

**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. 23-23-EL-SSO**

**IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY FOR APPROVAL  
OF CERTAIN ACCOUNTING AUTHORITY.**

**CASE No. 23-24-EL-AAM**

**OPINION AND ORDER**

Entered in the Journal on April 3, 2024

**Attach.**

**A**

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## I. SUMMARY

{¶ 1} The Commission modifies and approves the Stipulation and Recommendation filed by the signatory parties and authorizes Ohio Power Company d/b/a AEP Ohio to implement an electric security plan for the period of June 1, 2024, through May 31, 2028.

## II. DISCUSSION

### A. Procedural History

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} Most recently, in Case No. 16-1852-EL-SSO et al., the Commission modified and approved, pursuant to stipulation, AEP Ohio's Application for its fourth ESP to commence on June 1, 2018, and continue through May 31, 2024, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO et al. (*ESP 4 Case*), Opinion and Order (Apr. 25, 2018); Second Entry on Rehearing (Aug. 1, 2018).

{¶ 5} By order issued November 17, 2021, the Commission approved, pursuant to a joint stipulation and recommendation, AEP Ohio's Application to increase its base distribution rates. *In re Ohio Power Co.*, Case No. 20-585-EL-AIR, et al., (*Base Rate Case*), Opinion and Order (Nov. 17, 2021); Second Entry on Rehearing (Feb. 8, 2023).

{¶ 6} On January 6, 2023, in the above-captioned case, AEP Ohio filed an Application that, if approved, would establish the Company's fifth ESP (ESP 5) for a period to commence on June 1, 2024, and continue through May 31, 2030, as well as an application for approval of certain accounting authority to implement aspects of the proposed ESP.

{¶ 7} A technical conference regarding AEP Ohio's ESP Application was held on February 7, 2023.

{¶ 8} By Entry dated March 2, 2023, a procedural schedule was established, including deadlines for intervention, discovery, and testimony on behalf of intervenors and Staff. The Entry also scheduled a prehearing conference to occur on June 22, 2023, and an evidentiary hearing to commence on July 10, 2023.

{¶ 9} On March 21, 2023, the attorney examiner scheduled five in-person local public hearings which occurred throughout AEP Ohio's service territory on April 13, April 26, May 1, May 22, and May 23, 2023. In addition, by Entry dated April 17, 2023, the attorney examiner scheduled a virtual public hearing via Webex for May 9, 2023.

{¶ 10} Consistent with the requirements of R.C. 4928.141(B), the Commission directed AEP Ohio to publish notice in a newspaper of general circulation in each county in the utility's certified territory of the public hearings. On June 9, 2023, AEP Ohio filed its proof of publication, including an affidavit, for the public hearings.

{¶ 11} The following parties filed for and were granted intervention in these proceedings: Ohio Energy Group (OEG), Armada Power, LLC (Armada), The Ohio Manufacturers' Association Energy Group (OMAEG), Citizens' Utility Board of Ohio (CUB), Ohio Partners for Affordable Energy (OPAE), Calpine Retail Holdings, LLC (Calpine), Nationwide Energy Partners (NEP), Ohio Hospital Association (OHA), ChargePoint, Inc. (ChargePoint), Walmart Inc. (Walmart), Interstate Gas Supply, LLC (IGS), Environmental Law & Policy Center (ELPC), The Kroger Company (Kroger), One Energy

Enterprises Inc. (One Energy), Ohio Environmental Council (OEC), Ohio Consumers' Counsel (OCC), Retail Energy Supply Association (RESA), Ohio Energy Leadership Council f.k.a. Industrial Energy Users-Ohio (OELC), Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (jointly, Constellation), Ohio Telecom Association (OhioTel), Ohio Cable Telecommunications Association (OCTA), Northeast Ohio Public Energy Council (NOPEC), Enel North America, Inc. (Enel), and Direct Energy Business Services LLC and Direct Energy Services LLC (collectively, Direct Energy).

{¶ 12} Prehearing conferences were held, as scheduled, on June 22, 2023, and September 11, 2023.

{¶ 13} Pursuant to Entries issued on June 27, 2023, July 18, 2023, and August 16, 2023, recognizing that the parties were pursuing settlement negotiations, the attorney examiner granted motions for the extension of certain deadlines and ultimately continued the hearing to commence on October 10, 2023. The August 16, 2023 Entry directed, in part, that in the event that a stipulation has not been filed, Staff's testimony is due by September 8, 2023; scheduled a prehearing conference for September 11, 2023; directed that upon execution of a stipulation, the parties should file the stipulation on the docket and testimony in support of the stipulation, by any party, should be filed within three business days and testimony in opposition of the stipulation be filed within 10 business days of the filing of the stipulation.

{¶ 14} On September 6, 2023, AEP Ohio filed a Joint Stipulation and Recommendation (Stipulation) for the Commission's consideration, which, if approved, would resolve all of the issues raised in these proceedings. The Stipulation was executed by AEP Ohio, Staff, OEG, Enel, Walmart, IGS, RESA, OEC, OP&E, ELPC, OELC, OMAEG, CUB, Direct Energy, OHA, Armada and Kroger (Signatory Parties). OhioTel also signed the Stipulation as a non-opposing party.

{¶ 15} On September 11, 2023, testimony in support of the Stipulation was filed by Jamie L. Mayhan for AEP Ohio, Christopher Healey on behalf of Staff, Travis Kavulla for Direct Energy, and John Smith on behalf of RESA.

{¶ 16} On September 20, 2023, testimony in opposition to the Stipulation was filed by Joseph P. Buckley, Robert B. Fortney, James F. Wilson, Colleen Shutrump, Ramteen Sioshansi, Andrew R. Tinkham, James D. Willaims on behalf of OCC; and Muralikrishna Indukuri on behalf of Constellation. While no supplemental testimony was filed by Calpine, the original direct testimony of Becky Merola, filed on June 9, 2023, was used at hearing.

{¶ 17} The evidentiary hearing commenced on October 10, 2023, and after five days of hearings concluded on November 3, 2023.

{¶ 18} Initial briefs were filed by AEP Ohio, Staff, OPAE, CUB, jointly by OMAEG and Kroger, One Energy, OELC, Walmart, IGS, Direct Energy, OEC, ELPC, OCC, Constellation, Calpine and RESA on December 1, 2023. Reply briefs were filed on December 22, 2023, by all parties that filed an initial brief.

## ***B. Procedural Issues***

### **1. MOTION FOR PROTECTIVE ORDER**

{¶ 19} On June 9, 2023, OELC filed a motion for protective order regarding portions of the original direct testimony of Matthew Brakey, which was also filed on that day. OELC states that the unredacted copy of the testimony filed under seal with the Commission includes Exhibit MB-1, which is a document produced by AEP Ohio in discovery and designated by the Company as “confidential” in accordance with a Protective Order between AEP Ohio and OELC. OELC states that it takes no position as to whether the exhibit and information it contains constitute nonpublic information under Ohio law but asks that it be protected as required under the Protective Agreement.

{¶ 20} No memoranda contra OELC’s motion for protective order were filed.



{¶ 21} Having reviewed the relevant documents and filings, the attorney examiner finds that OELC's unopposed motion for protective order is reasonable and should be granted. Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Opinion and Order. Until that date, the Commission's Docketing Division should maintain, under seal, the information filed confidentially with the motion.

## **2. ONE ENERGY – REVIEW OF RULING ON MOTION FOR A REASONABLE PROTECTIVE AGREEMENT AND INTERLOCUTORY APPEAL**

{¶ 22} On July 31, 2023, One Energy filed a motion to establish a reasonable protective agreement. In its motion, One Energy argued that it has been unable to enter into a reasonable protective agreement with AEP Ohio that would facilitate One Energy obtaining and reviewing discovery responses that the Company has designated as confidential, competitively-sensitive confidential, and/or restricted access confidential (RAC). One Energy took issue with three particular provisions in paragraph three of AEP Ohio's proposed protective agreement: (a) a provision prohibiting all CRES employee-witnesses from viewing RAC information; (b) a provision that allows a CRES employee to view competitively-sensitive confidential information only if the employee is not engaged in competitive pricing, sales, or marketing, or involved in other CRES-related business activities of One Energy; and (c) a provision requiring One Energy to give AEP Ohio notice of an individual who will view protected information, which it asserts grants AEP Ohio virtual veto power over individuals to be granted access. One Energy stated that it offered to enter into a protective agreement with the Company but that the agreement proposed by AEP Ohio contains provisions that unreasonably preclude One Energy, its employees, and consultants from accessing information needed to evaluate AEP Ohio's Application. On August 9, 2023, AEP Ohio filed a memorandum contra One Energy's motion. One Energy filed a reply in support of the motion on August 16, 2023.

{¶ 23} As part of an Entry issued August 16, 2023 (the August 16 Entry), the attorney examiner denied One Energy’s motion to establish a reasonable protective agreement. The attorney examiner ruled that the Company’s proposed protective agreement imposed reasonable limits on competitor employee-witnesses viewing highly confidential information. The Entry noted that One Energy’s witness, Jereme Kent, serves as president of a CRES provider that actively competes in the marketplace and that it would be virtually impossible for anyone in that position to completely forget or disregard this information after viewing it. Further, the Entry found the objection process and dispute resolution outlined in the proposed protective agreement to be reasonable.

{¶ 24} Ohio Adm.Code 4901-1-15 sets forth the Commission’s requirements for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule or unless the appeal is certified to the Commission pursuant to paragraph (B) of the rule. Ohio Adm.Code 4901-1-15(B) specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling that represents a departure from past precedent and an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, if the Commission should ultimately reverse the ruling in question.

{¶ 25} On August 21, 2023, One Energy filed an interlocutory appeal of the attorney examiner’s decision in the August 16 Entry to deny its motion to establish a reasonable protective agreement. One Energy asserted that permitting the August 16 Entry’s ruling regarding its motion to establish a reasonable protective agreement to stand deprived One Energy of its rights to discovery and due process, thus resulting in immediate and undue prejudice. One Energy claimed that its interlocutory appeal was entitled to automatic certification under Ohio Adm.Code 4901-1-15(A) because it “sought a reasonable protective

agreement” and the August 16 Entry denied the motion. One Energy stated that allowing the ruling to stand would create a dangerous precedent that could allow AEP Ohio to anoint itself a “discovery gatekeeper” in future proceedings. One Energy argued that One Energy itself is not a CRES provider, but rather it is its subsidiaries that function as CRES providers. One Energy stated that whether its witness in this case, Jereme Kent, is the president of any One Energy affiliate is irrelevant to the issue. One Energy responded to AEP Ohio’s earlier concerns about sharing information with “competitors” by pointing out that AEP Ohio is an EDU that cannot engage in CRES. One Energy stated that the effect of the August 16 Entry is that intervening parties in these types of cases will be forced to hire third-party experts when they have in-house subject matter experts. Finally, One Energy stated that the attorney examiner failed to adequately consider the points it raised in its reply in support of its motion, as the August 16 Entry was docketed shortly after the reply itself was filed, which resulted in undue prejudice.

{¶ 26} As part of an Entry issued September 18, 2023 (Interlocutory Appeal Entry), another attorney examiner denied One Energy’s interlocutory appeal. First, the attorney examiner ruled that One Energy’s appeal did not fall under any of the enumerated categories of Ohio Adm.Code 4901-1-15(A) which would entitle a party to an immediate interlocutory appeal as of right and disagreed with One Energy’s attempt to liken the August 16 Entry to the denial of a motion for protective order. The attorney examiner noted that One Energy made no attempt to demonstrate satisfaction of the criteria for certification of an interlocutory appeal under Ohio Adm.Code 4901-1-15(B). Regardless, the attorney examiner found that even if such attempt was made, the arguments laid out in the appeal failed to demonstrate any new or novel question of law or policy or show that the ruling was a departure from past precedent. The attorney examiner found One Energy’s distinctions between itself and its CRES subsidiary to be unavailing for the same reasons described in the August 16 Entry. The Interlocutory Appeal Entry further noted that One Energy’s wholly-owned subsidiary, which has no officers or directors of its own, is managed by One Energy and, as AEP Ohio demonstrates, Mr. Kent is identified personally in OE

Retail Services LLC's CRES application, highlighting Mr. Kent's vast experience in the electric industry. *In re the Application of OE Retail Services LLC*, Case No. 20-654-EL-AGG, Application (Apr. 15, 2022). Based upon these interrelations, the attorney examiner found the reasoning in the August 16 Entry sound. With respect to the timing between the filing of One Energy's reply in support and the issuance of the August 16 Entry, the attorney examiner found One Energy's arguments to be inconsequential, as nothing in the reply in support altered the sound reasoning for denial of the motion.

{¶ 27} The procedural history of the motions and rulings on this topic are expansively detailed above because in its post-hearing brief, One Energy again challenges the soundness of the denial of its motion in the August 16 Entry and in the denial of its interlocutory appeal. One Energy's reasoning for this appeal is virtually the same as that contained in those earlier filings. One Energy again asserts that in denying its motion for a reasonable protective agreement, the attorney examiner denied its right to broad discovery in the case. One Energy reiterates that One Energy Enterprises, Inc. is not a CRES provider and that Mr. Kent is not an employee of a CRES provider. One Energy argues that its proposed protective agreement provides adequate protections to prevent its employee witnesses from improperly using the protected information. One Energy states that because AEP Ohio is an EDU, it is prohibited from providing CRES. Thus, One Energy questions why AEP Ohio would need to protect information from "competitor-employee witnesses." One Energy restates its belief that the August 16 Entry and denial of its interlocutory appeal will force intervening parties to hire third-party witnesses even though they may have an in-house expert available to testify. (One Energy Br. at 16-22.)

{¶ 28} Finally, One Energy argues that the attorney examiner unreasonably and unlawfully applied Ohio Adm.Code 4901-1-15(A) and that its interlocutory appeal should have been certified to the Commission as a matter of right. One Energy states that Ohio Adm.Code 4901-1-15(A) entitles a party to an immediate interlocutory appeal as of right from any ruling that "denies a motion for a protective order." One Energy argues that

because its filing was captioned as a “motion” for a reasonable “protective agreement” and that the motion was denied, it was entitled to an immediate appeal as of right. One Energy believes that the attorney examiner effectively rewrote the rule to deny the appeal. One Energy, therefore, requests that the Commission reverse the relevant rulings made by the attorney examiners in both the August 16 Entry and the Interlocutory Appeal Entry and then to adopt One Energy’s modifications to the protective agreement. (One Energy Br. at 22-23.)

{¶ 29} AEP Ohio answers that One Energy’s restated challenges of the rulings made in the August 16 Entry and the Interlocutory Appeal Entry should again be rejected. AEP Ohio restates the arguments made in opposing One Energy’s original motion and its interlocutory appeal. First, AEP Ohio notes that Mr. Kent manages One Energy, and that One Energy is identified as the manager of its CRES subsidiary. Second, AEP Ohio reiterates that once confidential information is released there is no way to ensure that it will later be disregarded, even if that has been “agreed to.” Third, in response to One Energy’s argument that it cannot be a competitor of AEP Ohio because AEP Ohio is an EDU, the Company still possesses considerable confidential information that could cause competitive harm to it and other parties. Fourth, AEP Ohio responds that their protective agreement does not prohibit internal witnesses from viewing RAC or other protected information and testifying in proceedings, but prudently attempts to shield such confidential information from access. AEP Ohio notes that the lack of access to this information did not preclude Mr. Kent from filing direct testimony in this case. Finally, AEP Ohio argues that One Energy identifies no harm it suffered from the attorney examiners’ rulings. Mr. Kent filed testimony and One Energy makes no attempt to identify how his having access to confidential information may have changed that testimony. (Co. Reply Br. at 76-799.)

{¶ 30} With respect to One Energy’s contention that it was entitled to an automatic interlocutory appeal under Ohio Adm.Code 4901-1-15(A)(1), AEP Ohio first states that the issue is moot, as the Commission’s rules allow One Energy to “raise the propriety” of the

rulings in its initial brief, which it did. Thus, AEP Ohio notes that the Commission could grant One Energy relief without reversing the interlocutory appeal. Regardless, AEP Ohio states that the ruling on this issue in the Interlocutory Appeal Entry was correct – the denial of One Energy’s “motion to establish a reasonable protective agreement” is not the same as the denial of a motion for a protective order. AEP Ohio points to Ohio Adm.Code 4901-1-24(A), which defines a motion for a protective order as being made by a “party or person from whom discovery is sought” and who is then requesting an order “...necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden.” This, AEP Ohio asserts, is not the same as One Energy’s motion and, therefore, the August 16 Entry does not constitute a denial of a motion for a protective order. (Co. Reply Br. at 76.)

{¶ 31} The Commission affirms the rulings made by the attorney examiners in both the August 16 Entry and the Interlocutory Appeal Entry. In its post-hearing brief, One Energy makes the same arguments that were previously made and rejected by the attorney examiners. With respect to the original denial in the August 16 Entry, we agree with the reasoning outlined by the attorney examiner therein, as well as the affirmation provided in the Interlocutory Appeal Entry. It would be impossible for any individual to completely forget or disregard the type of information requested by One Energy in discovery. While Mr. Kent may not be an employee of a CRES provider, he manages One Energy, which in turn directly manages its CRES subsidiary. As noted by the attorney examiner in the August 16 Entry, AEP Ohio’s revised protective agreement allowed for counsel, whether in-house or outside, to view all levels of confidential information and thus One Energy could fully utilize any information for cross-examination purposes. The Commission agrees that the protective agreement proposed by AEP Ohio imposed reasonable limits on witnesses viewing highly-sensitive and confidential data and that One Energy did not demonstrate that the proposed revisions were unreasonable. Further, we agree with the ruling made in the Interlocutory Appeal Entry that One Energy’s arguments as to the timing between its reply in support and the issuance of the August 16 Entry were inconsequential, as nothing

in the reply in support altered the sound reasoning for the denial outlined in the August 16 Entry. (August 16 Entry at ¶ 16-17; Interlocutory Appeal Entry at ¶ 26.)

{¶ 32} We also note our concurrence with the attorney examiner’s denial of certification of One Energy’s interlocutory appeal and ruling that One Energy was not entitled to an interlocutory appeal as of right. Among the instances listed in Ohio Adm.Code 4901-1-15(A) that entitles a party to an immediate interlocutory appeal as of right is a Commission ruling which denies a motion for a protective order. See Ohio Adm.Code 4901-1-15(A)(1). Relatedly, however, Ohio Adm.Code 4901-1-24(A) describes a motion for a protective order as being made by a “party or person from whom discovery is sought” and who is then requesting an order “... necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden” and that may seek relief such as “[d]iscovery [to] be had only on specified terms and conditions.” Regardless of how One Energy titled its pleading, that is not what was sought in One Energy’s motion to establish a reasonable protective agreement. One Energy’s motion did not seek to protect information which it possessed, but rather asked the Commission to impose its desired restrictions upon the release of confidential information maintained by AEP Ohio. This is more akin to a motion to compel rather than a motion for protective order that would entitle a party to an automatic interlocutory appeal. Accordingly, the attorney examiner correctly determined that such a ruling did not trigger the interlocutory appeal as of right under Ohio Adm.Code 4901-1-15(A) and we agree with that decision.

### **3. CHARGEPOINT NOTICE OF WITHDRAWAL**

{¶ 33} As noted in the procedural history above, ChargePoint filed for and was granted intervention in these proceedings.

{¶ 34} On September 26, 2023, ChargePoint filed a notice of withdrawal of intervention in these proceedings. No memoranda contra this notice of withdrawal of intervention were filed.

{¶ 35} The Commission finds ChargePoint’s notice of withdrawal of intervention in this proceeding to be reasonable and hereby grants ChargePoint’s requested withdrawal, such that ChargePoint is no longer a party to these proceedings.

#### **4. ELPC MOTION FOR LEAVE TO FILE TIMELY THE POST-HEARING REPLY BRIEF**

{¶ 36} On January 2, 2024, ELPC filed a motion for leave to file timely the post-hearing reply brief and attached its reply brief to the motion. ELPC states that it did file its post-hearing reply brief on the December 22, 2023, deadline and received confirmation of its filing at that time; however, on December 27, 2023, ELPC received an email notification from the Commission’s Docketing Division that the filing was rejected because the filing did not have Case No. 23-24-EL-AAM on the filing. As ELPC’s offices were closed for the holidays from December 25, 2023 through January 1, 2024, its staff only discovered the issue upon their return. ELPC notes that it emailed a courtesy copy of its reply brief to the attorney examiners and all parties immediately after it was filed on December 22, 2023, and, therefore, no party will be prejudiced by the Commission granting this motion.

{¶ 37} No memoranda contra the motion were filed.

{¶ 38} The Commission finds that ELPC’s motion is reasonable and should be granted. The post-hearing reply brief attached to the filing will be accepted and considered timely filed by the Commission. We agree with ELPC that no party is prejudiced by this ruling, as a courtesy copy of the reply brief was emailed to the attorney examiners and all parties by the December 22, 2023 deadline.

#### **5. ONE ENERGY’S ARGUMENT THAT AEP OHIO’S ESP 5 IS INCOMPLETE**

{¶ 39} One Energy makes an overarching procedural argument that the Stipulation must be rejected because (i) the ESP 5 proceeding is incomplete under Ohio Adm.Code 4901:1-35-03(A) and (C), and (ii) AEP Ohio failed to satisfy its burden of proof. One Energy asserts that under Ohio Adm.Code 4901:1-35-03(A), an application for an ESP is



“...incomplete without a complete set of direct testimony of the electric utility personnel or other expert witnesses written in question and answer format supporting all schedules and significant issues identified by the electric utility.” (Emphasis in original.) Further, under subsection (C) of the rule, One Energy states that AEP Ohio is obligated to provide a “...complete description of the ESP and testimony explaining and supporting each aspect of the ESP” (Emphasis in original) and other identified criteria. One Energy claims that neither the Application nor any testimony supporting the Application are part of the evidentiary record. In support, One Energy highlights the proposed Basic Transmission Cost Rider (BTCR) schedule, which is attached as Exhibit A to the Stipulation. One Energy contends that the proposed tariff is not explained or supported by the Stipulation or any testimony filed in support of the Stipulation. One Energy states none of the direct testimony submitted by parties supporting the Stipulation discusses or explains the Stipulation’s BTCR or addresses the BTCR issues raised by intervening parties in their filed testimony. One Energy also argues that the evidentiary record contains no description of the accounting authority requested by the Company or how that authority might be implemented. One Energy notes that it made a similar oral motion at the evidentiary hearing, which the attorney examiner denied. (One Energy Br. at 4-6; Tr. Vol. I at 148-157.)

{¶ 40} One Energy stresses that the burden of proof in an ESP proceeding rests on the EDU and that in this case AEP Ohio failed to satisfy its burden. One Energy states that R.C. 4903.09 “requires the commission to set forth the reasons for its decisions and prohibits summary rulings and conclusions that do not develop the supporting rationale or record.” *In re the Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698, 121 N.E.3d 320, at ¶24. One Energy notes the lack of sponsorship or admission of any of the testimony supporting the Application, such as was done in other Commission proceedings. *In re the Application of Columbia Gas of Ohio*, Case No. 21-637-GA-AIR, et al., Opinion and Order (Jan. 26, 2023) at 4-5. The result, in One Energy’s estimation, is a Stipulation that incorporates an Application that is not in the evidentiary record and which cannot be legally considered. One Energy is astonished that only one of the 27 initial direct testimonies filed by

intervenors was admitted into evidence. Thus, One Energy states that all of that additional testimony is not available for the Commission to review and assist it in its review of the contested issues in the Stipulation and, therefore, the Commission will not be able to properly set forth the reasons for any decision. One Energy argues that the filing of the Stipulation does not enable AEP Ohio or the Commission to disregard statutory procedural protections and evidentiary requirements. (One Energy Br. at 6-8.)

{¶ 41} AEP Ohio responds that both of One Energy's procedural arguments lack merit. In response to the alleged violations of Adm.Code 4901:1-35-03(A) and (C), AEP Ohio first argues that this argument is untimely to first be raised in a post-hearing brief. AEP Ohio states that the Commission already accepted the Application as properly filed and has litigated the case. AEP Ohio asserts that One Energy merely disputes the sufficiency of the supporting evidence and the terms of the Stipulation. If One Energy felt there were deficiencies in the Application, AEP Ohio states that they should have been raised at a much earlier stage in the proceeding. (Co. Reply Br. at 70-71.)

{¶ 42} With respect to the argument that it failed to meet its burden of proof, AEP Ohio responds that One Energy should have made any such motion to dismiss after the hearing concluded, as a separate written motion under Ohio Adm.Code 4901-1-12. AEP Ohio notes that when One Energy's oral motion to dismiss was denied at hearing, it was made clear that a written motion should be filed on the issue (Tr. Vol. I at 148-157). AEP Ohio also highlights that One Energy ignores the fact that the Application was, in fact, entered into evidence as Company Exhibit 1, in order to provide context for the scope of the initial filing. Testimony supporting the Stipulation was admitted on behalf of AEP Ohio, Staff, RESA, and Direct Energy. AEP Ohio finds One Energy's concern over the lack of additional filed testimonies being admitted into evidence to be curious considering One Energy itself did not offer any testimony on its behalf or ask a single question of AEP Ohio's witness Mayhan or Staff witness Healey. AEP Ohio avers that One Energy continues to disregard the controlling standard for contested settlements. AEP Ohio states that every

party in the case was afforded the opportunity to file testimony in support of or in opposition to the Stipulation in accordance with the attorney examiner's August 15, 2023 procedural entry. However, One Energy chose not to file testimony either for or against the Stipulation. Instead, One Energy decided to use its initial brief to reargue and litigate the position it advanced prior to the settlement phase of the case. AEP Ohio points to a Supreme Court ruling which it argues supports the idea that only advancing a party's litigation position in opposing a Stipulation is not sufficient challenge to the application of the three-part stipulation test and cannot form the basis for rejecting a stipulation. (Co. Reply Br. at 71-72 citing *Ohio Partners for Affordable Energy v. Pub. Util. Comm'n*, 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32; Tr. Vol. I at 154.)

{¶ 43} Finally, as to One Energy's discussions concerning the filed testimony that was not admitted into evidence at the hearing, AEP Ohio asserts that this testimony is part of the record but not part of the evidentiary record for purposes of the Stipulation. AEP Ohio states that this testimony, both in support of and against the Application, provide context and background for comparison of items that the Signatory Parties addressed in the Stipulation. AEP Ohio avers that it was repeatedly made clear at the evidentiary hearing that the purpose of the hearing was only to enter into the record evidence relating to the terms of the Stipulation and provide information sufficient to address the three-part test. Rather than fully engage in this proceeding, AEP Ohio submits that One Energy chose not to file any testimony in opposition to the Stipulation and, instead, wants to argue about the terms of the Application rather than the negotiated and sometimes modified terms of the Stipulation. (Co. Reply Br. at 73.)

{¶ 44} The Commission rejects the arguments made by One Energy that this proceeding is incomplete and that the Stipulation should be rejected due to AEP Ohio failing to meet its burden of proof. One Energy made similar arguments in an oral motion to dismiss at the evidentiary hearing, which the attorney examiners denied, and we deny the renewed arguments in this Opinion and Order (Tr. Vol. I at 154). The Commission first

notes that One Energy is mistaken in its assertion that the Application was not admitted into the evidentiary record – as pointed out by AEP Ohio, it was not only incorporated into the Stipulation (which was admitted as Joint Exhibit 1) but also independently admitted into the record as Company Exhibit 1. One Energy asserts that the Application may have been admitted into the record “not [] for the truth of the matter asserted,” but no objection to its admission was made on such hearsay grounds by One Energy or any other party, nor was it admitted into the record with such qualifying language (One Energy Reply Br. at 4; Tr. Vol. I at 74). Thus, we have an Application admitted into the evidentiary record independently, along with it being incorporated into a Stipulation which is supported by the testimony of AEP Ohio witness Mayhan, Staff witness Healey, Direct Energy witness Kavulla, and RESA witness Smith (Joint Ex. 1; Co. Ex. 1, 2; Staff Ex. 1; Direct Energy Ex. 1; RESA Ex. 1). Each of the witnesses providing testimony in support of the Stipulation were available for cross-examination by any party and One Energy declined to ask any questions of AEP Ohio witness Mayhan, the Company’s witness testifying in support of the Stipulation. In fact, One Energy only asked minimal questions of RESA witness Smith (Tr. Vol. I at 84-92). The attorney examiners accepted the filed Application as complete enough to commence the litigation process and we performed an analysis as to whether AEP Ohio met its burden of proof within this Opinion and Order. Finally, the Commission notes that our consideration and resulting approval of ESP 5 is based upon the entire record in this proceeding, including all testimony and exhibits admitted into evidence, rather than only the information contained in the Application or Stipulation. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*FirstEnergy ESP 3 Case*), Second Entry on Rehearing (Jan. 30, 2013) at 7. For the reasons enumerated in this section, and all those outlined throughout this Opinion and Order, we reject these arguments by One Energy.

### *C. Applicable Law*

{¶ 45} R.C. Chapter 4928 provides an integrated system of regulation in which specific provisions were designed to advance the state policy of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In considering these cases, the Commission is always cognizant of the challenges facing Ohioans and the electric power industry and is guided by the policy of the state as established by the General Assembly in R.C. 4928.02.

{¶ 46} As noted above, R.C. 4928.141 provides that EDUs must provide customers with an SSO, consisting of either an MRO or an ESP. The SSO is to serve as the EDU's default service. R.C. 4928.143 sets forth the requirements for an ESP.

{¶ 47} Additionally, R.C. 4928.143(C)(1) provides that the Commission is required to determine whether an ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of the same, is more favorable in the aggregate as compared to the expected results that would otherwise apply for an MRO under R.C. 4928.142.

### *D. Summary of the Application and Public Testimony*

{¶ 48} In its Application, AEP Ohio requests approval of an ESP that would begin on June 1, 2024, and continue through May 31, 2030. As part of the ESP, AEP Ohio proposes to continue or modify a number of established riders, as well as to continue the competitive bid process (CBP) for supplying its SSO load. The Application states that the Company approached the proposed ESP seeking to address a range of issues that go beyond focusing solely on the SSO for CRES. Therefore, the proposed ESP addresses provisions relating to its distribution services, including the continuation of a number of riders (with modifications), such as the Distribution Investment Rider (DIR) and Enhanced Service Stability Rider (ESSR), which the Company avers will facilitate improvements to the distribution network and reliability. The Application also proposes several new ESP

components. Among other proposals in the Application, AEP Ohio seeks approval of a Customer Experience Rider, the Ohio First Rider, and the Rural Access Rider, which the Company believes will facilitate deployment of additional technologies and infrastructure to further modernize and improve the distribution system and which will benefit its customers. AEP Ohio asserts that the Application proposes programs that will further promote retail electric competition, economic development and job retention, the alternative energy resource requirements of R.C. 4928.64, energy efficiency proposals consistent with applicable Revised Code provisions; and preserve competition for retail electric services in the Company's territory. (Co. Ex. 1 at 2-3.) As noted above, AEP Ohio and numerous other parties filed a Stipulation which recommends that the Commission modify and adopt the Company's Application as set forth in the Stipulation, and which results in some of the new riders and programs proposed in the Application being withdrawn (Joint Ex 1 at 3).

{¶ 49} At the local public hearings held in April and May 2023, approximately 20 individuals expressed their views regarding AEP Ohio's ESP Application. In addition to this testimony, numerous public comments were filed in these cases. The majority of the public testimony and filed comments raised opposition to AEP Ohio's Application. The primary concern among those testifying in opposition to the Application centered upon what they view as unreasonable rate increases anticipated to occur over the life of the ESP. Witnesses expressed concern that residential customers already struggling to meet financial obligations cannot withstand additional increases in the price of electricity. Numerous witnesses noted that recent inflation and COVID-related issues will only exacerbate the financial stress that new rate increases will put on struggling customers. Relatedly, many witnesses felt that consumers that cannot afford electricity will then suffer additional harms, such as medical issues, resulting from an inability to maintain reliable electric services in their residences. Many witnesses also pointed to the record revenue and profits reportedly earned by AEP Ohio and certain of its employees, finding it incongruous with requesting additional rate increases at this time. Other topics mentioned by witnesses included an aversion to continued Ohio Valley Electric Corporation (OVEC) recovery by the Company,

the need for a more rapid transition to renewable energy, and the lack of transparency on behalf of AEP Ohio, both in terms of how funds are utilized and how customers are billed. The public comments filed in the case docket largely mirrored those expressed at the local public hearings.

*E. Summary of the Stipulation*

{¶ 50} As previously stated, on September 6, 2023, a Stipulation was filed for the Commission's consideration. The Stipulation notes that it was intended by the Signatory Parties to resolve all of the issues raised in these proceedings (Joint Ex. 1 at 1). The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation.

**(1) ESP 5 TERM**

{¶ 51} The Signatory Parties recommend that the Commission modify and adopt the amended Application in these cases as set forth in the Stipulation. The term of the ESP would be abbreviated to commence on June 1, 2024 and end May 31, 2028. The Signatory Parties recommend that the Commission find that the Application meets the SSO filing requirements and that the Commission should grant any needed waivers. As set forth below, the Signatory Parties recommend that the Commission find that the statutory ESP v. MRO test continues to be fulfilled for the term of ESP 5. Further, the Signatory Parties recommend, consistent with the Application and supporting testimony, that the Commission approve all necessary and appropriate accounting authority to implement the riders and rate mechanisms being recommended through the Stipulation. (Joint Ex. 1 at 3.

