not charged for a program that offers them no benefit. (OCC Br. at 30-31.)

{**¶ 219**} AEP Ohio responds that OCC should be estopped from challenging the SCB pilot program, because OCC unequivocally supported the adoption of the pilot, including the cost sharing allocation, in the global settlement agreement approved by the Commission in Case No. 09-872-EL-FAC, et al. *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017). Noting that OCC witness Haugh testified in the *Global Settlement Case* that the global settlement satisfied the three-part test for stipulations, AEP Ohio asserts that OCC witness Haugh should not be permitted now to oppose the implementation details of the SCB pilot program by claiming that it violates an important regulatory principle or practice. AEP Ohio argues that, in any event, OCC's challenge lacks merit, because all customers have the right and opportunity to shop and, therefore, benefit from enhancements to the retail choice program regardless of whether they, in fact, elect to shop. AEP Ohio adds that the Stipulation provides additional benefits to non-shopping customers through its cost allocation provision requiring CRES providers to share the costs of the SCB pilot program. (Co. Br. at 41-43; Co. Reply Br. at 20-21.)

{¶ 220} Staff notes that OCC has already agreed to the cost allocation that it purports to challenge now in these proceedings. Staff adds that, because all customers can take advantage of shopping and the benefits of SCB, there is no violation of the cost causation principle. RESA/IGS assert that all customers benefit from enhancements to the competitive retail market regardless of whether any individual customer elects to shop or not. RESA/IGS conclude that, because all customers have the opportunity to shop, all customers may benefit from the SCB pilot program. (Staff Reply Br. at 7-8; RESA/IGS Reply Br. at 3-4.)

{¶ 221} Initially, the Commission notes that we have made clear that our desired course for competitive suppliers in the Ohio retail market is to implement either SCB or dual billing. *In re Ohio Power Co.*, Case No. 15-1507-EL-EDI, Finding and Order (Sept. 27, 2017) at ¶ 24. The SCB pilot program is consistent with that goal, as well as the state policy of promoting effective customer choice, as specified in R.C. 4928.02(B), (C), and (E). With respect to the particular details of cost allocation, the stipulation in the *PPA Rider Case* provides that half of the costs related to AEP Ohio's implementation of the SCB pilot program will be allocated to the two CRES providers that joined that stipulation, while the Company's remaining costs would be eligible for recovery in a future rate proceeding.[29] *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 33. In the Stipulation in the present cases, the Signatory Parties have agreed to cap expenditures for the SCB pilot program at $2 million, with maximum amounts of $1 million assessed to customers and $1 million funded by the CRES provider participants.

{¶ 222} We find that these parameters of the SCB pilot program provide for a reasonable allocation of costs, with the costs to be shared equally by the participating CRES providers and customers, and do not contradict the cost causation principle, as

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[29] In the *Global Settlement Case*, a third CRES provider joined the SCB pilot program and agreed to pay its share of the costs. *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017) at 37.

OCC claims. OCC argues that all of the costs of the SCB pilot program should be allocated to the CRES providers, because the pilot will not benefit non-shopping customers or customers that have no interest in SCB. As noted by AEP Ohio and Staff, all customers have the right to shop for an alternative generation provider and may elect to do so at any time. All customers, therefore, have the opportunity to benefit, at some point, from SCB and other enhancements to the competitive retail market. Although OCC contends that SCB primarily benefits CRES providers, we disagree. As RESA witness White explained, SCB enables CRES providers to provide customers with a single bill for all components of their electric service, including non-commodity components, and to offer innovative, value-added products and services that customers increasingly demand (RESA Ex. 1 at 13, 17). We note that SCB costs are typical of costs incurred to promote retail competition. However, the costs associated with the SCB pilot program do not appear to have been accounted for in the Signatory Parties' estimation of the CIR and SSOCR, which further supports our decision to establish the CIR/SSOCR as placeholder riders at this time, pending further review in the next rate case, as discussed above. For these reasons, we find that the SCB pilot program does not violate any important regulatory principle or practice.

d. Renewable Generation Rider

{¶ 223} OCC asserts that the RGR is an unlawful, above-market generation subsidy that should not be collected from captive customers. Specifically, OCC argues that the General Assembly has determined that generation is deregulated and that customers should be able to choose the source of their generation. Next, OCC notes that AEP Ohio has numerous riders and the new RGR would cause confusion for customers attempting to evaluate their charges. Additionally, OCC asserts that R.C. 4928.143(B)(2)(c) requires AEP Ohio, in these ESP proceedings, to establish the need for the electric generation facilities. OCC emphasizes that AEP Ohio has not attempted to make any showing of need in the present cases. Further, OCC contends that the

Stipulation is contrary to R.C. 4905.33(B), which prohibits a public utility from providing service for less than actual cost for the purpose of destroying competition. According to OCC, the Stipulation permits bilateral contracts at a price below the cost of the generation resource, which would distort competitive markets and, ultimately, destroy competition. (OCC Br. at 31-33.)

{¶ 224} AEP Ohio responds that OCC witness Haugh acknowledged that R.C. 4928.143(B)(2)(c) permits an electric utility to build new generation capacity pursuant to the requirements set forth in the statute. With respect to OCC's general criticism of riders, AEP Ohio asserts that OCC ignores the advantages resulting from the establishment of the RGR, which include transparent pricing for renewable power and separate tracking and auditing of costs related to specific projects. Regarding R.C. 4905.33, AEP Ohio maintains that OCC's concerns are premature, at best. AEP Ohio points out that Mr. Haugh admitted that, until specific projects are developed and proposed for approval, there can be no claim that the Company is seeking to destroy competition. Finally, addressing OCC's argument that R.C. 4928.143(B)(2)(c) requires that the need for the generating facility be established in an ESP proceeding, AEP Ohio responds that the Commission has previously rejected OCC's interpretation of the statute. Noting that the Stipulation's RGR provisions are consistent with the Commission's prior rulings, AEP Ohio adds that the process set forth in the Stipulation for approval of individual projects contemplates demonstration by the Company that the criteria in R.C. 4928.143(B)(2)(c) have been met. (Co. Br. at 45-46; Co. Reply Br. at 21-24.)

{¶ 225} Staff notes that OCC acknowledges that the Commission has already rejected the argument that the demonstration of need must occur in an ESP proceeding before the Commission may approve a rider to recover the costs of the generation facilities. Staff asserts that AEP Ohio will need to demonstrate in respective EL-RDR cases that the criteria in R.C. 4928.143(B)(2)(c) have been satisfied before any cost recovery will be permitted. Staff adds that there is no basis at this time to reject any possible

reasonable arrangements that may allow for discounts pursuant to R.C. 4905.31. (Staff Reply Br. at 8.)

{¶ 226} The stipulation in the *PPA Rider Case* requires AEP Ohio to propose renewable energy projects by filing EL-RDR applications and seeking approval for retail cost recovery through the PPA Rider. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 42-44. In the Stipulation presently before the Commission, the Signatory Parties propose to establish the RGR, in order to track the costs associated with the renewable energy projects separate and apart from the costs and credits associated with the OVEC asset that flow through the PPA Rider. The Stipulation contemplates that AEP Ohio will submit an EL-RDR filing for each renewable energy project and request recovery of costs through the RGR or, alternatively, seek approval through a reasonable arrangement under R.C. 4905.31. (Joint Ex. 1 at 7-9.)

{¶ 227} The Commission finds that OCC's arguments regarding the proposed RGR lack merit. Contrary to OCC's claims that the RGR is an unlawful, above-market generation subsidy and will cause customer confusion as a separate rider, the General Assembly has specifically authorized the establishment of a nonbypassable surcharge for the life of an electric generating facility owned or operated by the electric distribution utility, subject to certain requirements specified in R.C. 4928.143(B)(2)(c). With respect to OCC's contention that the statute requires AEP Ohio to establish the need for the facility in these ESP proceedings, the Commission has previously rejected the argument, as OCC acknowledges. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 24; *In re Ohio Power Co.*, Case No. 10-501-EL-FOR, et al., Opinion and Order (Jan. 9, 2013) at 23, Entry on Rehearing (Mar. 6, 2013) at 3-4. In pertinent part, R.C. 4928.143(B)(2)(c) provides that "no surcharge shall be authorized unless the [C]ommission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility." Recognizing the Commission's broad discretion to manage its dockets, we determined that the statute requires that a proceeding be held before any

recovery is authorized and, therefore, does not restrict the determination of need to the time at which the ESP is approved. *ESP 2 Case* at 24, citing *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). OCC has raised no argument that overcomes this precedent. In each EL-RDR proceeding proposing a specific project, AEP Ohio will be required to demonstrate need for each proposed facility and to satisfy all of the other criteria in R.C. 4928.143(B)(2)(c), and OCC will have a full and fair opportunity to raise its concerns on the issue of need.

{¶ 228} Finally, we reject OCC's premature assertion that the Stipulation is counter to R.C. 4905.33(B), as AEP Ohio has not yet proposed any specific project for approval by the Commission. There is absolutely no basis upon which to conclude that AEP Ohio has entered any bilateral contract that would "furnish free service or service for less than actual cost for the purpose of destroying competition," as prohibited by R.C. 4905.33(B).

e. Smart City Rider and PowerForward Rider

{¶ 229} OCC maintains that both the SCR and the PowerForward Rider should be rejected. OCC argues that a base rate case, rather than a rider mechanism, is the proper means for AEP Ohio to seek recovery of the costs associated with the Smart City and PowerForward proposals. OCC recommends that, before AEP Ohio is authorized to collect any costs from customers, the actual costs and benefits, if any, of the projects should be reviewed in a distribution rate case, in order to protect customers from unwarranted charges. In its reply brief, OCC adds that Staff witness Turkenton acknowledged that the SCR is a distribution rider that would charge customers for costs that could be part of a distribution rate case. OCC asserts that, by seeking to implement the SCR through these ESP proceedings, AEP Ohio is able to evade the consumer protections of a distribution rate case, such as a review to ensure that investments are prudent and used and useful in the provision of electric service. OCC concludes that the

Commission should not authorize the SCR in an ESP. (OCC Br. at 33; OCC Reply Br. at 23.)

{¶ 230} Next, OCC argues that the Smart City and PowerForward proposals have no nexus to these ESP proceedings. OCC claims that, although AEP Ohio originally sought to support the projects under R.C. 4928.143(B)(2)(h), none of the proponents of the Stipulation references this justification. OCC adds that none of the projects included in the SCR has been linked to any plan to improve AEP Ohio's distribution system reliability. (OCC Br. at 33-34.)

{¶ 231} Additionally, OCC asserts that the Smart City and PowerForward Riders are contrary to the state policy set forth in R.C. 4928.02, including avoiding improper subsidies and protecting at-risk populations. OCC claims that the EV rebate program will enable certain EV charging station owners and customers to receive discounted service. According to OCC, because all customers would fund the Smart City program for the benefit of relatively few customers, there are serious concerns regarding the allocation and recovery of costs in a fair and reasonable manner. OCC adds that low-income and at-risk customers would be required to fund the program without receiving proportionate benefits. (OCC Br. at 34-35.)

{¶ 232} With respect to the Stipulation's provision that AEP Ohio will conduct research and development necessary to develop and maintain the Smart City program, OCC claims that the Stipulation fails to provide a specific description of the research and development activities. OCC also asserts that, because the research and development will benefit AEP Ohio's affiliates, shareholders rather than Ohio customers should fund it. Further, OCC claims that there is a lack of specificity in the design and justification for the Smart City and PowerForward projects, as well as a lack of clarity concerning the percentage of costs that AEP Ohio can collect through the riders compared to the projects identified in the riders. (OCC Br. at 35.)

{¶ 233} Regarding the PowerForward Rider, OCC notes that the Commission has not opened a formal PowerForward proceeding or issued any PowerForward policy directives. OCC argues that the Stipulation appears to preempt the potential for considering alternative methods of cost recovery in the informal PowerForward proceeding and, therefore, the proposed rider should be rejected as unnecessary and inappropriate. (OCC Br. at 36.)

{¶ 234} As an initial matter, AEP Ohio asserts that OCC witness Alexander acknowledged that OCC's general, ideological opposition to rider recovery is at odds with precedent in Ohio and most other states. Next, AEP Ohio points out that, contrary to OCC's position, there is no nexus requirement in R.C. 4928.143 and that the Commission has often authorized rider recovery of distribution and smart technology program costs as part of an ESP. Addressing OCC's concerns with respect to R.C. 4928.02, AEP Ohio responds that the recipients of the EV charging station rebates will pay the same rates for distribution service as other customers, while the Stipulation specifically requires that a certain percentage of the funds be used in low-income geographic areas. Turning to OCC's claims that the research and development activities are inadequately described in the Stipulation and will benefit AEP Ohio's affiliates, the Company responds that the Stipulation includes ten pages of description, with additional detail provided in Staff witness Schaefer's testimony. AEP Ohio adds that the data gathered through the SCR programs will be available to all stakeholders, in order to better understand and assess siting considerations and pricing programs to optimize resources and ensure system reliability. With respect to the alleged lack of specificity in program design and justification, AEP Ohio contends that the SCR programs are demonstration projects expressly designed to gather the type of data that OCC seeks. Finally, regarding the PowerForward Rider, AEP Ohio asserts that the rider would initially be set at zero and would not be used until the Commission conducts a full EL-RDR proceeding, with an

opportunity afforded to OCC and other parties to raise arguments pertaining to cost recovery or other issues. (Co. Br. at 48-52; Co. Reply Br. at 26-28.)

{¶ 235} Staff responds that OCC's suggestion that riders should not be used outside of a base rate case ignores the SSO paradigm established by the General Assembly. Further, Staff notes that there is no statutory basis for OCC's claim that the recovery of what OCC deems the "relatively modest" costs of the SCR must be accompanied by proportionate benefits. Staff also notes that R.C. 4928.143(B)(2)(h) permits, in an ESP, provisions "regarding the utility's distribution service," which need not specifically pertain to reliability. Finally, with respect to the PowerForward Rider, Staff notes that the rider will enable AEP Ohio to be responsive to the Commission's PowerForward directives during the extended ESP. (Staff Reply Br. at 8-10.)

{¶ 236} In response to OCC's position, EVCA asserts that OCC ignores the testimony offered by EVCA witness Cherkaoui and Staff witness Schaefer in support of the EV charging station demonstration project. According to EVCA, both witnesses demonstrated that the project is intended to provide further information on how EV charging stations will be deployed in the future, as well as to enable future evaluation of EV charging stations. EVCA adds that the demonstration project furthers Ohio's policy goals, as set forth in R.C. 4928.02(A), (C), (J), and (N). (EVCA Reply Br. at 2-3.)