## **(2) STANDARD SERVICE OFFER AND COMPETITIVE BIDDING PROCESS**

1. The Signatory Parties<sup>1</sup> agree to modify the CBP as part of this Stipulation for the term of ESP 5 to include an option for full requirements auction products with a true-up to account for a proxy capacity price (if needed) during the term of ESP 5 (capacity pass-through mechanism): if the base residual auction (BRA) clearing prices for the planning years covered by all products offered in the SSO auction (any of a 12-month, 24-month, or 36-month product) are not known at least five business days before the scheduled SSO auction, there will be a tentative/proxy capacity price component for the delivery year for which the results of the BRA are not known that will be true-up/reconciled to the actual BRA capacity price. The auction manager, in consultation with Staff, will establish the proxy capacity price based on objective criteria in advance of the applicable auction. Percentage of Income Payment Plan (PIPP) auction products may require a modified approach. If the results of the BRAs for all products to be offered in a given SSO auction will become known soon after that scheduled SSO auction (or the results of the BRAs for all products to be offered in a given SSO auction will be known just before that scheduled SSO auction), the auction manager, in consultation with AEP Ohio, may make a timely decision to delay the scheduled SSO auction by up to 30 days. The scheduled SSO auction would only be delayed if following the delay, the BRA results would then be available for every planning year relevant to the delivery term(s) of the product(s) available in that SSO auction. A given SSO auction would not be delayed more than one time. If a delay is made to the SSO

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<sup>1</sup> As reflected by IGS' comments in Case No. 23-781-EL-UNC, IGS does not support the capacity pass-through proposal. But, in light of the provisions in Paragraph III.B.2, IGS agrees not to oppose adoption of Paragraph III.B.1 by the Commission as part of the Stipulation package. If the Commission adopts the capacity pass-through mechanism as part of the Stipulation in this case and decides not to modify or reverse or modify implementation of the mechanism in another docket, it will remain in effect for the ESP 5 term and IGS agrees not to consider that result a modification to the Stipulation or otherwise attempt to withdraw from the Stipulation.



auction typically scheduled to occur in spring (usually held in March), a delay to the scheduled PIPP request for proposal (RFP) may be made and/or the typical timelines for the PIPP RFP may be condensed. In the case of a delay, the PIPP price-to-beat would be made available to bidders as soon as practicable and no later than the deadline for bidders to submit the required qualification materials. If it is not practically possible to release the PIPP price-to-beat by the deadline for bidders to submit the required qualification materials due to a delay in the scheduled SSO auction, a delay to the scheduled SSO auction will not be made. The actual capacity price will be substituted for the capacity proxy price (CPP) and charged to SSO customers during the applicable PJM delivery year. Once the actual capacity price is known, AEP Ohio shall promptly calculate and post what the SSO auction clearing price would have been had the actual capacity price been known, and shall follow the same methodology as exists today for translating the SSO auction clearing price into the Generation Energy Rider and Generation Capacity Rider rate. AEP Ohio commits to provide interested stakeholders information on how the proxy price will work. (Joint Ex. 1 at 3-5.)

2. The Signatory Parties recommend that all intervenor proposals for SSO/CBP modifications in this case be dismissed without prejudice but may be considered in other SSO-related proceedings. If a final order is subsequently issued by the Commission in another proceeding that modifies the SSO/CBP (including an order that modifies or reverses the capacity pass-through mechanism), the Company consents to continuing jurisdiction and agrees to waive its right to withdraw under R.C. 4928.143(C)(2)(a) provided that such SSO/CBP modifications apply only during the ESP term, allow for timely and adequate cost recovery along with a reasonable time to implement the modification. The Signatory Parties (including the Company) reserve their rights to advocate specific positions as part of separate Commission dockets concerning such SSO-related determinations, including opposing such proposals and/or filing for rehearing

and appeal as they deem appropriate, provided, however, that the Signatory Parties agree that any modifications to the SSO/CBP in such other proceeding(s) (including an order that modifies or reverses the capacity pass-through mechanism) would not be considered a modification of the Stipulation that triggers the right to withdrawal under the Stipulation. (Joint Ex. 1 at 5-6.)

3. The Company's proposed Governmental Aggregation Standby Rider will be withdrawn with prejudice for the ESP 5 term (Joint Ex. 1 at 6).

### **(3) BASE RATE CASE COMMITMENT**

5. The Company will file a base distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025. Nothing in the settlement limits the Company from filing additional base rate distribution cases during the ESP 5 term. (Joint Ex. 1 at 6).
6. The Company will recover a return on and of its prudently incurred capital investment in the new customer information system (CIS) and its incremental operation and maintenance expenses associated with the new CIS through its next base distribution rate case. AEP Ohio shall be entitled to defer incremental operation and maintenance expenses and, if applicable, capital carrying charges on any CIS plant in service prior to the date certain in the next base distribution rate case. The capital carrying charge used in the deferral will reflect AEP Ohio's most recent debt issuance rate (five percent), property tax and amortization expenses. AEP Ohio may recover that deferral either through base distribution rates or a future rider, subject to demonstration that the functionality detailed below is available. The amount of CIS expenditures for future recovery is subject to a reasonableness and prudence review.
  - Within 30 days of approval of the Stipulation and quarterly thereafter, AEP Ohio shall meet with RESA, Staff and other interested stakeholders to discuss issues related to the implementation of the CIS and its timeframes, and

including items enumerated in the Stipulation. These quarterly meetings will continue after the go-live date of the CIS until the next base distribution rate case filing. This collaborative group will timely discuss regulatory issues related to the CIS implementation rollout, including whether additional approvals, waivers, or determinations by the Commission should be obtained prior to implementing certain functionalities.

- As part of the CIS implementation, AEP Ohio shall reflect the following functionalities, subject to compliance with any applicable Commission rules and orders (bill format, customer rights, data restrictions, customer consent, rescission rights, etc.):
  - (a) Ensure that the new system maintains no less functionality than what is available under the current systems and no less functionality than what AEP Ohio agreed to in the Stipulation approved in Case No. 19-1475-EL-RDR;
  - (b) Ensure that the new systems are flexible enough to allow for the introduction of new rate, product, and service offerings without the need for substantial additional investment in information technology (IT) systems;
  - (c) Ensure that AEP Ohio's customers can continue to directly access their interval customer data (15-minute interval) at any time through their customer portal;
    - (i) At least 24 months of energy usage data in 15-minute, 30-minute, or 60-minute intervals made available on a best efforts basis within 24 hours of performing industry-standard validation, estimation, and editing (VEE) processes and no later than thirty (30) days after the end of each meter cycle.

- (ii) At least 24 months of detailed billing history data, including breakdown of all billing line item charges.
  - (iii) Flexible views (for non-residential customer with multiple accounts) with options to: (a) select individual account, (b) group accounts by defined criteria, or (c) access full account list.
  - (iv) Tariff and rebate program information (if applicable).
  - (v) The foregoing data shall be able to be downloaded by the customer into either an .xlsx or.csv format.
  - (vi) No additional fees shall be charged to customers directly accessing or requesting their own data.
- (d) Ensure that the new system will have the functionality to accommodate supplier consolidated billing (SCB) without any Signatory Party agreeing to continue providing SCB. AEP Ohio will not implement changes unless it receives Commission approval for a SCB tariff outlining the process.
- (e) Ensure that the new CIS can provide authorized CRES providers and third parties, i.e., with customers' consent, with access to interval customer data (15-minute interval) for all customers with meters capable of recording interval data. Such data should be made available through both manual actions by an authorized CRES provider or third party and through electronic data interface (EDI) transactions. As part of its next base distribution rate case, AEP Ohio will evaluate the costs, if any, and propose a tariff charge for each method (manual and EDI) as applicable for CRES providers and third parties that request 15-minute data. The data and information used to evaluate the costs associated with this provision will be shared with Staff as part of the rate

case review. As products and services that utilize the 15-minute interval data are developed by CRES marketers and third parties, the Signatory Parties offering such products and services will share updates with the gridSMART Collaborative, once they are publicly available.

- (f) Ensure that the CIS is capable of allowing large commercial and industrial customers to switch on an accelerated basis (three-days), subject to reasonable limits approved by the Commission regarding the number of times a customer can shop within a billing period.
- (g) Ensure that the CIS is capable of allowing residential and small commercial customers to switch to or from the SSO default service on an accelerated basis.
- (h) Ensure that the new system can account for negative loads of both shopping and non-shopping customers, that the negative load data would be properly accounted for and reportable to PJM (consistent with PJM settlement and billing procedures) such that individual customers could participate in net metering and other market programs and their supplier could obtain value for the customer's behind the meter generation in the PJM markets.
- (i) Ensure that CIS is capable of allowing customers that relocate within AEP Ohio's service territory can keep their existing CRES provider when they move to a new location provided that AEP Ohio continues to perform billing for the customer, if and when AEP Ohio's operational plan is approved in Case No. 19-2141-EL-EDI.
- (j) Ensure that the new CIS can calculate banked usage for net metering customers.

- The new CIS system will incorporate secure data sharing functionality. Upon receiving evidence of all necessary customer consent, AEP Ohio's CIS system will be capable of providing to CRES providers and third-party aggregators available customer data sufficient to allow them to enroll residential accounts to participate in the PJM ancillary services market, including but not limited to the customer's peak load contribution. AEP Ohio will evaluate the costs of providing such service, if any, and propose charges, as applicable, for this service in its next rate case.
- AEP may propose tariff charges to be billed to third parties that utilize the AEP Ohio bill to charge for non-jurisdictional items/services. The revenue for those tariff services shall be credited to help offset any charges for data transfer and bill format costs. Signatory Parties reserve their rights to contest the proposed tariff changes.
- AEP Ohio will ensure that it shows past due non-jurisdictional charges separately from AEP Ohio past due regulated charges on its bill through a bill format application within 60 days of executing the Stipulation.

**(4) RATE OF RETURN FOR CAPITAL RIDERS.**

7. The carrying charge for capital riders will reflect the cost of capital approved in the most recent base rate case (Joint Ex. 1 at 11).

**(5) ENHANCED SERVICE RELIABILITY RIDER.**

8. The annual spending cap for the Enhanced Service Reliability Rider (ESRR) will be as follows:

June 1, 2024 through December 31, 2024	\$34 million
2025	\$60 million
2026	\$62 million
2027	\$62 million
Jan. 1, through May 31, 2028	\$26 million

The annual spending caps may be prospectively recalibrated and adjusted as part of any base rate case filed during the ESP term. AEP Ohio's total spending for the ESRR during the period June 2024 through May 2028 shall not exceed \$244 million. For planning purposes and for setting annual ESRR rates only, the ESRR funding level should be set at \$34 million in 2024 (June through December), \$60 million in 2025, \$62 million in 2026, \$62 million in 2027 and \$26 million in 2028 (January through May). Any spending exceeding the aforementioned amounts by year will be deferred without carrying charges for recovery through the ESRR, subject to final reconciliation for the total period up to the \$244 million cap. The ESRR will now be automatically approved 60 days after filing, unless otherwise ordered by the Commission, with all other rider mechanics remaining as they were in ESP 4. (Joint Ex. 1 at 11.)

#### **(6) ELECTRIC TRANSPORTATION PLAN**

9. AEP Ohio agrees to withdraw the proposed incentives available under the Electric Transportation Plan (ETP).
10. The Company will be eligible to recover up to \$300,000 annually for education, outreach, and analytical costs associated with the electric vehicle supply equipment (EVSE) installation requests and tariff provisions referenced below through the existing gridSMART rider.
11. AEP Ohio agrees to implement a preliminary "table top" capacity review process whereby interested parties can submit requests for capacity congestion/availability for EVSE and the Company will make best efforts to respond within five business days based upon these conditions: (a) requests must contain specific address location, anticipated time of connection, and expected amount of load, (b) requests will be limited to a single site/location, and (c) a requester will be limited to submitting five requests per day. AEP Ohio will also analyze and evaluate the implementation of a capacity "heat map" that would be

externally available, which may also encompass Distributed Energy Resources (DER) or other customer equipment. The analysis and evaluation will specifically review the incremental costs that would be required for timely recovery as well as whether/how prevailing cybersecurity concerns can be addressed. The results of this analysis will be shared with the plug-in electric vehicle (PEV) rate design group. During the ESP term, the Company may make a filing under the gridSMART rider for implementation and cost recovery of a capacity “heat map” proposal. Signatory Parties reserve all rights with respect to any such filing.

12. AEP Ohio’s proposed whole house service residential PEV rates on-peak hours will be adjusted to run from 1:00pm to 11:00pm in summer and 6:00am to 10:00am and 4:00pm to 10:00pm in the winter. The off-peak rate will be at 60 percent of the Schedule RS rate while the on-peak rate will be adjusted and designed to be revenue neutral based on the longer off-peak period, as set forth below:

	<b>Distribution</b>
Customer Charge (\$)	10.00
Off-Peak Energy Charge (¢ per kWh)	1.57875
On-Peak Energy Charge (¢ per kWh)	3.74277

AEP Ohio’s proposed separately metered PEV time-of-day (TOD) tariff will be amended whereby on-peak hours will be adjusted to run from 1:00pm-11:00pm in summer and 6:00am to 10:00am and 4:00pm to 10:00pm in the winter. A 40 percent credit will be applied to the customer’s bill for all off-peak PEV kWh usage measured at the separate meter and a 70 percent credit will be applied for a super off-peak period that will run from 12:00am to 4:00am year-round, as set forth below:

	<b>Distribution</b>
All Residential Services Usage	Current Schedule RS Energy rate and Customer Charge apply
Off-Peak Energy Charge (¢ per kWh)	(1.05250
Off-Peak Energy Charge (¢ per kWh)	(1.84188)



The current Public PEV rates will remain unchanged. However, AEP Ohio will incorporate the GS-TOU rate tariff language into the PEV public rate section as set forth in the proposed tariffs attached as Exhibit A to the Stipulation. If the Public PEV enrollment reaches 90 percent of the total 500 customer cap, the Company may file to increase the cap to 750 customers. (Joint Ex. 1 at 13.)

13. AEP Ohio commits to data sharing associated with PEV rates (including anonymized data on EV usage and customer billing from existing PEV tariffs) and to establish a workgroup that will meet semi-annually with interested parties to discuss and analyze cost of service impacts in advance of the Company's next base distribution rate case. The working group will also consider additional time-of-use (TOU) rate offerings, including potential SSO TOU options. Based on collaborative discussions, the Company can file an ATA application to change the PEV TOU rates, which would be automatically approved 30 days after the filing unless otherwise ordered by the Commission. The workgroup's findings will be taken into consideration in the Company's forthcoming rate case.
14. For purposes of the Stipulation, the proposal in AEP Ohio's Application that the utility be responsible for 100 percent of the Contribution in Aid of Construction (CIAC) for customer installations of electric vehicle (EV) chargers shall not be adopted. However, no Signatory Party opposes the Commission considering the issue of a change in Ohio Adm. Code 4901:1-9 through Case No. 22-1025-AU-COI or a rulemaking proceeding. In the Commission's next review of Ohio Adm. Code 4901:1-9, whether in the COI or some other proceeding, for non-residential customers, AEP Ohio will propose and support that electric utilities shall be responsible for 80 percent of the total cost of line extensions for publicly available EVSE, and customers will be responsible for the remaining 20 percent provided the Company is ensured full cost recovery for the 80 percent. Any interested Signatory Parties additionally may submit a letter in the docket in Case No. 22-1025-AU-COI reflecting their agreement consistent with this paragraph.

15. In the event the Commission approves increased levels of financial incentives to offset CIAC costs during the term of this ESP, the Company agrees to annually commit to invest at least \$2 million of capital investment (provided there are sufficient requests to support that level of investment), but will limit such investment to approximately \$4 million of capital investment, for recovery through the DIR to support its proposal to modify the CIAC costs for customer installations of EV charging stations in approved locations. Approved locations are those where there is existing capacity to serve the requested amount of peak load without having to install additional facilities to maintain, protect, upgrade or improve the existing distribution facilities before the point of origin. Approved locations can be provisionally confirmed during a “table top” review at the time of application for service, but will not be officially determined/confirmed based on available capacity at the time of connecting service. (Joint Ex. 1 at 12-14.)

**(7) IRP TARIFFS**

16. The IRP-L demand credit will be reduced to \$8/Kw month on the effective date of the new ESP then to \$7/Kw month in the second year of the ESP, and \$6/Kw month in the third and fourth years of the ESP. There will be an IRP-L minimum demand credit of 70 percent of the PJM BRA price during the entire ESP term.
17. IRP-L and IRP-E customers (including reasonable arrangement participants) may reset their firm service levels annually beginning on May 31, 2024, and on May 31 of each year of the ESP thereafter through written notice to AEP Ohio (without changing their interruptible load subscription under the IRP program). In order to provide the Company with certainty of the benefits of IRP participants, each IRP current or eligible subscriber (all eligible IRP-L, IRP-E and reasonable arrangement IRP participants during the ESP 4 term and including the additional allocation to the ESP 4 participation group) will provide the Company with a written notice of its election within 30 days of the ESP 5 term commencement (i.e.,

by July 1, 2024) whether to participate in the program for the entire ESP term; the total demand of all current and eligible customers submitted by an individual participating sponsor group under this election process will be subject to the total MW caps for that group as modified by the Stipulation. Every eligible ESP 4 participant that elects to participate in the program will secure its status as a participant for the full term of ESP 5. If a customer subsequently gives notice during the ESP term that it can no longer participate, the last 12 months of IRP credits given during the ESP term will be reversed and the customer will have to repay the credits applicable to that time period. The penalty for noncompliance with a curtailment obligation under IRP-L and IRP-E will be 150 percent of the current level (the current penalty calculated for uninterrupted demand times 1.5)

18. The minimum demand credit for IRP-E will be \$5.6/Kw month in the first year of the ESP, \$4.9/Kw month in the second year, and \$4.2/Kw month in the third and fourth years of the ESP term (i.e., 70 percent of the corresponding IRP-L demand credit). IRP-E will not contain a dollar cap. The participation allocation and enrollment system established in the Commission's April 25, 2018 Opinion and Order in the ESP 4 Case for IRP-E will continue with an increase of 55 MW to the existing 160 MW cap (215 MW effective with the new ESP term). As part of the election at the beginning of the ESP 5 term, the smallest allocation from the ESP 4 Opinion and Order shall be increased from 30 MW to 60 MW. The Company will establish a customer portal to create the customer queue of interested customers (including existing IRP-E participants seeking to increase their interruptible load) for available capacity under the IRP program, which process will be made available on the Company's website and notice of the portal being activated will be transmitted to all parties in this proceeding. The customer portal will confirm that the party attempting to register the customer has authority to act on behalf of the customer and will give each customer notice of whether it successfully entered the queue and will document the order of customers that successfully entered the

queue. Staff may inspect the documentation supporting the customer queue, upon request. As any additional customer slots becomes available in the program, customers in the queue will be notified in the same order they successfully entered the queue.

19. The IRP-L and IRP-E tariffs shall include language to clarify that IRP program curtailments may be made by AEP Ohio for operational reasons outside of a PJM emergency, including for localized load constraints.
20. While both IRP-L and IRP-E participants will need to comply with PJM requirements regarding notice and curtailment, IRP-L participants will continue to be required to provide reasonable evidence to the Company that their electric service can be interrupted within ten minutes of receiving notice from AEP Ohio.
21. The IRP-L and IRP-E tariffs will continue to have no annual or daily limitations on interruption hours or events. IRP-L customers will continue to be required to bid their eligible interruptible capacity into the PJM Base Residual or Incremental Auctions, with all capacity and emergency energy revenue (net of administrative fees) returned to the Company for crediting to customers. IRP-E customers shall continue to be allowed to participate in PJM demand response programs and retain all compensation received from PJM. If IRP-L or IRP-E participants are not in a PJM demand response program that requires annual testing, the Company will conduct annual tests consistent with PJM's testing protocols and with reasonable notice to the customer to ensure that IRP-L and IRP-E customers can interrupt down to their contractual firm service levels.
22. Customers that are new to the AEP Ohio service territory as well as existing customers may seek IRP-E participation through a reasonable arrangement or through the extension of an existing reasonable arrangement. Nothing in the Stipulation prohibits a current IRP-E participant from seeking a reasonable arrangement to increase the amount of its interruptible load. In an effort to streamline and expedite reasonable arrangement applications that solely request

IRP-E participation, Staff agrees to make best efforts to complete its review and file a recommendation regarding any such reasonable arrangement application within 60 days of the filing of the application. Such customers will not count toward the program's cap.

**(8) DISTRIBUTION INVESTMENT RIDER**

23. Any investment funded by grants received under the All Ohio Future Fund created by R.C. 126.62 will be excluded from the DIR to the extent of such grant funding. The Company's proposal in the Application to categorically exclude customer work from the DIR annual revenue caps will not be adopted. Nothing in the Stipulation, however, is intended to prevent the Commission in a subsequent proceeding from approving specific capital investments to be recovered through the DIR above the annual revenue caps stated below. Parties reserve the right to take any position in that subsequent proceeding.
24. Based on the latest completed depreciation analysis available and that was submitted to Staff (2022), there is a \$159.246 million imbalance because the theoretical reserve balance is \$159.246 million lower than the actual accumulated depreciation as of December 2022. The DIR currently reflects an annual charge of \$23.727 million, which is above the annual revenue requirement caps (i.e., added on top of the DIR caps). Starting with the new ESP term and until the effective date of new rates in the next distribution base rate case, the \$23.727 million charge will be removed from the DIR and an additional annual credit of \$10 million will be added to the DIR. As a related matter, the Company's annual depreciation expense will be reduced by \$33.727 million in order to limit growth in the imbalance prior to the next base rate case. This change will enable additional capital investment through the DIR to maintain and enhance reliability. The Company commits to perform a full depreciation study in conjunction with its next base distribution rate case. If as a result of the Company's full depreciation

study and Staff's review in the next base rate case, the theoretical reserve balance is higher than the actual accumulated depreciation balance at that time, and Staff determines an adjustment is required, the adjustment will be reduced by \$10 million times the number of years between the effective date of the ESP and the date certain of the rate case, prorated for a partial year as needed (e.g., if the ESP is effective in June 2024 and the date certain is November 30, 2025, then the reduction to the depreciation adjustment will be \$15 million). The adjustment will be reflected in the new base distribution rates and it will be removed from the DIR. Any theoretical reserve imbalance amount that is excluded from the next theoretical reserve adjustment calculation as a result of this provision will remain on the Company's books and be reflected in future theoretical reserve difference calculations that will be addressed in a proceeding subsequent to the next base rate case. The Signatory Parties request an Opinion and Order from the Commission granting the Company accounting authority that accomplishes these changes as illustrated in Exhibit B to the Stipulation.

25. The adjusted annual revenue requirement caps for the DIR for the ESP term will be: 2024 (6-12): \$ 122.75M. This cap will be separate from, and not combined or merged with the previously Commission approved DIR caps for January to May.

June 1 through Dec. 31, 2024	\$122.75 million
2025	\$226 million
2026	\$256 million
2027	\$286 million
Jan. 1 through May 31, 2028	\$131 million

This set of annual caps reflects a reversal of the \$23.727 million annual theoretical reserve charge currently reflected in the DIR and an additional credit of \$10 million, as referenced in the preceding paragraph. The annual DIR revenue caps may be prospectively recalibrated to the level of plant-in-service reflected in rate base and adjusted as part of any base rate case filed during the ESP term.

Likewise, the extent of theoretical reserve included in base rates and in the DIR, respectively, may be adjusted as part of any base rate case filed during the ESP term.

26. There will be no rollover from year-to-year of unused annual DIR revenue requirement amounts.
27. The DIR filing that previously has been effective as of August 1 will now be effective as of July 1 and docketed at least 60 days prior to that date.
28. Consistent with current practice, physical security upgrade costs in FERC accounts 360-374 may be included in the DIR and no operation and maintenance (O&M) physical security upgrade costs shall be included.

**(9) GRIDSMART RIDER**

29. The filing of gridSMART rider quarterly filings will occur at least 60 days prior to their auto approval date.
30. Until such time as Advanced Distribution Management System (ADMS) costs are subsequently reflected in base distribution rates, the Company will recover its ADMS investment through the gridSMART rider. The Company will ensure there is no double recovery between base distribution rates and through the gridSMART rider.
31. AEP Ohio shall calculate the updated gridSMART rider by separating plant and O&M balances for each component of the gridSMART rider to ensure the Company is in compliance with applicable caps. This includes separating the plant balances attributable to each phase of the gridSMART investment.
32. When AEP Ohio files its next base rate case, it shall propose that all used and useful Phase 2 assets and costs in the gridSMART rider will be moved into base rates. Upon the effective date of new rates in that base rate case, only the following costs will be eligible for recovery in the gridSMART rider: ADMS costs

and assets, Phase 3 costs and assets, and any other costs approved for recovery in the gridSMART rider in the Stipulation and/or other future Commission Orders.

33. The Company will be eligible to recover up to \$300,000 annually over the ESP term for the ETP education, as described above, and the potential “heat map” costs referenced above, which is subject to a separate filing.

34. In order to reduce peak demand thereby reducing stress on the distribution grid, reducing costs, and enhancing reliability, the Signatory Parties agree that AEP Ohio will implement a smart thermostat demand response program with an annual cap of \$5,000,000 for the term of the ESP (Smart Thermostat Demand Response Program), which will be administered as follows:

- Residential customers enrolled in the demand response program agree to permit AEP Ohio to call events on their thermostat to reduce (winter) /increase (summer) the temperature of their home by no more than three degrees for no more than four hours during times of peak usage determined by AEP Ohio (Demand Response Event). AEP Ohio has the ability to call Demand Response Events to implement a PJM directive, to protect its distribution system, to limit or avoid distribution outages, to reduce load on localized constrained distribution circuits, and to reduce the coincident peak (CP) demand of the distribution network. AEP Ohio will not bid in the associated demand response into the PJM market. Customers reserve the ability, on their own or through their agent on their behalf (e.g., CRES) to engage in energy efficiency and peak demand reduction activities and/or participate in PJM demand response programs. To the extent that a single smart thermostat cannot be utilized in more than one demand response program, the working group will address how to optimize CRES participation in this Smart Thermostat Demand Response Program, including but not limited to using a portion of the annual \$5,000,000 funding cap to implement a solution.



- AEP Ohio will not subject a customer to more than 16 Demand Response Events in a calendar year, excluding any CRES events being noticed through AEP Ohio's system.
- Residential customers can take advantage of an initial \$75 incentive toward the purchase of a new qualifying smart thermostat or an initial \$50 incentive for residential customers with existing qualifying smart thermostats acquired outside of this demand response program (qualified smart thermostats means those that have the required capabilities to administer the program and have reasonably/competitively sourced access costs) through AEP Ohio or a CRES provider; whereby, the customer will be required to agree to be enrolled in the program for a term of 12 months. Enrolled customers would be automatically renewed for the next program year unless the customer expressly opts out of the program. Customers will only be permitted to redeem the initial incentive for one thermostat per account number.
  - In signing up participating CRES customers, CRES must: (1) provide an account number or SDI so that AEP Ohio can verify that customer's identity as a customer with an active AEP Ohio account that is not previously associated with a \$75 smart thermostat rebate under this program, and (2) provide make, model and serial number of the installed smart thermostat.
  - As part of the initial enrollment process, AEP Ohio and CRES will acquire affirmative consent for enrollment.
  - If the customer consents, the \$75/\$50 rebate can be transmitted directly to the CRES provider.
- Residential customers would receive an annual \$25 incentive following each program year (September 1 through August 31) as long as the customer participates (does not override) in at least 75 percent of the Demand Response Events.

- Residential customers will be permitted the ability to override the Demand Response Event.
- Incentive levels and other details of the program (e.g., change in degrees, number of Demand Response Events, etc.) can be adjusted by the Company as necessary based upon demand in order to optimize participation.
- AEP Ohio will host semi-annual working group meetings where the Company and other interested stakeholders (including smart thermostat vendors) can collaborate on ways to maximize the benefits of the program. The working group will address and form a recommendation as to whether the demand response program should incorporate other in-home demand-response-capable devices that would use a portion of the existing \$5,000,000 annual funding cap. The collaborative will also discuss and implement any reasonable and cost-effective changes necessary to preserve CRES providers communication channels with their CRES customers relative to programming initiated pursuant to market-based activities, and will further explore a reasonable and cost-effective solution for any potential limitations to CRES provider offered programs that could be impacted or limited due to physical or technology capabilities with smart thermostats and the vendors running the smart thermostat demand response operations.
- AEP Ohio will notify customers of Demand Response Events via app, text message and/or email. Any costs and/or fees associated with marketing and/or administering this program (including but not limited to smart thermostat API costs) will come out of the \$5,000,000 annual cap.

**(10) SMART CITY RIDER**

35. The Smart City Rider will be discontinued upon approval of the ESP. Any final true ups and audit adjustments for the Smart City Rider shall occur in the gridSMART rider (Joint Ex. 1 at 24).

**(11) CUSTOMER EXPERIENCE RIDER**

36. The Customer Experience Rider will be withdrawn but the Economic Development plan will be funded through the Economic Development Rider at a level of \$450,000 per year (and the Company will match \$450,000 in shareholder funding for Economic Development) (Joint Ex. 1 at 24-25).

**(12) ENERGY EFFICIENCY RIDER**

37. The Company will withdraw the proposed business customer programs. The EE Rider will be used to fund \$400,000 annually during the ESP term toward the Neighbor-to-Neighbor program, which leverages matching donations from other customers to the benefit of low-income customers. The EE Rider will be automatically approved 60 days after filing, unless otherwise ordered by the Commission, with all other rider mechanics not modified in the Stipulation remaining as they were described in AEP Ohio witness Heitkamp's testimony in support of the Application in this case.

38. The annual budget for residential customer programs will not exceed \$12 million and the annual budget will be recovered through the EE Rider that is only charged to residential customers. The \$12 million budget will be allocated as follows:

**Figure 1: Energy Efficiency Plan Savings, Budget and Cost Effectiveness**

<b>Proposed Program</b>	<b>Energy Savings (MWh)</b>	<b>Coincident Demand Savings (kW)</b>	<b>Annual Budget</b>
E3smart	4,205	606	\$ 600,000
High Efficiency for Low-Income Program (HELP)	7,954	1,784	\$ 10,000,000
Residential Subtotal	12,159	2,390	\$ 10,600,000
Neighbor to Neighbor			\$ 400,000
Education and Training			\$ 1,000,000
Cross Sector Subtotal			\$ 1,400,000
<b>Total</b>	<b>12,159</b>	<b>2,390</b>	<b>\$ 12,000,000</b>

For clarity, the HELP program will be increased to fund \$8.0 million for community assistance program that includes lighting, heat pumps, refrigerators and weatherization for customers up to 200 percent federal poverty level. The HELP program also includes \$2.0 million – for a supplemental low-income program which will be amended to fund heat pumps and weatherization for customers at 200 percent - 300 percent federal poverty level (identified by median income according to census district data). The e3Smart and HELP program will be bid out through an RFP. Successful bidders for the HELP program will be required to have the ability to ensure all eligibility requirements are met and provide accurate reporting.

39. The program administrative fee will be ten percent of total annual program costs incurred. Staff reserves the right to evaluate the programs (through an independent auditor or otherwise), including but not limited to annual rider audits and periodic Evaluation, Measurement, & Verification (EM&V) of the programs, at no additional cost to the Company.
40. The Company's Call Center representatives will be equipped to answer questions from customers about the energy efficiency programs in the Stipulation.
41. The Company will not recover lost distribution revenues associated with the proposed EE programs.
42. If legislation is passed in the future authorizing additional utility energy efficiency programs and associated matters, the Signatory Parties fully reserve their right to pursue during the ESP term but through a separate proceeding such opportunities to supplement the programs under this settlement, provided that any such proposal shall not conflict with such new legislation. Any changes to energy efficiency programs in such separate proceeding shall not be considered a modification of the ESP or this Settlement for purposes of AEP Ohio's right to withdraw and terminate its ESP under R.C. 4928.143(C)(2)(a) or any Signatory

Party's right to withdraw from the Stipulation. The Signatory Parties reserve their rights to advocate specific positions as part of separate Commission dockets concerning any future energy efficiency program and associated matters, including opposing such proposals. (Joint Ex. 1 at 25-27.)

**(13) RURAL ACCESS RIDER**

43. The Company will withdraw the Rural Access Rider in this proceeding without prejudice, including the two middle mile projects – (1) Allen County Middle Mile Connect project and (2) Southeastern Ohio Middle Mile Connect project (Joint Ex. 1 at 27).

**(14) BASIC TRANSMISSION COST RIDER PILOT**

44. AEP Ohio will contract with a third-party auditor, chosen by the Commission, to review the actual results of the pilot program. At a minimum, the review should attempt to determine (to the extent possible and quantifiable) whether there is an aggregate savings in transmission costs for all of AEP Ohio's customers, whether and how much in transmission costs are being shifted to customers not participating in the pilot program, whether the benefits of the pilot program outweigh any costs, an analysis of the reallocation of costs between AEP companies, whether the billing structure impacts costs allocated to Ohio, whether there has been a coincident peak load reduction that can be discretely calculated, whether the CP load reduction is included in AEP Transmission's long term load forecast, and whether the BTCR Pilot results in an overall cost savings to customers. The Company and other interested parties will be given an opportunity to comment on or contest the audit findings and assumptions prior to the Commission considering any audit recommendations. The cost of this audit will be recovered through the BTCR.

45. In order to balance the cost and benefits of the program, each customer that was eligible to participate in the Pilot BTCR program during ESP 4 (including reasonable arrangement participants) will provide the Company with a written notice of its election within 30 days of the ESP term commencement (i.e., by July 1, 2024) whether to participate in the BTCR 1CP Pilot program for the entire ESP term, subject to continued application of both the overall MW cap for the 1 CP BTCR program and the participation group slot allocations adopted by the Commission in the *Base Rate Case*. For purposes of the election in this paragraph, an eligible customer with multiple accounts at one location and an eligible customer with multiple accounts at different locations will both be considered as one slot. Every eligible participant that elects to participate in the program will secure its status as a participant for the full term, subject to the ability to exit the program at the end of the second year of the ESP term by giving written notice to the Company at least 60 days prior to the end of that second year. As part of the grandfathering of customer allocations, if a Signatory Party has a member that wishes to drop out of the program at those two junctures, the Signatory Party may designate an alternative member(s) to fill the slot(s) for the full or remaining term of the ESP as applicable and subject to the applicable MW cap. If an existing BTCR Pilot participant elects to drop out of the program, they will not be eligible to enroll in the program during the term of the ESP.
46. The Company will provide Staff the workpapers to support the audit of its BTCR application on the date of filing consistent with the roadmap established in this case. Workpapers will include revenue support as well as copies of any invoices and files needed to support the costs included in the D schedules with the PJM invoices and the costs recorded in the Company's general ledger.
47. Starting at the beginning of each year of ESP 5, increase MW participation cap by 100 MW per year, with incremental increases effective when the program year starts to avoid participation cap issues, except at the start and end of the ESP 5

term. Except as provided below, the allocation/queue priority under the annual MW participation cap will be available to all non-residential demand-metered customers on a first come, first served basis, with any new participants required to commit to participate during the remaining term of the ESP as of the time of enrollment. Twenty percent of the increased participation cap per year (20 MW) will be set aside for customers with a monthly billing demand of ten MW or less; such qualifying customers will have an opportunity to register one week ahead of the normal registration process during the ESP 5 term associated with the annual 100 MW expansion. To the extent the entire 20 MW is not fully subscribed during the one-week advance period, the remainder will be made available on a first-come, first-served basis to the customers in the customer queue described below. If new participants enter the program during the first two years of ESP 5, they will also have one opportunity to drop out by giving the notice prior to the end of the second year. The Company will establish a customer portal to create the customer queue of interested customers, which process will be made available on the Company's website and notice of the portal being activated will be transmitted to all parties in this proceeding. The customer portal which will confirm the party attempting to register the customer has authority to act on behalf of the customer and will give each customer notice of whether they successfully entered the queue and document the order of customers that successfully entered the queue. Staff may inspect the documentation supporting the customer queue, upon request. As any additional customer slots become available in the program, customers in the queue will be notified in the same order they successfully entered the queue.

48. Any AEP Ohio customer wishing to enroll in the BTCR 1CP Program that was not able to subscribe through the above processes can enter the program through a reasonable arrangement application. In an effort to streamline and expedite reasonable arrangement applications that solely request BTCR participation, Staff

agrees to make best efforts to complete its review and file a recommendation regarding any such reasonable arrangement application within 60 days of the filing of the application. Reasonable arrangement customers on 1 CP transmission billing do not count against the MW cap. Any reasonable arrangement applications will still be subject to approval by the Commission.

49. No transmission revenue requirement increase or decrease caused by the one coincident peak (1 CP) program, 1 CP reasonable arrangements, or six coincident peak (6 CP) Pilot program will be allocated to residential customers or allocated to specific non-residential rate schedules.
50. The Stipulation will include a new BTCR 6 CP Pilot program for customer-sited battery energy storage systems (BESS) and public transit EV loads based on a 6 CP rate design and subject to a 100 MW participation limit for BESS and 50 MW participation limit for public transit EV loads. Nothing in this paragraph is intended to prevent a customer from seeking a reasonable arrangement for 6 CP billing.
51. The BTCR 6 CP Pilot will be available to all non-residential demand-metered customers with more than 1 MW and less than 20 MW of BESS capacity or public transit EV load connected to their facility, with additional technology-specific eligibility requirements.
52. For the purposes of the BTCR 6 CP Pilot, BESS shall be defined as a grid-connected, fixed in place, behind the customer meter, commercially available device that charges (or collects energy) from the grid and/or, if applicable, co-located renewable energy generation, and then discharges that energy at a later time. Eligible systems shall follow AEP Ohio's standard interconnection process and meet necessary and reasonable electrical and safety standards as part of that process.
53. As part of the BTCR 6 CP Pilot, each customer's billing demand will be determined each year as their average hourly load coincident with the hourly



peaks for AEP Retail Load (AEP East transmission zone) during the months of June, July, August, December, January and February (in accordance with AEP's Transmission Agreement for each year November 1 through October 31), and grossed up for losses. The 6 CP billing rate shall reflect a similar rate design and methodology as the BTCR 1 CP transmission rate design and methodology while using 6 CP values.

54. Related to the BESS portion of the BTCR 6 CP Pilot, project and aggregate program capacity will be based on BESS inverter nameplate capacity (AC-rated) at the individual account level. Co-located, non-dispatchable generation, such as photovoltaic solar, shall not render a site ineligible, and any residual load at the associated account shall be assessed at 6 CP billing. Customers that have a reasonable arrangement affecting transmission/primary rates shall not be eligible to participate in the BTCR 6 CP Pilot for the same load.
55. Related to the BESS portion of the BTCR 6 CP Pilot, the application, reservation, and retainment process should incorporate the following:
  - Available on a first come, first served basis.
  - Program participation reservation shall only be secured after completion of an executed interconnection agreement with AEP Ohio.
  - Successful project applicants shall be granted two years to complete the project, defined as achievement of mechanical completion and electrical permit approval by the authority having jurisdiction, or be subject to forfeiting their reservation. One Company-approved six-month extension request will be permitted before project-specific BTCR 6 CP capacity reservation is returned to the program.
  - 6 CP billing to be activated for the program year after development of site-specific 6 CP data following the project commercial operation date.
  - If demand for participation exceeds the Pilot participation cap, the Company will establish an application portal where reservation qualification, selection,

and notification takes place, which process will be made available on the Company's website and notice of the portal being activated will be transmitted to all parties in this proceeding. Staff may inspect the documentation supporting the application portal and reservation selection, upon request. (Joint Ex. 1 at 27-32.)

**(15) OHIO FIRST RIDER**

56. To the extent that the All Ohio Future Fund created by R.C. 126.62 partially funds projects that are otherwise eligible for recovery under the Ohio First Rider, the remaining costs associated with such projects may be included in the Ohio First Rider, which will be charged on a per bill basis. If the Company does not submit an application to populate the Ohio First Rider for approved grant opportunities by the midpoint of the ESP term (June 1, 2026), then the Ohio First Rider will sunset. (Joint Ex. 1 at 32.)

**(16) DISTRIBUTED GENERATION PILOT**

57. The tariff will be retained, expanded and modified by increasing the size of eligible behind-the-meter (BTM) renewable energy generation to 7.5 MW (AC-rated) expanding eligibility to secondary voltage service customers, and expanding the program participation cap to 100 MW. BESS, either standalone or co-located with BTM renewable energy generation, will also be an eligible resource for this tariff, provided such resources will not exceed 50 MW of the 100 MW participation cap. BESS shall be defined as a grid-connected, fixed in place, behind the customer meter, commercially available device that charges (or collects energy) from the grid and/or, if applicable, co-located renewable energy generation, and then discharges that energy at a later time. Eligible BESS systems shall follow AEP Ohio's standard interconnection process and meet necessary and reasonable electrical and safety standards as part of that process. The current

requirement to be defined as a net metering system under RC 4928.01(A)(31) shall not apply to Distributed Generation Pilot (DG Pilot) participants that include BESS. The program shall be available to eligible customers enrolling on a first come, first served basis. Current participants shall be automatically included in the expanded DG Pilot for the term of ESP 5 and have the priority optionality to expand their MW participation by providing AEP Ohio written notice of such expansion within 30 days of the approval of the Stipulation. Any remaining capacity in the program shall be available on a first come, first served basis. The foregone distribution revenue associated with only the expanded DG Pilot under this ESP will be recovered through the Economic Development Rider. The Signatory Parties agree that the Company has fulfilled its obligation under the Stipulation approved in the *Base Rate Case* to consider inclusion of combined heat and power resources as part of this tariff. As part of the Company's next distribution rate case application, the Company agrees to evaluate the cost to serve customers that have interconnected large onsite DG facilities (larger than 500 kW of capacity), including a breakout of customers participating in the DG Pilot. (Joint Ex. 1 at 32-34.)

**(17) RESIDENTIAL SENIOR CITIZEN TARIFF**

58. AEP Ohio's proposal for a Residential Senior Citizen Tariff is withdrawn (Joint Ex. 1 at 34).

**(18) TARIFFS/OTHER**

59. The set of redlined tariffs to implement are attached as Exhibit A to the Stipulation.

60. AEP Ohio will provide consumer disconnection data required by R.C. 4933.123 by zip code on an annual basis in an executable Excel spreadsheet to Staff.

61. The last sentence of the first partial paragraph on page 4 (Section II) of AEP Ohio's Application (beginning with the words "If there are" and ending with the words "terminate the ESP") will be struck, and instead the following language shall be adopted as part of the Stipulation: "If there are new tax laws affecting the amount of federal taxes paid by AEP Ohio, the Company may file an application to address the effects of such changes in tax law through the Tax Savings Credit Rider or other mechanism. Signatory Parties shall reserve the right to take any position in response to any such application, including, but not limited to, opposing such application in its entirety and/or challenging the legality of such application."

62. The following language will be struck from AEP Ohio's Application:

- "... But AEP Ohio reserves the right to amend its ESP to recover or refund the net costs of OVEC either: (1) if R.C. 4928.148 is repealed or substantially modified; or (2) upon issuance of any final decision, law or order by a court, legislative authority or administrative agency adversely affecting the ongoing viability of the LGR Rider or cost recovery thereunder prior to the expiration of the proposed ESP 5. (Joint Ex. 1 at 34).

#### **(19) THREE-PART TEST FOR COMMISSION APPROVAL OF A STIPULATION**

{¶ 52} The Signatory Parties agree that the Stipulation satisfies the three-part test traditionally used by the Commission to consider stipulations (Joint Ex. 1 at 35).

#### **(20) MRO TEST RESULT**

{¶ 53} The Signatory Parties agree that the Stipulation preserves and advances the positive results of the MRO v. ESP test under R.C. 4928.143(C) (Joint Ex. 1 at 35).

#### *F. Consideration of the Stipulation*

{¶ 54} 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.

{¶ 55} 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:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?
- Does the settlement package violate any important regulatory principle or practice?

{¶ 56} 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.

{¶ 57} The Commission will address the arguments in favor and in opposition to the Stipulation below. To the extent that an argument has not been explicitly addressed in this Opinion and Order, it has nonetheless been thoroughly considered, and rejected, by the Commission.

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

{¶ 58} The Signatory Parties declare that the Stipulation complies with the first criterion of the three-part test and emphasize that no party challenges the Stipulation on this factor. Signatory Parties submit that all parties to these proceedings and their counsel are capable and knowledgeable about the issues raised in this matter, as the majority of parties and their counsel are regular participants in regulatory proceedings before this Commission. All parties were invited to attend more than 14 meetings, plus 10 breakout meetings to focus on certain topics, to participate in negotiation of the Stipulation over a period of months. Signatory Parties emphasize that the Stipulation differs from the Company's Application in several respects and incorporates a balance of recommendations offered by Staff and intervenors. According to AEP Ohio witness Mayhan, the parties involved in negotiations are capable and knowledgeable about the issues raised in these proceedings and were afforded the opportunity to engage in significant discovery as well as to file testimony and review testimony filed by AEP Ohio and the other intervenors. Recognizing that diversity of interest is not a requirement under the first criterion, the Signatory Parties, nonetheless, highlight the broad spectrum of interest among the signatories, including low-income customer advocates, industrial and commercial customer advocates, commercial customers, CRES suppliers, environmental advocates, and Staff. (Joint Ex. 1 at 1-2; Co. Ex. 2 at 3, 19; Staff Ex. 1 at 3-4.)

{¶ 59} No opposing party presented evidence or argued on brief any challenge to the Stipulation on the first criterion of the three-part test used to evaluate stipulations.

{¶ 60} The Commission finds that the record conclusively demonstrates the Stipulation is the product of serious bargaining among capable, knowledgeable parties. All parties, representing all customer classes, were afforded the opportunity to participate in negotiations. *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 and were also parties in AEP Ohio's prior ESP proceedings<sup>2</sup> and the Company's prior rate cases. We note that many of the riders and some of the issues raised in the pending ESP Application, and addressed in the Stipulation, carry over from the Company's prior ESP proceedings. Diversity of interest among the signatories to a stipulation, while not a factor in the first criterion of the three-part test, connotes the range of parties that have determined the Stipulation, or specific provisions of the Stipulation, align with their interests. In this case, the diversity of signatory parties includes residential customer advocates OPAE and CUB, who also advocate on behalf of small business customers, commercial customers Kroger and Walmart, commercial customer advocate OHA, commercial and industrial advocates OEG, OELC, and OMAEG, CRES providers Direct Energy and IGS, and a CRES advocacy organization RESA, environmental advocacy organizations OEC and ELPC, and Armada, a manufacturer of smart technologies in the demand response and energy efficiency markets. Accordingly, the Commission finds, based upon the record in these proceedings, the Stipulation is the product of serious

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<sup>2</sup> *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 08-917-EL-SSO, et al. (ESP 1 Case), Opinion and Order (Mar. 18, 2009), Entry on Rehearing (July 23, 2009, and Nov. 4, 2009); *ESP 2 Case*, Opinion and Order (Aug. 8, 2012), Entry on Rehearing (Jan. 30, 2013); *ESP 3 Case*, Opinion and Order (Feb. 25, 2015), Entry on Rehearing (May 28, 2015, and Nov. 3, 2016); *ESP 4 Case*, Opinion and Order (Apr. 25, 2009), Entry on Rehearing (July 23, 2009, Nov. 4, 2009).

bargaining among capable, knowledgeable parties. (Joint Ex. 1 at 1-2; Co. Ex. 2 at 3, 19; Staff Ex. 1 at 3-4.)

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

{¶ 61} Pursuant to the second criterion of the test, the Commission must determine whether the settlement, as a package, benefits ratepayers and the public interest.

{¶ 62} According to the Signatory Parties, the Stipulation contains numerous provisions that benefit customers and the public interest. The Stipulation reduces the term of the ESP from six years, as proposed by AEP Ohio, to four years ending May 31, 2028, and requires AEP Ohio to file a base distribution rate case by June 1, 2026, with a date certain of no later than December 31, 2025 (Co. Ex. 2 at 16). AEP Ohio advocates that the reduced ESP 5 term, and the Stipulation overall, balances the reduction of expected earnings while maintaining cash flows to facilitate investments in the distribution system to maintain and improve reliability while also providing certainty and predictability to AEP Ohio customers, auction suppliers, and CRES participants (Co. Ex. 2 at 20). The total average rate impact of the Stipulation for a residential customer is estimated to increase less than 1 percent or \$1.50 per month. Further, considering actual rider filing dates, the typical residential customer using 1,000 kWh will see a monthly bill increase of 0.5 percent in the first year, and 0.6 percent to 1.8 percent increase in the second through fourth years of ESP 5 (Co. Ex. 2 at 20-21). The carrying charge on capital riders will reflect the cost of capital approved in the Company's last base rate case decided in November 2021, which AEP Ohio points out is consistent with OCC's alternative recommendation. (Co. Ex. 2 at 4-15, 19-24; Co. Ex. 6 at 3; Tr. Vol. III at 612; Joint Ex. 1.)

{¶ 63} Further, as part of the Stipulation, the SSO auction process implements a CPP mechanism, subject to true-up, to address delays in and concerns with the capacity market and incorporates a provision to facilitate the potential need for further refinements



to the CBP SSO along with acknowledgement of the Commission's continuing jurisdiction. AEP Ohio notes that the Stipulation continues the DIR, endorsed by the Commission in AEP Ohio's last three ESP proceedings. *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 46; *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015) at 40, 47; *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶189. Signatory Parties state the DIR will continue to be subject to annual compliance audits, with any grant funds received pursuant to R.C. 126.62, the All Ohio Future Fund, excluded from the DIR. In addition, starting with ESP 5, until the effective date of new rates in the Company's next distribution rate case, a \$10 million credit will be added to the DIR,<sup>3</sup> ultimately reducing the rate impact for customers from June 1, 2024, through the effective date of the rates in the next distribution rate case. (Co. Ex 2 at 10; Co. Br. at 42; Joint Ex. 1 at 18.) Accordingly, AEP Ohio contends the DIR provision of the Stipulation allows the Company to continue to invest in critical distribution system equipment to address aging infrastructure and serve new customers in its growing service territory (Co. Ex. 2 at 21-22). Under the Stipulation, the DIR excludes the customer work exception proposed by the Company in its Application, which provides additional rate stability for customers as spending beyond the Company's control is eliminated (Co. Ex. 2 at 10). In addition, AEP Ohio agrees to form a collaborative to include all interested parties in this case to coordinate implementation and rollout of the CIS and related matters, including a list of agreed-upon functionalities, promoting enhanced customer information, and promoting competition, including flexible billing, customer and CRES access to interval data and accelerated customer switching, commitments to develop secure data sharing for customers and authorized third parties. These CIS features,

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<sup>3</sup> The \$10 million credit to be added to the DIR is in addition to the \$23.727 million charge to reflect the imbalance in the December 2022 theoretical reserve balance as compared to the actual accumulated depreciation balance.

according to AEP Ohio, are beneficial to customers, the competitive market, and the public interest. (Co. Ex. 2 at 6, 10, 16, 21-22.)

{¶ 64} The Company will replace its existing Outage Management System (OMS) and Distribution Management System (DMS) with the new ADMS platform, with fully integrated capabilities to manage and operate the complexities associated with Distributed Energy Resources (DER) moving forward. The costs for the ADMS platform are to be recovered via the gridSMART rider until reflected in the Company's base distribution rates (Co. Ex. 1 at 15, 23). The Stipulation incorporates a revised Energy Efficiency Program, focused almost exclusively on benefits for low-income residential customers, at a cost of \$12 million, \$31.4 million below the program as proposed by the Company, with a cap on administrative fees, to include energy education for school children in the Company's service territory; \$8 million of assistance to support at-risk residential customers with income up to 200 percent of the federal poverty level to be used on lighting, heat pumps, refrigerators, and weatherization; \$2 million to fund heat pumps and weatherization for at-risk customers at 200 percent to 300 percent of the federal poverty level; and continuance of the Neighbor-to-Neighbor Program, the bill assistance program which matches customer donations with shareholder funds for customers below 200 percent of the federal poverty level. The Energy Efficiency Programs in the Stipulation help low-income customers reduce their energy usage reducing their electric bill, the demand on the electric grid which benefits the customer and all AEP Ohio customers (Co. Ex. 2 at 11, 12.) CUB posits that reducing electricity demand equals customer savings and demand response programs enhance reliability, particularly on the hottest days of summer when storms threaten the grid. The Stipulation includes a Smart Thermostat Demand Response Program, which awards residential customers who enroll that already have a smart thermostat \$50 and participants that need to purchase a smart thermostat \$75, in addition to annual incentives for participation in demand response events. Customer participants lower their thermostat when called upon, reducing their energy consumption, and lowering the customer's energy bill, to the benefit of not only the participating customer but all customers including CRES

customers and reducing the stress on the electric grid. (Joint Ex. 1 at 21-23; Direct Energy Ex. 1 at 3-5; CUB Br. at 5-6; CUB Reply Br. at 2-3, 5-6; RESA Ex. 1 at 2-7, RESA Br. at 8-9.) In addition, the Company committed to analyze and evaluate implementation of a capacity “heat map” to be used by external parties to determine available capacity for EVSE, DERs or other demand intense technology. The Stipulation expands the off-peak hours for the whole home PEV and separately metered PEV rates adjusted to incorporate intervenor recommendations to promote electric-intense EV charging benefiting AEP Ohio’s distribution grid and saving all AEP Ohio customers money (Co. Ex. 2 at 23; Staff Ex. 1 at 7-8). The Stipulation eliminates the Company’s proposal to take responsibility for all CIAC for customer installations of EV charging stations with AEP Ohio’s proposal to advocate for electric utilities being responsible for 80 percent of the total cost of line extensions for publicly available EVSE in the next review of the rules in Ohio Adm.Code Chapter 4901:1-9, Metering Options. AEP Ohio asserts the combined commitments related to EV charging equipment, rate design, and information sharing will maximize insight and support reduced stress on the grid from the expected increase of demand-intense EV charging to the benefit of current EV owners, future EV owners and all AEP Ohio customers. The Stipulation implements two new residential TOU rates for EVs, with the opportunity to adjust the rate based on market signals and customer feedback. Finally, the Stipulation reflects the withdrawal of riders and tariffs proposed by the Company in its Application, namely the Customer Experience Rider, Residential Senior Citizen Tariff, and the Rural Access Rider. However, while the Stipulation eliminates the Customer Experience Rider, it retains the Economic Development plan rider at \$450,000 annually which AEP Ohio will match with shareholder funding. Further, the Governmental Aggregation Standby Rider is withdrawn with prejudice. (Co. Ex. 2 at 11-12, 13, 15; Staff Ex. 1 at 10; Direct Energy Ex. 1 at 5-8; RESA Ex. 1 at 2-7; Co. Br. at 25-71; Staff Br. at 7-18; RESA Br. at 3-14; ELPC Br. at 4-6; OEG Br. at 3-4; OEC Br. at 9-10; Direct Energy Br. at 5-10; IGS Br. at 6-13; Walmart Br. at 5-7; OELC Br. at 4-7; OMAEG/Kroger Br. at 10-15; CUB Br. at 4-9; OPAE Br. at 4-5.)

{¶ 65} Opposing intervenors argue that certain provisions of the Stipulation require amendment or elimination, in addition to OCC's requests that the Stipulation be rejected in its entirety, on the basis that the Stipulation does not benefit consumers and the public interest. The Commission discusses the specific provisions opposed by various intervenors in more detail below.

*a. Basic Transmission Cost Recovery Rider and Pilot Program*

{¶ 66} The Stipulation expands the BTCR participation cap by 100 megawatts (MW) per year of ESP 5, available to a subset of customers on a first come, first served basis. New customers are required to commit to participate in the BTCR pilot for the remaining term of the ESP at the time of enrollment. (Joint Ex. 1 at 27-32.)

{¶ 67} AEP Ohio contends that the modified BTCR pilot program, as to the 1 coincident peak (1 CP) pilot, allows certain customers to participate in a transmission rate that encourages more efficient use of the transmission grid, reduces overall transmission revenue requirement for AEP Ohio while ensuring there is no cross-class subsidization, and helps to improve reliability by reducing or avoiding outages or localized constraints. Further, as to the 6 coincident peak (6 CP) pilot, AEP Ohio asserts that, under the Stipulation, the BTCR promotes technological advancement while increasing grid resiliency and sustainability to the benefit of all customers, supports the Smart Thermostat Demand Response Program to lower peak demand and stress on the delivery network, which can lower costs for all customers and could help to improve reliability by reducing or avoiding outages or localized constraints. AEP Ohio submits that the testimony of opposing intervenors does not challenge the stated benefits of the BTCR and offers that a moderate expansion of the BTCR pilot, along with an independent study to determine next steps, is appropriate and a balanced approach. (Co. Ex. 2 at 13-14, 17-18.)

{¶ 68} IGS, RESA, OELC, OMAEG and Kroger generally endorse the continuation of the BTCR pilot, as modified by the Stipulation. IGS asserts no evidence has been

presented in this proceeding that should convince the Commission to further alter the BTCR pilot in the manner that parties opposing the Stipulation recommend. IGS argues if transmission costs are made bypassable it would unjustly and unreasonably add costs that some suppliers do not have embedded in their retail contracts and ultimately would harm the competitive market (IGS Br. at 12-13). RESA, OMAEG, and Kroger posit that the revised BTCR pilot allows more customers to be billed based on their network service peak load (NSPL) rather than peak demand. OMAEG and Kroger contend the revised billing allows the customers to manage and potentially decrease their transmission costs, allowing the customer to be more cost-effective and facilitating Ohio's competitiveness in the global economy. RESA submits billing nonresidential customers transmission service based on NSPL demand will send a transparent price signal to the customer to reduce demand during the system peak, allowing the competitive market to deliver products and services to such customers to help them manage their CP demand and reduce overall stress on the transmission grid during times of peak demand constraints, which is in the public interest. Further, OMAEG and Kroger note the Stipulation creates a new BTCR 6 CP pilot for customer-sited BESS and a 50 MW participation limit for public transit EV loads, both to the benefit of the public interest. (OMAEG/Kroger Br. at 4-5, 12, 14; OELC Br. at 6; RESA Br. at 13.)

{¶ 69} Calpine and One Energy oppose the BTCR. One Energy argues transmission costs should be bypassable and on that basis the BTCR should be rejected as unlawful or, in the alternative, the Stipulation should be amended to make the BTCR bypassable (OEE Br. at 8-12). Calpine argues, as to the BTCR rider and BTCR pilot program: (a) that the Rider should be bypassable for shopping customers; (b) the Stipulation should be amended to prohibit the assignment of PJM transmission charges and billing from CRES providers to AEP Ohio; and (c) the Stipulation should be revised to set a definite end date for the BTCR pilot program, thereby, restoring the right of all shopping customers to receive transmission service through the customer's chosen CRES. (Calpine Ex. 1 at 4-7.)

{¶ 70} Calpine reasons that in every PJM state except Ohio CRES are obligated to obtain wholesale market transmission service directly from, billed by, and transmission charges paid to PJM, with the CRES provider factoring into its charges to CRES customers transmission costs along with innovative customer products, services, and incentives. Calpine contends this approach gives both the supplier and the supplier's customers incentive to manage transmission costs, which is becoming an increasing portion of the electric bill, and does not subsidize any particular CRES provider's business plan over another CRES provider's business plan. Calpine argues that Ohio's transmission structure and policies also shift risk to Ohio's consumers and businesses. Calpine requests that the Commission restore full retail competition by unbundling distribution service from transmission service so shopping customers are billed for transmission cost by their CRES provider. Calpine also argues the scope of the proposed audit of the BTCR, as set forth in the Stipulation, should be expanded to include information on a forward-looking basis, including an assessment of the cost savings and benefits to ratepayers that would occur by eliminating all nonbypassable transmission charges. Further, Calpine contends that the BTCR pilot and rider should be permitted to expire and the Commission should restore choice for customers, removing the limits on existing and potential customers' products and services choices, and eliminating all cost and risk shifting by returning to a fully functioning competitive market. (Calpine Ex. 1 at 4-7; Calpine Br. at 2, 5, 6.)

{¶ 71} AEP Ohio argues that Calpine has not offered any analysis, study, or details to support its claims regarding the BTCR. Further, AEP Ohio details, as explained by AEP Ohio witness Kelso, the step-by-step process how wholesale transmission costs are charged to AEP Ohio retail customers, ultimately declaring that the BTCR is a pass-through rider to collect no more and no less than the charges billed to AEP Ohio according to the FERC-approved Open Access Transmission Tariff (OATT) and Transmission Agreement (Tr. Vol. V at 875, 876, 880, 887-888.) AEP Ohio states that revising the BTCR to be bypassable is a major rate design change with unknown impact for shopping and nonshopping customers, in four respects: (1) how any variance in allocation method would be allocated; (2) 1 CP rate

design is inherently less stable for individual customers' load in only one hour of the year; (3) making the BTCR bypassable could impact the price-to-compare in multiple ways; and (4) a bypassable BTCR has not been studied by AEP Ohio and the impact evaluated to the operation of the FERC-approved Transmission Equalization Agreement. (Co. Ex. 9 at 6-9.) In its reply brief, RESA states that while Calpine and One Energy challenge aspects of the BTCR, neither opposes the expansion of the NSPL billing and, in fact, One Energy expounds on the benefits of transparent price signals, albeit in the absence of the BTCR, that would be allocated to SSO suppliers and CRES providers on an NSPL basis. RESA reiterates that neither Calpine nor One Energy has addressed the impacts resulting from their proposal to eliminate the BTCR on June 1, 2024. For these reasons, AEP Ohio and RESA advocate the BTCR be continued as proposed in the Stipulation. (Co. at 88-91; RESA Reply Br. at 3-4.)

{¶ 72} The Commission finds Calpine's request to modify the BTCR to be bypassable is a significant rate design change without sufficient record support regarding the impacts of such a major change. Many CRES providers, like IGS, likely have embedded transmission costs into their retail contracts in reliance on Ohio's current electric market structure (IGS Br. at 12-13). In response to Calpine's request that the BTCR audit should be expanded to include a forward-looking assessment of the cost savings and benefits to ratepayers that would occur by eliminating all nonbypassable transmission charges, we reason that audits, by their very nature, are backward-looking, not forward-looking, evaluations of transactions, policy, and management. As with the Commission's usual audit process, interested parties, including Calpine, will be afforded the opportunity to file comments and evaluate the BTCR auditor's findings and recommendations. Accordingly, the Commission will not modify the Stipulation to terminate the BTCR at the conclusion of the ESP 4 term. The BTCR was proposed, and adopted in the ESP 3 Case, subject to certain modifications, and subsequently further modified and extended in the Global Settlement and the Company's ESP 4 Case. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 67-68; *In re AEP Ohio*, 09-872-EL-FAC et al. (*Global Settlement Cases*), Order on Global Settlement Stipulation (Feb. 23, 2017) at ¶98; *ESP 4 Case*, Opinion and Order (Apr. 25, 2018). As a

provision of the Stipulation package, the Commission is not persuaded by the arguments of Calpine, considering the record, that the BTCR is not a benefit to AEP Ohio customers and the public interest. Rather, the Commission continues to find the BTCR pilot program, particularly with the modifications in the Stipulation, to be a benefit for customers and the public interest. (Co. Ex. 2 at 13-14; Tr. Vol. V at 875, 876, 880, 887-888).

*b. Return on Equity*

{¶ 73} The Stipulation incorporates the cost of capital approved in the Company's last base rate case, meaning a 9.70 percent return on equity (ROE), and rate of return (ROR) of 7.28 percent. *Base Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 48, 150, 208. (Joint Ex. 1 at 6, 11.) Endorsing the rates and capital structures, including the ROE in the Stipulation, AEP Ohio and Staff declare that the ROE is consistent with the Commission's long-standing policy to utilize the rate and capital structure in the Company's last base rate case. *Base Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 48. (Staff Ex. 1 at 7.) AEP Ohio notes that while OCC now opposes the ROE in the Stipulation, the Stipulation adopts OCC's alternative proposal to continue the ROE and ROR as determined in the Company's most recent base rate case (Co. Ex. 6 at 3; Tr. Vol. III at 611-612). Further, AEP Ohio argues that, as OCC acknowledges, it has been the Commission's long-standing practice not to recalculate a utility company's ROE and ROR outside of the company's base rate case. (Staff Ex. 1 at 7; Co. Ex. 6 at 3; Tr. Vol. III at 643-644.)

{¶ 74} In its opposition to the Stipulation, OCC recognizes there are numerous ways to determine the ROE but advocates the Commission modify the Stipulation to an ROE of 9.51 percent, with a resulting ROR of 6.7 percent, based AEP Ohio's capital structure, and OCC's preferred analysis, methods, and detailed calculations. Significantly, OCC notes that the national average ROE granted to electric companies for the period March 31, 2022, to March 31, 2023, was 9.61 percent overall and 9.19 percent on average for distribution-only utilities. (OCC Ex. 8 at 12.) OCC also submits that AEP Ohio has an above average bond rating when compared to other regulated utilities and is producing returns that are



significantly higher than the average returns earned by other regulated companies within AEP Corporation (OCC Ex. 8 at 12). OCC contends that AEP Ohio has not met its burden to demonstrate that an ROE of 9.70 percent is fair and reasonable for an entity with the risk profile of AEP Ohio and exceeds the average ROE for utilities with higher risk profiles. For these reasons, OCC argues the ROE in the Stipulation takes advantage of Ohio consumers awarding the Company exorbitant profits to the benefit of the Company's shareholders. (OCC Ex. 8 at 7-13; OCC Br. at 3-10; OCC Reply Br. at 6-9.)

{¶ 75} As noted above, the Stipulation incorporates the carrying charges and cost of capital approved in the Company's most recent base rate case, where the Commission evaluated and approved a 9.70 percent ROE, and ROR of 7.28 percent. *Base Rate Case, Opinion and Order* (Nov. 17, 2021) at ¶¶ 48, 150, 208. It has long been the Commission's practice to utilize the capital structure and cost of capital from a Company's last base rate proceeding in the calculation of riders and alternative rate plans. *In re the East Ohio Gas Company dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, *Opinion and Order* (Dec. 30, 2020) at ¶¶ 68-69, *Second Entry on Rehearing* (Feb. 23, 2020) at ¶ 20; *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, *Opinion and Order* (Nov. 28, 2018) at 16; *In re Ohio Power Company's Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1007-EL-UNC et al., *Finding and Order* (Oct. 3, 2018). The Commission is obligated to follow its precedent. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975). Notably, less than three years ago, the Commission held a forum in which it explored the benefits and disadvantages to selectively updating the cost of capital components to be implemented in rider cases and alternative regulation proceedings as well as the associated impacts. Since that review, our approach has been to continue the practice of updating a utility's cost of capital components used in its rider and alternative regulation proceedings in the context of periodic base rate cases for the utility, in which all inter-related ratemaking elements relevant to the utility's base rates and rider and alternative regulation rates are updated on a comprehensive basis at the same time. Upon further consideration of this issue, the Commission has elected to continue to follow the long-standing policy and

precedent of reviewing capital structure and carrying cost components in the utility's base rate case and utilizing those updated components in subsequent rider and alternative regulation plan proceedings, including customer credit calculations and ESPs, until the next base rate case proceeding. We note that OCC's proposal for determining the ROE based on current market conditions yields a rate of 9.707 percent using the discounted cash flow (DCF) method but then OCC continues by averaging the DCF method with the Capital Asset Pricing model (CAPM). This confirms for the Commission that the ROE, approved less than three years ago, in the Company's last base rate case and incorporated in the Stipulation, is not unreasonable and is further justified based on OCC's analysis. On that basis, we decline to adopt OCC's proposal to revise the ROE provision of the Stipulation. (Co. Ex. 6 at 3; Staff Ex. 1 at 7; OCC Ex. 8 at 9; Tr. Vol. III at 611-612.)

*c. Standard Service Offer and Competitive Bid Process*

{¶ 76} AEP Ohio asserts the Stipulation builds on the current descending clock CBP auction formation and incorporates a capacity pass-through mechanism to address recent developments and concerns with the capacity market. AEP Ohio argues that there is no reason to further modify the SSO CBP, as presented in the Stipulation, particularly given that SSO prices have been lower in recent months. Further, Signatory CRES and CRES advocate, IGS and RESA endorse the continuation of the SSO/CBP as presented in the Stipulation, including the withdrawal of the Governmental Aggregation Standby Rider proposed in the Company's Application. (Co. Br. at 18; RESA Br. at 3-4; IGS Br. at 6-8. )

{¶ 77} Opposing intervenors make three proposals to amend the Stipulation, in regard to the SSO/CBP process: (a) class-based auctions; (b) load migration pricing bands; and (c) deletion of the provision of the Stipulation which dismisses all intervenor proposals to modify the SSO/CBP as a part of this proceeding, without prejudice (Joint Ex. 1 at 5-6).