{¶ 237} The Commission finds no merit in OCC's arguments regarding the SCR and the PowerForward Rider. Although OCC has clearly indicated a preference that any authorized cost recovery associated with the Smart City or PowerForward initiatives occur through a distribution rate case, the fact that the Stipulation proposes that the costs be recovered through riders is not a violation of any important regulatory principle or practice. As OCC witness Alexander acknowledged, riders are commonly used in Ohio and many other states (Tr. III at 382). Additionally, R.C. 4928.143(B)(2)(h) specifically authorizes for inclusion in an ESP "[p]rovisions regarding the utility's distribution

service, including * * * provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility." Both the SCR and the Power Forward Rider are permitted under the statute.

{¶ 238} Although OCC claims that the Smart City projects must be connected to a specific plan to improve AEP Ohio's distribution system reliability, there is no such requirement in the statute. R.C. 4928.143(B)(2)(h) provides that, in determining whether to approve a distribution service provision under the statute, the Commission must "examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system." The Commission has thoroughly considered AEP Ohio's distribution system reliability in these proceedings, as addressed by Staff witness Nicodemus, and the requirements of R.C. 4928.143(B)(2)(h) have been satisfied (Staff Ex. 2 at 3-8). OCC also argues that the Smart City and PowerForward proposals in the Stipulation lack a sufficient nexus to these ESP proceedings. However, as discussed above, both the Smart City and PowerForward proposals fall squarely within the parameters of R.C. 4928.143(B)(2)(h), as well as further the state policy in R.C. 4928.02(A), (C), (D), (E), (F), and (N), among others.

{¶ 239} We also find nothing in the SCR or the PowerForward Rider provisions in the Stipulation that is contrary to the state policy of avoiding improper subsidies and protecting at-risk populations, as set forth in R.C. 4928.02(H) and (L), respectively. With respect to R.C. 4928.02(H), OCC has not explained how the EV charging station rebate program would be contrary to the statute. Rebate programs, as a general matter, are not equivalent to an anticompetitive subsidy. Further, the EV charging station rebate program would not, as OCC claims, allow certain EV charging station owners to receive discounted prices for distribution service; the EV charging station owners will continue

to pay the same rates for distribution service. Turning to R.C. 4928.02(L), although OCC believes that low-income and at-risk customers would not receive proportionate benefits from what OCC describes as "relatively modest" costs, the three-part test does not require that every specific subgroup within a particular customer class receive benefits from each provision in the Stipulation that are commensurate with the costs. Again, the Stipulation must be considered as a package, and some provisions will benefit certain customers more than others. In addition to the Stipulation's requirement that some of the charging stations be deployed in low-income geographic areas, there are other provisions in the Stipulation, like the Neighbor-to-Neighbor bill payment assistance program, that particularly benefit at-risk customers. OCC also ignores the microgrid portion of the SCR, which will benefit all customers. (Joint Ex. 1 at 5, 12, 16-17.)

{¶ 240} Next, the Commission rejects OCC's criticisms regarding lack of sufficient detail for the PowerForward Rider and SCR in general, and particularly the research and development activities associated with the Smart City program. We find that the Stipulation provides a sufficient description of both rider proposals and Staff witness Schaefer specifically addressed the type of information that AEP Ohio will gather from the Smart City project (Joint Ex. 1 at 10-20; Staff Ex. 1 at 3-4). We also reject OCC's claim that customers should not have to fund any research and development activities, because AEP Ohio's affiliates may benefit. We agree with the Signatory Parties that OCC overlooks the fact that the Smart City proposal is a demonstration project and that the data to be gathered will be available for the benefit of all parties. We clarify, however, that AEP Ohio's application to populate the PEV tariff shall incorporate rate design that encourages load management that can increase the potential reliability benefits to the distribution system from EV charging.

{¶ 241} Finally, OCC claims that the Stipulation forecloses any other method of cost recovery that may be considered in the Commission's PowerForward initiative. We disagree. The Stipulation proposes to establish the PowerForward Rider as a placeholder

rider set at zero. The Stipulation specifically notes that the rider is eligible for implementation based on the Commission's findings and directives in the PowerForward initiative. (Joint Ex. 1 at 11.) In light of the fact that ESP 4 will continue through May 31, 2024, the Commission finds that it is reasonable to establish the PowerForward Rider on a placeholder basis at this time. Following the conclusion of the Commission's PowerForward initiative, the PowerForward Rider will either be implemented as contemplated under the Stipulation, or it will remain inactive and set at zero, if other cost recovery methods are implemented and the placeholder rider becomes unnecessary.

f. Other State Policy Arguments

{¶ 242} OCC argues that the Stipulation will not provide reasonably priced retail electric service for consumers or protect at-risk consumer populations and, therefore, it is contrary to R.C. 4928.02 and should not be approved. OCC notes that AEP Ohio has the highest electric rates in the state, while its residential customers live within some of the highest poverty areas. OCC concludes that, because the Stipulation will increase the charges paid by customers, it will not assure that customers receive reasonably priced retail electric service. OCC also concludes that AEP Ohio's rates have impacted its residential disconnections for nonpayment, which indicate that at-risk customers are not being protected. (OCC Br. at 36-38.)

{¶ 243} With respect to R.C. 4928.02(A), AEP Ohio notes that OCC focuses solely on price considerations, despite the fact that the statute also pertains to adequate, reliable, safe, efficient, and nondiscriminatory retail electric service. AEP Ohio also notes that, regardless, the proposed ESP does ensure the availability of reasonably priced electric service through such provisions as the CIR/SSOCR and the RDCR, while Company witness Allen demonstrated that customer rates will be virtually unchanged from the rates approved in the *ESP 3 Case*. AEP Ohio adds that the proposed ESP includes numerous provisions that, consistent with R.C. 4928.02(L), will protect at-risk populations, such as the Neighbor-to-Neighbor program and the RDCR. (Co. Reply Br.

at 29-30.) In response to OCC's argument that the Stipulation will increase charges for customers and, thus, will not assure that customers are provided reasonably priced retail electric service, Staff contends that OCC's position is absurd, as rate increases are not per se unreasonable (Staff Reply Br. at 10).

{¶ 244} The Commission finds that the Signatory Parties have taken steps to include provisions in the Stipulation, such as the RDCR and the Neighbor-to-Neighbor program, that address the state policy objectives of ensuring the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric service and protecting at-risk populations, as specified in R.C. 4928.02(A) and (L), respectively. As AEP Ohio notes, these principles encompass much more than just cost. In any event, the evidence reflects that the ESP is expected to result in a modest increase for residential customers and a small decrease for small business and industrial customers, in conjunction with the many benefits provided by the Stipulation (Co. Ex. 1 at 20-22). Further, AEP Ohio agreed, in the Stipulation, to file a base distribution rate case by June 1, 2020, for the stated purpose of addressing concerns that its rider rates are disproportionate and that costs should instead be reflected through base rates (Joint Ex. 1 at 4). OCC and other interested stakeholders will have the opportunity, in that rate case, to offer recommendations regarding how the Company's riders and rate structure should be modified.

g. *Return on Equity*

{¶ 245} OCC argues that the Stipulation should not be approved because the proposed ROE and WACC are overstated and result in unjust and unreasonable charges to customers. According to OCC, the proposed ROE of 10.00 percent is too large for customers to fund. OCC recommends that, based on the ROEs authorized for electric distribution utilities in recent years in many jurisdictions, the financial and business risks of AEP Ohio and its parent company, and the current conditions of the financial markets and the economy, the Company's authorized ROE be no higher than 9.30 percent. OCC

notes that AEP Ohio has earned a higher ROE than most EDUs in Ohio from 2012 through 2015, as well as the highest ROE among its parent company's distribution subsidiaries in recent years, while the proposed ROE is higher than the quarterly and yearly average ROEs authorized for similarly situated electric utilities nationwide in 2016 and higher than the proposed ROEs in other pending electric utility rate cases. Noting that AEP Ohio's credit rating was upgraded by Moody's in June 2017, OCC argues that the Company is a financially strong and stable utility that is less risky than the average EDU. Finally, OCC claims that the adoption of an unjust and unreasonable ROE will not promote the state policy of ensuring reasonably priced retail electric service, protecting at-risk populations, and facilitating the state's effectiveness in the global economy. (OCC Br. at 38-43.)

{¶ 246} Additionally, OCC argues that the proposed pre-tax WACC rate of 10.82 percent, which will be updated if AEP Ohio refinances future debt, is overstated and should not be funded by customers. Specifically, OCC maintains that the Stipulation does not obligate AEP Ohio to refinance the debt and, even if it does, there is no assurance that the Company will obtain more favorable refinancing terms. OCC adds that, because the $350 million that may be refinanced is only a small portion of AEP Ohio's debt, the reduction in the overall embedded cost of debt would be limited, while the new WACC rate may actually be higher, in light of the fact that the Company's updated capital structure will consist of a higher equity portion. (OCC Br. at 43-44.)

{¶ 247} Initially, AEP Ohio notes that the 10.00 percent ROE recommended in the Stipulation is lower than the Company's current ROE of 10.20 percent and lower than the ROE of 10.41 percent proposed in the Company's application. Next, AEP Ohio asserts that OCC witness Duann's recommendations are unreasonably and unreliably based on ROEs authorized or proposed in litigated cases in other jurisdictions. According to AEP Ohio, Dr. Duann has limited knowledge of the cases and companies noted in the underlying report and whether they are comparable to the Company and the present

proceedings. With respect to Dr. Duann's reliance on Staff's recommended midpoint ROE of 9.73 percent in Duke's pending rate case, Case No. 17-32-EL-AIR, et al., AEP Ohio notes that Dr. Duann conceded that Staff's actual recommendation is an ROE range of up to 10.24 percent, which is consistent with the ROE recommended in the Stipulation in the present cases. Further, AEP Ohio maintains that OCC's focus on the Company's recent earned ROEs and its purported status as a financially strong utility ignores the financial and business risks and other changed circumstances that the Company will face in the first three years of the ESP 4 term when the 10.00 percent ROE would be in place. Finally, regarding the debt refinancing provision in the Stipulation, AEP Ohio contends that OCC's criticism is contrary to the Stipulation and based primarily on OCC's incorrect assumption that the Company's capital structure will change as a result of the debt refinancing. (Co. Br. at 46-48; Co. Reply Br. at 24-26.)

{¶ 248} Staff responds that the proposed ROE is lower than the ROE approved by the Commission in the *ESP 3 Case* and, in any event, would be fixed only until new rates are effective with a newly authorized ROE in AEP Ohio's next distribution rate case. Staff adds that the Signatory Parties have agreed that the WACC may only be adjusted in favor of customers. Staff asserts that any adjustment that could increase the WACC due to a change in capital structure that would result in relatively more costly equity would also be prohibited by the Stipulation. (Staff Reply Br. at 10.)

{¶ 249} The Commission does not agree with OCC's contention that the proposed ROE and WACC are overstated and result in unjust and unreasonable charges to customers. In the *ESP 3 Case*, the Commission maintained an ROE of 10.20 percent for AEP Ohio, as approved in the Company's prior distribution rate case. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 84, citing *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-351-EL-AIR, et al., Opinion and Order (Dec. 14. 2011) at 12, 14. In the Stipulation, the Signatory Parties have agreed that, until a new ROE is authorized in the next rate case, an ROE of 10.00 percent will be used prospectively for all riders that

have a capital component (Joint Ex. 1 at 6). The Commission finds that this provision in the Stipulation is a reasonable outcome and does not violate any important regulatory principle or practice. Although OCC claims that the ROE should be lower, OCC does not explain how reducing the current ROE from 10.20 percent to 10.00 percent, until a new ROE is established in the rate case, will result in rider rates that are unreasonable or contrary to any provision in R.C. 4928.02. With respect to potential long-term debt arrangements, AEP Ohio agreed, in the Stipulation, to update its WACC rate "to the extent such an update would be favorable to ratepayers" (Joint Ex. 1 at 6). In response to OCC's concerns regarding a potential change in capital structure, AEP Ohio explained that its capital structure will be as reflected in Attachment B to the Stipulation until it is updated as a result of the next rate case. Further, although OCC notes that there is no assurance that AEP Ohio will actually secure more favorable refinancing terms, that fact does not itself mean that the WACC rate is overstated or that this provision of the Stipulation violates any important regulatory principle or practice. For these reasons, we find no merit in OCC's arguments.

h. Commission Conclusion

{¶ 250} Following our review of the record and the parties' arguments, we conclude that the Stipulation, as modified, does not violate the third part of the Commission's three-part test. In addition to the issues addressed above, the Commission finds that other modifications or clarifications are necessary to ensure that the Stipulation fully satisfies the three-part test. First, we find that the OVEC recovery provision in the Stipulation should be clarified. The Stipulation provides that, absent legislation that provides an alternative recovery opportunity, AEP Ohio "will retain the status quo recovery of OVEC costs through the non-bypassable PPA Rider" for the duration of the ESP term, including all requirements in the Commission's orders in the *PPA Rider Case* (Joint Ex. 1 at 9). In the *PPA Rider Case*, the Commission approved a stipulation that provided that the net credits or costs of AEP Ohio's contractual entitlement to a share of

the electrical output of generating units owned by OVEC should be reflected in the Company's retail rates through the PPA Rider. *PPA Rider Case,* Opinion and Order (Mar. 31, 2016) at 24.

{¶ 251} Subsequently, on December 15, 2017, OVEC and PJM submitted a tariff filing to the Federal Energy Regulatory Commission (FERC), in Docket Nos. ER18-459-000, et al., proposing to integrate OVEC into PJM. The integration agreement between PJM and OVEC includes the implementation plan for the transfer of functional control of the OVEC transmission facilities to PJM, the integration of the OVEC control area into the PJM energy and other markets, and the addition of OVEC as a transmission owner. On February 13, 2018, FERC accepted the filing and noted that, following the integration of the OVEC transmission system into PJM, the costs associated with any transmission projects that are deemed necessary in the OVEC zone will be allocated pursuant to PJM's FERC-approved cost allocation methods. *PJM Interconnection, L.L.C. and Ohio Valley Electric Corp.,* 162 FERC ¶ 61,098 (2018).