{¶ 78} OCC and Constellation argue the Stipulation largely continues AEP Ohio's current SSO auction process. Constellation contends the Stipulation fails to make any

substantive changes to AEP Ohio's CBP despite significant increases in the default service price and reduced auction participation, particularly as a result of governmental aggregation. Constellation notes that in 2022 residential customers served by governmental aggregation went from a high of approximately 73 percent to a low of 53 percent. (Const. Ex. 2 at 14-16). As the only slice of system auction in the PJM region, Constellation reasons the increased risk has led to fewer suppliers electing to participate in Ohio's auctions and the auctions being more heavily impacted by recent market price volatility than nearby states (Const. Ex. 2 at 19, 25-26). In consideration of Constellation witness Indukuri's experience as Portfolio Manager, Constellation submits his testimony as an expert should be afforded significant weight and proposed modifications to the Stipulation adopted by the Commission. Constellation contends that without the adoption of class-based SSO auctions and its proposal for contractually set pricing bands, this primary element of the Stipulation is not in the public interest. (Constellation Ex. 2 at 1-2; Constellation Br. at 15.) OCC and Constellation recommend that the Commission modify the Stipulation to require AEP Ohio to conduct auctions by customer class, or residential consumers and small commercial consumers, reasoning that class-based auctions, as opposed to the current slice-of-system auctions, have the potential to limit the risk perceived by SSO suppliers and to contribute to more efficient and lower costs for consumers. (Constellation Ex. 2 at 21; OCC Ex. 2 at 2-3.) Constellation notes that supplier participation in Ohio SSO auctions is falling, the auction clearing prices are almost double the prices of auctions conducted before 2022, and Ohio's default service is becoming more expensive relative to other states in the PJM region, with more services included in the default service product. With multi-class auctions, OCC argues, the lower cost consumer classes subsidize the service provided to higher-cost consumer classes, violating the principle of cost-causation (OCC Ex. 2 at 5). Single customer class auctions, or residential and small commercial auctions, are common in other states (OCC Ex. 2 at 6). Constellation and OCC reason that adopting SSO auctions by customer class or at "natural breakpoints" (like residential and small commercial or large commercial, at primary voltage, and industrial) will improve supplier interest, lower the

premiums suppliers incorporate into their offer price and passed on to consumers and is the best option for improving efficiency of SSO auction outcomes to the benefit of consumers and the public interest. Constellation believes the approximately 30 MW of default service load for AEP Ohio's large commercial and industrial customers is sufficient to attract suppliers to a class-based auction. Constellation reasons Pennsylvania's class-based procurement auctions was a significant factor in attracting more bidders and the resulting lower prices in its default service procurement. (OCC Ex. 2 at 2-3, 5, 6, 8; Constellation Ex. 2 at 5, 7, 14, 17 19; OCC Ex. 1 at 7; Tr. Vol. IV at 723-724, 729).

{¶ 79} Signatory Parties, including CRES suppliers, RESA, Direct and IGS, agree that additional modifications to the SSO auction process, beyond that offered in the Stipulation, are not justified. IGS offers that there is no guarantee that customer class-based auctions will result in lower auction prices (IGS Br. at 6-7). IGS states that OCC did not offer, and AEP Ohio contends neither OCC nor Constellation offers, a principled analysis of data or other record evidence that the segmentation of SSO auctions will benefit customers at this time. OCC did not offer a comparison of Ohio SSO auction results to those in other jurisdictions (Tr. Vol. II at 326, 329). AEP Ohio submits, as Constellation witness Indukuri acknowledged, that the slice-of-system tranches used in AEP Ohio's SSO auctions result in a blended price based on all the customer load profiles and the same charge for all non-shopping customers; whereas, in an auction conducted on the same day, the recommendation for auction products segmented by customer class would create different prices for different customer classes, with some clearing prices lower and some higher than the blended slice-of-system approach (Tr. IV at 717, 720-721.) IGS notes that AEP Ohio offered testimony challenging whether class-based auctions would result in savings (Co. Ex. 9). IGS adds that the proposed load migration mechanism could shift risk away from market participants and onto customers. Direct Energy and IGS reason that bidders into the SSO auction should bear the risk associated with volumetric changes as well as any other risk factors inherent in the marketplace. AEP Ohio offers that CRES Signatory Parties as well as other Signatory Parties that represent customer interests agree that there is no justification

to further modify the SSO CBP provisions of the Stipulation, as requested by OCC and Constellation. (Co. Br. at 34; IGS Br. at 6- 8; Direct Reply Br. at 8-9; Co. Ex. 9 at 4-6, Ex. LOK-1; Tr. Vol. IV at 717, 720-721.)

{¶ 80} Further, Constellation proposes the Stipulation be modified to adopt contractually established load migration pricing bands to address default service load migration. As proposed by Constellation, load migration pricing bands would be developed where an anticipated amount of default service load would be set for each customer class based on the aggregate peak load contribution (PLC) of the specific class's default service customers at the time of the auction. Winning bidders would be required to supply 100 percent of their default service obligation at the price set by the CBP so long as the aggregate PLC for that class of default customers did not exceed 105 percent of the default service load; incremental loads exceeding the threshold would be settled at market rates. Constellation reasons the incorporation of a pricing band will not shift the migration risk to customers but provides potential suppliers with more certainty, thus reducing risk premiums and leading to better auction results for customers. (Const. Ex. 2 at 20 – 22; Tr. Vol. IV at 679.) Constellation reasons the adoption of minimum stay tariff provisions, like those recently adopted by the Commission<sup>4</sup>, are inadequate to mitigate migration risk faced by default service suppliers because the tariff provisions (1) do not include any relief for the supplier from serving returning customers and (2) do not provide default service suppliers with any certainty regarding when a town/municipality or county may decline to renew an aggregation or start a new aggregation (Const. Ex. 2 at 14.)

{¶ 81} AEP Ohio submits that Constellation's proposed mechanism would obscure the price-to-compare by shifting the risk of price increases away from SSO suppliers to non-

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<sup>4</sup> See, *In re the Application of Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co. for Approval of Tariff Amendments, et al.*, Case Nos. 22-1127-EL-ATA, et al., Finding and Order (Mar. 8, 2023) at ¶¶ 19-21.

shopping customers based on volatile market prices at the very time when the SSO would serve the most value to non-shopping customers (i.e., when market prices go up and shopping customers migrate to the SSO). AEP Ohio asks that the Commission not modify the Stipulation since it passes the three-part test but acknowledges the Commission may wish to entertain such amendments in the event the Stipulation should prove inadequate in the future. (Co. Reply Br. at 21.)

{¶ 82} In regard to the proposals to modify the Stipulation to incorporate revisions to the SSO/CBP, the Commission continues to be concerned by the increases and volatility in SSO prices, particularly the impact of increases in wholesale energy prices and the impact on the SSO prices experienced by customers. However, the Commission also recognizes the SSO auction results in November of 2023 yielded a clearing price of \$71.00 per MW for a 12-month product to be delivered starting June 1, 2024, which is significantly below the clearing price in the prior auction of \$88.55 per MW for a 12-month product to be delivered starting June 1, 2023. Further, the AEP Ohio SSO auction results in March 2024 yielded an even lower clearing price of \$67.17 per MW hour for a 12-month product to be delivered starting June 1, 2024, to May 31, 2025. *In re AEP Ohio*, Case No. 23-1097-EL-UNC, Finding and Order (Nov. 30, 2023); *In re AEP Ohio*, Case No. 23-1097-EL-UNC, Finding and Order (Mar. 6, 2024); *In re AEP Ohio*, Case No. 17-2391-EL-UNC, Finding and Order (Mar. 8, 2023) (*AEP SSO Procurement Case*). Similarly, the Commission takes notice that in SSO auctions of another EDU, the clearing price was \$63.39 per MW for a 12-month product to be delivered starting June 1, 2024. *In re the Procurement of Std. Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Order (Feb. 21, 2024) at ¶ 7. The Commission has recently adopted the CPP mechanism, to address unknown capacity prices during the delivery period. *In re the Proposed Modifications to the Elec. Distribution Utilities' Std. Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC (*CPP Case*), Finding and Order (Dec. 13, 2023) at ¶ 35. With the significant reduction in auction clearing prices recently observed and the adoption of the CPP, the Commission is continuing to monitor and to gradually address the price volatility in SSO prices by implementing mitigation

measures that are commensurate to the circumstances at hand. By introducing only a couple of refinements, the Commission can more efficiently react to price volatility. Nonetheless, as we have previously stated, we appreciate intervenors offering ideas for modifying the SSO/CBP process with an eye toward lowering the cost for end use consumers. However, at this time, the Commission is not persuaded that additional action is necessary or appropriate. The Commission notes that Constellation and OCC advocated for the same amendments, class-based auctions, and a load migration band mechanism, in another recent ESP proceeding, which the Commission denied. *The Dayton Power and Light Co., d/b/a In re AES Ohio*, Case No. 22-900-EL-SSO et al. (*AES Ohio ESP Case*), Opinion and Order (Aug. 9, 2023) at ¶ 246-248. Our conclusion in this case is consistent with our determination just a few months ago in the *AES Ohio ESP Case* and further bolstered by the continually improving results observed by the Commission in SSO auction proceedings. Nothing in the record of this case convinces the Commission that the modifications to the SSO auction process, as advocated by OCC and Constellation, are necessary or appropriate. Specifically, based upon the evidence in this case, we are not persuaded that conducting the auctions by class or by “natural breaking points” will result in aggregate savings to consumers in this state. Nor are we persuaded that the mechanism proposed by Constellation will not shift migration risk from wholesale suppliers to consumers in this state. As such, we will not modify the CBP process presented in the Stipulation as requested by opposing intervenors.

{¶ 83} Third, Constellation notes that the Stipulation includes a provision which reads, in part:

“The Signatory Parties recommend that all intervenor proposals for SSO/CBP modifications in this case be dismissed without prejudice but may be considered in other SSO-related proceedings. If a final order is subsequently issued by the Commission in another proceeding that modifies the SSO/CBP (including an order that modifies or reverses the capacity pass-through mechanism established under Paragraph III.B.1), the Company consents to continuing jurisdiction and agrees to waive its right to withdraw under R.C. 4928.143(C)(2)(a) provided that such SSO/CBP modifications apply only

during the ESP term, allow for timely and adequate cost recovery along with a reasonable time to implement the modification.”

{¶ 84} Constellation argues that R.C. 4928.142 and R.C. 4928.143 provide the only mechanism for the Commission to establish a utility’s SSO, the Stipulation refers to a separate proceeding that may never happen, and AEP Ohio’s consent to the Commission’s continuing jurisdiction is insufficient to supersede the statutory requirements.(Tr. Vol. I at 55-57, 130).

{¶ 85} AEP Ohio and Staff contend the Stipulation recognizes the Commission’s continuing jurisdiction to consider further improvements to the SSO CBP throughout the term of ESP 5 in other dockets. Staff interprets the provision at issue in the Stipulation to have the same effect as any provision proposed but not adopted in the case which approved the stipulation; to essentially be the same as any proposal contrary to a stipulation (Tr. Vol. I at 125-126; Co. Br. at 28.)

{¶ 86} Constellation argues that R.C. 4928.142 and R.C. 4928.143 provide the only mechanism for the Commission to establish a utility’s SSO. Furthermore, Constellation argues, the Stipulation provision refers to a separate proceeding that may never happen and AEP Ohio’s consent to the Commission’s continuing jurisdiction is insufficient to supersede the statutory requirements. (Tr. Vol. I at 55-57, 130). We disagree. The Commission has sought comments in other proceedings outside of an EDU’s ESP case to address aspects of the SSO auction process, particularly where uniformity among the state’s EDUs is appropriate. *AEP SSO Procurement Case*, Entry (Jan. 3, 2023), Finding and Order (May 8, 2023). Further, as OCC and Constellation are aware, while this matter was proceeding through the negotiation and hearing process, the Commission opened, considered comments, and issued a decision in the *CPP Case*, wherein the Commission directed EDUs operating in Ohio to modify their SSO auction products to include a CPP for years in which no actual capacity price has been established, including at least an annual true-up of the CPP, prior to the actual flow of power for any given delivery period. *CPP Case*, Finding and



Order (Dec. 13, 2023) at ¶ 35. Should the Commission find reason, it is well within the Commission's oversight and jurisdiction to address issues which impact or require an alteration of the EDUs' SSO procurement process. The Stipulation proactively acknowledges, as we have previously expressly stated, that the Commission will retain continuing jurisdiction to make modifications in the CBP to reduce price volatility and to ensure consistency between the EDUs' CBPs, as this Commission sees fit. *CPP Case*, Entry (July 26, 2023) citing *AES Ohio ESP Case*, Opinion and Order (Aug. 9, 2023) at ¶248. The Commission will continue to evaluate, within the infrastructure of Ohio's applicable laws, whether aspects of the auction process are adversely impacting the long-term cost of service for customers and how to address price volatility. As such we find Constellation's rationale for the process that must be followed to amend AEP Ohio's auction process unconvincing. Furthermore, to the extent that the SSO auction processes of all or most of the state's EDUs are impacted, it is more efficient, and the Commission would prefer to adopt any revisions necessary in a single proceeding as opposed to making such changes one EDU at a time to allow for due process for those impacted and consistency amongst the EDUs.

*d. Capacity Proxy Price Mechanism*

{¶ 87} Signatory Parties offer that the capacity pass-through mechanism improves flexibility and enhances certainty while reducing price volatility for SSO customers when the BRA clearing price for capacity during the delivery year is not known. The CBP provision for the establishment of the capacity pass-through calls for the SSO auction manager, in consultation with the Staff, to set the proxy capacity price based on objective criteria in advance of the auction. Indeed, Signatory Parties note that opposing intervenor Constellation witness Indukuri endorses the capacity pass-through mechanism. (Joint Ex. 1 at 3-5; Co. Br. at 30-32; Constellation Ex. 2 at 7; Tr. Vol. IV at 704-706.)

{¶ 88} OCC argues that the Stipulation (1) does not offer any guiding principles regarding how the capacity pass-through price should be set; (2) asserts the capacity pass-through mechanism and true-up are potentially confusing to residential and smaller

commercial consumers; (3) adoption of the mechanism renders any price-comparison less meaningful, at best, and, at worst, misleading; and (4) the capacity pass-through mechanism changes the anticipated cost of SSO service likely leaving some customers feeling cheated. Therefore, OCC recommends the Commission provide some guidance to EDUs regarding how the capacity pass-through or CPP mechanism will be set. Further, OCC advocates that the price be set “erring on the high side...to reduce the likelihood of a substantial upward true-up.” (OCC Ex. 2 at 4, 9-10.)

{¶ 89} The Commission notes, as recognized by OCC, while this matter was proceeding through the negotiation and hearing process, the Commission opened, considered comments, and issued a decision in the *CPP Case*. OCC, Constellation, and several other interested stakeholders participated by providing comments and reply comments. On December 13, 2023, in the *CPP Case*, the Commission directed EDUs operating in Ohio to modify their SSO auction products to include a CPP for years in which no actual capacity price has been established, including at least an annual true-up of the CPP, prior to the actual flow of power for any given delivery period. *CPP Case*, Finding and Order (Dec. 13, 2023) at ¶ 35. That Commission order addresses uncertainty in the cost of capacity and, as recognized in the Stipulation, overrides this aspect of the Stipulation (Joint Ex. 1 at 3-6). The Commission notes that no applications for rehearing of our order in the *CPP Case* were filed and it is now a final order of the Commission which applies to AEP Ohio, as well as all other Ohio EDUs, auctions going forward. Furthermore, in a recent auction conducted for the FirstEnergy Utilities, the auction consultant noted that the CPP mechanism did not negatively affect the auction results in any appreciable way. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 24-133-EL-UNC, Finding and Order (Mar. 20, 2024) at ¶ 8. As such, the Commission finds OCC’s expressed concerns regarding the capacity proxy provision of the Stipulation moot.

*e. Distribution Investment Rider*

{¶ 90} Signatory Parties, specifically AEP Ohio and Staff, endorse the continuation of the DIR as reflected in the Stipulation. AEP Ohio notes, consistent with the current process, AEP Ohio will continue to file quarterly updates, with rates effective 60 days after the filing unless otherwise ordered by the Commission; however, the filing will now be due by no later than 60 days before July 1 with the rates to be effective as of July 1. AEP Ohio notes that the DIR is subject to an annual compliance audit, with audit costs recoverable through the DIR (Tr. Vol. II at 389). The Company adds that the annual DIR revenue requirement caps under the Stipulation may be prospectively recalibrated to the amount of plant-in-service in the base rate case and the DIR as well as the theoretical reserve further adjusted in the base rate case. AEP Ohio and Staff posit that proactive investments in reliability, grid resilience, and vegetation management permit the Company to address aging infrastructure, serve new customers and help reduce outages; the DIR places AEP Ohio in a better position to react to increasing new customer growth and facilitates the replacement of aging infrastructure on a more accelerated timetable than would otherwise occur. (Co. Ex. 2 at 10, 21-22; Tr. Vol. I at 44.)

{¶ 91} Staff and AEP Ohio note, as proposed in its Application, that AEP Ohio requested no DIR cap on its charges to ratepayers for “customer driven investments” which included but was not limited to capacity additions for new load, new or repairs to customer service lines, upgrades to customer’s or developer’s distribution or customer service lines and project relocations to accommodate government infrastructure changes. According to Staff, the Company currently recovers funding for such capital projects through the DIR. In contrast, Staff emphasizes the Stipulation specifically withdraws that provision and includes all customer investments in the DIR annual revenue caps, which Staff argues averts unfettered DIR charges, incentivizes DIR spending on reliability-focused projects, and lowers the DIR request by nearly half a billion dollars as compared to the Application. AEP Ohio notes that in the Company’s last ESP, the Commission approved the DIR,

acknowledging the beneficial impact to reliability and gridSMART technologies. *ESP 4 Case*, Opinion and Order at ¶ 189. AEP Ohio contends that the same essential circumstances exist today and support the continuation of the DIR. (Joint Ex. 1 at 18; Co. Ex. 1 at 12; Ex. 2 at 10; Co. Br. at 47; Staff Ex. 1 at 6; Staff Br. at 12).

{¶ 92} In addition, Staff notes that R.C. 4928.143(B)(2)(h), requires the Commission to examine the reliability of the utility's distribution system to ensure that the reliability expectations of the distribution utility and its customers are aligned, and to determine whether the utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. Staff points to OCC testimony which includes a comprehensive table of the Company's reliability performance as compared to the standards, to facilitate the Commission's evaluation (OCC Ex. 8 at 17; Staff Br. at 13-14).

{¶ 93} Further, pursuant to Ohio Adm.Code 4901:1-10-10(B)(4)(b), a survey is to be conducted, at least every three years, to measure the reliability expectations of AEP Ohio's customers. AEP Ohio's 2021 Customer Reliability Survey was admitted through the cross-examination of OCC witness Williams (Tr. Vol. II at 380). Staff contends the 2021 survey, as it relates to reliability, reveals 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 (Co. Ex. 5). Staff submits the Commission has also previously found that AEP Ohio's DIR facilitates the timely replacement of aging infrastructure, improving and maintaining service reliability, and is an appropriate component of an ESP that "affords the benefit of reliable service to all customers." *ESP 4 Case*, Opinion and Order at ¶ 189. Staff recommends the Commission conclude that the requirements of R.C. 4928.143(b)(2)(h) have been met under the Stipulation. (Staff Br. at 13-14.)

{¶ 94} Opposing intervenor OCC argues that the DIR annual revenue requirement caps, \$122.75 million for June through December 2024, \$226 million for 2025, \$256 million for 2026, \$286 million for 2027, and \$131 million for January through May 2028, would cause

rate shock for customers by 2028 with a bill impact of \$11.78 per month (OCC Ex. 4 at 7-9.) Rather, OCC proposes the DIR caps be set at \$80 million for June through December 2024, \$160 million for 2025, \$182 million for 2026, \$202 million for 2027, and \$93 million for January through May 2028. Further, OCC disputes, as implied by the Stipulation, that the reduction in the associated depreciation expense allows additional capital investment through the DIR. OCC argues the DIR caps should be maintained at the more affordable level proposed and linked to actual quantifiable improvements in the Company's service reliability. Otherwise, OCC argues the Stipulation permits AEP Ohio to collect the full amount of the DIR irrespective of any improvement in reliability or not, noting that AEP Ohio has a pending application to modify its reliability standards, lowering the System Average Interruption Frequency Index (SAIFI) to 1.28 from 1.2 and the Customer Average Interruption Duration Index (CAIDI) to 158.0 minutes from 148.0 minutes. OCC notes that AEP Ohio has not performed quantifiable projections of the impact to SAIFI and CAIDI associated with the DIR revenue caps as set forth in the Stipulation. OCC also argues that the Commission prescribed certain improvements in the System Average Interruption Duration Index as a condition for approval of the AES Ohio ESP and as a condition for Duke to recover the full value of the DIR revenue caps. *AES Ohio ESP Case*, Opinion and Order (Aug. 9, 2023) at 26; *In re Duke Energy Ohio*, Case No. 17-1263-EL-SSO, Opinion and Order (Dec. 19, 2018) at 39; and *In re Duke Energy Ohio*, Case No. 21-887-EL-AIR, et al., Opinion and Order (Dec. 14, 2022) at 21. OCC declares AEP Ohio should be held to at least the same standards. (OCC Ex. 4 at 7-11, Att. JDW-01; Tr. Vol. II at 369; OCC Br. at 21-24.)

{¶ 95} In response, AEP Ohio submits the DIR caps, as proposed in the Stipulation, will result in a total average monthly rate impact of \$1.12 for a residential customer which can hardly be characterized as rate shock. AEP Ohio contends there is no indication that OCC conducted any analysis whether the current DIR caps would be sufficient for the Company to maintain, nor improve, its reliability standards, or whether upgrades or expansion for new load qualifies under the DIR (Tr. Vol. II at 222, 387, 411). AEP Ohio points out that the reliability standards were based on a three to four percent growth rate

established over 10 years ago (Tr. Vol. II at 406-407). AEP Ohio argues that while OCC would like to tie the DIR caps to reliability performance, OCC did not cite any example where the Commission ordered a utility to do so outside of a settlement agreement and this case should not be the exception. Walmart offers that the reduced DIR revenue caps, which are not subject to rollover from year-to-year, reflect a significant concession made by the Company. (Co. Ex. 2 at 20-22; Co. Reply Br. at 29-31; Walmart Reply Br. at 3.)

{¶ 96} Contrary to OCC's implications otherwise, the Commission approved, pursuant to stipulation, the connection between the DIR and the reliability performance standards of AES Ohio and Duke Energy. *In re AES Ohio*, Case No. 22-900-EL-SSO, et al., Opinion and Order (Aug. 9, 2023) at ¶77; *In re Duke Energy Ohio, Inc.*, Case No. 21-887-EL-AIR, et al., Opinion and Order (Dec. 14, 2022) at ¶¶ 141-142; *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018) at 39, Second Entry on Rehearing (June 27, 2019) at ¶ 29. We did not modify the stipulations to tie the distribution rider expenditures to the performance reliability standards. In contrast to those two instances, we must also recognize, that the Company's current ESP did not initially link the DIR revenue requirement caps and the Company's reliability performance indices. Instead, those reliability metrics were adopted pursuant to stipulations executed in the Company's base rate proceeding, after the DIR caps had already been established. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018), Entry on Rehearing (Aug. 1, 2018); *Base Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 53-57.

{¶ 97} First, to approve the continuation of the DIR as part of ESP 5, as Staff notes, the Commission is required to 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. Notably, AEP Ohio has met each of its reliability performance measures for the years 2020 through 2022 (OCC Ex. 8 at 17).

{¶ 98} As required by Ohio Adm.Code 4901:1-10-10(B)(4)(b), no less than every three years, the electric utility must conduct a customer perception survey, with the results used as an input to the methodology for calculating new performance standards.

Satisfaction with Reliability	Residential Customers (n=930)	Non-Residential Customers (n=1,420)
Very Satisfied	51 percent	50 percent
Somewhat Satisfied	19 percent	18 percent
Neither Satisfied nor Dissatisfied	7 percent	9 percent
Somewhat dissatisfied	8 percent	8 percent
Very dissatisfied	13 percent	13 percent
Don't know	2 percent	2 percent

(Co. Ex. 5 at 3, Table 2.)

{¶ 99} The Commission finds that AEP Ohio customers' expectations and the Company's expectations are sufficiently aligned, as 70 percent of residential customers and 68 percent of non-residential customers are very satisfied or somewhat satisfied with the reliability of their electric service (Co. Ex. 5 at 3, Table 2). The survey, conducted periodically throughout 2021, found that 22.4 percent of residential customers and 23.0 percent of non-residential customers experienced no outages, with 33.5 percent of residential customers and 30.8 percent of non-residential customers recalling one or two brief outages in the past 12 months. The Institute of Electrical and Electronics Engineers (IEEE) standard defines a brief interruption as an outage of five minutes or less within the past 12 months. Further, the survey reveals that the vast majority of residential customers, 73.5 percent, and non-residential customers, 71.6 percent, consider less than two brief outages over 12 months to be acceptable (Co. Ex. 5 at 4, Table 3A and 3B). When it comes to sustained interruptions in electric service, defined as lasting longer than five minutes over the past 12 months, results were approximately the same. Sustained outages are usually caused by vehicle and

construction accidents, animal contact with the power system, equipment failure, and severe weather, including high wind, tornadoes, hurricanes, ice, and snowstorms. Eighty-five percent of residential customers and 83.9 percent of non-residential customers responded that two or fewer sustained outages were acceptable where 65.3 percent of residential customers and 62.5 percent of non-residential customers reported having two or less sustained outages in 2021, including customers with no outages. (Co. Ex. 5 at 5, Table 4A and 4B.) When asked about the longest outage experienced over the last 12 months, 13 percent of residential respondents and 14 percent of non-residential respondents surveyed were not aware of any power outages. Most residential and non-residential customers, 54 percent, and 52 percent, respectively, reported that the longest outage was less than 5 hours (Co. Ex. 5 at 6, Table 5). We note that in 2018, the Company missed its CAIDI standard of 149.00 and its SAIFI standard of 1.19. The Company's CAIDI and SAIFI after exclusions were 150.32 and 1.30, respectively. In 2019, AEP Ohio's SAIFI standard was 1.18 and its SAIFI, after exclusions was 1.20. However, the Company has met its 149.00 CAIDI standard and its 1.18 SAIFI standard for 2020, 2021 and 2022. (OCC Ex. 8 at 17.) OCC witness Williams acknowledges that, based on the Company's 2021 Customer Reliability Survey, the Company's and customers' expectations appear to be aligned regarding satisfaction with service reliability, the number of acceptable outages, and the duration of outages with electric service restored quickly. (Co. Ex. 5; Tr. Vol. II at 379, 380-384, 386, 390.) Based on the survey results and the Company's ability to meet its CAIDI and SAIFI reliability performance standards, we find that AEP Ohio is dedicating sufficient resources to reliability.

{¶ 100} We decline to revise the annual DIR revenue requirement caps and to link the revenue requirement to the reliability performance standards, as proposed by OCC, in light of the Company's recent reliability performance. This is another request to revise an isolated provision of the negotiated Stipulation to incorporate what OCC believes to be a more beneficial provision for consumers. However, whether there might be a better version of one specific provision of the Stipulation, when viewed in isolation, is not the question



before the Commission. In any event, we emphasize that the Company's recovery of the DIR rider is, as it always has been, subject to an annual review for prudence, and accuracy, and OCC and other interested parties may intervene in the DIR audit case. Further, the Commission notes that AEP Ohio has the responsibility to demonstrate that its DIR expenditures are incremental, prudent, and consistent with Ohio statutes, and Commission rules and orders. We note that our decision not to revise the negotiated DIR revenue requirement does not foreclose the parties' reconsideration of the DIR as part of the Company's next rate case nor foreclose any action within the Commission's jurisdiction should the Company's service reliability degrade. The Commission finds that the DIR facilitates the timely replacement of aging infrastructure, supporting continued service reliability, the installation of gridSMART technologies, 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 5 that affords the benefit of reliable service to all customers, and, for that reason, the Commission approves the continuation of the DIR as amended in the Stipulation. (Co. Ex. 5; Co. Ex. 2 at 10, 16-17, 21-22; Staff Ex. 1 at 6; OCC Ex. 8 at 17; Co. Br. at 5, 47.)

*f. Enhanced Service Reliability Rider*

{¶ 101} Continuing the ESRR, with adjustments to the funding level, AEP Ohio contends, facilitates the streamlined regulatory approach to the recovery of vegetation management costs which the Signatory Parties endorse (Co. Ex. 2 at 16-17). The Stipulation reduces the funding levels from those proposed in the Company's Application to \$34 million for June 1, 2024, through December 31, 2024; \$60 million for the year 2025; \$62 million for the years 2026 and 2027; and \$26 million for January 1, 2028, through May 31, 2028. AEP Ohio posits that continuation of the ESRR at the funding levels provided in the Stipulation will facilitate the Company's ability to target danger trees out of the right-of-way which has

proven to have a materially positive impact on reliability (Co. Ex. 2 at 22).<sup>5</sup> AEP Ohio argues OCC misrepresents the order in the Company's distribution rate case to terminate the danger tree program at the end of 2023. AEP Ohio contends that vegetation related outages on the Company's system vary from year-to-year based on storms, vegetation growth due to weather and other conditions. Increased funding levels do not, according to AEP Ohio, correlate to more vegetation work, as labor cost alone, as well as other factors, can obscure any ability to project performance results based on specific funding levels. Pursuant to Ohio Adm.Code 4901:1-10-26(B), the Company is required to submit an annual system improvement plan with the goals for each program, including the vegetation management program. The Company emphasizes that the ESRR is audited for prudence as a condition of recovery. (Co. Br. at 47 -51.)

{¶ 102} AEP Ohio reiterates that it has met its reliability standards for the last three years, 2020-2022 (OCC Ex. 8 at 17). Further, the Company offers that the 2021 Customer Reliability Survey confirms that customers expect that the number of outages should be kept to a minimum and in instances where there is an outage, service be restored quickly. Even more so, the Customer Surveys, along with the Company's reliability performance, support a finding that the Company's expectations and customers' expectations are aligned. (Co. Ex. 5; Co. Br. at 5, 47.)

{¶ 103} OCC argues that the Stipulation permits AEP Ohio to charge customers \$244 million over the term of ESP 5 via the ESRR that should be recovered through base rates, noting that as the ESRR was originally approved in AEP Ohio's first ESP, the purpose was to facilitate AEP Ohio's transition to a four-year cycle based tree trimming program. *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 33. Further, OCC notes that the most recent ESRR

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<sup>5</sup> As defined in the joint stipulation and recommendation approved by the Commission in Case Nos. 17-38-EL-RDR and 18-230-EL-RDR, a danger tree is a tree that is structurally unsound and could strike power lines when it falls. Danger tree characteristics include dead branches or trunks, leaning, uprooting, fungus, signs of disease, and signs of decay.

rates, as established in the Company's last base distribution rate case, were implemented to address a danger tree program scheduled to end in 2023. *Base Rate Case*, Opinion and Order (Nov. 17, 2021) at 23. The Stipulation reflects, according to OCC, a 38 percent increase in the amount of ESRR spending without (a) a determination that the program is cost-effective, (b) a requirement for AEP Ohio to file an updated vegetation management plan to demonstrate additional tree-trimming responsibilities, (c) projected improvements in reliability, or (d) a requirement that AEP Ohio examine the impact of including all tree-trimming expenses in the test year for the distribution rate case to be filed by June 1, 2026. For these reasons, OCC submits that the Commission should not approve the continuation of the ESRR. (OCC Ex. 4 at 12-14, 17.)

{¶ 104} The Commission did not anticipate, as OCC seems to imply, that the Company would no longer need to address the removal of danger trees at the conclusion of 2023. Pursuant to the Joint Stipulation approved by the Commission in AEP Ohio's last distribution rate case, "[T]he stand-alone danger tree program will end at the conclusion of 2023, but AEP Ohio may continue to take prudent actions to address danger trees after 2023 within the funding levels described above as part of its overall vegetation management plan." *Base Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶61. On that basis, AEP Ohio is permitted to address danger trees as a component of the overall vegetation management program funded by way of the ESRR but not as a separate component. We note that for the three-year period 2020 to 2022, AEP Ohio has met or exceeded its reliability performance measures (OCC Ex. 8 at 17). Reliable service is a benefit to customers and serves the public interest. We find that the continuation of proactive, cycle-based vegetation management contributes to the Company's ability to comply with reliability performance measures. Vegetation management, by its very nature, is an ongoing process. The Commission finds the cost to customers, given the ongoing nature of the program, to be reasonable and complementary to reliability. As part of the Stipulation, AEP Ohio has committed to filing a base rate case by June 1, 2026, where, like other expenses, the cost of its vegetation management will be subject to review and evaluation. Further, the ESRR is subject to an

annual review for accuracy and prudence. For these reasons, the Commission finds the continuation of the ESRR, in accordance with the Stipulation, beneficial to customers and the public interest. The Commission continues to find benefit in the continuation of the ESRR consistent with our determination in prior ESP proceedings, particularly ESP 4. *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; *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶196.

*g. Interruptible Power Tariff*

{¶ 105} The Interruptible Power (IRP) tariff is offered to two categories of customer: two legacy customers on IRP-L category of the tariff; and other customers that elect to participate in the expanded program, including reasonable arrangement participants, who are served on the IRP-E category. Customers served under the IRP tariff must be available to interrupt their electric consumption on short notice, approximately 10 minutes, and the two legacy customers participating on IRP-L receive a credit, subject to compliance with certain conditions and are subject to penalties for non-compliance. The Stipulation, in addition to several other modifications, provides for the continuation of the IRP tariff, with negotiated reductions in the credit amounts for the IRP-L customers during the term of ESP 5. The Stipulation incorporates a phase-down of the demand credits for IPR-L customers from the current rate of \$9 per kW by \$1 per kW effective June 1, 2024, another \$1 per kW June 1, 2025, and June 1, 2026, such that the credit will be \$6 per kW in the third and fourth years of the ESP 5 term unless the IRP-L credit is at or below the IRP-E credit, in which case the credit for IRP-L shall be equivalent to the IRP-E credit. AEP Ohio contends, and OELC and Staff endorse, that demand response programs, like the IRP tariff, allow the Company to call on customers to curtail load during high demand. Such programs incentivize peak load shifting to control stress on the distribution grid and avoid potential outages to customers, prepare the Company for the future of the electric distribution grid, and provide

operational benefits to AEP Ohio and, ultimately, for AEP Ohio customers. (Co. Ex. 2 at 9, 23; OELC Reply Br. at 6; Staff Ex. 1 at 9).<sup>6</sup> (Staff Ex. 2 at 9; Joint Ex. 1 at 16-22).

	<b>Stipulation Proposal IRP-L Demand Credit</b>	<b>OCC Proposal IRP-L Demand Credit</b>
Current	\$9 kW	\$9 kW
June 1, 2024, to May 31, 2025	\$8 kW	\$7.75 kW
June 1, 2025, to May 31, 2026	\$7 kW	\$6.50 kW
June 1, 2026, to May 31, 2027	\$6 kW	\$5.25 kW
June 1, 2027, to May 31, 2028	\$6 kW	\$4 kW

{¶ 106} OCC argues that the IRP-L demand credit phase-down in the Stipulation does not go far enough nor fast enough. OCC recommends the demand credits be reduced by \$1.25 per year such that the year 1 credit is \$7.75, the year 2 credit is \$6.50, the year 3 credit is \$5.25, and the year 4 credit is \$4.00. (OCC Ex. 3 at 4).

{¶ 107} OCC reasons that \$4 kW month is representative of the market clearing price for capacity in the AEP zone as established by PJM in its BRA plus the “unquantifiable” benefits of reliability and the economic benefits that the interruptible credits provide. OCC contends the “price” for interruptible service should reflect the market price for a very comparable product (capacity in the AEP zone) as closely as possible, for the benefit of consumers. (OCC Ex. 3 at 4-5.)

{¶ 108} OELC argues it is significant that OCC does not oppose the continuation of the IRP provision of the Stipulation as negotiated and endorsed by the Signatory Parties or

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<sup>6</sup> The IRP-E credit, per the Stipulation, will be \$5.6/kW month in the first year of the ESP, \$4.9/Kw month in the second year, and \$4.2/kW month in the third and fourth years of the ESP term (i.e., 70 percent of the corresponding IRP-L demand credit).

any other aspect of the IRP-L program, other than the amount of the IRP-L credit. OELC emphasizes that OCC introduced no evidence or analysis to determine the impact of OCC's proposal, and OCC witness Fortney acknowledged that the Commission has previously found the IRP program provides reliability benefits for AEP Ohio's customers and also supports the important policy goal of economic development in Ohio (Tr. Vol. II at 355, 357, 363-364). Rather, OELC submits, OCC's sole argument is that, even though the Stipulation significantly phases down the credits for IRP-L customers, OCC believes the credits should be phased down even more. OELC reasons the carefully negotiated IRP-L credit levels take into account key aspects of the program, including benefits, curtailment criteria, the ten-minute notice period, and penalties. (OELC Reply Br. at 2-12.)

{¶ 109} The Commission notes OCC does not oppose the continuation of the IRP tariff nor dispute the reliability benefits. OCC's rationale for the reduction in the IRP-L credit is the recent market clearing price for capacity in the AEP zone as established by PJM in its BRA plus the "unquantifiable" benefits of reliability and economic benefits that the interruptible credits provide (OCC Br. at 35). However, OCC witness Fortney acknowledges that the capacity price beyond the first year of the ESP term will not be known and could change substantially between now and the final year of the ESP 5 term (Tr. Vol. II at 359-360). In other words, OCC is requesting that the Commission replace this aspect of the negotiated Stipulation package with OCC's judgement on the appropriate credit rate. We find OCC's attempted connection to the \$4/kW capacity price to be tenuous, at best, and insufficient justification to revise the negotiated credit amounts presented in the Stipulation. Further, we note that this Commission has previously determined that IRP programs offer numerous benefits, including the promotion of economic development. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 140; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 40; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 26, 66. In addition to approving this IRP for AEP Ohio, we have repeatedly approved interruptible programs for other EDUs. *In re Ohio Edison Co., The Cleveland Elec. Illum. 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., 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 Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 36. We note the Stipulation reflects modifications to the IRP tariff which include the creation of a portal for interested customers and expanded access to the program. For these reasons, the Commission is not persuaded that the amount of the IRP-L credits must be revised for the Stipulation, as a package, to be a benefit to customers and the public interest. We find OCC's proposal to modify this provision of the Stipulation to be OCC's proposal to purportedly improve the benefit of the Stipulation for customers, except IRP-L customers. The benefits of a stipulation will not be accorded equally to all ratepayers or customers. As the Commission has previously recognized, the question before us under the second part of the three-part test is not whether there are additional or different mechanisms or amendments to individual provisions of the agreement that would improve the benefit to ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. Accordingly, the Commission finds OCC's recommendation to revise the amount of the IRP-L credit to be unpersuasive. The Commission continues to find the IRP program, as presented in the Stipulation, provides numerous benefits to customers and the public interest. (Co. Ex. 2 at 8-10, 17, 23; Staff Ex. 1 at 11; Tr. Vol. II at 359-364.)

#### *h. Electric Transportation Plan*

{¶ 110} The Stipulation reduces the cost of the ETP, as proposed by AEP Ohio. The Stipulation omits the proposed incentives, reducing the cost of ESP 5 by \$16.2 million, and maintaining the cap on the cost for education, outreach, and analytical evaluation at \$300,000 annually recoverable through the gridSMART rider. Analytical evaluations encompass the Company's "table top" capacity evaluation for congestion/availability for

the installation of EVSE and for AEP Ohio to analyze and evaluate implementation of a “capacity heat map” for use by external parties to determine capacity for EVSE, DERs or other demand intense technologies. The Company will revise its residential PEV tariffs to promote EV charging during off peak times to the benefit of the distribution grid and all consumers. (Joint Ex. 1 at 12-13; Co. Br. at 53-54; Staff Ex. 1 at 7-8).

{¶ 111} OCC argues that the Stipulation would permit AEP Ohio to collect costs associated with its ETP and potential “heat map” costs through the gridSMART rider (OCC Br. at 26). The Commission considers OCC’s arguments below in the gridSMART section.

*i. GridSMART Rider*

{¶ 112} Pursuant to the Stipulation, AEP Ohio will recover its costs for ADMS via the gridSMART rider and the Company withdraws the proposed new Customer Experience Rider (Co. Ex. 1 at 15; Joint Ex. 1 at 20-24). ADMS will replace the Company’s existing DMS and OMS, systems from which the vendor is retiring. (Co. Br. 55-57.)

{¶ 113} OCC witness Williams argues that the Stipulation gives AEP Ohio “carte blanche” to shift expenses into the approved gridSMART rider that are unrelated to gridSMART, including costs associated with: (a) the ADMS until such time the costs are reflected in base rates; (b) ETP and potential “heat map” costs; and (3) Smart Thermostat Demand Response Program costs (Joint Ex. 1 at 20-21.) OCC states the Commission capped the amount that could be recovered from customers through the gridSMART rider at \$233,113,318 in capital costs and \$78,838,617 in associated expenses. OCC claims the Stipulation fails to project what, if any, impact the additional costs have on the Commission-approved caps. *In re Ohio Power Co. to Initiate Phase 3 of its Grid SMART Project*, Case No. 19-1475-EL-RDR, Opinion and Order (Dec. 1, 2021) at 6. Further, OCC adds that the Company has not presented any evidence that it would be beneficial for consumers or in the public interest for these expenses to be collected from consumers through the gridSMART rider. (OCC Ex. 4 at 13; OCC Br. at 26-27).



{¶ 114} The Company and Staff disagree with OCC's interpretation of the Stipulation as it relates to the gridSMART rider. The Company contends OCC's arguments improperly attempt to connect the Stipulation in this proceeding to the gridSMART Phase 3 Stipulation approved in Case No. 19-1475-EL-RDR (gridSMART Stipulation), alleging that the latter purportedly permanently limits the Company, and the Commission, from implementing additional technologies to be recovered through the gridSMART rider. AEP Ohio submits that the gridSMART Stipulation, on its face permits future investments. The Stipulation incorporates one component of the Company's Application regarding the ETP, as offered in the Company's Application. AEP Ohio explains that education, outreach, and analytical costs are limited to no more than \$300,000 annually in association with the EVSE installation request as provided in the Stipulation (Joint Ex. 1 at 12). Further, AEP Ohio and Staff note that the Stipulation specifically limits the Smart Thermostat Demand Response Program to a maximum budget of \$5 million per year for the term of ESP 5 (Staff Reply Br. at 9). According to AEP Ohio because the Stipulation makes no amendment to the costs of ADMS, estimated at approximately \$25.5 million per the Application, AEP Ohio and Staff note the Stipulation provides no double-recovery between gridSMART and the rate case, but otherwise the Company is permitted to recover prudently incurred investments which are used and useful, and all ADMS costs included in gridSMART will be part of Staff's annual review of the rider. Staff submits that OCC's arguments are inaccurate as "heat map" costs are not included in the Stipulation, but AEP Ohio has committed to evaluate a heat map and to file a separate application, if and when it is appropriate, where OCC and other interested stakeholders could raise concerns about the heat map costs (Joint Ex. 1 at 21; Staff Reply Brief at 9.) The Company and Staff emphasize the Stipulation's assurance against double recovery (Staff Reply Br. at 9). Further the Company reasons, the recovery of ADMS costs via the gridSMART rider is also beneficial because it (1) allows the Company the ability to implement the functionalities of ADMS now rather than wait until the rate distribution case; (2) as part of the Stipulation AEP Ohio will file its gridSMART filings 60 days before their auto-approval date to ensure the Company's compliance with applicable

caps; and (3) AEP Ohio has committed to the transfer of all used and useful Phase 2 assets and cost into base rates as part of the upcoming distribution rate case, streamlining what is permitted to be recovered through the rider and thereby enhancing the efficiency of future audits of the rider to the benefit of ratepayers (Co. Ex. 2 at 11, 23). Accordingly, AEP Ohio and Staff assert that OCC's concerns regarding gridSMART costs are unfounded. (Co. Br. at 56-57; Co. Reply Br. at 32-33; Staff Reply Br. at 9-11.)

{¶ 115} The Commission finds that while the gridSMART Stipulation instituted caps on Phase 3 cost recovery, with specific exceptions, nothing in the gridSMART Stipulation nor the Commission order approving it sunsets the gridSMART rider nor prohibits the Company from requesting recovery of the cost for new technological investments through the gridSMART mechanism as OCC appears to imply. *In re Ohio Power Co. to Initiate Phase 3 of its Grid SMART Project*, Case No. 19-1475-EL-RDR, Opinion and Order (Dec. 1, 2021). As to OCC's concerns that the costs recoverable through the gridSMART rider equates to "a blank check" or gives the Company "carte blanche" to charge customers, we find such concerns to be overstated. As noted by AEP Ohio and Staff, the Stipulation places caps on the costs of the ETP education, outreach and analytical assessment and the Smart Thermostat Demand Response Program, specifically prohibits the double recovery of expenses, and subjects the gridSMART rider to annual audit. Furthermore, AEP Ohio may only recover the cost of prudent investments which are used and useful. The cost of the ADMS will be subject to review as part of the distribution rate case. (Joint Ex. 1 at 12, 20-21.) In particular, the \$25.5 million dollar estimate for the ADMS initiative, while perhaps not providing either an absolute floor or ceiling, provides a clear frame of reference for evaluating the investments in that initiative in any future proceedings that review their prudence and used and usefulness. Moreover, we believe the caps reflected in the Stipulation and the audit and evaluation process serve as protection against OCC's concerns. For these reasons, the Commission finds the additional investment costs to be recovered through the gridSMART rider, as reflected in the Stipulation, to be reasonable. (Joint Ex. 1 at 20-24; Staff Ex. 1 at 10; Co. Br. at 10, 55-57; OCC Br. at 26.)

*j. Smart Thermostat Demand Response Program*

{¶ 116} The Stipulation includes a new Smart Thermostat Demand Response Program. Enrolled residential customers will receive an incentive of \$50 to \$75 for a smart thermostat, in addition to \$25 annually for participating in demand response events. The Smart Thermostat Demand Response Program will be capped at \$5 million annually to be recovered through the gridSMART rider. AEP Ohio and Direct Energy state the Smart Thermostat Demand Response Program will offer a means of calling upon customers to curtail demand during certain events to reduce the stress on the Company's distribution system. (Direct Energy Ex. 1 at 3-5; Co. Ex. 2 at 11, 18, 23.)

{¶ 117} OCC argues that the Stipulation affords AEP Ohio near "carte blanche" to charge customers through the gridSMART rider, including the costs associated with the Smart Thermostat Demand Response Program (OCC Br. at 26-27). As AEP Ohio and Staff note, the Stipulation includes an annual cap on the Smart Thermostat Demand Response Program of \$5 million. Accordingly, for all the same reasons stated above in regard to OCC's concerns of unchecked cost charged to customers through the gridSMART rider, the Commission finds the Smart Thermostat Demand Response Program, as part of the Stipulation to be beneficial to customers, encouraging customers to reduce demand, lowering stress on the Company's distribution network thereby lowering distribution investment cost for all customers. (Joint Ex. 1 at 21-22; Co. Ex. 2 at 11, 18, 23; Staff Ex. 1 at 10; Co. Br. at 57-59.)

*k. Energy Efficiency Program*

{¶ 118} The Company initially proposed in its Application a \$43.4 million Energy Efficiency (EE) Plan with programs for residential, commercial, and industrial customers. As reflected in the Stipulation, the EE Rider funding is reduced to \$12 million with four programs and focuses primarily on low-income assistance:

<b>Program Name</b>	<b>Annual Budget</b>
e3smart	\$600,000
High Efficiency for Low-Income Program (HELP)	\$10,000,000
Neighbor to Neighbor	\$400,000
Education and Training	\$1,000,000
<b>TOTAL</b>	<b>\$12,000,000</b>

As reflected in the Stipulation, a component of the EE plan and rider is funding for the Neighbor-to-Neighbor Program, which provides bill assistance to at-risk customers with income at or below 200 percent of the federal poverty level. Further, customer donations will be matched by AEP Ohio shareholders' and contributed to the program. (Co. Ex. 2 at 12; Tr. Vol. III at 514, 518-519.) The program administrative fee will be capped at ten percent of total annual program costs incurred, a reduction from the ten percent to 20 percent depending on the cost-effectiveness of the programs requested by the Company in its Application (Tr. Vol. III at 498, 501-502). E3smart will provide energy efficiency education to school children in the Company's service territory (Staff Ex. 1 at 8). The High Efficiency for Low-Income Program (HELP) consists of two aspects: (a) an \$8.0 million program to assist customers with income up to 200 percent of the federal poverty level to be used toward lighting, heat pumps, refrigerators, and weatherization; and (b) a \$2.0 million program to fund heat pumps and weatherization for at-risk customers with income at 200 percent to 300 percent of the federal poverty level (Joint Ex. 1 at 25-26). As part of the EE Program, the Stipulation prohibits AEP Ohio from collecting lost distribution revenues as proposed in the Company's Application. Staff may evaluate the EE programs and rider through, but not limited to, an annual audit conducted by an independent auditor or otherwise, a periodic evaluation, measurement, and verification process of the programs (Joint Ex. 1 at 25-27). AEP Ohio contends that the EE Rider and programs provide an annual gross benefit to customers of approximately \$22 million, substantially exceeding the cost of the programs and the administrative fee (Co. Ex. 2 at 17). Staff and CUB endorse the EE

Rider and the EE programs reflected in the Stipulation which will provide bill payment assistance, weatherization and other measures that can reduce energy usage and the bills of low-income and moderate-income customers (Staff Ex. 1 at 8; CUB Br. at 6-8).

{¶ 119} OCC requests that the Commission modify the Stipulation to include: (1) an additional level of review, with the costs of the review to be incurred by customers, and (2) to revise the source of funding for the Neighbor-to-Neighbor Program or to incorporate more funding from AEP Ohio shareholders rather than consumers. OCC recommends that the audit take place at the end of 2026, incorporate Commission oversight over the competitive bid process for the selection of an administrator, and that the management audit of the policies, practices, and organization are prudent and should include a review of:

- (1) program expenditures, including average dollars expended per household and per property;
- (2) any administrative fees collected by AEP Ohio and the program providers;
- (3) eligibility documentation for AEP Ohio program applicants;
- (4) spending of the AEP Ohio program budget (or failure to spend the program budget);
- (5) prioritization, if applicable, of energy efficiency program services;
- (6) accounting of expenses that relate directly to reducing electric usage by the low-income consumer;
- (7) the timeline of providing low-income weatherization program products/services;
- (8) the impact of health and safety spent on services specific to weatherization;
- (9) the number and types of properties (e.g., owner-occupied, rental, etc.) that receive weatherization funding;

- (10) compliance with weatherization program guidelines, including determining eligibility of program recipients and, if applicable, limitations on funding; and
- (11) to the extent AEP Ohio knows, identifying any rental properties sold or converted by the property owner to non-low-income properties within two years of receiving weatherization services to that property. The management audit should also include recommendations to streamline administrative and operational costs, to leverage funding sources, to maximize the numbers of discrete recipients of low-income energy efficiency services, and to assist the consumers most in need. The Staff audit of the rider should also be required, not optional. And interested parties should be permitted a reasonable opportunity to address the findings of the Staff audit and should be permitted to request an evidentiary hearing based on the auditor's findings. AEP Ohio should make available to Staff and OCC, upon request, program expenditures per property and property addresses where weatherization services are performed. (OCC Ex. 5 at 6-7, 8-9; Tr. Vol. III at 506-507, 511.)

{¶ 120} Without the 11 aforementioned modifications to the EE program audit, OCC contends the Stipulation does not benefit consumers and the public interest (OCC Ex. 5 at 6-7; OCC Br. at 11-12). OCC argues a low-income program management audit is necessary and different from the Staff's review of EE programs under the mandates, which do not include general guidelines, such as: structures receiving weatherization must not be vacant or for sale, weatherization should not include undue or excessive upgrades or expenses that do not directly reduce usage or relate to health and safety, and weatherization services should not include current landlord obligations under R.C. 5321.04. (OCC Ex. 5 at 7-8.)

{¶ 121} Second, according to OCC, the Neighbor-to-Neighbor program should not be funded by AEP Ohio customers, increasing the electric bill for all residential customers,

especially not PIPP customers. OCC argues Neighbor-to-Neighbor should be completely funded by AEP Ohio shareholders or at the very least, AEP Ohio shareholders should share in the cost of funding the low-income assistance programs (OCC Br. at 15). To benefit consumers and the public interest, OCC states the Neighbor-to-Neighbor funding should be increased to \$1.5 million annually from shareholders with optional donations from customers instead of through charges on customer bills. In addition, OCC advocates the adoption of a new bill payment assistance program, in the amount of \$1 million annually to be funded by AEP Ohio shareholders, to assist consumers in the top 20 zip codes with the highest disconnection rates. (OCC Ex. 1 at 13- 14; Tr. Vol. II at 276.)

{¶ 122} Signatory Parties, AEP Ohio, Staff and CUB reiterate their endorsement of the EE plan and rider as reflected in the Stipulation. As indicated above, Staff generally endorses the EE programs which include the Neighbor-to-Neighbor program (Staff Ex. 1 at 8). As to the audit requirements, AEP Ohio contends OCC has not analyzed the costs, or identified any additional benefits that will be acquired as a result of this additional audit, let alone any benefits that will outweigh the “blank check” for the audit that is to be paid for by customers. Signatory Parties believe Staff’s expressly reserved ability to review and audit the EE rider and its programs is sufficient without assessing customers with additional unnecessary costs of a burdensome audit as outlined by OCC. According to the Signatory Parties, this benefits the Company, its customers, and the public interest. (Co. Br. at 60-61; Tr. Vol. III at 510-511).

{¶ 123} CUB submits that the overall crux of OCC’s opposition is that the funding is paid for by consumers as opposed to AEP Ohio shareholders. However, CUB points out that while customers fund the EE programs it does not mean that consumers and the public interest do not benefit. (CUB Reply Br. at 6-7.)

{¶ 124} AEP Ohio notes that OCC misunderstands that the ten percent administrative fee is not awarded to the program administrator but goes to AEP Ohio.

Further, AEP Ohio reasons that OCC's misunderstanding is the underlying basis for OCC's recommendation as to the CPP for the administrator. Staff's plenary ability to review Commission filings as well as the expressed right to evaluate the programs via an independent auditor, according to AEP Ohio, does not justify the additional audit of the EE programs as requested by OCC (Joint Ex. 1 at 26). AEP Ohio contends OCC has not analyzed the costs, or identified any additional benefits that will be acquired because of this additional audit, nor has OCC listed any benefits that will outweigh the "blank check" for the audit that is to be paid for by customers. (Co. Br. at 60-61; Tr. Vol. III at 510-511; OCC Ex. 5 at 5, 8; OCC Br. at 12; Co. Reply Br. at 26; Co. Br. at 60.)

{¶ 125} The Commission appreciates OCC's concern and recommendation as to the accounting and management audit of the weatherization and purchase assistance programs offered as part of the EE plan under the Stipulation. However, we find that these additional audit requirements are not necessary for the Stipulation, as a package, to be beneficial to customers and the public interest.

{¶ 126} The Commission is vested with the authority and supervision to direct Staff or an independent auditor to evaluate and recommend revisions or improvements to any aspect of the EE rider as well as the programs, policies, or management funded by the rider, including the audit and details of the programs thereunder, which the Commission deems to be necessary. At this time, rather than amend the Stipulation to impose the list of audit requirements advocated by OCC, the Commission directs that the EE programs shall be established in collaboration with Staff, to incorporate eligibility requirements, including supporting documentation and other requirements and processes, to the extent feasible, to set a foundation for the safeguards OCC proposes be part of a program audit. The Commission finds this to be a more efficient way to address certain of the concerns raised by OCC, as well as cost-effective for consumers. The Commission and Staff or the selected auditor at Staff's direction will randomly review aspects of the EE programs and conduct a more detailed audit when an issue is discovered or at the Commission's discretion.



{¶ 127} Next, to OCC's argument regarding the funding of the Neighbor-to-Neighbor bill assistance program. Through the Stipulation, AEP Ohio customers will fund the Neighbor-to-Neighbor Program in the amount of \$400,000 annually. The Commission notes that the Application as modified by the Stipulation does not appear to include any commitment by AEP Ohio or its shareholders to continue to fund the bill assistance program other than to match donations made to the program. The Stipulation shifts the responsibility of the bill assistance program on AEP Ohio customers. Only customers who elect to donate to the Neighbor-to-Neighbor Program should do so. The Commission appreciates that AEP Ohio shareholders have funded the Neighbor-to-Neighbor Program over the years and direct that they continue to do so. Accordingly, the Commission modifies the Stipulation to direct that AEP Ohio shareholders fund the Neighbor-to-Neighbor program at \$400,000 annually rather than AEP Ohio customers. The Commission does not find it necessary to modify the Stipulation to require AEP Ohio to contribute additional funding, as requested by OCC, to comply with part two of the three-part test for evaluating the Stipulation.

*1. Percentage of Income Payment Plan Generation Rate*

{¶ 128} OCC states that for the 12-month period ended May 31, 2023, the PIPP generation rate was \$0.1536 kWh and the SSO generation rate for the same period was \$.066220 kWh, causing at-risk, low-income consumers to be burdened with higher electric bills. The Universal Service Fund (USF) Rider, which is applied to all customer bills, is the funding mechanism for PIPP and other assistance and education programs (OCC Ex. 1 at 15). To protect at-risk PIPP participants and the public interest, OCC requests that the Stipulation be amended such that if the PIPP generation auction results in a PIPP generation rate that is higher than the SSO generation rate, the PIPP generation rate defaults to the SSO generation rate (OCC Ex. 1 at 16). OCC reasons the amendment would benefit consumers by reducing the amount paid through the USF, guarantee the generation rate paid by PIPP participants is not higher than the SSO generation rate, and lower the arrearages of PIPP

participants. Without this amendment, OCC argues the Stipulation fails to benefit consumers and the public interest. (OCC Ex. 1 at 14-16; OCC Br. at 33-34.)

{¶ 129} AEP Ohio, Staff, and RESA reply that OCC has raised this issue in numerous Commission proceedings, and in each instance, OCC's arguments have been denied explicitly or by operation of law.<sup>7</sup> AEP Ohio and Staff contend that the Commission has ruled that there is not a statutory requirement that the PIPP generation rate be at or below the SSO generation rate. Indeed, the Commission has recognized that the PIPP generation rate may be higher than the blended SSO generation rate. *In re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC (*Procurement Case*), Finding and Order (Mar. 2, 2016) at 5. AEP Ohio notes that the ESP statute contains no reference to PIPP or the USF and, furthermore, a separate statutory structure governs PIPP, including the acquisition of generation on behalf of PIPP customers. *See* R.C. 4928.54 and 4928.544. On that basis, AEP Ohio contends OCC's proposal should be rejected, as it is logically impossible to conclude that the Stipulation does not benefit the public interest by failing to address an issue that is outside the scope of the ESP and irrelevant to the consideration of the Stipulation. In addition, OCC's requested amendment, according to AEP Ohio, raises legal and logistical issues which OCC has not addressed. AEP Ohio notes that OCC acknowledges that AEP Ohio has no control over the PIPP and SSO auctions and has followed the process dictated in the *Procurement Case* (Tr. Vol. II at 280, 284). AEP Ohio points out, as OCC witness Tinkham acknowledged, the PIPP generation rate effective June 1, 2023, is \$0.07216 per kWh, which is significantly lower than the SSO generation rate of

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<sup>7</sup> *See, e.g., In re Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF (2022 USF Case), Opinion and Order (Oct. 5, 2022) at ¶ 44. In the same case, OCC's applications for rehearing filed on November 4, 2022, and January 13, 2023, were denied by operation of law pursuant to R.C. 4903.10(B). Similarly, in the *AEP SSO Procurement Case*, OCC's December 2, 2022, application for rehearing was also denied by operation of law.

\$0.10589 per kWh (Co. Ex. 4; Tr. Vol. II at 283-284; Co. Reply Br. at 22-25; Staff Reply Br. at 10; RESA Reply Br. at 6.)

{¶ 130} We deny OCC's request to modify the Stipulation on the basis that it fails to be in the public interest unless it ensures PIPP generation rates are at or below SSO generation rates. The Commission has repeatedly considered and denied this proposal for PIPP generation rates advocated by OCC. *In re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order (Mar. 2, 2016) at 5; *In re the Application of The Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Elec. Distribution Utilities*, Case No. 22-556-EL-USF, Opinion and Order (Oct. 5, 2022) at ¶ 41-44. The Commission is aware, as OCC has pointed out several times, that the PIPP generation rate effective for the 12-month period ended May 31, 2023, was more than the SSO generation rate for the same period (Co. Ex. 4). And we emphasize, as highlighted by AEP Ohio, the Company's current PIPP generation rate is below the SSO generation rate, which substantiates the Commission's expectation that while the PIPP generation rate "may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542(B)." *Procurement Case*, Finding and Order (Mar. 2, 2016) at 5. Accordingly, we find OCC's claim that without a provision to cap the PIPP generation rate at or below the SSO generation rate, this Stipulation is not in the public interest to be without merit. (Co. Ex. 4; Tr. Vol. II at 280, 282-284.)

*m. Affordability and Residential Service Disconnections*

{¶ 131} OCC submits that the Stipulation fails to address affordability, especially for at-risk customers, and the large number of residential service disconnections over the past few years and does not adopt measures that could lower the number of service disconnections. OCC points out that, when comparing AEP Ohio's annual disconnection report for 2022 to 2023, the total dollar amount of unpaid bills has increased from \$21,162,801

to \$63,554,236, the number of final notices increased by 115,293 and the unpaid balance on the final disconnection notices increased to \$542,345,458 in 2023 from \$459,550,106 in 2022. Also, OCC notes that AEP Ohio performed 155,398 residential service disconnections for non-payment from June 1, 2022, through May 31, 2023, almost 30,000 more disconnections than all the EDUs combined. OCC notes that 47.5 percent of the service disconnections in 2022 occurred in 20 zip codes within AEP Ohio's service territory. OCC recommends the Commission require a 15 percent reduction in service disconnections, including a 15 percent reduction in service disconnections within the top 20 zip codes with the highest number of disconnections. OCC witness Tinkham argues the Stipulation does nothing to address affordability nor to reduce the number of service disconnections by zip code and on that basis, the Stipulation does not benefit consumers or the public interest. (OCC Ex. 1 at 6-9, 12, Att. ART 1 and ART 2; OCC Br. at 27-30.)

{¶ 132} To the contrary, AEP Ohio notes that the Stipulation yields nominal increases to customer bills of less than one percent year-over-year. In other words, a typical customer using 1,000 kWh per month will see less than a one percent increase, \$1.50 per month, over the term of ESP 5 using traditional bill impact analysis, and less in the earlier years of ESP 5, as shown in the actual rider impact analysis, which demonstrates rider rates will not be adjusted as quickly as assumed in the traditional bill impact analysis. AEP Ohio argues that OCC overlooks the provisions of the Stipulation to support at-risk customers including the Neighbor-to-Neighbor and HELP programs. (Co. Ex. 2 at 20-21; Co. Br. at 77; Co. Reply Br. at 35.)

{¶ 133} Further, regarding OCC's arguments as to the rate of disconnections, AEP Ohio submits OCC's claims lack accuracy, context, and any true nexus to this ESP 5. The Company points out that the period of OCC's analysis 2022 through 2023, includes a 250 percent increase in the SSO generation rate, over which AEP Ohio has no control and makes

no profit or incurs any loss (Tr. Vol. II at 283-286).<sup>8</sup> The disconnection report, as compiled by AEP Ohio, includes each disconnection and may include multiple disconnections for the same customer, adding that customers may also be disconnected for a variety of reasons, such as, leaving the service area, or taking service in the name of another person. Finally, AEP Ohio contends OCC's comparison of AEP Ohio's disconnection rate to the disconnection rates of other Ohio EDUs is inadequate, incomplete, and overlooks circumstantial explanations. For instance, AEP Ohio emphasizes that OCC witness Tinkham did not consider, analyze or otherwise compare the socioeconomic makeup of the service territories of the EDUs which could account for the difference in the disconnection rates. (Tr. Vol. II at 218-219, 223-224, 226; Co. Br. at 77-79.)

{¶ 134} CUB states that it shares OCC's concerns regarding the rise in residential service disconnections. However, CUB continues, the cost-effective energy efficiency and efficiency-related programs for low-income and all residential customers is why CUB supports the Stipulation. Weatherization, CUB notes, protects customers from future cost increases and provides some protection from the future disconnection of the customer's service. (CUB Reply Br. at 8.)

{¶ 135} OCC argues the Stipulation does not address affordability and disconnections. We disagree. The Commission notes that the Stipulation calculates a modest bill increase for residential customers using 1,000 kWh per month of \$1.50 over the term of the ESP, and based on actual rider filing dates, AEP Ohio submits the bill increase will be .5 percent in the first year of ESP 5 and .6 percent to 1.8 percent in years two through four of the ESP 5 term (Co. Ex. 2 at 20-21). Further, the Stipulation package includes the EE programs. Neighbor-to-Neighbor, as proposed in the Stipulation, includes provisions to

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<sup>8</sup> See, *In re AEP Ohio*, Case No. 22-486-EL-RDR, Finding and Order (May 18, 2022); and *In re AEP Ohio*, Case No. 23-482-EL-RDR, Finding and Order (May 17, 2023). From June 1, 2022, to June 1, 2023, AEP Ohio's SSO generation rate increased from \$0.04355 to \$0.06622 to \$0.10977 per kWh.

assist low and moderate income customers with (a) bill payment assistance; and (b) the purchase of lighting, heat pumps, refrigerators, and weatherization for customers at or below 300 percent of the federal poverty level. Similarly, the Smart Thermostat Demand Response Program, which assists with the purchase of a smart thermostat and provides incentives for the participating residential customer, will assist customers with their electric bill as well as the purchase of fixtures and appliances with the goal of reducing energy usage—all factors which reduce the electric bill and improve affordability, especially for low-income customers, thereby reducing the likelihood of disconnection.

{¶ 136} As to OCC's proposal to amend the Stipulation to require AEP Ohio to reduce disconnections by 15 percent, including a 15 percent reduction in each of the 20 zip codes with the highest disconnection rate, we find OCC's proposal untenable, arbitrary, and discriminatory. In addition to the residential programs proposed in the Stipulation, as OCC is aware, the Commission has rules and programs to address affordability and the threat of disconnection for residential customers, including the PIPP programs. PIPP Plus and Graduate PIPP Plus are designed to make electric and gas utility services more affordable for low-income customers. PIPP Plus reduces the utility payment due for residential customers with household income at or below 175 percent of the federal poverty level. Even after the former PIPP Plus customer's financial situation improves, Graduate PIPP continues the reduced utility payment due for a limited period of time. See Ohio Adm.Code 4901:18-12 through 4901:1-18-18. In addition, Ohio Adm.Code 4901:1-18-05 requires AEP Ohio, like other electric, gas, and natural gas utilities, to offer any residential customer an extended payment plan to help make payments more affordable and avoid the possibility of disconnection. Also, the Commission has, for nearly 40 years, issued winter reconnection procedures in the fall of each year. *In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2015-2016 Winter Heating Season*, Case No. 15-1460-GE-UNC, Finding and Order (Sept. 2, 2015); *In re the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 03-1915-GE-UNC, Entry (Sept. 18, 2003). Most recently, on

October 4, 2023, the Commission issued its Special Reconnect Order, in effect for the current winter heating season, to assist customers facing disconnection or whose service has been disconnected, get their service restored. *In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2023-2024 Winter Heating Season*, Case No. 23-856-GE-UNC (2023-2024 WRO), Finding and Order (Oct. 4, 2023). OCC has been an active participant in the review and revision of the PIPP and Graduate PIPP rules and programs as well as the Winter Reconnect Orders over the years. *In re the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 04-1503-GE-UNC, Entry (Oct. 6, 2004), Entry (Nov. 23, 2004); *In re the Commission's Review of Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18*, Case No. 19-52-AU-ORD, Finding and Order (Nov. 4, 2020); *In re the Commission's Review of Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18*, Case No. 13-274-AU-ORD, Finding and Order (June 4, 2014). The record evidence does not support, and we therefore decline to amend the Stipulation package to incorporate OCC's zip code disconnection proposal in this proceeding.

*n. Commission Conclusion*

{¶ 137} The Stipulation includes provisions to manage electric load, provides support to low- and moderate-income customers and increases transparency in disconnection data. The Commission has consistently viewed programs to manage load volatility as a long-term financial benefit to all customers. While the Stipulation reflects a modest increase to residential customers over the term of the ESP, the cost increase to residential customers is significantly lower than the increases requested by AEP Ohio in its Application. Although intervenors raise numerous concerns regarding various isolated provisions of the Stipulation, we are persuaded that the Stipulation, as a package, benefits ratepayers, and the public interest. The question before us under the second part of the three-part test is not whether there are additional requirements, additional or different mechanisms or amendments to individual provisions that would improve the benefit to

ratepayers and the public interest, but whether the Stipulation, as a package, benefits ratepayers, and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63; *In re Duke Energy Ohio, Inc.*, Case Nos. 14-375-GA-RDR, et al. (*Duke MGP Proceedings*), Opinion and Order (Apr. 20, 2022) at ¶ 117. As discussed above, the Commission finds opposing intervenors' arguments unpersuasive. Opposing intervenors offer mechanisms and modifications to the Stipulation that, in their respective opinions, better benefit customers, suppliers, and the public interest. The Commission agrees with the Signatory Parties that the Stipulation, as a package, offers ample incentive to AEP Ohio to maintain and improve reliability for its customers in all rate classes (Staff Ex. 1 at 13; Co. Br. at 100; OMAEG/Kroger Br. at 15; Staff Br. at 22; ELPC Br. at 4; OEC Br. at 9; OELC Br. at 6–7.)