{¶ 252} Given this recent development, the Commission clarifies that AEP Ohio's recovery of its portion of OVEC PPA costs through the PPA Rider shall not include any costs associated with transmission system additions, improvements, or other projects under PJM's Regional Transmission Expansion Plan or supplemental transmission projects. We find that this clarification is necessary to ensure that AEP Ohio's customers receive the intended benefit of the PPA Rider as a financial hedging mechanism with respect to the pricing of retail electric generation service, as well as to effectuate our intention in approving the inclusion of the OVEC generating units in the PPA Rider, consistent with our obligation under R.C. 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service.

{¶ 253} As another matter, in Case No. 10-3126-EL-UNC, the Commission encouraged AEP Ohio and the other electric utilities to propose an SFV rate design in

their next base rate cases. *In re Aligning Electric Distribution Utility Rate Structure*, Case No. 10-3126-EL-UNC, Finding and Order (Aug. 21, 2013) at 20. In its amended application, AEP Ohio proposed to phase in an SFV rate design (Co. Ex. 3 at 17). In the Stipulation, the Signatory Parties agreed that the current residential rate design should remain in effect until AEP Ohio's next distribution rate case, at which point the Company would propose a new customer charge and an SFV rate design for residential customers (Joint Ex. 1 at 4). The Commission finds that the Stipulation should be modified to exclude AEP Ohio's obligation to propose an SFV rate design in its next rate case. We intend to evaluate the issue of rate design, consistent with the state policy objectives set forth in R.C. 4928.02, as part of our PowerForward initiative. Accordingly, neither AEP Ohio nor Staff shall have an obligation to propose or support an SFV rate design in the next rate case.

{¶ 254} As modified by the Commission, the Stipulation does not violate any important regulatory principle or practice and furthers the state policy objectives enumerated in R.C. 4928.02. (Co. Ex. 1 at 22-23; Staff Ex. 3 at 4; Staff Ex. 1 at 3-4; Tr. I at 106; RESA Ex. 1 at 17.)

4. ESP/MRO TEST

a. Parties' Arguments

{¶ 255} AEP Ohio, Staff, and OPAE argue that the proposed ESP satisfies the ESP/MRO test set forth in R.C. 4928.143(C)(1). Specifically, they contend that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results of an MRO, both on a quantitative and a qualitative basis. AEP Ohio and Staff note that, because the rates to be charged customers under the ESP are entirely market based, there would be no difference between the ESP and an MRO. AEP Ohio, Staff, and OPAE assert that there are at least two quantifiable benefits that would not exist with an MRO, including an annual benefit of approximately

$14.7 million from the extension of the RDCR, which would otherwise expire on May 31, 2018, and $1 million from the Company's contribution to the Neighbor-to-Neighbor program for low-income residential customers. According to Staff, these benefits more than offset the $21.1 million cost of the new SCR. AEP Ohio and Staff add that the Company's anticipated debt refinancing may also result in financial savings for customers. (Co. Br. at 52-54; Staff Br. at 13-15; OPAE Br. at 7-8, 10.)

{¶ 256} Additionally, Staff notes that the Commission has previously determined that it is not necessary, in the MRO/ESP analysis, to attempt to quantify the impact of placeholder riders like the PowerForward Rider. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 94. Staff adds that the Commission has also determined that the revenue requirements associated with the recovery of incremental distribution investments from distribution-related riders, such as the DIR and the ESRR, should be considered to be the same whether recovered through the ESP or through a distribution rate case conducted in conjunction with an MRO. *ESP 3 Case* at 94. Staff concludes that such investments should be excluded here. (Staff Br. at 15.)

{¶ 257} In its reply brief, OCC claims that, according to AEP Ohio, there are quantitative benefits associated with the continuation of the DIR, RDCR, and the Neighbor-to-Neighbor program without the complexity of a base rate case. OCC points out that AEP Ohio stated that it fully intends to file a rate case by June 1, 2020, and, therefore, the Company and other parties will incur the complexity of a rate case anyway. OCC concludes that there is no benefit to including the DIR, RDCR, and Neighbor-to-Neighbor program in the ESP. With respect to the debt refinancing, OCC contends that AEP Ohio relies on a benefit that may not even occur, as the Company acknowledges. (OCC Reply Br. at 25-26.)

{¶ 258} With respect to the distribution-related riders, OCC argues that R.C. 4928.143(C)(1) does not direct the Commission to compare the ESP to an MRO in

conjunction with a distribution rate case; rather, according to OCC, the statute calls for a comparison of the ESP to an MRO on its own. OCC asserts that, under R.C. 4928.142(A), an MRO is nothing more than the SSO price for retail electric generation service that is delivered to the utility under the MRO. OCC further asserts that, even if the Commission compares the ESP to an MRO in conjunction with a distribution rate case, the ESP still fails the statutory test. OCC notes that Staff takes the position that the RDCR and the Neighbor-to-Neighbor program render the ESP more favorable than an MRO. However, according to OCC, Staff also acknowledged that both the RDCR and the Neighbor-to-Neighbor program would be available options under an MRO in conjunction with a distribution rate case. OCC claims, therefore, that the results under the proposed ESP or under an MRO in conjunction with a rate case would be equal. OCC concludes that, pursuant to R.C. 4928.143(C)(1), the proposed ESP must be rejected because it is not more favorable in the aggregate than an MRO. (OCC Reply Br. at 27-28.)

{¶ 259} AEP Ohio, Staff, and OPAE also note that the Stipulation provides a number of qualitative benefits, including reduced uncertainty through the Company's commitment to file a base rate case by June 1, 2020; investment in distribution infrastructure through the DIR; quick implementation of the Commission's PowerForward directives through adoption of the placeholder PowerForward Rider; promotion of innovative measures related to the Smart City and PowerForward programs; data and information acquired through demonstration projects enabling the Company and the Commission to better respond to new technologies and demands on the distribution system; provisions for economic development and increased demand response through expansion of the IRP tariff; enhancements to the retail competitive market through the Enroll From Your Wallet pilot program and expansion of the SCB program. (Co. Br. at 54-56; Staff Br. at 15-16; OPAE Br. at 8.)

{¶ 260} OCC responds that, under the terms of the Stipulation, AEP Ohio is not required to file a base distribution rate case and, therefore, there is no qualitative benefit

from the provision in the Stipulation. With respect to the RGR and the SCR, OCC asserts that there are no qualitative benefits from riders that are set at zero and have unknown costs with few implementation details. (OCC Reply Br. at 26-27.)

{¶ 261} OCC asserts that the proposed ESP, as embodied in the Stipulation, fails the statutory test. First, OCC notes that there a number of new riders and increases to existing riders that would add over $1.1 billion in costs to customers, while providing customers with little to no value. According to OCC, these riders would not be included in an MRO, because an MRO merely sets the SSO price. With respect to particular riders, OCC claims that neither the SCR nor the ESRR provides any quantitative or qualitative benefits, while the DIR provides little to no value to the reliability of AEP Ohio's distribution system. OCC also believes that the RDCR is not a benefit but instead is a requirement to prevent double recovery through the DIR and base distribution rates. OCC also notes that the Neighbor-to-Neighbor program could continue with or without the ESP through shareholder funds. Finally, OCC argues that AEP Ohio has provided no data regarding the costs and benefits of the PPA Rider or the RGR and, in any event, OCC states that customer subsidization of uneconomic generation cannot be considered a benefit. In its reply brief, OCC argues that the Commission cannot lawfully conduct the ESP/MRO test when costs are unknown, particularly where the riders would not be part of an MRO process and, thus, increase the cost differential between the MRO and ESP. (OCC Br. at 44-47; OCC Reply Br. at 24.)

{¶ 262} Turning to qualitative benefits, OCC maintains that such benefits do not exist. Beginning with the PPA Rider and the RGR, OCC asserts that there are more prudent ways to provide a hedging mechanism for SSO customers. Next, with respect to purported economic development benefits, OCC asserts that economic development is an issue that should be addressed through reasonable arrangement cases. According to OCC, the CIR and SSOCR, as well as the DIR and ESRR, should be addressed in a

distribution rate case, in which the Commission can fully examine AEP Ohio's financial standing. (OCC Br. at 47-48.)

{¶ 263} AEP Ohio asserts that most of OCC's criticisms reiterate positions that OCC has taken in prior cases regarding riders, including the RDCR, DIR, and ESRR, that the Commission ultimately approved and determined to be beneficial in the context of the ESP/MRO test. For example, AEP Ohio notes that, in the *ESP 3 Case*, the Commission rejected the position that the RDCR does not provide a quantitative benefit to customers. AEP Ohio adds that the Commission has also previously rejected OCC's argument that zero-dollar placeholder riders like the RGR should be quantified in some way and included in the statutory test. With respect to OCC's argument that distribution-related riders should be addressed in a distribution rate case, AEP Ohio contends that OCC ignores the fact that, in the Stipulation, the Company agreed to file a rate case by June 1, 2020, which, on its own, is a qualitative benefit of the ESP. Addressing the PPA Rider, AEP Ohio argues that the Signatory Parties agreed that the Company will retain the status quo recovery of OVEC costs and, therefore, no additional quantitative analysis is necessary, as the Commission already evaluated the significant quantitative benefits of the Company's OVEC proposal in the *PPA Rider Case*. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 105. Finally, with respect to the SCR, AEP Ohio maintains that OCC fails to account for the significant benefits of the rider and disregards the fact that the rider's costs are more than offset by the quantifiable benefits of the ESP. (Co. Br. at 56-59; Co. Reply Br. at 31-32.)

{¶ 264} Staff and OPAE respond that the Commission has determined that the revenue requirements associated with the recovery of incremental distribution investments from distribution-related riders, such as the DIR and ESRR, as well as the new SCR, are properly excluded as part of the MRO/ESP analysis. OPAE adds that, while OCC argues that residential rates would have to be credited amounts equal to the

RDCR at some point, the Stipulation guarantees that the RDCR will continue after the expiration of the current ESP term. (Staff Reply Br. at 11-12; OPAE Reply Br. at 4.)

{¶ 265} In its reply brief, Kroger notes that OCC broadly claims that the purported qualitative benefits from the Stipulation's economic development provisions should be rejected, because economic development should be addressed through reasonable arrangement cases. Kroger responds that R.C. 4928.143(B)(2)(i) expressly authorizes the inclusion of economic development provisions in an ESP. Kroger also argues that the Stipulation's economic development provisions promote job retention in Ohio and facilitate the state's effectiveness in the global economy, consistent with R.C. 4928.02(N). (Kroger Reply Br. at 2-5.)

b. Commission Conclusion

{¶ 266} R.C. 4928.143(C)(1) requires the Commission to approve, or modify and approve, a proposed ESP, if the Commission finds that the ESP, as approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142. In making this determination, the Commission is not bound to a strict price comparison. Rather, consistent with the statute's instruction, we consider pricing, as well as all other terms and conditions, under the ESP. *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, ¶ 27; *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 22. Accordingly, the Commission evaluates the ESP, in its entirety, and undertakes both a quantitative and a qualitative analysis. Upon consideration of the ESP, as proposed in the Stipulation, including its pricing and all other terms and conditions, we find that the ESP recommended by the Signatory Parties is more favorable in the aggregate than the expected results under R.C. 4928.142.

{¶ 267} We begin with a quantitative analysis. Under the ESP proposed in the Stipulation, the base generation rates to be charged SSO customers will continue to be established through a fully auction based process and, therefore, are considered equivalent to the results that would be obtained under R.C. 4928.142 (Staff Ex. 3 at 5). Further, in light of the fact that the RGR and PowerForward Rider have been established as placeholder riders set at zero and will be subject to future proceedings, we do not attempt to speculate as to the quantitative impact of these riders in the MRO/ESP analysis, consistent with our precedent. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 94, Second Entry on Rehearing (May 28, 2015) at 56; *ESP 2 Case*, Entry on Rehearing (Jan. 30, 2013) at 9. Regarding the SCR and other distribution-related riders, the revenue requirements associated with the recovery of incremental distribution investments is considered to be the same whether recovered through the ESP or through a distribution rate case conducted in conjunction with an MRO. Accordingly, we do not consider such investments in our quantitative MRO/ESP analysis. *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶¶ 23-27 (rejecting argument that R.C. 4928.142 does not permit inclusion of hypothetical distribution rate case revenues as part of the MRO/ESP comparison). OCC has raised no argument on any of these issues that persuades the Commission that we should deviate from our established method of applying the ESP/MRO test. OCC's remaining criticisms of the ESP's cost impact are directed at the continuation of the PPA Rider, which the Commission has already evaluated and found to be an expected net credit over an extended period through 2024. *PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶¶ 63, 278-280.

{¶ 268} Next, the Commission finds that there are quantitative benefits provided by the Stipulation that render the proposed ESP more favorable in the aggregate than the expected results under an MRO, as Staff witness Turkenton testified. As part of the ESP proposed in the Stipulation, AEP Ohio agreed to continue the RDCR, without change, at least until new rates take effect in the Company's next distribution rate case, which the

Company agreed to file no later than June 1, 2020. The continuation of the RDCR provides residential customers an annual benefit of $14,688,000. AEP Ohio has also agreed to contribute $1,000,000 annually to the Neighbor-to-Neighbor program for the same period. (Joint Ex. 1 at 4, 5; Co. Ex. 1 at 18; Staff Ex. 3 at 5-6.) In disputing these quantitative benefits, OCC argues that Staff acknowledged that both the RDCR and the Neighbor-to-Neighbor program would be available options under an MRO in conjunction with a distribution rate case. Staff, however, merely agreed that nothing would preclude AEP Ohio from proposing the RDCR and Neighbor-to-Neighbor program in a distribution rate case. As we have previously stated, there is no obligation on AEP Ohio's part to propose to continue either the RDCR or the Neighbor-to-Neighbor program. *ESP 3 Case*, Second Entry on Rehearing (May 28, 2015) at 55-56. Accordingly, we find that, quantitatively, the proposed ESP is more favorable than the expected results under an MRO. (Co. Ex. 1 at 17-18; Staff Ex. 3 at 5-6.)

{¶ 269} Finally, the proposed ESP's quantitative benefits are supplemented by a number of qualitative benefits as well. As thoroughly addressed above, the ESP proposed in the Stipulation affords customers in AEP Ohio's service territory numerous benefits and advances many of the state policy objectives enumerated in R.C. 4928.02. As Staff witness Turkenton testified, these benefits include provisions for economic development, enhancements to the retail competitive market, and renewable energy options, as well as the promotion of innovative measures related to the Smart City and Power Forward initiatives (Staff Ex. 3 at 6). These qualitative benefits, in combination with the quantitative benefits discussed above, lead us to conclude that the proposed ESP, as set forth in the Stipulation and adopted by the Commission, is more favorable in the aggregate as compared to the expected results that would apply under R.C. 4928.142 (Co. Ex. 1 at 17-19; Staff Ex. 3 at 5-7).

5. Conclusion

{¶ 270} In sum, based upon the evidence submitted by the parties in these proceedings, the Commission finds that the ESP proposed in the Stipulation, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO pursuant to R.C. 4928.142. We further find that the Stipulation, as modified, meets the criteria of our three-part test and should be adopted. Finally, we note that, considering the length of its term, ESP 4 will be subject to another application of the ESP/MRO test in its fourth year, pursuant to R.C. 4928.143(E).

{¶ 271} AEP Ohio is directed to file proposed tariffs consistent with this Opinion and Order, subject to review and approval by the Commission.

III. Findings of Fact and Conclusions of Law

{¶ 272} AEP Ohio is a public utility as defined in R.C. 4905.02 and an electric distribution utility as defined in R.C. 4928.01(A)(6), and, as such, is subject to the jurisdiction of this Commission.

{¶ 273} On November 23, 2016, AEP Ohio filed an application for an SSO pursuant to R.C. 4928.141. The application is for an ESP in accordance with R.C. 4928.143.

{¶ 274} On December 14, 2016, a technical conference was held regarding AEP Ohio's ESP application.

{¶ 275} The following parties were granted intervention in these proceedings: IEU-Ohio, OCC, OMAEG, ELPC, OPAE, Kroger, Buckeye, OEC, EDF, OEG, Walmart, OHA, Paulding, P3/EPSA, NRDC, IGS, Commerce Energy, RESA, Dynegy, Sierra Club, Calpine, Duke, MAREC, EnerNOC, EVCA, and Constellation.

{¶ 276} On August 25, 2017, the Stipulation was filed by AEP Ohio, Staff, OEG, OHA, MAREC, ELPC, OPAE, EVCA, OMAEG, IGS, OEC, EDF, RESA, NRDC, Sierra Club, IEU-Ohio, and Constellation. Commerce Energy, Walmart, and Kroger indicated in the Stipulation that they are non-opposing parties. The Stipulation was intended to resolve all of the issues in these cases.

{¶ 277} The evidentiary hearing in these proceedings commenced on November 1, 2017, and concluded on November 6, 2017. On various dates in April 2017, four public hearings were held – two in Columbus, one in Marietta, and one in Bucyrus. Pursuant to published notice, another hearing was held in Columbus on February 12, 2018.

{¶ 278} Initial briefs were filed on November 29 and 30, 2017. Reply briefs were filed on December 21, 2017.

{¶ 279} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted, as modified by the Commission.

{¶ 280} The ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142.

IV. ORDER

{¶ 281} It is, therefore,

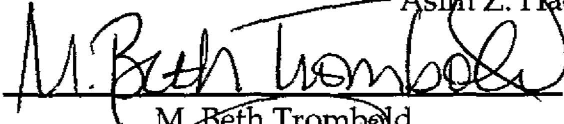
{¶ 282} ORDERED, That the Stipulation be adopted and approved, as modified by the Commission. It is, further,

{¶ 283} ORDERED, That AEP Ohio file proposed tariffs consistent with this Opinion and Order, subject to review and approval by the Commission. It is, further,

{¶ 284} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

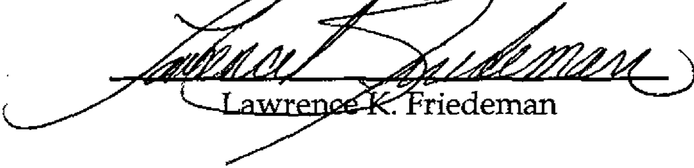
THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman



M. Beth Trombold

Thomas W. Johnson



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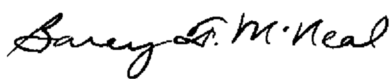

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Barcy F. McNeal
Secretary

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR AUTHORITY TO ESTABLISH A STANDARD SERVICE OFFER PURSUANT TO R.C. 4928.143, IN THE FORM OF AN ELECTRIC SECURITY PLAN.	**CASE NO. 16-1852-EL-SSO**
IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	**CASE NO. 16-1853-EL-AAM**

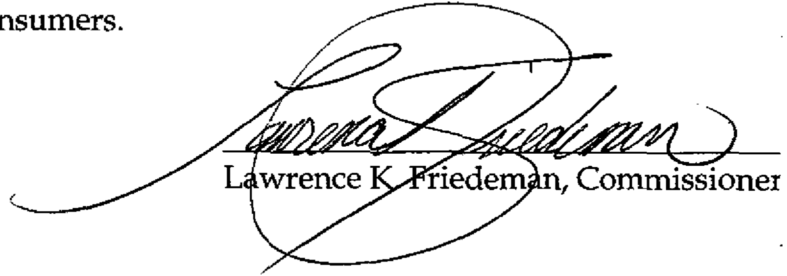
CONCURRING OPINION OF COMMISSIONER LAWRENCE K. FRIEDEMAN

I concur with my colleagues on the Commission in rendering this decision adopting and approving the Stipulation, as modified in the Order. Among the many action steps prescribed in the Stipulation, a number begin to lay a foundation upon which industry advancements as discussed in the PowerForward Initiative may occur.

Initially, I agree in recasting the "Competition Incentive Rider" as the "Retail Reconciliation Rider" (RRR). I do not believe the rider's purpose should be as originally and imprecisely described simply to incent the further development of the competitive market; but, rather I believe the value of the RRR is to more surgically eliminate any demonstrable cost disparities between default and retail service which impede the continued evolution of the competitive retail market. The retail prices charged by a competitive retail electric supplier (CRES) imbed costs, including many to ensure regulatory compliance, which are not incurred by the Standard Service Offer (SSO) suppliers nor reflected in the SSO price. Admittedly, the price of the SSO default service is determined through a competitive bidding process. However, that process constitutes a wholesale pricing process, not a retail pricing process. Introducing a wholesale product into a retail market without concomitant measures to address inherent cost imbalances will tend to distort that market, particularly when that wholesale price is juxtaposed against the retail prices and described as the price to compare.

In its Order, the Commission cites state policy, as set forth in R.C. 4928.02(C), (D), and (G), to promote customer choice, encourage innovation, and facilitate the development of the competitive *retail* electric market through flexible regulatory treatment. I would suggest that the market distortion caused by cost imbalances and the resulting cost advantage afforded to the SSO wholesale product in the retail market erect market barriers which have a tendency not to promote retail competition, but rather to have an anti-competitive impact or, in an extreme eventuality, to re-monopolize the retail market inconsistent with enunciated state policy.

I acknowledge the wisdom of providing a forum in which to conduct a comprehensive identification of regulatory requirements that drive additional non-market based costs to CRES product offerings. This is an important and complex discussion in which to engage to ensure proper cost allocation for the ultimate benefit of the consumer. The Commission's action in establishing the placeholder RRR in this Order is, in my opinion, an important first step in balancing the costs and interests of market participants, including retail consumers.



Lawrence K. Friedeman, Commissioner

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Barcy F. McNeal
Secretary

R.C. 4903.09

In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

R.C. 4903.13

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

4909.15

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (C)(8) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital as determined by the commission.

The commission, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete.

In determining the percentage completion of a particular construction project, the commission shall consider, among other relevant criteria, the per cent of time elapsed in construction; the per cent of construction funds, excluding allowance for funds used during construction, expended, or obligated to such construction funds budgeted where all such funds are adjusted to reflect current purchasing power; and any physical inspection performed by or on behalf of any party, including the commission's staff.

A reasonable allowance for construction work in progress shall not exceed ten per cent of the total valuation as stated in this division, not including such allowance for construction work in progress.

Where the commission permits an allowance for construction work in progress, the dollar value of the project or portion thereof included in the valuation as construction work in progress shall not be included in the valuation as plant in service until such time as the total revenue effect of the construction work in progress allowance is offset by the total revenue effect of the plant in service exclusion. Carrying charges calculated in a manner similar to allowance for funds used during construction shall accrue on that portion of the project in service but not reflected in rates as plant in service, and such accrued carrying charges shall be included in the valuation of the property at the conclusion of the offset period for purposes of division (C)(8) of section 4909.05 of the Revised Code.

From and after April 10, 1985, no allowance for construction work in progress as it relates to a particular construction project shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, except as otherwise provided in this division.

The applicable maximum period in rates for an allowance for construction work in progress as it relates to a particular construction project shall be tolled if, and to the extent, a delay in the in-service date of the project is caused by the action or inaction of any federal, state, county, or municipal agency having jurisdiction, where such action or inaction relates to a change in a rule,

standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change.

In the event that such period expires before the project goes into service, the commission shall exclude, from the date of expiration, the allowance for the project as construction work in progress from rates, except that the commission may extend the expiration date up to twelve months for good cause shown.

In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission immediately shall exclude the allowance for the project from the valuation.

In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected.

In no event shall the total revenue effect of any offset or offsets provided under division (A)(1) of this section exceed the total revenue effect of any construction work in progress allowance.

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section;

(4) The cost to the utility of rendering the public utility service for the test period used for the determination under division (C)(1) of this section, less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period.

(a) Federal, state, and local taxes imposed on or measured by net income may, in the discretion of the commission, be computed by the normalization method of accounting, provided the utility maintains accounting reserves that reflect differences between taxes actually payable and taxes on a normalized basis, provided that no determination as to the treatment in the rate-making process of such taxes shall be made that will result in loss of any tax depreciation or other tax benefit to which the utility would otherwise be entitled, and further provided that such tax benefit as redounds to the utility as a result of such a computation may not be retained by the company, used to fund any dividend or distribution, or utilized for any purpose other than the defrayal of the operating expenses of the utility and the defrayal of the expenses of the utility in connection with construction work.

(b) The amount of any tax credits granted to an electric light company under section 5727.391 of the Revised Code for Ohio coal burned prior to January 1, 2000, shall not be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the allowable operating expenses of the company and the defrayal of the allowable expenses of the company in connection with the installation, acquisition, construction, or use of a compliance facility. The amount of the tax credits granted to an electric light company under that section for Ohio coal burned prior to January 1, 2000, shall be returned to its customers within three years after initially claiming the credit through an offset to the company's rates or fuel component, as determined by the commission, as set forth in schedules filed by the company under section 4905.30 of the Revised Code. As used in division (A)(4)(b) of this section, "compliance facility" has the same meaning as in section 5727.391 of the Revised Code.

(B) The commission shall compute the gross annual revenues to which the utility is entitled by adding the dollar amount of return under division (A)(3) of this section to the cost, for the test period used for the determination under division (C)(1) of this section, of rendering the public utility service under division (A)(4) of this section.

(C)(1) Except as provided in division (D) of this section, the revenues and expenses of the utility shall be determined during a test period. The utility may propose a test period for this determination that is any twelve-month period beginning not more than six months prior to the date the application is filed and ending not more than nine months subsequent to that date. The test period for determining revenues and expenses of the utility shall be the test period proposed by the utility, unless otherwise ordered by the commission.

(2) The date certain shall be not later than the date of filing, except that it shall be, for a natural gas, water-works, or sewage disposal system company, not later than the end of the test period.

(D) A natural gas, water-works, or sewage disposal system company may propose adjustments to the revenues and expenses to be determined under division (C)(1) of this section for any changes that are, during the test period or the twelve-month period immediately following the test period, reasonably expected to occur. The natural gas, water-works, or sewage disposal system company shall identify and quantify, individually, any proposed adjustments. The commission shall incorporate the proposed adjustments into the determination if the adjustments are just and reasonable.

(E) When the commission is of the opinion, after hearing and after making the determinations under divisions (A) and (B) of this section, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, that the service is, or will be, inadequate, or that the maximum rates, charges, tolls, or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall:

(1) With due regard among other things to the value of all property of the public utility actually used and useful for the convenience of the public as determined under division (A)(1) of this

section, excluding from such value the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right, and excluding any value added to such property by reason of a monopoly or merger, with due regard in determining the dollar annual return under division (A)(3) of this section to the necessity of making reservation out of the income for surplus, depreciation, and contingencies, and;

(2) With due regard to all such other matters as are proper, according to the facts in each case,

(a) Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal to the actual embedded cost of debt of such public utility,

(b) But not including the portion of any periodic rental or use payments representing that cost of property that is included in the valuation report under divisions (C)(4) and (5) of section 4909.05 of the Revised Code, fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the service that will provide the public utility the allowable gross annual revenues under division (B) of this section, and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one. After such determination and order no change in the rate, fare, toll, charge, rental, schedule, classification, or service shall be made, rendered, charged, demanded, exacted, or changed by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited.

(F) Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code for other hearings, has been given, the commission may rescind, alter, or amend an order fixing any rate, fare, toll, charge, rental, classification, or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders.

R.C. 4928.02

It is the policy of this state to do the following throughout this state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

(O) Encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization.

(P) Ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers.

In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

R.C. 4928.03

Beginning on the starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers. In accordance with a filing under division (F) of section 4933.81 of the Revised Code, retail electric generation, aggregation, power marketing, or power brokerage services supplied to consumers within the certified territory of an electric cooperative that has made the filing are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers.
Beginning on the starting date of competitive retail electric service and notwithstanding any other provision of law, each consumer in this state and the suppliers to a consumer shall have comparable and nondiscriminatory access to noncompetitive retail electric services of an electric utility in this state within its certified territory for the purpose of satisfying the consumer's electricity requirements in keeping with the policy specified in section 4928.02 of the Revised Code.

R.C. 4928.05

(A)(1) On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation by a municipal corporation under Chapter 743. of the Revised Code or by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4905.10 and 4905.31, division (B) of section 4905.33, and sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 4963.41 of the Revised Code only to the extent related to service reliability and public safety; and except as otherwise provided in this chapter. The commission's authority to enforce those excepted provisions with respect to a competitive retail electric service shall be such authority as is provided for their enforcement under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter. Nothing in this division shall be construed to limit the commission's authority under sections 4928.141 to 4928.144 of the Revised Code.
On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except as otherwise expressly provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised Code.
(2) On and after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility shall be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter, to the extent that authority is not preempted by federal law. The commission's authority to enforce those provisions with respect to a noncompetitive retail electric service shall be the authority provided under those chapters and this chapter, to the extent the authority is not preempted by federal law. Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

The commission shall exercise its jurisdiction with respect to the delivery of electricity by an electric utility in this state on or after the starting date of competitive retail electric service so as to ensure that no aspect of the delivery of electricity by the utility to consumers in this state that consists of a noncompetitive retail electric service is unregulated.