{¶ 138} 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 EE programs provide bill payment and purchase assistance, in addition to weatherization to residential customers with income at or below 300 percent of the federal poverty level. The EE programs serve to immediately assist at-risk customers who may be facing disconnection to maintain their electric service as well as support the household's reduction of electric energy consumption. Residential customers may elect to participate in the Smart Thermostat Demand Response Program and receive credit on the purchase of the thermostat in addition to an annual incentive for participating by reducing their thermostat when requested. Commercial and industrial customers also benefit from the various economic development provisions of the Stipulation, including the continuation of the Automaker Credit, the continuation of the IRP tariff and the continuation of BTCR pilot, with modifications, and the Company's contribution of shareholder funds to the Economic



Development. All customers benefit from the Stipulation provision to replace the CIS and to collaborate to ensure system functionality and flexibility for new product and service offerings, facilitate customer switching, and customer data sharing with authorized third parties. The Stipulation package provides valuable benefits to customers as well as the public interest over the term of the ESP, as all customers benefit by provisions to reduce the stress on AEP Ohio's distribution system and the electric grid. For these reasons, the Commission concludes that the record supports a finding that the Stipulation meets the second part of the three-part test. (Co. Ex. 2 at 8-10, 20-22; Staff Ex. 1 at 5-10; Tr. Vol. I at 91, 92; OMAEG/Kroger Br. at 15; Staff Br. at 22; ELPC Br. at 4; OEC Br. at 9; OELC Br. at 6-7.)

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

{¶ 139} AEP Ohio, Staff, OPAE, CUB, OMAEG, Kroger, OELC, Walmart, IGS, Direct Energy, OEC, OEG, ELPC and RESA argue that the Stipulation does not violate any important regulatory principle or practice. AEP Ohio points to the testimony of its witness Mayhan, as she outlines how the Stipulation promotes a number of the policies expressed in R.C. 4928.02. Staff, likewise, contends that AEP Ohio witness Mayhan and Staff witness Healey testified that the Stipulation promotes a number of the state's energy policies. Walmart echoes its support for the conclusions of AEP Ohio witness Mayhan and Staff witness Healey. OPAE agrees with Staff's analysis and adds that the Stipulation provides protections for at-risk populations through annual funding to programs targeted to assist low-income customers, including the elderly and disabled, which is also consistent with R.C. 4928.02. Similarly, IGS supports Staff witness Healey's contention that the Stipulation does not violate any important policies or principles, while also furthering state energy policy by offering new and innovative products and promoting competition in the market. CUB supports the testimony of Staff witness Healey, arguing that the Stipulation supports important regulatory policies like the facilitation of reasonable rates, investments to ensure safe and reliable service, economic development within the state, and competitive rates

through a competitively bid SSO. OMAEG and Kroger jointly submit that the Stipulation does not contain any provisions that run contrary to Commission precedent and will serve to further Ohio's policy toward retail electric service, as specified in R.C. 4928.02. According to OELC, by maintaining reasonable rate increases with supporting distribution investments, the Stipulation meets the standards outlined in R.C. 4928.02(A) regarding the availability of reliable and safe electric service. Further, OELC submits that the Stipulation's support of innovative products and services furthers the goal of R.C. 4928.02(D) regarding innovation. ELPC argues that not only does the Stipulation not violate any important regulatory principles or practices, but it will advance the priorities outlined in R.C. 4929.02(A), (D), and (G). (Co. Br. at 72, 91-93; Staff Br. at 18-19; Walmart Br. at 7; OPAE Br. at 5; IGS Br. at 13; CUB Br. at 9; OMAEG/Kroger Br. at 16-17; OELC Br. at 7-8; ELPC Br. at 6-8; OEC Reply Br. at 3-4; OEG Reply Br. at 3-5; RESA Reply Br. at 3.)

*a. Interruptible Service Credit*

{¶ 140} The Stipulation proposes to continue and modify the IRP programs approved in previous AEP Ohio ESP proceedings. OCC argues that the gradual phase-down of the IRP-L demand credit proposed in the Stipulation is insufficient and should be reduced at a more rapid pace. OCC supports the recommendation of its witness Fortney, who testified that the credits should be reduced \$1.25 per year such that the Year 1 credit is \$7.75, Year 2 credit is \$6.50, Year 3 credit is \$5.25, and the Year 4 credit is \$4.00. Fortney testified that \$4.00 /kW is representative of the market clearing price for capacity in the AEP zone as established by PJM in its BRA plus the unquantifiable benefits of reliability and economic benefits that the interruptible credits provide. Witness Fortney argues that the amount of the IRP credits should ultimately reflect the "price" of such a comparable product. OCC argues that the interruptible credits in the Stipulation are simply too high and that such high credits, paid for by consumers, cannot be to the benefit of consumers and the public interest. OCC submits that a central regulatory principle is that rates should, to the extent possible, reflect costs incurred. Failure to use the market clearing price for

capacity to establish the credit amounts, OCC argues, would result in the rate for interruptible service being unjust and unreasonable and violate important regulatory principles and practices. (OCC Br. at 34-36; OCC Ex. 3 at 4-5; See above for discussion of IRP programs relative to the second prong of the stipulation test.)

{¶ 141} AEP Ohio believes that OCC wants to renegotiate the phase-down IRP credits simply because OCC disagrees with the proposal, not because the terms outlined in the Stipulation violate any important regulatory principles. First, AEP Ohio points out that witness Fortney supports the IRP program and recognizes the economic development and demand response benefits of the programs (Tr. Vol. II at 357, 366). Pointing to the explanation of AEP Ohio witness Mayhan in her testimony, the Company avers that the Stipulation modestly expands the IRP programs while managing the cost impact by phasing down the credit earned by participating customers over the course of the ESP 5 term. AEP Ohio believes that this approach balances the benefits to the distribution grid by encouraging large commercial customers to curtail electric usage during times of need on the distribution grid. AEP Ohio argues that OCC witness Fortney's proposed modifications to the rate were not supported by any analysis or impact assessment, but instead reflected Fortney's desire to arrive at \$4 by the end of the four-year term. Further, AEP Ohio argues that OCC's request for larger phase downs of the IRP overlooks the concept of gradualism and what is needed to adequately induce customer participation. Ultimately, AEP Ohio believes that OCC is attempting to substitute Fortney's opinion for the bargained terms of the Stipulation, without any supporting analysis or studies. AEP Ohio asserts that such a disagreement of terms does not amount to violating regulatory principles or practice. (Co. Br. at 62-65; Co. Reply Br. at 12, 69; Co. Ex. 2 at 8-10.)

{¶ 142} OEG responds on this issue by arguing that interruptible rates like the IRP proposed in the Stipulation are authorized under R.C. 4928.143(i) and further the state policy outlined in R.C. 4928.02(N) by facilitating the state's effectiveness in the global economy. Further, OEG states that IRP credits promote the policies under R.C. 4929.02(A)

by enhancing the reliability of retail electric service and R.C. 4928.02(D) by encouraging demand-side management. Staff likewise point out that the Commission has consistently found that the IRP programs provide flexible options for energy intensive customers and further the policies outlined in R.C. 4928.02(N). (OEG Reply Br. at 3-4; Staff Br. at 16.)

{¶ 143} In its response, OELC points out that the 17 Signatory Parties to the Stipulation negotiated the specific phase down provisions in the agreement as part of a comprehensive settlement package. OELC echoes AEP Ohio in its argument that the gradual phase down proposed in the Stipulation follows the Commission's well-established regulatory principle of gradualism, which will mitigate against a rate shock to participating customers and provide sufficient time to transition to lower credit levels. OELC argues that OCC is attempting to undo the IRP provisions that resulted from arduous negotiations among the parties by simply substituting the judgment of its witness as to the appropriate phase down levels for the IRP-L credits. OELC avers that nothing in the record supports OCC's contention that the IRP credits violate any important regulatory principles. (OELC Reply Br. at 2, 5-7, 12.)

{¶ 144} The Commission finds that the phased-down IRP credits proposed in the Stipulation do not violate any important regulatory principle or practice. The Commission has regularly approved IRP programs for multiple EDUs and determined that they provide flexible options for energy intensive customers. Further, the Commission has previously made clear that these types of IRP programs are consistent with state policy under R.C. 4928.02(N) as they further Ohio's effectiveness in the global economy. *In the Matter of the Application of Columbus S. Power Co. and Ohio Power Co. for Authority to Establish a St. Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case Nos. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 26; *ESP 4, ESP 4 Case* Opinion and Order (Apr. 25, 2018) at ¶ 140; *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; *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 Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 36. Indeed, OCC does not argue against the IRP program generally, but instead believes that the phase-down of credits should occur at a more rapid pace. The Commission agrees with AEP Ohio that mere disagreement from OCC, and its offering of what it believes are superior methods for calculating credits, does not demonstrate that the IRP terms in the Stipulation violate important regulatory principles or practices. Rather, the modest expansion of the programs represents a measured approach that will balance the benefits of the program with gradually inducing customer participation. As we determined in previous rulings on interruptible programs, terms of the IRP outlined in the Stipulation will continue to further numerous state policies encapsulated in R.C. 4928.02, such as encouraging demand-side management and facilitating the state's effectiveness in the global economy.

***b. Demand Response Program***

{¶ 145} OCC argues that the Stipulation provisions which allow for AEP Ohio to implement a Smart Thermostat Demand Response Program violate numerous regulatory principles and practices. As detailed in the Stipulation, and as touched on above concerning OCC's opposition to the gridSMART rider, the Smart Thermostat Demand Response Program would have an annual cap of \$5 million for the term of the ESP. The program would be funded via the Company's gridSMART rider. The Stipulation states that a semi-annual working group will be established to, among other things, address how to optimize CRES participation in the Smart Thermostat Demand Response Program. The program would allow residential customers to take advantage of an initial \$75 incentive toward the purchase of a new qualifying smart thermostat or an initial \$50 incentive with existing qualifying smart thermostats acquired outside of the demand response program, through either AEP Ohio or a CRES provider. (Joint Ex. 1 at 22-24.) OCC witness Shutrump testified that this portion of the Stipulation violates R.C. 4928.02(H), which is intended to deter

anticompetitive subsidies flowing from a non-retail electric service provider (in this case, AEP Ohio) to a CRES provider. OCC argues that this program would allow a portion of consumer funding intended for smart thermostat rebates to SSO customers to go to CRES providers to allow CRES providers to enroll their own customers in the program. OCC further argues that the proposed Smart Thermostat Demand Response Program violates R.C. 4928.02(D), which is intended to encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, among other things, smart grid programs and advanced metering infrastructure. OCC witness Shutrump testified that consumers can purchase smart thermostats at numerous online and big-box stores and choose from a plethora of types and brands. OCC argues that because this program would force consumers to fund the purchase of smart thermostats that are easily and widely available in the competitive market, where consumers can be further educated about the pros and cons of a particular device, this program contradicts the purpose of R.C. 4928.02(D). (OCC Br. at 36-38; OCC Ex. 5 at 11-12; Joint Ex. 1 at 22-24.)

{¶ 146} OCC also argues that the Stipulation provisions regarding the Smart Thermostat Demand Response Program violate R.C. 4928.02(G). R.C. 4928.02(G) states that it is the policy of the state to “[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.” OCC states that the Commission has applied flexible regulatory treatment to recognize competitive markets and further the state’s policy of promoting availability of unbundled and comparable goods and services to allow consumers to acquire the supplier, terms, price, and conditions they feel appropriate for their respective needs. OCC points to witness Shutrump’s testimony concerning a Commission Entry issued in Case No. 20-1013-EL-POR, in which the Commission, on its own motion, struck the shared savings provision in the application filed by Duke Energy Ohio, Inc. (Duke) in that case. OCC highlights that in that Entry, the Commission stated that recovery of such shared savings would conflict with the state’s goal promoting customer choices as to the selection of supplies and supplies and would discourage market access for cost-effective supply- and demand-side retail services.

*In re Duke Energy Ohio, Inc.*, Case Nos. 20-1013-EL-POR, et al., Entry (June 17, 2020) at 2. OCC avers that the Commission reiterated this position in AEP Ohio's most recent rate case, in which we stated that future energy efficiency programs will be best served by market-based approaches. *Base Rate Case*, Opinion and Order (Nov. 17, 2021) at 47-48. OCC argues that the Stipulation departs from this precedent in that the Smart Thermostat Demand Response Program would allow AEP to charge consumers for smart thermostats that can easily be acquired in the marketplace. Participating customers that already have a smart thermostat, or plan to buy one in the market, could still participate in the program without the "subsidies" provided for in the Stipulation. (OCC Br. at 38-40; OCC Ex. 5 at 12.)

{¶ 147} AEP Ohio submits that the Smart Thermostat Demand Response Program satisfies both the second part of the settlement test as well as this third criterion, as it benefits ratepayers and the public interest and does not violate any regulatory principles. AEP Ohio believes that OCC failed to demonstrate violations of R.C. 4928.02(H) or (D). AEP Ohio argues that the Smart Thermostat Demand Response Program is designed to be competitively neutral by allowing any CRES provider to sign up customers. Not only will this advance the demand response capabilities of AEP Ohio's distribution grid but, according to AEP Ohio, the breadth of the program will ensure effective competition, in accordance with the goals of the state and the Commission. Further, AEP Ohio points out that OCC witness Shutrump herself conceded that the program will be charged through the nonbypassable gridSMART rider, not just to SSO customers (Tr. Vol. III at 521-523). AEP Ohio states that not only does this program not violate the policies set forth in R.C. 4928.02, but it is also the type of program encouraged by the statute. Responding to OCC's focus on the wide availability of smart thermostats on the open market, AEP Ohio finds the point to be overstated. AEP Ohio states that the rebate for smart thermostats is only one component of the overall structure and ties into the associated demand response program. AEP argues that the mere purchase of a smart thermostat through other vendors does not include participation in the demand response program that will allow AEP Ohio to call demand response events to improve the distribution grid. Finally, AEP Ohio argues OCC's reliance

on the Commission entry in Duke's voluntary energy efficiency portfolio is misplaced and has no bearing on the legality of the Smart Thermostat Demand Response Program proposed in the Stipulation. (Co. Br. at 83-84; Co. Reply Br. at 10, 58-61.)

{¶ 148} Staff responds that the provisions of R.C. 4928.02 are guidelines, not binding directives, and that the Supreme Court of Ohio has recently held that it neither imposes strict conditions on nor requires anything of the Commission. *See In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698, 121 N.E.3d 320, at ¶ 19. Even so, Staff states that the program does not violate these guidelines, but rather supports reliability (consistent with R.C. 4928.02(A)) and encourages innovation and market access to demand-side management (consistent with R.C. 4928.02(D)). Staff agrees with OCC that the Commission has recently emphasized the importance of relying on the market for energy efficiency but argues that the Commission has never declared that energy efficiency should be done exclusively by the competitive market. Further, Staff argues that the Smart Thermostat Demand Response Program is primarily focused on enhancing reliability, which is certainly within the domain of an EDU. (Staff Reply Br. at 10-11.)

{¶ 149} CUB also disagrees with OCC's assessment of the Smart Thermostat Demand Response Program. Rather than contradicting R.C. 4928.02(D), CUB argues that it furthers the statute's aims by encouraging innovation for demand-side retail electric service, including demand-side management and time-differentiated pricing. While consumers may be able to independently purchase smart thermostats from retailers, CUB counters that such an approach would not provide the type of systemwide benefit envisioned by the demand response program. With respect to OCC's allegation that the program violates R.C. 4928.02(H), CUB posits that OCC mistakenly views the program only as a marketing campaign and not the grid-enhancing program it is intended to be. CUB states that the actual selling or purchase of a smart thermostat is the means to the end goals of improved reliability and energy reduction. CUB submits that OCC's argument for the program's violation of R.C. 4928.02(G) is relying on dicta from recent Commission orders concerning



energy efficiency programs. CUB believes that these citations are not probative to any discussion concerning the demand response program, as those orders deal with natural gas and electric energy efficiency programs and shared savings proposals. To the extent that implementation of the program may ultimately appear to be negatively impacting Ohio's energy policies, CUB notes that the working group to be established can analyze such impacts and recommend necessary adjustments. (CUB Br. at 9; CUB Reply Br. at 2-6.)

{¶ 150} OEG responds that the smart thermostat investments and technologies proposed in the Stipulation encourage the innovation and market access to retail electric service called for by R.C. 4928.02(D), rather than violating that statute as alleged by OCC (OEG Br. at 44). OELC agrees with this assessment, arguing that by advancing innovative approaches such as investments in the smart thermostat program, the settlement package is accomplishing what R.C. 4928.02(D) intends (OELC Br. at 7). ELPC echoes this belief, outlining how the Smart Thermostat Demand Response Program promotes the policies encompassed in R.C. 4928.02(A), (D), and (G). ELPC further argues that OCC, in making its arguments on this program, overlooks the elements of the program that will allay many of OCC's concerns. For example, the working group called for in the Stipulation will allow AEP Ohio and other interested stakeholders to regularly collaborate on ways to maximize program benefits. Joint Ex. 1 at 22, 24.)

{¶ 151} OEC finds OCC's arguments with respect to the Smart Thermostat Demand Response Program to be contradictory and overbroad. OEC argues that OCC's premise that this provision violates state policy against using ratepayer dollars toward a competitive service, thus obstructing "market access," is based on an unsupported assumption that demand response programs are solely a competitive service. OEC also disagrees with OCC's assessment that the program would use ratepayer funds to inflate the competitive market. OEC avers that OCC's argument overlooks the details and goals of the specific program. According to OEC, the state's goal of ensuring effective competition must be balanced with other state policies outlined in R.C. 4928.02, which the Commission must

weigh against each other based on the facts of a particular case. Thus, the Commission is tasked with balancing the need to cultivate a competitive market while also maintaining access to reliable electric service for all Ohioans. OEC argues that the residential, distribution demand response program in this case fulfills the competing interests in R.C. 4928.02 because it is narrowly tailored to meet the needs of the distribution grid, leaving the competitive market to occupy residential offerings on the transmission system. OCC's arguments, according to OEC, fail to respond to this narrowly tailored program; instead, they argue that all potential programs under the umbrella of energy efficiency be left up to a theoretical competitive market. OEC states that reliability tools, like demand response, are not exclusively a competitive service. In response to OCC's allegation of the program violating R.C. 4928.02(H), OEC states that any funding anticipated through the Stipulation through collaboration with competitive marketers is intended to spur competition, not stifle it. OEC argues that finding this balance between competitive opportunities in the transmission market and reliability needs on the distribution system will require coordination between AEP Ohio, third-party vendors, and the competitive marketers, which the Stipulation will facilitate. (OEC Reply Br. at 3-10.)

{¶ 152} Direct Energy responds that just because a program benefits suppliers and helps them sell electricity does not mean that the program automatically violates the policy set forth in R.C. 4928.02(H). If this were true, Direct Energy asserts, then AEP Ohio's entire electric distribution system would be in violation, as SSO customers often pay for things that benefit customers, the utility, and suppliers. Further, Direct Energy states that OCC overlooks that the \$5 million per year funding will be paid by all customers and split between the utility and suppliers, commensurate in part by the benefits they provide to customers. With respect to OCC's R.C. 4928.02(D) argument, Direct Energy responds that OCC has it backward, as Direct Energy believes the Smart Thermostat Demand Response Program actually promotes the policy set forth in R.C. 4928.02(D). Similarly, Direct Energy finds OCC's R.C. 4928.02(G) argument to be backward, as the program, as structured in the

Stipulation, would provide the flexible regulatory treatment called for under that provision of the statute. (Direct Energy Reply Br. at 4-6.)

{¶ 153} The Commission finds OCC's arguments that the Smart Thermostat Demand Response Program violates important regulatory principles or practices to be without merit. We agree with Staff that the Supreme Court of Ohio has held that R.C. 4928.02 does not impose strict conditions on the Commission's actions or authority when considering applications before it. *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698, 121 N.E.3d 320, at ¶ 19. Further, while OCC is correct that we have previously indicated that the marketplace should play an important role in energy efficiency programs, the Smart Thermostat Demand Response program will facilitate the introduction of innovative products in the competitive market by encouraging the widespread distribution of smart thermostats. Rather than conflicting with state policy for retail electric service, the Smart Thermostat Demand Response Program will promote many of the goals described in R.C. 4928.02, including flexible regulatory treatment of competitive electric markets called for in subsection (G). As rightly pointed out by OEC, the guidelines enumerated in R.C. 4928.02 task this Commission with balancing the goals of promoting effective competition while also ensuring that all Ohioans maintain access to reliable electric service. This program manages to strike such a balance by encouraging innovation and market access to demand-side management while at the same time providing AEP Ohio with the ability to take actions that will improve the distribution grid. Far from violating R.C. 4928.02, this demand response program promotes many of the principles outlined therein. Improving the reliability of service is the intention of R.C. 4928.02(A), and this program will provide AEP Ohio with an additional tool to make such improvements. The program encourages innovation for demand-side retail electric service and demand-side, time-differentiated price, as encouraged in R.C. 4928.02(D). With respect to OCC's argument that the program violates R.C. 4928.02(H) by allowing consumer funding to flow from AEP Ohio to CRES providers, OCC fails to consider the program in its totality. First, this program will be charged through the nonbypassable gridSMART rider, not solely to

SSO customers. Further, the funding anticipated through collaboration between AEP Ohio and CRES providers is intended to spur competition and increase participation in the demand response program. As AEP Ohio points out, the mere fact that a consumer can purchase a smart thermostat from a third-party vendor does not mean that they will participate in the demand response program and allow improvements on the grid. Thus, the rebates allowed for are only one component of the overall structure and are intended to enhance the results of improving reliability and energy reduction. (Joint Ex. 1 at 21-24.)

*c. Alternative Energy Rider*

{¶ 154} OCC states that the Stipulation does not address every issue and term raised within the Application, but instead requests that the Commission adopt the Application “as modified by” the Stipulation. OCC further notes that while it is not mentioned in the Stipulation, the Application proposes continuing AEP Ohio’s Alternative Energy Rider (AER). OCC avers that AEP Ohio is already seeking to implement future rate adjustments to the AER in its recent application filed in Case No. 20-1745-EL-RDR. However, by Entry issued in Case No. 15-1052-EL-RDR, OCC states that the AER rates are frozen until Staff completes an audit. *See In re the Alternative Energy Rider and Auction Cost Recovery Rider for Ohio Power Co.*, Case No. 15-1052-EL-RDR, Entry (Dec. 22, 2020). OCC, therefore, argues that the issues surrounding the audit of AER charges should be addressed before the program is permitted to continue under the Stipulation. (OCC Br. at 40.)

{¶ 155} AEP Ohio finds this argument to be little more than a collateral attack on another case docket and which has no bearing on the Stipulation. AEP Ohio argues that the Commission should not permit OCC to insert a separate rider action, which is unrelated to ESP 5, into the consideration of the Stipulation. AEP Ohio acknowledges that the AER is currently stayed and subject to an ongoing audit. Beyond that, AEP Ohio argues that OCC fails to articulate how that fact establishes that the Stipulation violates important regulatory practices or principles. AEP Ohio believes that the Commission should disregard OCC’s arguments regarding the AER. (Co. Reply Br. at 61.)

{¶ 156} Staff responds to OCC's argument regarding the AER by noting that there remains a renewable mandate under R.C. 4928.64. Based upon this statutory directive, Staff states that the rider should continue to allow AEP Ohio to recover prudently incurred costs to comply with the statute. (Staff Reply Br. at 12.)

{¶ 157} OEG agrees with Staff and points out that continuation of AEP Ohio's AER is required in order to collect costs incurred pursuant to R.C. 4928.64 (OEG Reply Br. at 4).

{¶ 158} The Commission finds OCC's arguments concerning the continuation of the AER do not support the conclusion that these provisions of the Stipulation violate important regulatory principles or practices. The audit discussed by OCC is ongoing in a separate case docket, in which AEP Ohio is seeking an increase in AER rates. Upon completion of this audit, Staff will file a report in the appropriate case docket and make recommendations as to appropriate rates, which the Commission will review and rule upon. *In re the Application of the Alternative Energy Rider and Auction Cost Recovery for Ohio Power Co.*, Case No. 20-1745-EL-RDR, Entry (Dec. 22, 2020) at ¶ 11. Furthermore, interested parties, including OCC, will have the opportunity to intervene and participate in that proceeding. That case and audit are unrelated to this proceeding, however, and have no bearing on the continuation of the AER called for under the Stipulation. Thus, these provisions of the Stipulation cannot be in violation of any important regulatory principles or practices.

#### *d. Customer Information System*

{¶ 159} OCC argues that the Stipulation authorizes AEP Ohio to collect the costs of a new CIS from consumers through its next distribution rate case or a future rider, which it believes will allow the Company to recover costs without having to prove that the investment is used and useful. OCC points to the testimony of its witness Williams, who testified that allowing AEP Ohio to demonstrate that the new CIS may meet some limited functionality requirements such as those outlined in the Stipulation falls short of a demonstration that the system is used and useful in providing service to customers. OCC

states that the standard of review for all costs that will be collected from consumers related to the new CIS should be a determination that the plant is used and useful, as of a certain date, in providing electric distribution service to consumers, as required under R.C. 4909.15. OCC argues that failing to require AEP Ohio to prove the investment is used and useful violates important regulatory principles and practice. (OCC Br. at 41-42; OCC Ex. 4 at 17-18.)

{¶ 160} AEP Ohio responds that the Stipulation already provides the protections that OCC seeks and further argues that this objection is superficial and premature. AEP Ohio explains that the Stipulation permits the Company to defer a return on its prudently incurred capital investments in the new CIS and its incremental expenses rather than immediate recovery of costs associated with the CIS through the Customer Experience Rider, as was originally proposed in the Application. AEP Ohio believes that OCC witness Williams mischaracterized the CIS commitments in the Stipulation, overlooking that the ultimate inclusion of the CIS investment in rate base in the Company's next distribution case will itself be the subject of a reasonableness and prudence review by the Commission. Further, under this framework, interested stakeholders will have the opportunity to review and comment on the incurred capital investments in the CIS and its incremental expenses during a future distribution rate case or rider case. AEP Ohio stresses that nothing in the Stipulation, or the record in this case, will prevent OCC or any other interested party from intervening and/or participating in AEP Ohio's future filings relating to the CIS. AEP Ohio also points out that the ESP statute explicitly authorizes deferral under R.C. 4928.143(B)(2)(d). (Co. Br. at 75-77; Co. Reply Br. at 12, 70; Joint Ex. 1 at 6.)

{¶ 161} Staff agrees that OCC's argument mischaracterizes the CIS provisions in the Stipulation. Staff states that the Stipulation does not guarantee recovery of CIS expenses in the next rate case, but instead that the recovery of these costs in the next rate case will be consistent with all applicable laws. Thus, contrary to OCC's argument, AEP Ohio will be

required to show that its CIS upgrades are used and useful before being permitted to recover those investments. (Staff Reply Br. at 12.)

{¶ 162} IGS responds similarly, asserting that nothing in the record supports OCC's contention that the CIS provisions in the Stipulation violate important regulatory principles. IGS agrees with AEP Ohio's statement that the Stipulation reflects that 17 parties to the Stipulation agreed that the amount of CIS expenditures for future recovery will be subject to review. (IGS Reply Br. at 9 citing Co. Br. at 14.)

{¶ 163} Direct Energy largely echoes the points made by AEP Ohio, pointing to the ESP statute, R.C. 4928.143, to emphasize that it and other provisions of R.C. Chapter 4928 allow for AEP Ohio to recover a return on and of its prudently incurred capital investment in the CIS through its next base distribution rate case. Like other parties to the Stipulation, Direct Energy believes that OCC is mischaracterizing how the recovery of these expenses will occur because the Stipulation already dictates that the amount of the CIS expenditures for future recovery will be subject to a reasonableness and prudence review. OEG likewise responds to this OCC objection by stating that such CIS costs may be lawfully recovered in a base distribution case, as contemplated under the Stipulation. (Direct Energy Reply Br. at 6-7; OEG Reply Br. at 4.)

{¶ 164} Similar to others that opined on this issue, RESA responds that the Stipulation does not eliminate the used and useful standard or the need to determine that AEP Ohio's expenditures to implement the CIS were prudent. Conversely, RESA states that the Stipulation makes clear that the CIS provisions will be "consistent with all applicable laws" and that the CIS investment must be "prudently incurred." Further, RESA states that the Stipulation requires that certain operability requirements be met before AEP Ohio can recover deferred CIS investment. Thus, RESA avers that the Stipulation provisions are more stringent than using only a typical used and useful standard. (RESA Reply Br. at 5; Joint Ex. 1 at 6.)

{¶ 165} The Commission finds nothing in the provisions of the Stipulation concerning AEP Ohio collecting the costs of a new CIS from consumers through its next distribution rate case or a future rider to be in violation of important regulatory principles or practices. R.C. 4928.143 allows for the deferral of a return on prudently incurred expenses, which is contemplated in the Stipulation by AEP Ohio committing to seek recovery of its prudently incurred capital investments in the new CIS. *See* R.C. 4928.143(B)(2)(d) and Ohio Adm.Code 4901:1-35-03(C)(9)(c)(ii). OCC either overlooks or misunderstands the implications of this commitment and the effect that this has on AEP Ohio's ability to recover those costs. The Stipulation makes clear that the recovery of these incurred expenses must be "consistent with all applicable laws" and must be "prudently incurred" (Joint Ex. 1 at 6). Thus, by committing to seek the return in a future base distribution rate case, the capital costs that AEP Ohio seeks to recover will be subject to a reasonableness and prudence review by the Commission. During that proceeding, OCC and all interested stakeholders will have the ability to review and comment on the incurred expenses and weigh in on the reasonableness of their recovery prior to the Commission making a determination. This review in the base rate case will be done in accordance with all applicable laws and regulations. AEP Ohio is, therefore, correct that these objections made by OCC are premature and would be more appropriate in the contemplated future base rate case. As such, the provisions of the Stipulation relating to the deferral of costs incurred on the new CIS do not violate any important regulatory principles or practices. (Joint Ex. 1 at 6.)

*e. Automaker Credit Rider*

{¶ 166} OCC believes that not only does the Automaker Credit Rider harm consumers, but it also violates regulatory principles. OCC argues that R.C. 4928.143(B)(2)(i) allows for implementation of new economic development programs, but that this program already exists. OCC contends that Automaker Credit Rider should only be considered if it satisfies the standards for a reasonable arrangement under R.C. 4905.31. OCC states that



R.C. 4905.31 already provides a mechanism for large industrial and commercial consumers, such as automakers, to seek favorable electric service rates and terms from an EDU. To do so, such large consumers can file an application with the Commission for a reasonable arrangement under R.C. 4905.31, which places the burden of proof on the customer that seeks to have the arrangement approved. OCC argues that the Automaker Credit Rider provisions in the Stipulation will allow automakers to bypass the requirements of R.C. 4905.31, which the Commission should not permit. (OCC Br. at 42.)

{¶ 167} AEP Ohio responds to this objection by stating that OCC is ignoring the nominal bill impact that the Automaker Credit Rider will have and prior Commission precedent that approved the Automaker Credit as a beneficial economic development tool despite the same objections being made by OCC. AEP Ohio refers to the *ESP 4 Case* in which OCC made the same argument that the Automaker Credit should be considered under R.C. 4905.31. The Commission rejected this argument, however, and authorized the creation of the Automaker Credit. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 148. Further, AEP Ohio avers that R.C. 4905.31 is not the exclusive mechanism for establishing economic development programs, as the ESP statute permits “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 EDUs in the same holding company system.” R.C. 4928.143(B)(2)(i). Thus, consistent with Ohio statutes and Commission precedent, AEP Ohio states that the Automaker Credit Rider does not violate regulatory practices or principles. (Co. Reply Br. at 61-62.)

{¶ 168} OEG agrees with AEP Ohio, highlighting that the Automaker Credit Rider is authorized under R.C. 4928.143 and furthers the state policy in R.C. 4928.02(N) by facilitating the state’s effectiveness in the global economy. (OEG Reply Br. at 3-4.)

{¶ 169} The Commission finds OCC’s arguments that the Automaker Credit Rider violates important regulatory principles to be without merit. As pointed out by AEP Ohio,

we previously approved the creation of the Automaker Credit Rider in the *ESP 4 Case*, despite OCC lodging the same arguments concerning reasonable arrangements. Consistent with that prior determination, we again find that the Automaker Credit Rider is the type of economic development program contemplated and authorized by R.C. 4928.143(B)(2)(i) and, thus, does not violate any regulatory principles or practices. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 148.

*f. Excessive Disconnection of Consumer Services*

{¶ 170} OCC argues that the Stipulation violates regulatory principles and practices by failing to address excessive disconnection of consumer services by AEP Ohio. OCC states that electric service is critical for households to maintain lighting, heating and cooling, and the continued operation of essential devices and appliances. In addition to low-income consumers struggling to pay electric bills, OCC highlights other coping strategies that customers engage in – such as leaving off air conditioning in the summer, forgoing food and medicine, seeking payday loans and other nonoptimal strategies – can lead to additional health and financial complications for individuals. OCC witness Tinkham testified that the Stipulation violates both R.C. 4928.02(A) and (L), which set the state’s policy to ensure reasonably priced retail electric service and the protection of at-risk populations, respectively. OCC contends that the Stipulation does not protect at-risk consumers, but OCC offers protections that should be implemented to meet the statutory requirements. OCC believes that the Commission should require a reduction in service disconnections by 15 percent, including a 15 percent reduction in service disconnection within the top 20 zip codes with the highest number of disconnections. OCC states that based upon 2022 data, implementation of this proposal would reduce service disconnections by 21,910 in AEP Ohio’s service territory, within which a 10,429 reduction would need to occur in the top 20 zip codes. To strengthen such a commitment, OCC believes that failure by AEP Ohio to meet this standard should require the Company to contribute \$100,000 from shareholders toward bill assistance programs. OCC also believes that to increase transparency, AEP Ohio

disconnection data should be made public. OCC states that disconnection data should be released quarterly, rather than annually, and that categorizing the data by zip code would assist social service organizations and other groups to identify areas with the greatest need for electric bill assistance. Finally, OCC believes that the Commission should require a quarterly collaborative meeting between AEP Ohio, OCC, and other interested parties to discuss ways that the Company can reduce service disconnections. (OCC Br. at 43-45.)