On and after that starting date, a noncompetitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4933.81 to 4933.90 and 4935.03 of the Revised Code. The commission's authority to enforce those excepted sections with respect to a noncompetitive retail electric service of an electric cooperative shall be such authority as is provided for their enforcement under Chapters 4933. and 4935. of the Revised Code.

(B) Nothing in this chapter affects the authority of the commission under Title XLIX of the Revised Code to regulate an electric light company in this state or an electric service supplied in this state prior to the starting date of competitive retail electric service.

R.C. 4928.142

(A) For the purpose of complying with section 4928.141 of the Revised Code and subject to division (D) of this section and, as applicable, subject to the rate plan requirement of division (A) of section 4928.141 of the Revised Code, an electric distribution utility may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer.
(1) The market-rate offer shall be determined through a competitive bidding process that provides for all of the following:

(a) Open, fair, and transparent competitive solicitation;

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

(d) Oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division (A)(1)(a) to (c) of this section are met;

(e) Evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners.

No generation supplier shall be prohibited from participating in the bidding process.

(2) The public utilities commission shall modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A)(1) of this section.

(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A)(2) of this section, and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon their taking effect.

An application under this division shall detail the electric distribution utility's proposed compliance with the requirements of division (A)(1) of this section and with commission rules under division (A)(2) of this section and demonstrate that all of the following requirements are met:

(1) The electric distribution utility or its transmission service affiliate belongs to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or there otherwise is comparable and nondiscriminatory access to the electric transmission grid.

(2) Any such regional transmission organization has a market-monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.

(3) A published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.

The commission shall initiate a proceeding and, within ninety days after the application's filing date, shall determine by order whether the electric distribution utility and its market-rate offer meet all of the foregoing requirements. If the finding is positive, the electric distribution utility may initiate its competitive bidding process. If the finding is negative as to one or more requirements, the commission in the order shall direct the electric distribution utility regarding how any deficiency may be remedied in a timely manner to the commission's satisfaction; otherwise, the electric distribution utility shall withdraw the application. However, if such remedy is made and the subsequent finding is positive and also if the electric distribution utility made a simultaneous filing under this section and section 4928.143 of the Revised Code, the utility shall not initiate its competitive bid until at least one hundred fifty days after the filing date of those applications.

(C) Upon the completion of the competitive bidding process authorized by divisions (A) and (B) of this section, including for the purpose of division (D) of this section, the commission shall select the least-cost bid winner or winners of that process, and such selected bid or bids, as prescribed as retail rates by the commission, shall be the electric distribution utility's standard service offer unless the commission, by order issued before the third calendar day following the conclusion of the competitive bidding process for the market rate offer, determines that one or more of the following criteria were not met:

(1) Each portion of the bidding process was oversubscribed, such that the amount of supply bid upon was greater than the amount of the load bid out.

(2) There were four or more bidders.

(3) At least twenty-five per cent of the load is bid upon by one or more persons other than the electric distribution utility.

All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, shall be timely recovered through the standard service offer price, and, for that purpose, the commission shall approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

(D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:

(1) The electric distribution utility's prudently incurred cost of fuel used to produce electricity;

(2) Its prudently incurred purchased power costs;

(3) Its prudently incurred costs of satisfying the supply and demand portfolio requirements of this state, including, but not limited to, renewable energy resource and energy efficiency requirements;

(4) Its costs prudently incurred to comply with environmental laws and regulations, with consideration of the derating of any facility associated with those costs.

In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility.

Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so

inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division.

(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, including because of the length of time, as authorized under division (C) of this section, taken to approve the market rate offer, cause the duration of the blending period to exceed ten years as counted from the effective date of the approved market rate offer. Additionally, any such alteration shall be limited to an alteration affecting the prospective proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the commission under this division.

(F) An electric distribution utility that has received commission approval of its first application under division (C) of this section shall not, nor ever shall be authorized or required by the commission to, file an application under section 4928.143 of the Revised Code.

R.C. 4928.143

(A) For the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility may file an application for public utilities commission approval of an electric security plan as prescribed under division (B) of this section. The utility may file that application prior to the effective date of any rules the commission may adopt for the purpose of this section, and, as the commission determines necessary, the utility immediately shall conform its filing to those rules upon their taking effect.
(B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code:
(1) An electric security plan shall include provisions relating to the supply and pricing of electric generation service. In addition, if the proposed electric security plan has a term longer than three years, it may include provisions in the plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the plan as authorized under that division.

(2) The plan may provide for or include, without limitation, any of the following:

(a) Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes;

(b) A reasonable allowance for construction work in progress for any of the electric distribution utility's cost of constructing an electric generating facility or for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Any such allowance shall be subject to the construction work in progress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Further, no such allowance shall be authorized unless the facility's construction was sourced through a competitive bid process, regarding which process the commission may adopt rules. An allowance approved under division (B)(2)(b) of this section shall be established as a nonbypassable surcharge for the life of the facility.
(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Additionally, if a surcharge is authorized for a facility pursuant to plan approval under division (C) of this section and as a

condition of the continuation of the surcharge, the electric distribution utility shall dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements.

(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;

(e) Automatic increases or decreases in any component of the standard service offer price;

(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:
(i) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code;
(ii) Provisions for the recovery of the utility's cost of securitization.

(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;

(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

(i) Provisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.

(C)(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the

application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.
(2)(a) If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code.
(b) If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively.
(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section 4928.64, or division (A) of section 4928.66 of the Revised Code.
(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital

structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. If the test results are in the negative or the commission finds that continuation of the electric security plan will result in a return on equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that will face comparable business and financial risk, with such adjustments for capital structure as may be appropriate, during the balance of the plan, the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.
(F) With regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. Consideration also shall be given to the capital requirements of future committed investments in this state. The burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility. If the commission finds that such adjustments, in the aggregate, did result in significantly excessive earnings, it shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments; provided that, upon making such prospective adjustments, the electric distribution utility shall have the right to terminate the plan and immediately file an application pursuant to section 4928.142 of the Revised Code. Upon termination of a plan under this division, rates shall be set on the same basis as specified in division (C)(2)(b) of this section, and the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan. In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.

R.C. 4928.31

(A) Not later than ninety days after the effective date of this section, an electric utility supplying retail electric service in this state on that date shall file with the public utilities commission a plan for the utility's provision of retail electric service in this state during the market development period. This transition plan shall be in such form as the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code and shall include all of the following:
(1) A rate unbundling plan that specifies, consistent with divisions (A)(1) to (7) of section 4928.34 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, the unbundles components for electric generation, transmission, and distribution service and such other unbundled service components as the commission requires, to be charged by the utility beginning on the starting date of competitive retail electric service and that includes information the commission requires to fix and determine those components;
(2) A corporate separation plan consistent with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;
(3) Such plan or plans as the commission requires to address operational support systems and any other technical implementation issues pertaining to competitive retail electric service consistent with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;
(4) An employee assistance plan for providing severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under this chapter;

(5) A consumer education plan consistent with former section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.
A transition plan under this section may include tariff terms and conditions to address reasonable requirements for changing suppliers, length of commitment by a customer for service, and such other matters as are necessary to accommodate electric restructuring. Additionally, a transition plan under this section may include an application for the opportunity to receive transition revenues as authorized under sections 4928.31 to 4928.40 of the Revised Code, which application shall be consistent with those sections and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code. The transition plan also may include a plan for the independent operation of the utility's transmission facilities consistent with section 4928.12 of the Revised Code, division (A)(13) of section 4928.34 of the Revised Code, and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.
The commission may reject and require refiling, in whole or in part, of any substantially inadequate transition plan.

(B) The electric utility shall provide public notice of its filing under division (A) of this section, in a form and manner that the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code. However, the adoption of rules regarding the public notice under this division, regarding the form of the transition plan under division (A) of this section,

and regarding procedures for expedited discovery under division (A) of section 4928.32 of the Revised Code are not subject to division (D) of section 111.15 of the Revised Code.

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	)))	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.

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DECEMBER 17, 2021

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

APPLICATION FOR REHEARING OF
INTERSTATE GAS SUPPLY, INC.

Under R.C. 4903.10 and Rule 4901-1-35 of the Ohio Administrative Code, Interstate Gas Supply, Inc. ("IGS") submits this Application for Rehearing of the Opinion and Order for Ohio Power Company issued by the Public Utilities Commission of Ohio on November 17, 2021, for the following reasons:

1. **The Opinion and Order is unlawful and unreasonable because the finding that there is no basis upon which to conclude that Ohio Power's distribution rates include known, quantifiable costs that should be allocated to the Retail Reconciliation Rider is not supported by the uncontroverted evidence that Ohio Power recovers known and quantifiable costs to provide default service in its distribution rates, a violation of R.C. 4903.09.**

2. **The Opinion and Order is unlawful because it finds that an analysis of known and quantifiable costs to provide default service and the customer choice program was incomplete because the analysis did not factor choice program costs as to the Retail Reconciliation Rider and the SSO Credit Rider when the record does not support that finding, in violation of R.C. 4903.09.**

3. **The Opinion and Order is unlawful and unreasonable because it authorizes Ohio Power to recover costs that Ohio Power incurs to supply a competitive product or service in distribution rates in violation of R.C. 4909.15, 4928.02, and 4928.05.**

4. **The Opinion and Order is unlawful and unreasonable because it failed to address the arguments showing that approving a provision of the stipulation leaving the rates of the Retail Reconciliation Rider and the SSO Credit Rider at zero was unlawful and unreasonable and deferred population of the riders to a future case, all in violation of R.C. 4903.09.**

5. **The Opinion and Order is unlawful and unreasonable because the decision authorizing the continuation of a discriminatory switching fee for which there is no evidence of cost and that penalizes competitive suppliers and their customers is without a reasoned explanation in violation of R.C. 4903.09.**

6. **The Opinion and Order is unlawful and unreasonable because it fails to remove a provision requiring Ohio Power to provide aggregate billing data that violates important regulatory practices or principles.**

7. **The Opinion and Order is unlawful because the Commission decision finding that the provision that requires Ohio Power to provide aggregate billing data to OCC does not violate an important regulatory practice or principle represents a break with Commission precedent that is without a reasoned explanation.**

8. **The Opinion and Order is unlawful and unreasonable because it permits Ohio Power to recover in distribution rates the costs it incurs to market customer-sited generation in violation of R.C. 4928.47 and R.C. 4903.09.**

As discussed in the Memorandum in Support, the Opinion and Order are unlawful and unreasonable, and the Commission should grant this Application for Rehearing.

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MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING OF INTERSTATE GAS SUPPLY, INC.

I. Introduction

In this case, Ohio Power Company ("Ohio Power") filed an application to increase base distribution rates. To resolve the issues presented by the application, Ohio Power, several intervenors, and the Staff of the Public Utilities Commission of Ohio ("Commission") filed a joint stipulation. Although Ohio Power and the other supporting parties asserted that the Stipulation met the three-part test upon which the Commission judges the lawfulness and reasonableness of a stipulation, Interstate Gas Supply, Inc. ("IGS") and others demonstrated that there were significant legal deficiencies with its terms. Nonetheless, the Commission found that the Stipulation without modification satisfied the Commission's three-part test and approved it in an Opinion and Order.[1]

On rehearing, the Commission should reverse approval of four substantive results in the Opinion and Order.

First, the decision to approve rates without populating the Retail Reconciliation Rider and the SSO Credit Rider to remove $64 million from distribution rates is not supported by the record and authorizes the recovery in distribution rates of costs for the provision of a competitive electric service in violation of Ohio law. Further, that decision fails to consider the merits of several issues presented to the Commission in violation of

[1] Under the three-part test, the Commission reviews whether the settlement is the product of serious bargaining among capable and knowledgeable parties, whether the settlement as a package benefits ratepayers and the public interest, and whether the settlement package violates any important regulatory principle or practice. Industrial Energy Consumers of Ohio Power Co. v. Pub. Utils. Comm'n of Ohio, 68 Ohio St. 3d 559 (1994).

the requirements of R.C. 4903.09. Separately and together, these errors warrant a reversal of the decision on rehearing and a new order populating the riders.

Second, the failure to remove unlawful switching fees for which there is no cost-basis in evidence permits the continuation of a discriminatory rate or charge in violation of Ohio law and the state energy policy. On rehearing, the Commission should direct Ohio Power to file a new tariff sheet removing the switching fee.

Third, the decision to approve the collection and transfer of manipulated and incomplete billing data to the Ohio Consumers' Counsel is unreasonable and a break with Commission precedent without a reasoned explanation. On rehearing, the Commission should reverse its approval of this provision and modify the Stipulation by striking this provision.

Fourth, the decision to permit Ohio Power to recover in distribution rates the costs of Ohio Power's marketing of customer-sited generation is unlawful and unreasonable because it permits Ohio Power to violate the requirements of R.C. 4928.47. On rehearing, the Commission should require Ohio Power to identify the costs it incurred to market customer-sited generation projects so that the costs can be removed from distribution rates.

II. Approval of a provision of the Stipulation setting the Retail Reconciliation Rider and SSO Credit Rider at zero was unlawful and unreasonable

In Ohio Power's ESP IV Order, the Commission approved two riders, the Retail Reconciliation Rider and the SSO Credit Rider. In re Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, Case Nos. 16-1852-EL-SSO, et al., Opinion and Order ¶ 214

(Apr. 25, 2018) ("ESP IV Order"). The purpose of the riders is to remove the cost of providing the standard service offer from distribution rates and assign that cost to the cost-causers, default service customers. To identify those costs, the Commission directed Ohio Power to "analyze, as part of the rate case, its actual costs of providing SSO generation service" and "its actual costs associated with the choice program." Id., ¶ 215. Ohio Power identified both direct and indirect cost associated with the provision of default service and supplied them with its application. IGS Ex. 3 at 11-12 and Ex. DMR-2. Although Ohio Power submitted testimony in its rate application in this case in which it identified and quantified direct costs associated with the provision of both services, the analysis was incomplete. Staff Ex. 1 at 31. In particular, Ohio Power did not attempt to quantify or allocate indirect costs it identified. IGS Ex. 3 and Ex. DMR-2. Additionally, the analysis was too narrow, leaving out substantial cost categories. IGS/Direct Ex. 2 at 50. In any case, however, Ohio Power then brokered a term of the Stipulation providing that the Retail Reconciliation Rider and SSO Credit Rider be set at zero. Joint Ex. 1 at 9.

In the Opinion and Order, the Commission did not modify the provision setting the Retail Reconciliation Rider and SSO Credit Rider at zero based on testimony supporting the Stipulation from Ohio Power, Staff, and the Ohio Consumers' Counsel ("OCC"). It also found "that there is no basis upon which to conclude that [Ohio Power's] distribution rates include known, quantifiable cost that should be allocated to the [Retail Reconciliation Rider]." Opinion and Order, ¶ 184. It justified the conclusion that there was no basis to assign and allocate some costs to the riders on a critique of IGS's witness, who the Commission found "made no attempt to factor choice program costs into his recommendation as to the RRR and SSOCR." Id., ¶ 184. While the Commission

apparently agreed that Ohio Power's response was less than complete, it concluded that this response was not a violation of its order because of Ohio Power's "lack of granular data sufficient to permit a more thorough analysis." Id., ¶ 185.

The Commission erred in three material ways. First, the decision that the record did not demonstrate known and quantifiable costs incurred by Ohio Power to provide default service does not address the uncontroverted record that Ohio Power is and will recover known and quantifiable costs to provide default service in its distribution rates. Second, authorizing rates that permit Ohio Power to collect these known and quantifiable costs of a competitive service in distribution rates violates Ohio law. Third, the failure of the Commission to address the arguments and evidence and properly set reasonable rates in this case also violates Ohio law.

A. The Opinion and Order is unlawful and unreasonable because the finding that there is no basis upon which to conclude that Ohio Power's distribution rates include known, quantifiable costs that should be allocated to the Retail Reconciliation Rider is not supported by the uncontroverted evidence that Ohio Power recovers known and quantifiable costs to provide default service in its distribution rates, a violation of R.C. 4903.09

"In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, 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. This statutory requirement imposes on the Commission an obligation to "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence." In re Columbus S. Power Co., 128 Ohio St. 3d 512, ¶ 30 (2011).

As previously noted, the Commission approved the provision recommending that the Retail Reconciliation Rider and SSO Credit Rider remain at zero based on the Staff Report recommendation and supporting testimony provided by Ohio Power, the Staff, and OCC. Opinion and Order, ¶ 183. In support of that decision, it found that there was no basis on which to conclude that Ohio Power's distribution rates include known and quantifiable costs that should be allocated to the Retail Reconciliation Rider. Id., ¶ 184. That critical finding is unsupported by the record because Ohio Power itself demonstrated that there were known and quantifiable direct costs being collected and all interested parties agree that the rates proposed in this case would recover costs associated with the provision of default service if the riders are not populated.

In response to the ESP IV Order, Ohio Power provided testimony identifying direct and indirect costs associated with the provision of default service and later agreed on cross-examination that the incurred costs would be collected in distribution rates. IGS/Direct Ex. 3, Attachment DMR-2; Tr. at 36, 49-53, and 158-59. That analysis, though incomplete, demonstrated that Ohio Power incurred at least $4.7 million in costs directly attributable to default service. Although the information was incomplete, the Commission nonetheless concluded that Ohio Power did not violate the Commission's order to conduct an analysis of the costs to support default and competitive supply services. Opinion and Order, ¶ 185. If that is so, then there is credible evidence of $4.7 million in costs collected in rates that are directly assignable to the provision of default service.

Staff and OCC also agreed that Ohio Power is collecting costs of providing generation-related services in distribution rates. On cross-examination, both the Staff and

OCC conceded that costs to provide default service were collected in distribution rates that would be approved in this case. Tr. at 291-92 and 346-49.

The only challenge raised by Staff and OCC regarding these costs does not go to whether the costs are generation-related or that they are being collected in rates. Instead, both assert that the costs should be characterized as distribution costs on the theory (discussed further below) that the relabeling of generation costs converts them into distribution costs. Tr. at 291-92 and 346-49. This relabeling, however, does not change the fact that costs to provide competitive generation services are being collected in distribution rates.

Likewise, Mr. Lacey, on behalf of IGS and Direct, identified both direct and indirect costs that are being recovered in rates. IGS/Direct Ex. 2. See, also, IGS Exs. 13 and 14. Although the Commission did not accept the analysis of IGS and Direct that much more should be assigned and allocated to the riders,[2] this critique does not change the fact that Ohio Power is recovering at least the direct costs identified by Ohio Power that it and everyone else agreed are recovered in rates.

At a minimum, therefore, it is uncontested that Ohio Power incurs and recovers in distribution rates $4.7 million in costs directly attributable to the provision of default service. These costs are both known and quantified. Likewise, Ohio Power incurs $1.2 million in direct costs directly attributable to the support of competitive supply. IGS Ex. 3

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[2] According to the Commission, Mr. Lacey did not follow the Commission's direction in the ESP IV Order because he did not factor choice program costs into his recommendation. Opinion and Order, ¶ 184.Mr. Lacey concluded the costs of supporting competitive suppliers are monopoly costs of the utility and a distribution service. IGS/Direct Ex. 2 at 44. The reason is important: if these costs concern distribution service, netting them from the costs associated with the provision of competitive supply is improper. Id. Thus, Mr. Lacey did not fail to factor choice costs into his recommendation because there was nothing to factor.

at Ex. DMR-2. Again, these costs are both known and quantified. In the case of the latter, the only dispute is whether they should be netted against the amount to support default service. IGS/Direct Ex. 2 at 44 (arguing that it is improper to net costs to support competitive suppliers from the costs to support default service). Even if that offset is proper, there remains $3.5 million of known and quantifiable costs that should be removed from distribution rates and collected and refunded under the Retail Reconciliation Rider and SSO Credit Rider. Thus, the finding that "there is no basis upon which to conclude that [Ohio Power's] distribution rates include known, quantifiable costs that should be allocated to the [Retail Reconciliation Rider]" is not supported the uncontroverted record. Due to this error, the Opinion and Order violates the requirements of R.C. 4903.09, and the Commission should grant rehearing and properly populate the Retail Reconciliation Rider and SSO Credit Rider.[3]

B. The Opinion and Order is unreasonable because it finds that an analysis of known and quantifiable costs to provide default service and the customer choice program was incomplete because the analysis did not factor choice program costs as to the Retail Reconciliation Rider and the SSO Credit Rider when the record does not support that finding, in violation of R.C. 4903.09

In addition to the estimate of the costs to provide default and choice service provided by Ohio Power, the Commission also had a separate estimate provided by IGS and Direct. The IGS/Direct estimate showed that those costs were in excess of $64 million. IGS/Direct Ex. 2. The Commission rejected that recommendation on the ground that it was incomplete because the supporting witness did not offset choice program costs against the costs Ohio Power incurred to provide default service. Opinion and Order, ¶

[3] It is also uncontroverted that Ohio Power will collect in distribution rates costs such as call center costs that should be allocated to the Retail Reconciliation Rider. IGS Ex. 3 at Ex.DMR-2. On rehearing, the Commission should require Ohio Power to provide an estimate of those allocable costs.

184. That finding misstates the record: in fact, the witness explained in detail why offsetting those costs was incorrect. The Commission, thus, erred in its factual finding and improperly failed to address the merits of the analysis. Accordingly, the Commission should grant rehearing, correct its determination regarding the analysis, and find that Ohio Power incurs at $64 million in known and quantified costs that are illegally recovered in distribution rates.

Under R.C. 4903.09, the Commission must base its findings on the record. The record in this case provides a detailed explanation as to why the costs that Ohio Power incurs to provide default service is $64 million. IGS and Direct's witness, Mr. Lacey, identified direct and indirect costs to be assigned and allocated for recovery through the Retail Reconciliation Rider. These costs were drawn from Customer Accounts captured in FERC Accounts 901-905, Customer Service and Information captured in Accounts 906-910, Administrative and General Costs captured in Accounts 920-931, and Depreciation and Amortization costs captured in Account 403. IGS/Direct Ex. 2 at 36. This resulted in a "pool of resources" of $190 million to be assigned and allocated. Applying allocators based on direct assignment, revenue, and customer count, Mr. Lacey concluded that $64.3 million should be charged to SSO customers through the Retail Reconciliation Rider and distributed back to all customers through the SSO Credit Rider. Id. at 37 and Appx 1. At current shopping rates, standard service offer customers would incur a bypassable charge of $0.0057/kWh, and all customers would receive a credit of $0.0015/kWh. Id.

Without discussion of the merits of the costs that were identified, the Opinion and Order finds instead that the whole analysis can be ignored on the basis that the IGS

witness did not factor in choice costs. Opinion and Order, ¶ 184. The claim that IGS fails to acknowledge costs to serve choice customers, however, is patently wrong: IGS recognized that there were such costs, but they are not properly offset against the costs that should be recovered through the Retail Reconciliation Rider. IGS/Direct Ex. 2 at 42-43. The reason why offsetting the costs of providing choice service is incorrect is equally obvious: The services, which competitive suppliers pay for through multiple fees, are instances in which Ohio Power is acting as the sole provider of those services. For instance, competitive suppliers can receive metering information from only Ohio Power. Similarly, only Ohio Power can effectuate a change in generation supplier. Unlike the costs associated with the standard service offer, which are declared a competitive service by Ohio law, therefore, the services for supporting choice remain monopoly services regulated by R.C. Chapter 4909 and paid for by competitive suppliers.

On the record before the Commission, the Commission erred when it concluded that the analysis offered by IGS and Direct was incomplete. To correct the error, the Commission should grant rehearing, correct its determination regarding the analysis, and find that Ohio Power incurs $64 million in known and quantified costs that are illegally recovered in distribution rates.

C. The Opinion and Order is unlawful and unreasonable because it authorizes Ohio Power to recover costs that Ohio Power incurs to supply a competitive product or service in distribution rates in violation of R.C. 4909.15, 4928.02, and 4928.05

The Staff, Ohio Power, and OCC agreed that Ohio Power is collecting costs to support its default service in distribution rates. At hearing, the Staff attempted to relabel

these costs as distribution costs. Staff Ex. 3 at 9. They clearly are not.[4] Alternatively, the Staff and, belatedly, Ohio Power stated that these costs should be socialized, and OCC joined the argument by noting that the Stipulation would protect non-shopping customers from paying more for generation service. Staff Ex. 1 at 31 and Staff Ex. 3 at 9-11; Ohio Power Ex. 4 at 3-4 and Initial Post-Hearing Brief of Ohio Power in Support of the Joint Stipulation and Recommendation at 31 (June 14, 2021) ("Ohio Power Initial Brief"); Initial Brief by Office of the Ohio Consumers' Counsel at 9 (June 14, 2021) ("OCC Initial Brief"). Without addressing any of these claims, the Opinion and Order appears to agree that these costs are not distribution costs, but nonetheless permits Ohio Power to avoid the legal outcome of that finding by permitting Ohio Power to continue to collect these costs in distribution rates. That authorization is unlawful.

In 1999, S.B. 3 "restructured Ohio's electric-utility industry to foster retail competition in the generation component of electric service." Industrial Energy Users-Ohio, 117 Ohio St.3d 486, 487 (2008). The foundation for competition was established by requiring "the three components of electric service — generation, transmission, and distribution — to be separated." Id. Initially in a transition step, S.B. 3 required the monopoly electric utilities to separate their business lines by function, i.e., distribution, transmission, and generation, and adopt corporate separation plans to prevent cross-subsidies across those functions. R.C. 4928.31(A). "In short, each service component was required to stand on its own." *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 452-53 (2004). Consequently, the Commission is under a legal requirement to

[4] The Commission correctly did not fall for this relabeling. That decision was correct because a finding relabeling generation costs as distribution costs would constitute reversible error. Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486, 490-91 (2008).

properly assign the collection of costs of the provision of a competitive service such as default generation service to the customers that use that service, not distribution customers generally. R.C. 4909.15, 4928.05, and 4928.31. See Initial Brief of Interstate Gas Supply, Inc. at 12-18 (June 14, 2021) ("IGS Initial Brief") (legal authority and related discussion incorporated by reference).

As the uncontroverted evidence demonstrates, Ohio Power collects $4.7 million in known and quantified costs to provide default service, but those amounts are and will continue to be collected in distribution rates. IGS Ex. 3, 13, and 14; Tr. at 36, 49-53,158-59; Tr. at 290-92; and Tr. at 346-49. Two riders to properly assign those costs exist, but remain unused because of Ohio Power's decision to bargain a resolution of this case on a term that leaves the riders at zero. Under Ohio law, that bargain cannot stand because it rests on an unlawful assignment of costs to distribution rates. Monongahela Power Co. v. Pub. Utils. Comm'n of Ohio, 104 Ohio St. 3d 517 ¶ 26 (2004) (Commission cannot approve terms of a settlement that are contrary to law).

Further, state policy directs the Commission to ensure that competitive electric services are not subsidized by noncompetitive services. R.C. 4928.02(H). The Opinion and Order, however, permits unlawful "socialization" of costs to continue, thereby resulting in a default service price that does not cover its costs. This artificially low price leads to two unreasonable outcomes. First, the price signals provided by the standard service offer that the Commission relies on to promote customer choice are wrong. Second, the socialization of the costs of providing the standard service offer is a cross-subsidy that could have long-term effects on the rollout of other competitive services by delaying or preventing entry and curtailing active presence in the market. IGS Initial Brief

at 16-18 (discussion incorporated by reference). Thus, the authorization for Ohio Power to set the Retail Reconciliation Rider and SSO Credit Rider at zero is unreasonable as well as illegal.

Because the Opinion and Order permitting the recovery of costs to provide a competitive product is illegal and unreasonable, the Commission should grant rehearing and populate the rider based on the record, as noted previously.

D. The Opinion and Order is unlawful and unreasonable because it failed to address the arguments showing that approving a provision of the stipulation leaving the rates of the Retail Reconciliation Rider and the SSO Credit Rider at zero was unlawful and unreasonable and deferred population of the riders to a future case, all in violation of R.C. 4903.09

The Opinion and Order found that the provision leaving the Retail Reconciliation Rider and SSO Credit Rider at zero does not violate any important regulatory principle or practice based on the Staff Report recommendation and testimony supporting the Stipulation. Opinion and Order, ¶ 183. The remainder of the discussion of this provision of the Stipulation consisted of (1) a paragraph in which the Commission found that there was no known and quantifiable costs of default service collected in rates and in which the Commission rejected the results of Mr. Lacey's analysis that Ohio Power is collecting $64 million in known and quantifiable costs of providing the standard service offer in distribution rates and (2) a paragraph excusing Ohio Power's inadequate job of measuring those costs. Id., ¶ 184 and 185. The Opinion and Order then concludes its decision to set the riders at zero with a recommendation that interested parties can try again in another rate proceeding or file a complaint. Id., ¶ 186.