{¶ 171} OCC finds AEP Ohio's response to these proposals to be inadequate. Rather than addressing the suggestions, OCC believes that AEP Ohio simply discounts the testimony of OCC witness Tinkham and shifts blame to other utilities. OCC argues that the Stipulation will make electric service even less affordable for AEP Ohio customers and that the Commission should refuse to approve the Stipulation until the Company includes provisions to protect consumers from the unreasonable level of disconnections by AEP Ohio. Until such protections are implemented, OCC believes that the Stipulation fails to satisfy the third prong of the test for stipulations. (OCC Reply Br. at 17-18; OCC Ex. 1 at 3-5, 7-8.)

{¶ 172} AEP Ohio believes that OCC witness Tinkham's testimony identifies no specific regulatory law, practice, or principle that is violated by not reducing disconnections by 15 percent year-over-year or by reducing disconnections by 15 percent in the top 20 zip codes with the highest number of disconnections. Even more significantly, AEP Ohio highlights that witness Tinkham acknowledged that AEP Ohio is following the laws related to disconnections. AEP Ohio argues that witness Tinkham's 15 percent reduction standard is simply an attempt to "back into" the number of reductions that AEP Ohio performed ten years earlier. AEP Ohio counters that many factors beyond its control have occurred in the decade since those disconnection numbers. AEP Ohio finds OCC's comparison of the Company's disconnection rates to other utilities to be irrelevant, as witness Tinkham had no involvement in the preparation of these numbers nor had any familiarity with how each utility might have prepared them. Further, AEP Ohio points out that OCC provides no

detail as to how its 15 percent proposal would even be implemented. AEP Ohio states that OCC witness Tinkham's recommendations are unfounded, unprecedented, and are laden with administrative concerns that could ultimately result in a discriminatory impact to similarly situated customers. (Co. Br. at 77-79; Co. Reply Br. at 62-65; Tr. Vol. II at 252.)

{¶ 173} Staff echoes the concerns of AEP Ohio, pointing out that the proposals from OCC witness Tinkham are not required by any Ohio statutes or regulations. And while Ohio law does not require AEP Ohio to provide the number of disconnections annually in each zip code, Staff notes that as part of the Stipulation, the Company has agreed to go beyond the standard reporting requirements and provide more granular data by zip code. With respect to OCC's contention that the Company should be required to report disconnection data quarterly, rather than annually, Staff argues that the Commission has recently rejected such proposals from OCC. *See, e.g., In re Disconnection of Gas and Electric Service in Winter Emergencies for the 2022-2023 Winter Heating Season*, Case No. 22-668-GEUNC, Opinion and Order at 15-16 (Oct. 5, 2022); 2023-2024 WRO, Finding and Order (Oct. 4, 2023) at 34.

{¶ 174} OPAGE argues that the Stipulation provides protections for at-risk populations through annual funding programs intended to assist low-income customers (OPAGE Br. at 5.)

{¶ 175} OMAEG and Kroger similarly state that the Stipulation will work to ensure the availability of reasonably-priced retail electric service while also protecting at-risk populations, which presumably would help in lessening total disconnections. OMAEG and Kroger believe that proposals to modify certain provisions of the Stipulation, such as OCC's regarding reductions in disconnections, are being made to promote specific interests for particular parties or certain subclasses of customers and fail to demonstrate how the provisions violate regulatory principles. (OMAEG/Kroger Br. at 17; OMAEG/Kroger Reply Br. at 10-11.)

{¶ 176} We find no violation of regulatory principles and practices by the Stipulation due to a failure to address an alleged level of excessive disconnections. OCC argues that this failure causes the Stipulation to violate state electric policies in R.C. 4928.02(A) and (L), which promote reasonably-priced retail electric service and the protection of at-risk populations, respectively. Initially, we note that there is no statutory or administrative definition for what constitutes “excessive disconnection of customers” or any legal requirement that disconnections be reduced by a certain percentage. Thus, there is no metric against which a reduction can be measured and a failure to meet such a metric can be deemed to be a violation of statutes or Commission regulations. AEP Ohio makes clear, and even OCC witness Tinkham acknowledged, that AEP Ohio is abiding by applicable disconnection rules (Tr. Vol. II at 252). As pointed out by multiple parties throughout post-hearing briefs and discussed above with respect to the Smart Thermostat Demand Response Program, the policies outlined in R.C. 4928.02 create a number of goals that must be balanced and require that proposed energy plans or programs be viewed in their totality, as programs that favor one policy may simultaneously detract from another. OCC proposes a requirement AEP Ohio reduce the number of service disconnections by 15 percent and that, within that 15 percent, a further reduction to be made within the top 20 zip codes with the highest number of disconnections. However, as pointed out by AEP Ohio, OCC offers no insight as to how such a program can be implemented on a nondiscriminatory basis – which is another requirement of R.C. 4928.02(A) – and, as such, it would likely create a scenario in which similarly-situated customers could be treated differently in disconnection matters. Considered in the aggregate, the Stipulation incorporates programs intended to protect at-risk populations, such as the annual funding programs to assist low-income customers, demand response programs, and others (Joint Ex. 1 at 21-24, 25). The Stipulation not adopting an unstudied proposal put forth by a particular party does not amount to violating important regulatory principles and practices.

{¶ 177} Finally, with respect to OCC’s request that AEP Ohio should be required to provide data on disconnections quarterly rather than annually, the Commission declines to

incorporate such a requirement. The Commission notes that AEP Ohio has already agreed in the Stipulation to provide consumer disconnection data annually by zip code, which is beyond what is required by R.C. 4933.123. (Joint Ex. 1 at 34.) Regardless, arguments as to the reporting requirements of EDUs are better suited for a more general proceeding such as rules review rather than an ESP proceeding such as this, which the Commission has stated in response to OCC's similar recent proposals. See., e.g., *In re the Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for Nonpayment*, Case No. 21-548-GE-UNC, Entry (Oct. 6, 2021).

*g. Plug-In Electric Vehicle Time-of-Use Rates*

{¶ 178} OCC argues that the PEV TOU rates in the Stipulation, which contain new optional tariffs for residential customers with EVs, and the separately metered EV TOD tariff do not meet cost-causation, incentive, rate stability, and other regulatory principles and, therefore, violate important regulatory principles. While OCC acknowledges that these provisions of the Stipulation define off-peak and on-peak periods and set lower prices during off-peak periods, OCC asserts that these provisions violate certain regulatory principles. OCC witness Sioshansi testified that regulators typically set prices in a manner that achieves one or more desirable goals. For instance, witness Sioshansi highlighted the regulatory principle of “cost causation,” where the price charged to a customer for utility service should reflect the cost of providing that service to the customer. Other regulatory goals such as rate or cost stability, incentives or utilize a particular product, or other objectives may also guide regulators. Sioshansi argues, however, that the rate design for PEV TOU rates has no basis in any rate design philosophy or goal. OCC points to Sioshansi's testimony that there is no evidence showing that the proposed price levels for the program are sufficient incentive for EV owners to shift their vehicle-charging needs to off-peak hours. Additionally, OCC expresses concern that the Stipulation does not address potential “rebound peaks,” whereby EVs with automated charging controls simultaneously begin to charge at the start of off-peak hours. OCC also asserts that there is no evidence that

the Stipulation is consistent with the principle of cost causation. OCC expressed concern that, depending upon how the program is implemented, EV charging has the potential to impose ancillary costs on the electricity system that consumers who do not have such vehicles will be forced to bear. At a minimum, OCC argues that the Commission should request and scrutinize information regarding the design of the PEV TOU rates and “modify them accordingly.” Without additional substantiation of the prudence of these rates, OCC argues that the rates violate the third prong of the stipulation test. (OCC Br. at 45-48; OCC Ex. 6 at 4-7.)

{¶ 179} AEP Ohio asserts that the Stipulation already provides the relief that OCC witness Sioshansi seeks by its creation of a working group specifically tasked with discussing and analyzing the PEV rates and their cost-of-service impacts. AEP Ohio notes that while OCC witness Sioshansi focuses on the concept of “cost causation,” he also admitted that there are numerous additional regulatory concepts and principles that could also guide a certain decision, such as incentivizing EV charging during periods of low demand or encouraging customers to charge vehicles during off-peak hours. AEP Ohio submits that such peak-shifting for a demand-intensive resource like EVs would lead to customer savings on distribution costs and that this was the guiding principle in formulating the stipulated PEV rates. Further, AEP Ohio notes that the stipulated PEV rates, coupled with robust data sharing commitments and options for revisiting the PEV rates through an ATA filing, support many regulatory policies, including those enumerated in R.C. 4928.02(D). With respect to OCC’s request that the Commission “request and scrutinize” additional information about the PEV rates, AEP Ohio retorts that this is precisely what is contemplated in the Stipulation. AEP Ohio committed to sharing data associated with the PEV rates through a newly-established working group tasked with discussing and analyzing the PEV rates and considering further offerings to optimize impacts. (Co. Br. at 80-81; Co. Reply Br. at 66-67; Joint Ex. 1 at 12-14.)

{¶ 180} CUB and OEG both believe that the Stipulation's PEV rates and provisions promote the goals of R.C. 4928.02(D) by encouraging innovation for demand-side retail electric service by utilizing demand-side management, time-differentiated pricing. (CUB Br. at 9; OEG Br. at 4.)

{¶ 181} The Commission rejects OCC's arguments regarding the PEV rates violating the third prong of the stipulation test. OCC argues that there is no evidence that the Stipulation is consistent with theoretical regulatory principles, with the primary focus on the concept of cost causation. However, regulatory principles are not mutually exclusive, such that certain regulatory principles may coexist with each other and not easily align – in fact, OCC witness Sioshansi admitted as much (Tr. Vol. III at 563). The state of Ohio's policies with respect to CRES are outlined in R.C. 4928.02 and, as pointed out by AEP Ohio, CUB, and OEC, the PEV rates and design structure in the Stipulation are aligned with clearly defined goals such as that in paragraph (D), in which the state strives to encourage innovation for cost-effective demand-side retail electric service through time-differentiated pricing. The PEV rates should support additional policies enumerated in the statute. For instance, incentivizing EV charging during periods of low demand, thus shifting charging activities to off-peak hours, will assist AEP Ohio in stabilizing the grid and ensuring consumer access to reliable electric service, in compliance with R.C. 4928.02(A). AEP Ohio also highlights that by shifting a demand-intense resource like EV charging would help alleviate customer distribution costs. While any number of academic regulatory principles can be cited, AEP Ohio and other Signatory Parties demonstrate that the PEV rates were designed to satisfy those policies explicitly set forth by the state of Ohio. (Joint Ex. 1 at 12-14.)

{¶ 182} With respect to OCC's request that the PEV rates be further scrutinized and modified accordingly, the Stipulation already provides for such review on an ongoing basis. The Stipulation provides for the sharing of data associated with PEV rates as part of a newly-created working group specifically tasked with discussing and analyzing the rates to the



make recommendations as to additional TOU rate offerings whereby AEP Ohio can file applications to alter the PEV rates. The Stipulation states that this working group will include the Company and “interested parties,” which the Commission interprets to include OCC, should OCC choose to participate. This type of collaborative, ongoing review can serve to optimize the impact that these TOU offerings can make. (Joint Ex. 1 at 13-14.)

*h. Contribution in Aid of Construction Provisions*

{¶ 183} Also related to EVs, OCC takes issue with AEP Ohio’s commitment to propose a modification to the Commission’s rules related to CIAC for customer installations of EV charging stations (from 60 percent to 80 percent) and a corresponding reservation of capital to support that proposal, to the extent that the Commission ultimately approves such an amendment to its rules. OCC raises three primary objections relating to the CIAC commitments set forth in the Stipulation. First, OCC states that the Stipulation commits AEP Ohio’s customers to bear 80 percent of CIAC costs associated with deploying EV charging stations. OCC states that under the Stipulation up to \$4 million in CIAC costs would be borne by and socialized to all AEP Ohio customers, including lower-income consumers who are unlikely to receive any benefit from the installation of EV charging stations. OCC argues that this commitment would create, in the words of OCC witness Sioshansi, a “perverse cross subsidy” to EV owners, who are the primary beneficiaries of EV charging stations and already tend to be higher-income individuals. OCC believes that this cross subsidy is in violation of regulatory principles and that these provisions of the Stipulation should be denied. (OCC Br. at 48-50; OCC Ex. 6 at 10.)

{¶ 184} Second, OCC asserts that the CIAC proposals in the Stipulation are not germane to the issues raised in this ESP proceeding. OCC argues that Paragraph 14 of the Stipulation memorializes a commitment from AEP Ohio to act in a future unrelated matter in exchange for Commission acceptance of the Stipulation. However, OCC notes that nothing in the Stipulation precludes AEP Ohio or any other party in the case from taking any position with respect to Case No. 22-1025-AU-COI or Ohio Adm.Code 4901:1-9. OCC

argues that this portion of the Stipulation contains conditions which are not relevant to the issues of this proceeding and Paragraph 14 should not be included as part of any approved settlement. (OCC Br. at 50.)

{¶ 185} Finally, OCC believes that Paragraph 15 commits AEP Ohio to specific spending and investment levels on CIAC costs before the Commission has made any determination relating to AEP Ohio's promised proposal to modify rules related to CIAC for customer installations of EV charging stations. OCC argues, therefore, that Paragraph 15 is premature, as such predetermined spending levels may ultimately be inappropriate. Further, OCC cautions that approval of the Stipulation with these specified spending levels could inadvertently tie the hands of the Commission in making a determination regarding Case No. 22-1025-AU-COI. Thus, OCC thinks that it is premature and inappropriate to set these spending levels as part of the Stipulation. (OCC Br. at 50-51; OCC Reply Br. at 19-21.)

{¶ 186} AEP Ohio responds that the Commission has plenary power to change its rules upon proper consideration of such proposed changes and thus the provisions of the Stipulation relating to the CIAC do not violate important regulatory principles or in any way "tie the hands" of the Commission in future rules proceedings. AEP Ohio argues that its commitment to advance a position for the Commission's consideration related to the assignment of CIAC is directly germane to the issues in this case and is a commitment that AEP Ohio likely would not have agreed to or otherwise made if not for the bargaining that took place in negotiating the Stipulation. AEP Ohio also finds it ironic that OCC has previously agreed to a settlement containing commitments to take certain positions in a separate matter in a separate case, but now argues that a similar commitment in the Stipulation is inappropriate. *See, e.g. In re the Application of The Dayton Power and Light Co. for an Increase in its Elec. Distribution Rates*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at 23-24. In response to OCC witness Sioshansi's assertion that amendment to the CIAC rules would create a "perverse cross subsidy," AEP Ohio believes that OCC is ignoring the rigorous review that would take place before the Commission

approved an amendment to the rules. AEP Ohio states that the Commission will approve the amendment to the rules only after performing the kind of analysis that OCC requests. Moreover, AEP Ohio states that the capital reservation in the Stipulation is only applicable to “approved locations” which the agreement limits to “where there is existing capacity to serve the requested amount of peak load without having to install additional facilities to maintain, protect, upgrade or improve the existing distribution facilities before the point of origin.” AEP Ohio argues that this benefits all customers because it will reduce and/or defer the need for additional distribution plant in service that would not otherwise occur absent such an incentive. (Co. Br. at 80-83; Co. Reply Br. at 67-69; Joint Ex. 1 at 14-15.)

{¶ 187} Staff responds that the Stipulation only commits AEP Ohio to propose to the Commission that if its portion of line extension costs increase to 80 percent, then if (and only if) the Commission approves those costs in a separate proceeding, the Company would commit between \$2 million and \$4 million through the DIR. Staff further notes that customers are already responsible for 60 percent of line extension costs pursuant to Ohio Adm.Code 4901:1-9-07(D), so OCC’s argument that EV owners should pay 100 percent of such costs would be inconsistent with current Commission regulations. (Staff Reply Br. at 13-14.)

{¶ 188} Walmart believes that OCC incorrectly states the terms of the Stipulation regarding the CIAC. Walmart states that the Stipulation does not commit AEP Ohio’s customers to bear 80 percent of the CIAC costs associated with deploying EV charging stations, as claimed by OCC; but, rather, the Stipulation simply states that AEP Ohio will support a particular position in a future rulemaking proceeding. The ultimate decision on the issue will result only after the matter has gone before the Commission and undergone a standard rulemaking review. Walmart avers that agreeing to support a position or compromise that would otherwise exist in a future proceeding is not unusual nor prohibited as part of a settlement/stipulation. Walmart notes that OCC did not oppose a similar proposal in the *AES Ohio ESP Case*. *AES Ohio ESP Case*, Joint Stipulation and

Recommendation (Apr. 10, 2023) at 25-26. Similarly, Walmart believes that OCC overstates its case in claiming that up to \$4 million in CIAC costs will be borne by and socialized to all AEP Ohio customers. As noted previously, the dollars in question will only be spent if there is a change in the CIAC rules. Finally, Walmart states that OCC produced no evidence to show that lower income customers will not benefit from these improvements. (Walmart Reply Br. at 3-5.)

{¶ 189} The Commission finds OCC's arguments related to the CIAC for the installation of EV charging stations to be unpersuasive. As pointed out by Staff and Walmart, OCC ignores that rather than approving the level of commitments or certain amendments to Commission rules, the Stipulation simply provides that AEP Ohio will support a particular position in Case No. 22-1025-AU-COI. Ultimately, whether such revisions to the CIAC rules are made, or what percentage of CIAC costs associated with EV charging stations that AEP Ohio's customers must bear, is a decision that will be made by the Commission after a thorough rulemaking review. The Commission concurs that agreeing to support a position or compromise in a separate or future proceeding is not prohibited as part of a settlement. *Duke MGP Proceedings*, Opinion and Order (Apr. 20, 2022) at ¶ 135. To this point, we note that the Commission has previously approved a stipulation in a base rate case that contained a similar commitment from an EDU to support a particular position in a separate proceeding. *In re the Application of The Dayton Power and Light Co. for an Increase in its Elec. Distribution Rates*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at ¶ 1, 23-24. Likewise, in the most recent ESP case of AES Ohio, the Commission approved a stipulation in which AES Ohio agreed to propose certain rule changes in the Commission's next review of a particular chapter. *See AES Ohio ESP Case*, Opinion and Order (Aug. 9, 2023). Further, as AEP Ohio points out, the inclusion of this section of the Stipulation is a commitment that AEP Ohio otherwise would have been unlikely to make absent the negotiations that took place in this proceeding. Based on the foregoing, we do not find any violation of important regulatory principles or practices with the CIAC provisions of the Stipulation.

*i. Percentage of Income Payment Plan Generation Rate*

{¶ 190} While not argued specifically in the context of the third prong of the three-part stipulation test, OCC does argue in its initial brief that by failing to require that the PIPP generation rate be no higher than the SSO rate, the Stipulation violates R.C. 4928.542(B). OCC states that R.C. 4928.542(B) specifically requires that the winning bid(s) in the PIPP generation auction to “[r]educe the cost of the PIPP relative to the otherwise applicable standard service offer.” According to OCC, however, AEP Ohio’s PIPP customers have paid a higher generation rate than the SSO in two of the last three years. OCC, therefore, argues that the Commission should require the PIPP generation rate to be at or below the SSO rate. (OCC Br. at 32-33; OCC Ex. 1 at 16.)

{¶ 191} AEP Ohio responds that this issue has already been addressed by the Revised Code and in numerous Commission decisions in which OCC made this same argument. According to AEP Ohio, OCC has raised this exact same argument in at least five other cases in which AEP Ohio is a party and each time the Commission rejected the argument. AEP Ohio also points out that the Commission has explicitly acknowledged that while the established PIPP SSO process could “occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542(B). *In re the Application of The Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF, Opinion and Order (Oct. 5, 2022), at ¶ 41 quoting *In re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Opinion and Order (Mar. 2, 2016) at 5. (Co. Reply Br. at 22-25.)

{¶ 192} The Commission finds that the Stipulation provisions relating to the PIPP SSO process do not violate R.C. 4928.542(B). As discussed throughout this Opinion and Order, the Commission continues to monitor and gradually address price volatility in SSO

prices, but notes that there has been a significant reduction in clearing prices in recent auctions. Further, as AEP Ohio notes with respect to the PIPP SSO process, this argument has been advanced repeatedly by OCC in a number of Commission proceedings and each and every time we have declined to adopt the recommendation. *See, e.g., In re the Application of The Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Elec. Distribution Utilities*, Case No. 22-556-EL-USF, Opinion and Order (Oct. 5, 2022), at ¶ 41. We have also previously acknowledged that while it is possible for the PIPP rate to be higher than the SSO price, the auction process that was established is in accord with R.C. 4928.542(B) in attempting to reduce the PIPP rate over the long-term. *In re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order (Mar. 2, 2016) at 5. Thus, in line with previous Commission precedent, we reject OCC's argument that this violates R.C. 4928.542(B).

*j. Basic Transmission Cost Rider*

{¶ 193} Similar to its arguments made above with respect to the second prong of the stipulation test, One Energy argues that the Stipulation fails the third prong of the stipulation test because the inclusion of the BTCR as a nonbypassable rider violates important regulatory principles or practices. One Energy asserts that the Stipulation authorizes a nonbypassable transmission rider in the form of the BTCR while Ohio law requires transmission riders to be bypassable. One Energy states that R.C. 4928.143(B)(2)(g) provides the Commission with "limited discretion" to authorize an SSO containing transmission provisions, but that nothing in that statute authorizes the Commission to approve an SSO containing a transmission provision that makes shopping customers that obtain electric generation service from a CRES provider fixed to such a provision. Rather, according to One Energy, R.C. 4928.143 specifically identifies unavoidable or nonbypassable provisions that may be included in an SSO and a nonbypassable SSO transmission provision is not among those listed. One Energy further argues that Ohio Adm.Code 4901:1-35-03(C) requires that an ESP containing a transmission cost recovery rider must satisfy the rules of

that chapter, among which is Ohio Adm.Code 4901:1-36-04(B)'s requirement that "[t]he transmission cost recovery rider shall be avoidable by all customers who choose alternative energy suppliers..." (emphasis added) Thus, One Energy asserts that the transmission provision cannot be permitted to attach to non-SSO customers. One Energy states that a nonbypassable transmission rider such as the BTCR as proposed in the Stipulation is not permitted by statute or Commission rules and, as a result, the Stipulation must be rejected. (One Energy Br. at 8-10.)

{¶ 194} One Energy also argues that the BTCR violates the principles set forth in R.C. 4928.02. According to One Energy, the BTCR bills customers for electric transmission service in ways that ignore critical peak hours on the transmission system and could result in customers bearing a nonproportionate share of the cost of transmission service purchased from PJM. Worse yet, in One Energy's view, is that the BTCR fails to inform customers how their electric consumption decisions cause costs to be incurred, which may then lead to inefficient use of the transmission network. One Energy argues that the testimony of AEP Ohio witness Mayhan proves the shortcomings of the BTCR, in acknowledging that bill practices put forth by One Energy and other intervenors would result in more efficient use of the transmission grid and reduce the Company's overall revenue requirement. (One Energy Br. at 10-12; Co. Ex. 2 at 17-18.)

{¶ 195} One Energy describes the BTCR as a "fatal flaw" to the Stipulation but notes that if the Commission does not reject the Stipulation in its entirety, then it must at least modify the BTCR and make it bypassable. As discussed above, One Energy reiterates its assertion that a nonbypassable BTCR is unlawful and that no arguments from AEP Ohio regarding unknown impacts of making it bypassable can overcome this deficiency. One Energy argues that AEP Ohio's concerns about a bypassable BTCR creating a variance pushed to non-shopping customers, as well as other unknowns that could result from making the tariff bypassable, are solely the result of the Company assigning transmission service cost responsibility without regard to cost causation principles. According to One

Energy, AEP Ohio and its affiliates have created a unique transmission service cost reallocation, repricing, and rebilling substructure that is exclusively applicable to AEP Ohio and its affiliates. One Energy argues that affiliate-only structure violates a fundamental requirement of Ohio and federal law by creating undue discrimination or preference in access to a monopoly-owned transmission service. One Energy states that the nonbypassable BTCR, accompanied by the AEP Ohio requirement that CRES providers sign principal agent declarations of authority or execute bill line-item transfers of their demand-based PJM charges to AEP Ohio, preclude AEP Ohio shopping customers from obtaining and paying for transmission service pursuant to the PJM OATT. One Energy believes that this structure blocks CRES providers from assisting customers in managing their spending for transmission service as they are able to do in other states. Based on this, One Energy argues that AEP Ohio must not be allowed to implement a program that fails to allow other customers and market participants comparable and nondiscriminatory access to the same unbundled transmission services, rates, and charges as are available to AEP Ohio. (One Energy Br. at 13-16; One Energy Reply Br. at 5-8.)

{¶ 196} Calpine agrees with One Energy that the BTCR should be bypassable and asserts that AEP Ohio and other parties to the Stipulation do not provide support for continuing the BTCR as nonbypassable. If the Stipulation is ultimately approved, Calpine avers that it must, at a minimum, be modified to make the BTCR rider bypassable for shopping customers, prohibit the assignment of PJM transmission charges and billing from CRES providers to AEP Ohio, and set a definite end date to the BTCR pilot. Like One Energy, Calpine points to Ohio Adm.Code 4901:1-36-04(B) requiring transmission cost recovery riders to be avoidable by shopping customers. Thus, Calpine asserts that continuing the BTCR rider as a nonbypassable charge violates regulatory principles outlined in the Commission's own rules. Calpine argues that the BTCR limits competitive choices in the market, removes any incentive to create customized products and services that could assist Ohio's businesses in addressing transmission costs without burdening all non-participating customers with additional costs. However, Calpine goes a step further and



submits that merely making the BTCR rider bypassable is not enough to restore a truly competitive market. (Calpine Br. at 1, 7.)

{¶ 197} Calpine avers that the Commission must also prohibit the assignment of CRES responsibility for transmission charges and billing to AEP Ohio. According to Calpine, under PJM's OATT, registered LSEs are authorized to deal directly with PJM to procure the transmission service necessary to deliver load to their customers. Calpine states that in every state other than Ohio, retail suppliers are obligated to obtain their own wholesale market transmission service directly from PJM and are billed directly by PJM. Thus, these retail suppliers in other states factor this cost into the price charged to its customers, based upon its own unique load obligations, business plans, and other risk factors. Calpine labels Ohio an "outlier" among PJM states in that utilities such as AEP Ohio are authorized to force CRES providers (who are also LSEs within PJM) to sign away their rights under the PJM OATT to the incumbent utility. Calpine argues that this amounts to a monopoly over transmission service and prevents certain CRES providers from offering innovative products and services, as well as subsidizing CRES providers who have offloaded their responsibility for transmission service to the applicable utility. Calpine argues that this nonbypassable rider and the forced assignment of transmission rights from a CRES provider to the utility are bad policy and should be stopped by the Commission. Calpine supports restoring CRES suppliers' rights and responsibilities under the PJM OATT, making CRES providers responsible for managing and paying for its load directly from PJM, as they did prior to the establishment of the BTCR. (Calpine Br. at 2, 8.)

{¶ 198} Calpine also believes that the audit of the BTCR rider and pilot called for in the Stipulation should be expanded. Calpine states that the audit outlined in the Stipulation calls for an audit of the program in effect from 2015 through the end of the current ESP. Because during this period there was not, according to Calpine, full competition among CRES providers for better managing PJM transmission costs, the audit will produce no useful information for comparing the two approaches. (Calpine Br. at 12-13.)

{¶ 199} With respect to arguments raised by AEP Ohio and Staff concerning the testimony from Calpine witness Merola, Calpine responds that despite the Company's repeated contentions otherwise, nothing in the Revised Code or the Commission's rules specify different standards between stipulated hearings and litigated, non-stipulated hearings. Thus, Calpine states that the direct testimony submitted by witness Merola prior to the filing of the Stipulation is appropriate, as it addresses the BTCR provisions outlined in the Application and incorporated into the Stipulation. (Calpine Reply Br. at 3-7.)

{¶ 200} AEP Ohio first responds that neither One Energy nor Calpine filed testimony in response to the attorney examiner's procedural schedule for testimony addressing the three-part test for consideration of stipulations. AEP Ohio states that the testimony of Calpine witness Merola, filed months before the Stipulation was entered into, lacks any analysis under the three-part test and merely advances Calpine's original litigation position. While AEP Ohio continues to assert that Merola's original direct testimony should not have been admitted into the record, the Company points out that admitting such testimony into the record is a separate issue from allowing it to be used to contest a subsequent stipulation without even addressing the three-part test approved by the Supreme Court. As to the substance of Merola's testimony, AEP Ohio points out that there is no analysis or detailed studies of any kind to support Merola's recommendations as to the benefits of a bypassable BTCR, let alone that the structure proposed in the Stipulation violates any important regulatory principle or practice. AEP Ohio believes that Calpine and One Energy simply disagree with the establishment of the BTCR going back to the Commission's Opinion and Order in the *ESP 3 Case* that originally established the BTCR as a nonbypassable rider. *See ESP 3 Case*, Opinion and Order (Feb. 25, 2015). (Co. Br. at 86; Co. Reply Br. at 9.)

{¶ 201} AEP Ohio points to the testimony of witness Kelso, who explained the background and how wholesale transmission costs are ultimately charged to AEP Ohio retail customers. Ms. Kelso also confirmed that the BTCR is a passthrough rider to collect no more and no less than what AEP Ohio is billed through the FERC-approved OATT and

Transmission Agreement. AEP Ohio witness Kelso also explained that there are many unknowns related to the proposals advanced by Calpine and One Energy. First, the conversion of the BTCR to a bypassable rider would be a major rate design modification and the impact such a change would have on shopping and non-shopping customers is unidentified. Rather than making such an extreme change, the Stipulation provides for an incremental approach that will gradually expand the pilot and allow for third-party review of the program. Witness Kelso identifies other unknowns such as how stable the 1 coincident peak (CP) rate design would be for individual customers, how a bypassable BTCR could impact the price-to-compare (PTC), and how a bypassable BTCR would impact operation of the FERC-approved Transmission Equalization Agreement with its affiliates for transmission services in PJM. Finally, witness Kelso stressed the Company's opposition to adopting a bypassable transmission rider because it would represent a "drastic and very significant" modification to the Stipulation and could potentially lead to the settlement being unwound. AEP Ohio states that it is not permanently opposed to making transmission charges bypassable, but it feels that the unknown ramifications need to be carefully studied before doing so. (Co. Br. at 86-91; Co. Ex. 9 at 6-9; Tr. Vol. V at 875-876, 880, 887-888.)

{¶ 202} AEP Ohio finds the arguments of Calpine and One Energy regarding the alleged unlawfulness of a nonbypassable BTCR to be unpersuasive. In response to arguments that the BTCR violates Commission rules governing the recovery of transmission charges, AEP Ohio avers that Calpine and One Energy ignore the totality of Ohio Adm.Code 4901:1-36-04(B) – it states that transmission cost recovery riders shall be avoidable "...by all customers who choose alternative generation suppliers *and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers*" (emphasis added by AEP Ohio). AEP Ohio notes that there is, therefore, no conflict with the rule because AEP Ohio continues to bear the responsibility of providing non-market transmission service to shopping and non-shopping customers under the BTCR. Responding to One Energy's contention that it is unlawful for AEP Ohio to block customers

from having access to transmission on the same terms the Company obtains such services at the wholesale level, AEP Ohio states that One Energy is citing non-discrimination principles in FERC orders that are inapplicable to retail rates. AEP Ohio states that FERC's decisions apply only to wholesale transmission services and that states retain plenary authority to determine retail rates to be paid by end-use customers. As retail rates are what is at issue in this proceeding, AEP Ohio finds such arguments to be hollow. (Co. Reply Br. at 48-49.)

{¶ 203} Beyond the Commission's rules, AEP Ohio asserts that the Commission's classification of the BTCR as a nonbypassable wires charge is consistent with the Commission's statutory authority and case precedent. AEP Ohio explains that R.C. 4928.03 declares specific services to be competitive and that transmission service is not among those listed. Under R.C. 4928.04, the Commission is authorized to determine which additional services are competitive and which shall remain non-competitive. Finally, under R.C. 4928.05, the Commission's authority includes the authority to provide for the recovery, through a reconcilable rider on distribution rates, of all transmission and transmission-related costs. The Company highlights that the Commission has not specifically declared that transmission services should be competitive. Instead, AEP Ohio argues that the Commission has recognized that there are multiple transmission services that can be grouped into market and non-market categories. Based upon this approach, the competitive transmission services associated with generation supply are bypassable in AEP Ohio's rates and the non-market transmission services are recovered from all customers under the BTCR. AEP Ohio highlights that in the *ESP 3 Case*, the Commission explicitly stated that it was exercising authority under R.C. 4928.05 in declaring that the BTCR is reasonable. The Commission also acknowledged in the *ESP 3 Case* that it was declining to incorporate opposing parties' proposals into the BTCR design because they were not supported by analysis or studies and would produce unknown impacts on customer bills – precisely, AEP Ohio contends, as would occur in this case if the proposals of Calpine and One Energy were adopted. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 67-68. AEP Ohio stresses that its

retail tariff ensures compliance with the FERC-approved OATT and PJM billing procedures to coordinate the provision of non-market transmission services on a nonbypassable basis while leaving all competitive transmission services for shopping customers directly to CRES providers. (Co. Reply Br. at 44-47.)

{¶ 204} Finally, AEP Ohio characterizes Calpine's call for an expanded scope to the independent third-party study of the 1 CP BTCR program as an attempt to dictate its own desired audit scope in order to bias the outcome in favor of a bypassable BTCR. AEP Ohio submits that Calpine's position regarding the proposed audit, and halting the proposed pilot expansion until such a study is completed, ignores the reality of the need for this proceeding to be resolved without further delay in order to transition to the Company's next SSO plan. Further, AEP Ohio points out that the many considerations and factors that Calpine desires the study to address may well be deemed relevant by the third-party auditor, and the Stipulation already provides for interested parties to give comments or contest the findings of the audit prior to Commission consideration of the findings. Based on this, AEP Ohio sees no reason for the BTCR provisions of the Stipulation to be modified or delayed. (Co. Reply Br. at 51-52.)