The Commission's approval of the provision of the Stipulation setting the Retail Reconciliation Rider and SSO Credit Rider at zero presents a variation on a theme that

the Ohio Supreme Court has already rejected. In re Suvon, LLC, 2021-Ohio-3630 (Ohio Sup. Ct. Oct. 14, 2021). In the *Suvon* case, the Commission issued an order providing FirstEnergy Advisors with a competitive supplier certificate. It based that decision on a Staff report, which summarized the assertions of applicants, but failed to address the detailed objections concerning corporate separation presented by the OCC and competitive suppliers. On appeal, the Court reversed the Commission's order because it violated R.C. 4903.09.

In reversing the Commission's order, the Court explained that R.C 4903.09 requires the Commission to issue findings of fact and a written opinion setting forth the reasons for its decisions based on the findings of fact. In performing this duty, the Commission must make "independent findings" that satisfy the applicable statutory requirements. Id., ¶ 25. "Of course, PUCO can adopt reports prepared by its staff and incorporate them into its order, but these reports must satisfy the requirements of the statute; that is, they must contain sufficient factual findings and conclusions of law." Id., ¶ 22. Separately, the Court also found that deferring the issues that were required to be addressed in the certification proceeding to another proceeding violated the Commission's duty to make the statutory determination required to approve an application for a certificate to provide competitive energy services. Id., ¶ 33.

Like the decision in *Suvon*, the Commission relies on a Staff Report that is far from complete. The Staff Report presented two findings. The first finding was that Ohio Power did not examine all cost factors and therefore "Staff cannot recommend a charge that is not just and reasonable." Staff Ex. 1 at 31. The second had nothing to do with the Staff investigation of Ohio Power's application; instead, the Staff inserted a policy conclusion

that the standard service offer is a default service available to all customers. Id. (This statement apparently served as the basis for the Staff position that these costs should be socialized. Staff Ex. 3 at 9.)

The hearing developed the investigation that went into the Staff Report. At hearing, the Staff witnesses who described the Staff's investigation of Ohio Power's response to the Commission order in the ESP IV Order stated that the investigation consisted of three interrogatories that indicated that Ohio Power's efforts were incomplete. Upon receipt of those responses, the Staff undertook no further investigation even though it is common for the Staff to issue additional data requests when it determines they are necessary. Tr. at 356-57 and 416-17; IGS Exs. 13, 14, 15, and 16. Staff also assumed that the costs Ohio Power incurred to provide default service should be socialized through distribution rates, but did not address the legal requirements governing distribution rates. Staff Ex. 3 at 9.

The testimony provided by OCC and Ohio Power does not fill in the missing pieces left by the Staff Report. OCC supported setting the riders at zero because it would keep the default service rate low. OCC Ex. 1 at 9-10. It provides no insight into what costs are recovered and whether those costs are recovered legally in distribution rates, and it ignores the fact that residential customers receiving generation service are paying too much. The testimony offered by Ohio Power likewise offers little in the way of substantive support for the provision setting the riders at zero. In defending the provision, the witness for Ohio Power in support of the Stipulation offered it was a negotiated position and that there might be some basis for socializing these costs. Ohio Power Ex. 4 at 4. This less than rousing endorsement does not negate the fact that there are known and quantifiable

costs that Ohio Power is recovering for the provision of distribution service or provide any basis to find that the recovery is consistent with the requirements of Ohio law.

The burden thus fell to competitive suppliers to demonstrate the costs Ohio Power was recovering in distribution rates for the provision of default generation service. Based on the suppliers' efforts, the record shows agreement from Staff, Ohio Power, and OCC that known and quantifiable costs are being incurred to support default service; that these costs are generation-related costs, and that these costs are being recovered in distribution rates. IGS Ex. 3, 13, and 14; Tr. at 36, 49-53,158-59; Tr. at 290-92; Tr. at 346-49.

Besides showing that Ohio Power is collecting generation-related service costs in distribution rates, IGS also showed that authorization of the recovery of those costs in distribution rates was beyond the legal authority of the Commission and that such recovery promoted adverse economic effects on consumers, competitors, and competition in the generation service market by permitting a utility to collect generation costs in monopoly distribution rates. See IGS Initial Brief at 12-22 and Joint Reply Brief of Interstate Gas Supply, Inc. and Direct Energy Business, LLC and Direct Energy Services, LLC at 3-19 (July 6, 2021) ("IGS/Direct Reply Brief"); IGS/Direct Ex. 2. Although IGS raised these issues through its testimony and briefs, the Commission does not address any of the legal or economic consequences of approval of the provision setting the riders at zero in its decision.

In substance, then, the Opinion and Order's decision to leave the riders at zero is based on (1) a factual finding that the record does not support a determination of known and quantifiable costs that no party supported; (2) agreement with a Staff Report that

effectively excuses Ohio Power's indifference to the Commission's prior order and advances a policy claim wholly at odds with the requirements of Ohio law and based on a relabeling of generation costs as distribution costs, (3) ignoring the legal and economic problems that the provision setting the riders at zero presents, and (4) kicking the determination that was supposed to be made in this case that distribution rates are just and reasonable to some future case, or switching the burden of proof to the competitors to show that distribution rates are unreasonable.

Thus, the decision setting the riders at zero presents the same kinds of problems the Court found sufficient to reverse and remand the Commission's decision in *Suvon*.

First, the decision fails to address many of the material issues the Commission must decide. These include the legal impediments to such recovery and the economic fallout that will result.

Second, the Staff Report on which the Commission relies falls short of showing why costs that the parties agree are incurred to support default service should be recovered in distribution rates. This failure occurred because the Staff did not proceed beyond the fact that Ohio Power's efforts to address the prior Commission order to identify the costs to provide default service and support competitive suppliers was incomplete. Nonetheless, there is no disagreement that Ohio Power is recovering some known and quantifiable costs of generation supply in distribution rates. The question is not whether these costs are collected, but the degree to which they remain embedded in distribution rates. On that question, the Staff investigation stopped short. If Ohio Power's response was incomplete, then the efforts of the Commission and its Staff should be directed at reversing that failure, not excusing it. Yet, the incomplete report and investigation have

become the basis for a finding that known and quantifiable costs that parties agree are being recovered through distribution rates cannot be properly assigned for recovery in the riders.

Third, any reliance on the Staff's characterization (and the other parties' reliance on Staff's characterization) that these costs are distribution related or should be socialized is misdirected. A Staff recommendation cannot alter the law that requires functionalization of distribution, transmission, and generation costs and prohibits the recovery of generation costs in distribution rates. Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486, 490-91 (2008) and Wingo v. Nationwide Energy Partners, 2020-Ohio-5583 (Ohio Sup. Ct. 2020) (Commission cannot impose policy determination that would violate Ohio law).

Finally, the suggestion that this wrong can be righted by a future case or by complaint confirms the error of the Opinion and Order because the Commission, under R.C. 4909.15(E), must determine that the approved rates are just and reasonable in this case.[5] *Suvon*, ¶ 33.

In summary, the decision to leave the riders at zero follows the same path that the Court rejected in *Suvon*. By relying on a Staff Report that is contradicted by the record that known and quantifiable costs of a competitive service are recovered in distribution rates, failing to address the detailed legal and economic problems with the recommendation to leave the riders at zero, and kicking a determination of the

[5] Additionally, the recommendation that parties seek reasonable rates through a complaint case unfairly shifts the burden of demonstrating that rates are reasonable from Ohio Power to the complainant. Compare R.C. 4928.18 (burden to show that rates are reasonable is on the applicant) and R.C. 4905.26 (burden to show that rate or practice is unreasonable is on the complainant).

reasonableness of rates to another proceeding, the Commission violates the requirement of R.C. 4903.09. Based on this error, the Commission should grant rehearing.

Further, there is sufficient evidence in the record to support setting the riders at initial levels to begin to bring rates into compliance with Ohio law. Accordingly, the Commission should direct Ohio Power to file tariff changes that populate the riders in amounts that are demonstrated to be currently collected in distribution rates for the support of default service.

III. The Opinion and Order is unlawful and unreasonable because the decision authorizing the continuation of a discriminatory switching fee for which there is no evidence of cost and that penalizes competitive suppliers and their customers is without a reasoned explanation in violation of R.C. 4903.09

Over the objection of IGS, the Commission found that a fee assessed by Ohio Power when a customer switches to a competitive supplier but not to itself when a customer returns to default service did not violate an important regulatory principle. Opinion and Order, ¶¶ 187-90. This determination should be reversed on rehearing because the record demonstrates that the factual findings on which it is based are unsupported by the record. As a result, the Commission failed to exercise the independent judgment required by R.C. 4903.09.

Generally, electric distribution customers have the option of taking competitive electric generation service from either a competitive supplier or Ohio Power, and they can switch providers to the extent permitted by their contracts.[6] As demonstrated at the hearing, the underlying factual circumstances of a service change from a competitive

[6] Under Ohio law, a customer may be returned to default service because of a supplier default as well. R.C. 4928.14.

supplier to default service are no different from those applicable to a change from default service to service from a competitive supplier or switches from one competitive supplier to another. The financial consequences to suppliers and Ohio Power, however, are materially different. Under its tariff, Ohio Power charges a $5 switching fee for customer switches from default service to a competitive supplier (after the first such switch) or from supplier to supplier. However, the tariff provides that Ohio Power does not charge that fee to itself when a customer elects to return to default service or is returned to default service. Tr. at 337-44. The record is devoid of any credible support for the cost differences.

In fact, Ohio Power did not provide any evidence that the fee is cost-justified. Instead, it argued that the fee was reasonable because it had been previously approved. Ohio Power Initial Brief at 51-54. Likewise, the Staff did not investigate the costs underlying switching. See discussion below.

Given that the burden of showing that charges are reasonable rests with Ohio Power, it was error to find that the continuation of the charge is reasonable without some evidence to justify the cost is not lawful. R.C. 4903.09 and 4909.18.[7]

Moreover, given that the record demonstrates that switches back to default service are identical to the alternatives, the tariff discriminates against switches to competitive suppliers without any reasonable justification.

There is no apparent disagreement as to the important regulatory principle that is presented by the discriminatory switching fee. Under R.C. 4905.35, "[n]o public utility shall

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[7] IGS is aware that the Commission has permitted other utilities to continue these fees over the objections of intervenors. Those decisions, however, are incorrect because they permit, over objections properly before the Commission, an electric distribution utility to evade the requirement to justify its rate levels. R.C. 4909.18 and 4909.19.

make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage." Separating similarly situated customers into two classes and providing a price reduction for only one class constitutes an "'undue or unreasonable preference' prohibited by R.C. 4905.35." *Ameritech Ohio v. Pub. Util. Comm.,* 86 Ohio St.3d 78, 81 (1999). Likewise, it is the 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 (emphasis added).

Although there is apparent agreement on the applicable principle, the Commission rests its finding permitting disparate treatment of customers returning to default service from those choosing a competitive supplier on an allegation by a Staff witness that a switch in service from the standard service offer to a competitive supplier is not a comparable process or cost to a switch in service from a competitive supplier to the default service. Opinion and Order at ¶ 190.[8]

Reliance on that statement is not a sound basis for the Commission's determination that the discriminatory switching fee does not violate an important regulatory principle.

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[8] In its summary of the parties' positions, the Commission notes that Ohio Power contended in its reply brief that there was a difference between a customer that elects to return and one that returns due to a supplier default. Opinion and Order, ¶ 188. The Commission, however, does not offer that statement in Ohio Power's reply brief as the basis for its decision, and for good reason. The argument advanced by Ohio Power addresses customers that default to default service; it ignores that other customers elect default service but avoid the charge. Reply Brief of Ohio Power Company in Support of the Joint Stipulation and Recommendation at 55-59 (July 6, 2021) ("Ohio Power Reply Brief"). The treatment of customers that elect and those that default to the standard service offer, however, is identical. Thus, Ohio Power's brief ignores the testimony of the Staff witness who agreed that a customer can elect to return to default service and returns under the same terms and conditions that would be applicable to a switch to a competitive supplier. Tr. at 338-40. Given that Ohio Power offered no cost support for the fee, eliminating it is reasonable.

First, the record demonstrates that the circumstances and process of moving a customer to or from a competitive supplier and returning a customer to default service are identical. As with a move to a competitive supplier, a customer can return to default service because of a supplier default or can elect to return to default service. Tr. at 337-39. In either case, the customer change is conducted under the same terms and conditions applicable to an enrollment with a competitive supplier. Tr. at 340. Further, the customer electing to return to default service is afforded the same recission rights that the customer has when moving to a competitive supplier. Compare Tr. at 344 to Rule 4901:1-21-06, Ohio Admin. Code.

Second, the record demonstrates there was not any investigation whether cost differences justified the disparate treatment. The Staff did not investigate the costs of switching as part of its investigation. Tr. at 335 (Staff investigation was limited to the treatment of the revenue from supplier charges). Indeed, Staff did not investigate whether any cost exists at all to switch a customer in any direction. Instead, Staff assumed there was an underlying cost associated with the fees imposed on competitive suppliers. Tr. at 391. Likewise, Ohio Power did not submit evidence, nor did Staff seek evidence, to address the discriminatory application of the switching fee. IGS/Direct Ex. 2 at 46-47; Tr. at 393. More generally, Ohio Power confirmed that "[e]xcept as identified in Exhibit DMR-2, the Company is not aware of differences in cost of providing distribution service to shopping and non-shopping customers." IGS Ex. 14, Response to N. In summary, the only evidence supporting the Commission's decision to permit the discrimination to continue is the Staff's uninvestigated assertion that differences in the switches justifies the discriminatory switching fee, and that assertion is directly contradicted by the record.

Basing a finding on an unsupported assumption is not a lawful application of the Commission's authority. In a contested matter, "the commission shall file, with the records of such cases, 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. As discussed previously, this statutory requirement imposes on the Commission an obligation to "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence." In re Columbus S. Power Co., 128 Ohio St. 3d 512, ¶ 30 (2011). In particular, R.C. 4903.09 requires more than a faith that the Staff "got it right." As noted previously, the Commission "can adopt reports prepared by its staff and incorporate them into its order, but these reports must satisfy the requirements of the statute; that is, they must contain sufficient factual findings and conclusions of law." In re Application of Suvon, LLC, 2021 Ohio 3630 ¶ 22 (Ohio Sup. Ct. 2021).

The decision to leave the switching fee in the tariff does not meet the requirements of R.C. 4903.09. The Commission based its finding on a Staff witness assertion that there are differences between a switch back to default service and a switch to a competitive supplier. Opinion and Order, ¶ 190. That assertion, however, is not supported by the evidence. The record demonstrates that the Staff did not address switching costs in its investigation but assumed that differences justified the discriminatory fee. Moreover, the Staff witness on which the Commission rests its decision admits that the circumstances and processes for handling a change in which a customer elects to return to default electric service are exactly the same to those for handling a switch to a competitive supplier, right down to recission rights. Ohio Power offers nothing to suggest otherwise.

Thus, the finding that differences in the switching processes justify the discriminatory fee is not supported by the facts in the record of this case.

Because the Commission erred when it refused to remove the discriminatory switching fees applicable to competitive suppliers, it should grant rehearing and reverse its determination that the Stipulation does not violate an important regulatory principle. Further, the Commission should order Ohio Power to amend its tariff to remove the unlawful switching fee since there is no cost-based justification for the unduly discriminatory charge.

IV. The finding that a shadow billing proposal did not violate any important regulatory principle or practice was unlawful and unreasonable

The Stipulation provides that Ohio Power will give to OCC aggregate data concerning residential sales of competitive suppliers relative to what consumers would have paid had they taken default service. The provision is inconsistent with the Commission's repeated decision refusing to implement various forms of shadow billing. Additionally, the data provided by Ohio Power will be heavily manipulated. By Ohio Power's own estimate, the calculations would be subject to about eighty potential exclusions. Tr. at 144-157; IGS Ex. 6.

Despite these issues, the Commission found that the provision did not violate any important regulatory principle or practice and was not "insufficiently clear." Opinion and Order, ¶ 198. Avoiding the import of its repeated orders that rejected requiring various forms of shadow billing, the Commission also explained that a company could agree to engage in shadow billing. Id.

The finding that the shadow billing provision does not violate the third prong of the review standard for stipulations should be reversed on rehearing because (1) the proposal before the Commission is unreasonable, and (2) the decision fails to address the sound reasons for refusing to require shadow billing in prior orders.

A. *The Opinion and Order is unlawful and unreasonable because it fails to remove a provision requiring Ohio Power to provide aggregate billing data that violates important regulatory practices or principles*

The provision of the Stipulation regarding shadow billing provides that Ohio Power will provide aggregate calculations of the relative gains or losses of shopping customers relative to the standard service offer. Joint Ex. 1 at 11. While the data will be summarized in a form similar to a form attached to the Stipulation, the real details of what would be provided were identified in discovery and provided to parties as IGS Ex. 6. That exhibit details numerous adjustments to exclude those customers that are dual billed or in the consolidated supplier billing pilot, rate ready accounts, and customers that are on any form of a fixed bill such as a customer that receives budget billing. In all, the data would be subject to about eighty items that may be adjusted.

Further, the only criterion considered is price. By limiting the comparison to price differences, the manipulated summary Ohio Power will provide fails to account for other attributes available in the retail market, like renewable energy, fixed prices, and other value-added services.

Moreover, the adjustments only remove "certain types of charges *that are not in line with the cost per kWh*." Ohio Power Ex. 6 at 18 (emphasis added); Tr. at 152-153. Thus, a cost per kWh renewable product would only be removed from the analysis if it is labeled as such in the line item description provided to Ohio Power from the CRES

provider. *See id.* at 155. Notably, there is not a requirement for the CRES provider to include this description in the Commission rules, which certainly raises concerns regarding the number of customers' bills that will not be excluded from the analysis and further corrupt the data. (To fix the problem created by the inarticulate definition used for adjustments, the cost to provide information to trigger the appropriate exclusions would fall on competitive suppliers, a cost that the parties supporting the Stipulation ignore.)

The Commission is bound to base its decision on the record before it and explain its rationale based on that record. R.C. 4903.09. To support a finding that the Stipulation does not violate any important regulatory rule or practice, the Commission must find some credible evidence to support the claim that the shadow billing does not violate an important regulatory practice or principle. The only finding by the Commission on the merits of the proposal acknowledges "we do not here address the value of such information." Opinion and Order, ¶ 198. Yet if the information is of little or no value, as the record demonstrates, then its collection or dissemination is nothing more than a form of disinformation.

The Commission itself has an interest in the provision of accurate and truthful information. Yet the Opinion and Order approves the spreading of valueless information or misinformation. This result does not and cannot comport with the conclusion that the Stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission should grant rehearing, reverse its finding that the shadow billing provision requiring Ohio Power to provide aggregate data to OCC does not violate any important regulatory practice or principle, and modify the Stipulation to remove the provision.

B. The Opinion and Order is unlawful because the Commission decision finding that the provision that requires Ohio Power to provide aggregate billing data to OCC does not violate an important regulatory practice or principle represents a break with Commission precedent that is without a reasoned explanation

As an administrative entity, the Commission is governed by Title 49 and guided by its precedents addressing the issues presented to it. "Although the Commission should be willing to change its position when the need therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law." Cleveland Elec. Illuminating Co. v. Pub. Utils. Comm'n of Ohio, 42 Ohio St. 2d 403, 431 (1975). The failure to follow its prior orders without adequate justification constitutes an abuse of discretion. Office of Consumers' Counsel v. Pub. Utils. Comm'n of Ohio, 10 Ohio St. 3d 49, 50 (1984).

The Commission's prior decisions concerning various forms of shadow billing have uniformly rejected an industrywide requirement for the practice. In three separate decisions issued in 2021 alone, the Commission rejected rule proposals from OCC to require the utilities to conduct shadow-billing analyses because better resources already exist. In the Matter of the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code, Case No. 17-1842-EL-ORD, Entry on Rehearing at ¶ 35 (Jan. 27, 2021) (emphasis added) (also rejecting OCC's request to make shadow billing publicly available); In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code, Case No. 19-1429-GA-ORD, Finding and Order at ¶ 89 (Feb. 24, 2021) and id., Entry on Rehearing at ¶ 20 (Apr. 21, 2021). The list of other cases in which the Commission rejected other shadow-billing proposals for

similar reasons is long. See, e.g., In re Application of Ohio Power Company to Initiate Phase 2 of its gridSMART Project and to Establish the gridSMART Phase 2 Rider, Case No. 13-1939-EL-RDR, Opinion and Order at ¶ 79 (Feb. 1, 2017) (rejecting Ohio Partners for Affordable Energy's request for shadow billing) and In re the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc., Case No. 18-218-GA-GCR, et al., Opinion and Order at ¶ 54 (Dec. 18, 2019) (rejecting OCC's shadow billing recommendation which the Commission had also previously rejected in Duke's 2015 audit case regarding its GCR rider).

Apart from the consistent line of cases rejecting shadow billing, the reasons for doing so remain unchanged. In contrast to aggregate shadow billing data, and especially the heavily manipulated data that Ohio Power has promised to provide, tools such as the Commission's Energy Choice Ohio website benefit customers by providing a forward-looking comparison of the current product offerings for an individual customer. IGS/Direct Ex. 2 at 54.

Wholly absent from the Opinion and Order is any suggestion that the Commission's prior decisions were in error or that what Ohio Power has promised to provide is of any value. In fact, the Commission itself states it is not considering the value of the information to be provided. Opinion and Order, ¶ 198.

In fact, the only apparent consideration the Opinion and Order gives to the Commission's prior decisions is a statement that it previously approved an agreement to engage in shadow billing. Id. An agreement in another case, however, cannot justify the

change from precedent since it provides no evidence that the subsequent decisions rejecting shadow billing, including three decisions issued in 2021, are in error.[9]

Finally, given the long history of decisions and rulemaking orders rejecting the provision of shadow billing data, the Order will encourage parties to use stipulations to circumvent precedent and the Commission's rulemaking process. In addition to subverting the efficiency of the Commission's administrative processes, such a result will lead to continual re-litigation of issues.

Accordingly, the Commission should grant rehearing, reverse its finding that the shadow billing provision requiring Ohio Power to provide aggregate data to OCC does not violate any important regulatory practice or principle, and modify the Stipulation consistently with that decision.

V. The Opinion and Order is unlawful and unreasonable because it permits Ohio Power to recover in distribution rates the costs it incurs to market customer-sited generation in violation of R.C. 4928.47 and R.C. 4903.09

The Opinion and Order treats costs to conduct marketing of customer-sited generation, in an amount as yet unknown because the Staff did not investigate it and Ohio Power claims these costs are distribution-related, as "part of [Ohio Power's] functions as an electric distribution utility." Opinion and Order, ¶ 194. Relabeling costs to support the marketing of generation projects to customers as distribution costs does not make them so. Because this relabeling results in unlawful and unreasonable rates, the Commission

[9] The decision cited by the Commission in the Opinion and Order approved a stipulation, a term of which provided that a decision accepting a settlement shall not be interpreted or otherwise relied upon as authority for utilizing the process as a template for stipulations in other proceedings. In re Columbia Gas of Ohio, Inc., 12-2637-GA-EXM, Joint Motion to Modify Orders Granting Exemption and Motion for Bifurcation of Capacity and Balancing Issues on an Expedited Basis, Joint Ex. 1 at 14 (Oct. 4, 2021). Thus, reliance on this stipulation term regarding shadow billing places the Commission in the awkward position of violating its own order approving a term of the stipulation.

should grant rehearing, determine the amount Ohio Power included in test year expenses for the marketing of customer-sited generation projects, and adjust rates to remove the effects of those amounts.

It is not debated that Ohio Power is not permitted to bill and collect costs related to customer-sited generation projects in distribution rates. While an EDU may enter into an agreement with a mercantile customer for the purpose of constructing a customer-sited renewable energy resource, subject to Commission approval, "any direct or indirect costs" associated with the project shall be paid for solely by the EDU and the mercantile customer. R.C. 4928.47(A) and (B). "At no point shall the commission authorize the utility to collect, nor shall the utility ever collect, any of those costs from any customer other than the mercantile customer or group of mercantile customers." R.C. 4928.47(B).

The record in this case establishes that Ohio Power, through its customer representatives, marketed customer-sited generation projects to mercantile customers during the test period. Tr. at 978-79 and 983-84; IGS/Direct Ex. 2 at 55, *citing* IGS Ex. 19. Ohio Power made no attempt to identify the costs associated with these efforts, alleging that engaging customers with competitive retail electric service opportunities is part of Ohio Power's "normal customer service work." Tr. at 971-72. In a manner that should be familiar to the Commission, Ohio Power relabels these marketing costs as "incidental" to distribution service. IGS Ex. 19.

Although it would parrot Ohio Power's relabeling of the costs as incidental, Staff did not investigate the number of discussions or meetings held by Ohio Power regarding these efforts, the number of Ohio Power employees in the discussions, the hours and corresponding wages of the employees involved, or any other costs such as

administrative or support staff involved in the meetings. Staff Ex. 3 at 14; Tr. at 328 and 330-31.

Citing Staff's uninvestigated claim, the Commission treated the costs as "traditional customer service." Opinion and Order, ¶ 194, citing Staff Ex. 3 at 14.

The relabeling of generation-related costs as something they are not is reminiscent of the Commission decision to allow cost recovery for the research and development costs of an integrated gas combined cycle plant from distribution customers. Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486 (2008). In that case, the Commission sought to defend its decision to allow recovery by recasting the costs to develop the plant as an ancillary service subject to the Commission's authority. Id. at 490. The Ohio Supreme Court rejected that recharacterization, stating:

> The statutory definition of ancillary service, set forth in R.C. 4928.01(A)(1), contains examples of services that involve the control and regulation of the flow of electricity, not the planning and construction of generation facilities. Because R.C. 4928.03 explicitly declares electric generation to be competitive retail electric service and R.C. 4928.05 expressly provides that electric generation is no longer subject to the commission's regulation, the classification of AEP's proposed electric-generation facility as a distribution-ancillary service is contrary to law.

Id. at 490-91.

Similar reasoning applies here. Selling customers on the benefits of working with Ohio Power to develop customer-sited generation projects is not the provision of distribution service. Rather it is a cost associated with the development of customer-sited generation. Under R.C. 4909.15 and 4928.05, there is no authority to allow Ohio Power to recover customer-sited generation costs in distribution rates. Any authorization must be through a customer-specific recovery mechanism approved under R.C. 4928.47.

Accordingly, permitting these costs to be recovered in distribution rates is a legal error the Commission should address on rehearing.

Further, reliance on the Staff's uninvestigated conclusion that the costs are incidental violates the directive of R.C. 4903.09 that requires the Commission to base its finding on its independent judgement. Reliance on an uninvestigated claim does not meet that requirement. *Suvon*, ¶¶ 22 and 25.

If left unchanged, moreover, the Commission's error will harm the competitive electric generation market. Because the Commission has signed off on the collection of these costs to market customer-sited generation in distribution rates, Ohio Power's efforts are being subsidized by distribution ratepayers to the detriment of other vendors that cannot leverage the legal monopoly over distribution service that Ohio Power holds. IGS/Direct Ex. 2 at 24. Thus, the failure to properly segregate the marketing costs violates the state policy encouraging the Commission to prevent subsidies and abuse of market power and harms both competitors and competition in the renewable generation market. R.C. 4928.02.

Because the Commission has erred when it permitted costs associated with marketing customer-sited generation to be collected in rates, the immediate remedy is to require Ohio Power to identify these costs. Once identified, the next step will be to require Ohio Power to file revised rates to remove the effects of inclusion of these costs.

VI. Conclusion

The Commission is required to authorize rates that are just and reasonable based on findings of fact supported by the record. The findings and related decisions identified in this memorandum are instances in which the Opinion and Order fails to satisfy those

legal requirements. The findings and decisions, therefore, should be reversed and corrected on rehearing.

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Certificate of Service

I hereby certify that a true copy of this document was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on December 17, 2021. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

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Summary: App for Rehearing Application for Rehearing of Interstate Gas Supply, Inc. electronically filed by Regan Donoughe on behalf of Interstate Gas Supply, Inc.

Certificate of Service

I hereby certify that a copy of the Appendix of Appellant Interstate Gas Supply, LLC, was served in two volumes on the following parties via electronic transmission, hand-delivery, or first-class United States Mail on June 20, 2023.

/s/ Evan Betterton

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