{¶ 205} In sum, AEP Ohio submits that whether the BTCR should be bypassable or nonbypassable is a rate design issue that involves numerous policy considerations and wide discretion by the Commission. AEP Ohio argues that the Supreme Court has routinely acknowledged that decisions about rate designs are within the Commission's discretion and affords the Commission considerable latitude about rate designs. AEP Ohio stresses that the Commission has already spoken to this issue, beginning in the *ESP 3 Case* Opinion and Order, and that the Stipulation merely retains the status quo of a nonbypassable BTCR that has been in place for nearly a decade. Rather than pointing out any legal requirement that the BTCR be bypassable, AEP Ohio surmises that Calpine and One Energy merely disagree with the Commission's previous decisions. More to the point under the three-part test, AEP

Ohio states the record in this case does not support a conclusion that the current BTCR violates any important regulatory principle or practice. (Co. Reply Br. at 50-51.)

{¶ 206} Staff agrees that the nonbypassable BTCR is lawful. Even if Commission rules could be interpreted as prohibiting such a structure, Staff responds that the Commission is empowered to waive any rule found in Ohio Adm.Code Chapter 4901:1-36, as long as the rule is not required by statute. Staff points to previous Commission decisions in which the Commission waived this precise rule. Staff states that there is no statute requiring the BTCR to be bypassable. Staff asserts that One Energy's argument that the BTCR is unlawful under R.C. 4928.143(B)(2)(g) is incorrect, noting that the Commission has consistently approved nonbypassable transmission cost recovery riders in multiple previous ESP proceedings. Further, Staff states that R.C. 4928.05(A)(2) permits for recovery of transmission costs through a rider and it does not require that such a rider be bypassable. (Staff Reply Br. at 14-15.)

{¶ 207} OMAEG and Kroger disagree with One Energy's general objections to the BTCR as violating state electric policies in R.C. 4928.02, countering that the policy of ensuring the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric retail service is actually facilitated by a program like the BTCR (OMAEG/Kroger Br. at 17; OMAEG/Kroger Reply Br. at 11).

{¶ 208} RESA agrees with many of the points made by One Energy – such as the principle that sending transparent price signals to customers is consistent with state policy and encourages market-based development of products and services, including distributed generation – but argues that these desirable benefits already occur for customers participating in the BTCR pilot (RESA Reply Br. at 2-4).

{¶ 209} OEG responds to these arguments by stating that the settled billing approach in the Stipulation simply expands upon AEP Ohio's current legal approach. Further, OEG states that to the extent that One Energy argues that the BTCR violates Ohio Adm.Code

4901:1-36-04(B) because it is nonbypassable, the Commission can and has waived this rule in previous cases. (OEG Reply Br. at 4 citing *In re the Application of the Dayton Power and Light Co. to Establish a Std. Service Offer in the Form of an Elec. Security Plan*, Case No. 08-1094-EL-SSO, Third Entry on Rehearing (Dec. 14, 2016) at ¶ 24.)

{¶ 210} Similar to our ruling above where we considered similar arguments from Calpine and One Energy and found the BTCR pilot program to be a benefit to customers and in the public interest, the Commission finds that the continuation of the BTCR as a nonbypassable tariff is not contrary to law or any important regulatory principles. Calpine and One Energy appeal to Commission regulations concerning the recovery of transmission costs but fail to quote the rule in its totality. As AEP Ohio points out, Ohio Adm.Code 4901:1-36-04(B) does state that transmission cost recovery riders are to be avoidable, as both One Energy and Calpine stress; however, the second clause of that rule adds “...by all customers who choose alternative generation suppliers *and the electric generation utility no longer bears the responsibility of providing generation and transmission service to the customers* (emphasis added). AEP Ohio continues to be responsible for providing non-market transmission service to both shopping and non-shopping customers under the BTCR and thus its structure as a nonbypassable rider is not in conflict with Commission regulations. As pointed out by AEP Ohio, R.C. 4928.03 lists specific services that are to be competitive and transmission service is not among those listed. Further, R.C. 4928.04 authorizes the Commission to determine which additional services are to be competitive and we have not yet declared that transmission services are to be competitive. Under R.C. 4928.05, the Commission has additional authority to provide for the recovery, through a reconcilable rider on an EDU’s distribution rates, of all transmission and transmission-related costs. Based upon this grouping of statutory authority, the Commission is within its authority as classifying the BTRC as a nonbypassable wires charge. Such a decision in this case is consistent with case precedent, such as in the *ESP 3 Case*, when the Commission stated that it was exercising its authority under R.C. 4928.05 to authorize the creation and implementation of the BTCR. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 67.

{¶ 211} As previously stated in this Opinion and Order, the Commission agrees that whether the BTCR should be bypassable or nonbypassable is a complex rate design issue involving a multitude of considerations that have not been fully investigated. Again, similar to our decision in the *ESP 3 Case*, we decline to order such a drastic change in the structure of the rider without having the ramifications from such a decision being fully investigated and supported by adequate analysis or studies. Calpine and One Energy clearly disagree with the structure of the BTCR, going all the way back to its creation in the *ESP 3 Case*, but without providing analyses to support their assertions, such disagreement alone does not demonstrate that the inclusion of the nonbypassable BTCR in the Stipulation violates important regulatory principles. So long as AEP Ohio's retail tariff continues to comply with the FERC-approved OATT and PJM billing procedures for the provision of non-market transmission services, the nonbypassable BTCR is not contrary to law. Consequently, we find that those provisions of the Stipulation do not violate important regulatory principles or practices.

{¶ 212} Finally, the Commission declines to expand the parameters of the audit of the BTCR pilot beyond that called for in the Stipulation. The Stipulation calls for a third-party auditor to review the results of the pilot program and make determinations as to its effectiveness. Such an audit may reveal that many of the points raised by Calpine and/or One Energy are relevant and they will be free to raise those issues at that time. However, in the context of the third prong of the stipulation test, Calpine demonstrated no legal authority that requires such an expansion of the audit. (Joint Ex. 1 at 27.)

#### *k. CBP Auctions*

{¶ 213} Constellation submits that the Stipulation should be rejected because it violates important regulatory principles in three ways. First, the Stipulation fails to address proposed modifications to the CBP auction process in this proceeding, as required by R.C. 4928.141 and Commission regulations, and instead recommends that this issue be dealt with in a separate Commission proceeding. Constellation states that R.C. 4928.141 requires that



public utilities apply to establish an SSO in accordance with R.C. 4928.142 or R.C. 4928.143. Constellation further asserts that the proceedings established by these statutes are the only mechanisms for establishing an SSO. Thus, according to Constellation, all aspects of an SSO must be “authorized in accordance with” the statutory provisions providing for the establishment of an SSO. Constellation asserts that R.C. 4928.141 does not allow for a “piecemeal” adoption of SSO components in separate proceedings outside the one initiated by an SSO application. Constellation argues that the Commission’s own rules, such as in Ohio Adm.Code Chapter 4901:1-35, identify the CBP auction process as an integral part of establishing an SSO. Constellation states that it is AEP Ohio’s ESP filing, not a separate proceeding, that is the appropriate venue for considering its proposed CBP. Thus, Constellation asserts that the Stipulation’s recommendation that all intervenor proposals for CBP modifications be considered in a separate proceeding, and that AEP Ohio consents to “continuing jurisdiction” to allow certain SSO/CBP modifications resulting therefrom to apply during the ESP term, directly violates statutory provisions and important regulatory principles. Constellation goes further in arguing that any Commission order modifying the CBP in a separate proceeding (regardless of AEP Ohio’s consent to such process) would also violate the express requirement of R.C. 4928.141. (Constellation Br. at 8-9.)

{¶ 214} Second, Constellation believes that the Stipulation fails the third prong of the stipulation test by recommending the dismissal of opposing parties’ arguments in opposition to the SSO/CBP. Constellation states that Ohio Adm.Code 4901-1-30(D) provides that parties that do not join a stipulation may offer evidence and/or arguments in opposition to a proposed settlement. Constellation argues that the Stipulation’s recommendation to dismiss intervenor proposals for CBP modifications undermines this principle and further pushes the Commission to potentially take an action not statutorily permitted – as described above, Constellation believes that R.C. 4928.141 does not authorize the Commission to modify an SSO outside of the ESP application proceeding. Further, Constellation states that nothing in Ohio Adm.Code 4901-1-30(D) contemplates outright dismissal of dissenting opinions. (Constellation Br. at 10.)

{¶ 215} Third, Constellation argues that the “withdrawal upon modification” provision of the Stipulation, which would allow for parties to withdraw from the Stipulation if certain proposals for modification to its terms are adopted by the Commission, undermines the structure and intent of Ohio Adm.Code 4901-1-30. That rule states that no stipulation is binding upon the Commission and that parties that do not join a stipulation are permitted to offer evidence and argument in opposition. Constellation avers that such regulatory protections are rendered meaningless when there is potential for a stipulation to be withdrawn and additional, extensive litigation then initiated. Constellation argues that such a dynamic discourages reasonable modifications to filed stipulations, regardless of the amount of convincing evidence or arguments supporting such changes. Constellation does not believe that the inclusion of the “withdrawal upon modification” provision is even necessary to protect signatory parties, as all parties in this proceeding have the opportunity to present evidence to rebut any proposals from opposing parties. In short, Constellation argues that the “withdrawal upon modification” provision is coercive and unwarranted and undermines the important regulatory protections found in Ohio Adm.Code 4901-1-30. (Constellation Br. at 10-12.)

{¶ 216} AEP Ohio responds that each of Constellation’s arguments under prong three of the stipulation test should be rejected. AEP Ohio responds jointly to Constellation’s first and second points, arguing that Constellation submitted no case law or Commission precedent supporting the contention that all SSO requirements must be established in a singular proceeding under R.C. 4928.141 or 4928.143. AEP Ohio argues that there are many proceedings outside of ESP dockets in which the Commission makes substantive rulings that define the implementation of a utility’s ESP. For example, AEP Ohio points to rider proceedings, where significant decisions are made but do not trigger the multitude of filings and statutory requirements associated with an SSO proceeding. The Company states that audit cases and tariff cases are additional examples of proceedings, outside of an SSO docket, in which the Commission makes substantive decisions affecting the scope and implementation of an ESP. AEP Ohio avers that the statutory powers granted to the

Commission under R.C. Chapter 4828 do not allow the authority to modify and approve an ESP and then sua sponte revisit and materially modify the ESP outside of the ESP case, as it would be contrary to the statute to force a utility to accept subsequent modifications to its ESP. However, in this case, AEP Ohio has signaled its consent to continuing jurisdiction to SSO/CBP changes and has agreed to waive its right to withdraw under the ESP statute provided that such modifications apply only during the ESP term and allow for timely and adequate cost recovery along with a reasonable time to implement the modification. (Co. Reply Br. at 53-55.)

{¶ 217} Contrary to Constellation’s contention that it is an important regulatory principle to resolve all SSO business inside the ESP case docket, the Company points to recent cases which indicate that the Commission desires to address SSO reforms in a uniform way involving all four EDUs. *See e.g., CPP Case, AEP SSO Procurement Case.* In those dockets, AEP Ohio states that there have been significant disagreements about the scope of the Commission’s authority to make such changes outside of a proceeding under R.C. 4928.142 or R.C. 4928.143. AEP Ohio argues, however, that the key barriers to the Commission making significant SSO changes during the term of an approved ESP are the lack of utility consent under R.C. 4928.143(C)(2)(a) and such SSO changes being modifications to the approved ESP or underlying Stipulation. With the terms of the Stipulation at page 5, AEP Ohio asserts that those key barriers are overcome. (Co. Reply Br. at 56; Joint Ex. 1 at 5.)

{¶ 218} Finally, AEP Ohio finds Constellation’s argument that a “withdrawal upon modification” clause for signatory parties in a Stipulation is simply a creative method for trying to modify the Stipulation without having to prove that the Stipulation fails the three-part test. AEP Ohio states that such a clause is standard in stipulations and that Constellation fails to present any reasoning for discarding the provision. AEP Ohio submits that the purpose of such a provision is to ensure that when parties diligently work to resolve issues through negotiation and compromise, it is reasonable for them to desire some

assurance as to the final terms of a deal. Thus, including terms that allow a party to withdraw from a settlement if there are material changes is reasonable. Rather than violating regulatory practices or principles, as Constellation claims, AEP Ohio believes that disregarding these provisions would create a hostile environment for settlement negotiations. (Co. Reply Br. at 56-57.)

{¶ 219} The Commission finds each of Constellation's arguments that the Stipulation's CBP auction process violates important regulatory principles to be without merit. Constellation makes broad claims concerning the need for all SSO issues to be handled within the ESP application case docket but as pointed out by AEP Ohio, there are a number of proceedings that take place in separate case dockets that ultimately have significant impacts on the implementation of an ESP, with rider and tariff cases being prime examples. Further, rather than violating important regulatory principles or practices, the proposed method for handling potential changes to the SSO/CBP process is consistent with our recent desire to address alterations to SSO procedures uniformly among all of the state's EDUs. For instance, in early 2023, we investigated whether directing the EDUs to implement certain SSO auction modifications would help reduce the prices resulting from such auctions and included all four of the EDUs as parties while soliciting comments from all interested stakeholders as to proposed modifications. *See, e.g. In re the Procurement of Standard Service Offer Generation as Part of the Fourth Electric Security Plan for Customers of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co., et al., Case No. 16-776-EL-UNC, et al., Entry (Jan. 30, 2023).* Even more recently, in the *CPP Case*, we invited all EDUs and interested parties to file comments regarding Staff's proposed modifications to the SSO procurement auctions. This case ultimately resulted in the Commission issuing a Finding and Order directing each EDU operating in Ohio to modify its SSO auction products to price capacity at a proxy rate for years in which no actual price has been established. *CPP Case, Finding and Order (Dec. 13, 2023).* Further, the consent to continuing jurisdiction by AEP Ohio in the Stipulation obviates any arguments the Company may have as to the propriety of rulings in future proceedings concerning the CBP. Thus, the argument that the SSO

cannot be modified and/or finalized in a separate proceeding is inaccurate. The provisions in the Stipulation will facilitate the Commission's aim to establish SSO procedures uniformly among all EDUs during the terms of their approved ESPs. (Joint Ex. 1 at 5-6.)

{¶ 220} Constellation's objection to the Stipulation stating that the Signatory Parties recommend that all intervenor proposals for SSO/CBP modifications be dismissed without prejudice and be considered in a separate case docket is also unfounded. As Staff witness Healey testified, when a stipulation is approved by the Commission, any proposals or modifications that are not included in the stipulation are effectively "rejected" (Tr. Vol. I at 125-126). In other words, whether the arguments are "dismissed" or they are rejected by virtue of their not being inserted into a stipulation, the effect is the same. In this proceeding, however, this argument is even more misplaced, as Constellation's proposal for CBP amendments was considered by the Commission, as outlined above in this Opinion and Order, and we declined to incorporate those amendments at this time. Due to the consent to continuing jurisdiction on the part of AEP Ohio as part of the Stipulation, should separate SSO-related proceedings be commenced, Constellation and other intervenors would presumably have the opportunity to make their arguments at that time in the appropriate case dockets (Joint Ex. 1 at 5-6.)

{¶ 221} Finally, the inclusion of a "withdrawal upon modification" clause in the Stipulation is not a violation of regulatory principles or practices. In fact, such clauses are standard in stipulations, across a wide variety of case types, that have been approved and adopted by the Commission. *See, e.g., AES Ohio ESP Case, Stipulation* (Apr. 10, 2023) at 37-38; *In re the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 17-1263-EL-SSO, *Stipulation* (Apr. 13, 2018) at 27-28. The level of negotiation and compromise required to reach any type of settlement in a proceeding of this size and scope is enormous. Signatory parties that manage to reach a settlement deserve to know that the deal which they agreed to is what binds them. Further, nothing in the Stipulation states that alterations to its terms cannot be made – it

leaves to each Signatory Party to determine if a change constitutes a “material modification.” The Stipulation also requires any party declaring a “material modification” to first negotiate in good faith with other parties to achieve an outcome that allows the intent of the Stipulation to be carried out. The denial of such protection could, theoretically, lead to situations in which a party is bound to a settlement that is modified to contain terms that it never would have agreed to in negotiations. We agree with AEP Ohio that adopting such a course could potentially hamper future negotiation discussions in Commission proceedings and should not be adopted. (Joint Ex. 1 at 36-37.)

#### *1. Commission Conclusion*

{¶ 222} 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.

#### **4. ESP/MRO TEST**

{¶ 223} Pursuant to R.C. 4928.143(C)(1), the Commission should approve, or modify and approve, an application for an ESP if the Commission finds that 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 an MRO, pursuant to R.C. 4928.142.

{¶ 224} The Signatory Parties advocate that the Commission find AEP Ohio’s Application, as modified by the Stipulation, more favorable than an MRO, noting that the Stipulation will continue to price the SSO pursuant to the CBP, with minimal modifications, along with the withdrawal of the Governmental Aggregation Standby Rider, with prejudice. A CPP mechanism addresses a component of price volatility and affords the Company sufficient flexibility to offer 12-month, 24-month and 36-month auction products if there continue to be BRA delays (Co. Ex. 2 at 5). Staff declares, as OCC acknowledges, the continuation of market-based SSO auctions for generation, the ESP and the MRO would be

expected to yield the same results. (Staff Ex. 1 at 12; OCC Ex. 8 at 14; Co. Br. at 100). The Stipulation also facilitates, according to Signatory Parties, the dismissal of intervenor proposals presented in this case, without prejudice, with AEP Ohio's acquiescence to the Commission's continuing jurisdiction, should the Commission consider modifications to the SSO/CBP process in a subsequent proceeding and specifically acknowledges the ability of intervenor proposals made in this case to be reiterated in a subsequent proceeding (Co. Ex. 2 at 5-6; Tr. Vol. I at 125-126; Joint Ex. 1 at 5-6). Further, AEP Ohio and certain of the Signatory Parties state that the Application, as modified by the Stipulation, incorporates an array of additional quantitative benefits as compared to a MRO, including provisions for reliability, cost-effective energy efficiency, including customer assistance, grid sustainability and stress reduction mechanisms as well as DIR and ESRR mechanisms, at caps below that proposed in the Company's Application. The DIR and ESRR mechanisms reflect costs that would be recoverable from customers through a base rate case but with lower costs, due to the streamlined approach to recovering costs in the ESP, with installation and implementation occurring on an accelerated timeframe (Co. Ex. 2 at 16, OEC Br. at 11). EE programs for customers with income below 300 percent of the federal poverty level to assist with the purchase of more efficient products for the home, which will lower the participating customer's electric consumption and bill (Staff Ex. 1 at 12; CUB Br. at 10). Further, the EE programs provide an annual gross benefit of approximately \$22 million for recipient customers, including \$400,000 in bill payment assistance through the Neighbor-to-Neighbor plan, which exceeds the projected cost of the EE programs by approximately \$10 million (Staff Ex. 1 at 12; Co. Ex. 2 at 12, 17). OEC emphasizes that an MRO would not include the long-term usage curtailment benefits and the bill payment assistance targeted to financially vulnerable customers (Staff Ex. 1 at 12, Co. Ex. 2 at 17; OEC Br. at 11-12). The IRP tariff, Smart Thermostat Demand Response Program, facilitate a means to curtail demand and address stress on AEP Ohio's distribution system while the promotion of off-peak EV charging, with the TOU rates, allows AEP Ohio to call on customers to curtail during high demand and to encourage peak load shifting which also has the potential to

reduce stress on the distribution system (Co. Ex. 2 at 18, 23; Staff Ex. 1 at 12; CUB Br. at 10). For these reasons, AEP Ohio submits there are quantitative benefits associated with the resolution of this proceeding in accordance with the ESP 5 Application, as modified by the Stipulation (Co. Br. at 19-21, 99-101; Staff Br. at 19-22).

{¶ 225} Signatory Parties also endorse the qualitative benefits of reliability, rate stability, economic development, efficient use of the transmission grid and technological advancement with the modification of the Company's Application, as reflected in the Stipulation. AEP Ohio posits that the commitment to file a base rate distribution case by June 1, 2026, provides predictability to customers regarding the timing of a rate case in comparison to an MRO (Co. Ex. 2 at 16; Staff Ex. 1 at 13). AEP Ohio and Staff contend that the rate caps incorporated into the DIR and ESRR mechanisms facilitates investments in reliability, while balancing rate certainty and stability for customers that would not exist under the traditional ratemaking structure in a traditional rate case (Co. Ex. 2 at 17; Staff Ex. 1 at 12). The Signatory Parties agree that the incorporation of the Ohio First Rider streamlines the process for AEP Ohio to proceed with projects approved for federal funding without waiting for a base rate proceeding, to the benefit of the Company's customers (Co. Ex. 2 at 17). AEP Ohio submits that the expansion of the IRP tariffs further supports economic development in the state (Co. Ex. 2 at 17). The Company also contends that participation in the BTCR pilot encourages more efficient use of the transmission grid, thereby reducing AEP Ohio's need to invest in transmission infrastructure while increasing grid resiliency and sustainability (Co. Ex. 2 at 17). AEP Ohio and Staff advocate that the Stipulation ensures certain functionalities are implemented as part of the Company's CIS investment which will improve the billing system while promoting the advancement of retail competition and enhancing the security of customer data and promotes economic development in Ohio. The Economic Development plan includes \$450,000 annually in matching shareholder funds. (Staff Ex. 1 at 12-13; Co. Ex. 2 at 11-12, 22; Co. Br. at 102.) OEC points out that the Stipulation includes additional consumer protection transparency by AEP Ohio's commitment to provide Staff utility disconnection information by zip code,



which will permit the Commission to target outreach and education efforts and other agencies to focus their assistance. Factors that would not be part of an MRO. (Joint Ex. 1 at 34; OEC Br. at 1-13). For these reasons, AEP Ohio and Staff submit there are qualitative benefits associated with the Application, as modified by the Stipulation (Co. Br. at 101-102). Finally, AEP Ohio notes that OCC witness Buckley's criticism as reflected in his testimony, as Mr. Buckley admitted at hearing, applied to the Company's Application as filed and did not reflect the Application, as modified in accordance with the Stipulation (OCC Ex. 8 at 13-19; Tr. Vol. III at 648-649). Accordingly, AEP Ohio asks that the Commission disregard OCC's unsupported opposition to the modified ESP as it relates to the ESP v. MRO test pursuant to R.C. 4928.143(c)(1). (Co. Br. at 101-102.) In consideration of the above noted factors, the Signatory Parties argue the ESP pursuant to the Stipulation is more beneficial than an MRO (Co. Br. at 99-102, OEC Br. at 10-13; OPAE Br. at 6; CUB Br. at 10, Staff Br. at 19-22; OMAEG/Kroger Br. at 18.)

{¶ 226} OCC, the only opposing party to offer testimony regarding the ESP v. MRO test under R.C. 4928.143(c)(1), argues that the Commission has generally conducted this evaluation in three parts, comparing the results of the ESP to the expected results under an MRO, including (1) the SSO price of generation to consumers; (2) other quantifiable provisions; and (3) other qualitative provisions. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 73, Entry on Rehearing (Jan. 30, 2013) at 13-14; *In re Dayton Power & Light Co. to Establish a Std. Service Offer in the Form of an Elec. Security Plan*, Case No. 12-426-EL-SSO, et al., Opinion and Order (Sept. 4, 2013) at 48-52. OCC admits that with the current auction procedures for generation as part of the ESP, the ESP and MRO are equivalent (OCC Ex. 8 at 14). Further, OCC protests that the ESP proposes several new riders and increases to existing riders that add more than \$1.1 billion in cost to customers without any added value for customers, including riders which would not be included in an MRO. Therefore, OCC asserts, under the ESP, these riders cause consumers to pay more than under an MRO (OCC Ex. 8 at 13-14; OCC Br. at 52-53). Further, OCC offers that AEP Ohio does not provide any quantitative benefits in regard to the proposed EE portfolio and, therefore, the attributes of

the EE portfolio are more appropriately characterized as non-quantifiable or qualitative benefits. (OCC Br. at 54-55.)

{¶ 227} OCC challenges the benefits of DIR and ESRR as part of the ESP v. MRO test. As to the ESRR, OCC argues that the Stipulation does not require AEP Ohio to file an updated vegetation management plan demonstrating additional tree-trimming responsibilities in association with the additional funding over the level established in the *Base Rate Case*, nor projected reliability impacts. Thus, OCC argues the Company fails to demonstrate that the ESP, as modified by the Stipulation, is more favorable than an MRO with respect to the ESRR. Furthermore, the DIR at approximately twice the current cost to residential customers by the end of ESP 5, according to OCC, provides little to no reliability value to the distribution system, as the ESP offers no assurances that the standards of electric reliability received today will be maintained. (OCC Ex. 8 at 13-16; OCC Br. at 55.)

{¶ 228} As to qualitative benefits, OCC notes that in its Application, AEP Ohio listed several non-quantifiable benefits of the ESP as compared to an MRO, particularly as to the Rural Access Rider. However, OCC indicates those benefits have been deleted with the Rural Access Rider, as reflected in the Stipulation. Otherwise, OCC argues the purported qualitative benefits should not be subsidized by consumers without a review to determine the costs are prudent and the goals of the program are met or could not be better met by the competitive market. OCC contends that risks are being shifted away from AEP Ohio and on to consumers through riders whereas under the traditional regulatory process base rate cases were required for the Company to collect capital investments which also allows cost increases to be offset by decreases in other areas. With riders, OCC asserts, costs are collected from consumers, but often related savings are only shared with consumers as part of a base rate case. OCC advocates that if the Commission approves this ESP, despite its being less favorable in the aggregate than an MRO, the Commission should order a return on the riders to reflect the decreased risk and expedited collection period. (OCC Ex. 8 at 18-19; OCC Br. at 59- 60.)

{¶ 229} OCC retorts that other than the claimed annual gross benefit of \$22 million in low-income programs, the Stipulation is not more beneficial for consumers in comparison to an MRO. Further, OCC declares that AEP Ohio fails to provide any evidence of quantitative benefits. The qualitative benefits presented by Signatory Parties, particularly as to the benefits of AEP Ohio's commitment to file a base distribution rate case by June 1, 2026, rate certainty and stability, encouragement of economic development, more efficient transmission grid while reducing the overall transmission revenue requirement and promotion of technological advancements while increasing grid resiliency and sustainability, are, according to OCC "laudable hypothetical goals ... unlikely to be achieved." OCC submits that similar qualitative benefits were predicted as part of the stipulation in the *ESP 4 Case*, but OCC alleges residential consumers have not seen large improvements since that case. In support of its claimed lack of impact for residential consumers, OCC generally highlights, the number of PIPP consumers struggling to pay their electric bill, allege no noticeable improvements in reliability performance statistics and the residential rate increase expected as part of the Stipulation. (OCC Ex. 8 at 13-19; OCC Reply Br. at 23-25.)

{¶ 230} Significantly, AEP Ohio points out, that on brief, OCC's claims as to the impact of ESP 5 misstate the content of OCC witness Buckley's testimony offered into the record and relies on AEP Ohio witness testimony that is based only on the Company's Application, not the Application as modified by the Stipulation, leading to claims based on irrelevant amounts outside the record. AEP Ohio reiterates that OCC bases its claims regarding the ESP v. MRO test primarily on OCC's analysis of the Company's Application, except as to the elimination of the Rural Access Rider, as OCC Buckley admits (Tr. Vol. III at 647-649). Therefore, AEP Ohio contends, OCC's assertions as to the lack of benefits in the ESP are inapplicable. AEP Ohio submits that the Supreme Court of Ohio has rejected the proposition that because the Stipulation includes several riders it is not more favorable, in the aggregate, than an MRO from a quantitative perspective. *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 54 N.E.3d 1218, 2016-Ohio-3021, ¶ 25.

{¶ 231} AEP Ohio submits that OCC's recycled arguments regarding reliability in association with the increased cost of the DIR and ESRR mechanisms are irrelevant to the statutory ESP v. MRO test for multiple reasons. First, the plain language of the test requires the ESP to be more favorable in the aggregate not that the ESRR and the DIR mechanisms, individually, is more favorable than and MRO as OCC submits. Next, AEP Ohio characterizes OCC's arguments as to the DIR and ESRR to be the mechanisms do not include assurances of improved or maintained reliability which is not a requirement of the ESP v. MRO test. Instead, AEP Ohio argues the test is whether the proposed ESP provides "quantitative benefits ...that would not exist in an MRO." *AES Ohio ESP Case*, Opinion and Order (Aug. 9, 2023) at ¶ 208. Finally, the Company posits that the Commission should disregard OCC's claims that the qualitative benefits promised in the Company's prior ESP did not materialize. AEP Ohio contends that OCC cites no statutory test or Commission precedent which requires AEP Ohio to confirm the expected benefits of its prior ESPs as part of any new ESP filed.

{¶ 232} In its reply, Staff declares that none of the reasons offered by OCC should convince the Commission that the ESP, as revised in accordance with the Stipulation, does not meet the ESP v. MRO test. AEP Ohio and Staff argue that OCC raises issues previously presented and consistently rejected by the Commission and fails to mention precedent on this factor of an ESP. *Indus. Energy Consumers v. Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629N.E.2d 423, 1994-Ohio-435 (1994). The Court determined in *Indus. Energy Consumers* that R.C. 4928.143(c)(1) does not bind the Commission to a strict price comparison, but rather instructs the Commission to consider pricing, as well as all other terms and conditions, and the Stipulation, as a total package, including both a quantitative and qualitative analysis. *Indus. Energy Consumers* at ¶559. AEP Ohio and Staff argue that the testimony offered by Company witness Mayhan and Staff witness Healey demonstrate the quantitative and qualitative factors incorporated into the Stipulation and on that basis Signatory Parties conclude that the ESP Application, as modified by the Stipulation, satisfies

the ESP v. MRO test. (Co. Ex. 2 at 16-18; Staff Ex. 1 at 12-13; Co. Br. at 20-21; Co. Reply Br. at 84-86; Staff Reply Br. at 16-17.)

{¶ 233} R.C. 4928.143(C)(1) provides that the Commission should approve, or modify and approve, an application for an ESP if the Commission finds that 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 an MRO pursuant to R.C. 4928.142. In making this determination, the Commission is not bound to a strict price comparison. Rather, consistent with the statute's directives, the Commission considers 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. Consequently, the Commission evaluates the ESP, in its entirety, as modified by the Stipulation, 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 an MRO, pursuant to R.C. 4928.142.

{¶ 234} In conducting the ESP v. MRO test, as acknowledged by OCC and the Signatory Parties, the Commission looks at the relative price to be paid by SSO customers for generation service under both the proposed ESP and a hypothetical MRO, whether there are quantitative benefits to the ESP that would not exist in an MRO, and whether there are qualitative benefits to the ESP that would not exist in an MRO.

{¶ 235} In examining the relative price between the proposed ESP and a hypothetical MRO, the Commission notes that, under the proposed ESP as modified by the Stipulation, the rates to be charged SSO customers will be established through a CBP which is similar to, if not identical with, the CBP under an MRO. Staff declares, and AEP Ohio agrees, the

continuation of the SSO CBP auction process would be expected to yield the same results as an MRO (Staff Ex. 1 at 12; Co. Ex. 2 at 5; Co. Br. at 100). OCC admits that there are not any generation-related benefits in comparing the ESP to a hypothetical MRO because of the current auction procedures for generation where the SSO generation rates are 100 percent market-based rates. As a result, OCC witness Buckley conceded there should be no difference between market-based generation rates under an MRO and the ESP (OCC Ex. 8 at 14; OCC Br. at 52).

{¶ 236} Next, the Commission considers other quantitative benefits. OCC challenges the quantitative benefits asserted by the Signatory Parties, based on the addition of new riders, and increases in existing riders that purportedly “add over \$1.1 billion in costs to customers with little to no value to customers.” Further, OCC argues that the riders would not be included in an MRO and no provision in an MRO permits such charges to customers. (OCC Br. at 52-53 citing OCC Ex. 8 at 13-14.) As AEP Ohio points out, OCC’s claims as to new riders and the impact to customers is an incorrect cite and reference to OCC witness Buckley’s testimony. In addition, as Mr. Buckley admitted at hearing, his testimony in opposition to the Stipulation regarding the ESP v. MRO test was not updated to evaluate the ESP, as modified by the Stipulation (Tr. Vol. III at 647-649).

{¶ 237} OCC also argues that AEP Ohio does not offer any quantitative benefits associated with the EE portfolio asserting that the “streamlined recovery mechanism” is more appropriately characterized as non-quantifiable or qualitative, again citing OCC witness Buckley’s testimony, and request that the Commission find that the energy efficiency program provides no quantifiable benefits or qualitative benefits which outweigh the charges to be incurred by customers. (Co. Ex. 8 at 13-15 and relying on the direct testimony of Brian Billings at 3-4, filed on Jan. 6, 2023, which was not admitted into the evidentiary record.) The Commission disagrees. The record evidence demonstrates the ESP, as modified by the Stipulation package, as further modified in this order, offers bill payment assistance and purchase assistance for customers with limited income, as part of

the EE plan, and provides an annual gross benefit of approximately \$22 million, in addition to other qualitative benefits. (Staff Ex. 1 at 12, Co. Ex. 2 at 17.)

{¶ 238} Regarding OCC’s assertions as to the “streamlined recovery” of rider cost through an ESP as opposed to an MRO or a base rate case, reasoning that such “streamlined recovery” substantially shifts risk from AEP Ohio to residential consumers, the Commission notes the Supreme Court of Ohio has cast significant doubt on whether this is a valid objection to the ESP v. MRO test. In an appeal of the FirstEnergy EDUs’ third ESP, the Court rejected claims that costs which would be recovered in a distribution rate case should not be considered in the ESP v. MRO test, holding that:

NOPEC’s argument fails to recognize that unlike an MRO, an ESP will include all sorts of cost-recovery mechanisms at the outset, see R.C. 4928.143(B)(2)(a). Therefore, under NOPEC’s statutory interpretation, the MRO will always appear to be quantitatively more favorable but will never reflect the true cost of the MRO over time. (Emphasis sic.) *Ohio Edison Co.* at 25.

{¶ 239} To that end, the Commission finds OCC’s argument to be unpersuasive regarding the ESP v. MRO test. Therefore, we find that the evidence demonstrates that the relative price between the proposed ESP and a hypothetical MRO is not affected by the fact that the proposed ESP contains provisions for the accelerated recovery of certain distribution costs. Those same costs would be recovered through a distribution rate case under a hypothetical MRO; as we have previously held, it would simply be a “wash.” *FirstEnergy ESP III Case*, Opinion and Order (July 18, 2012) at 56; *AES Ohio ESP Case*, Opinion and Order (Aug. 9, 2023) at ¶214.

{¶ 240} OCC also argues that the ESRR and DIR provide little value to support a finding that the ESP, as modified by the Stipulation, is more favorable in the aggregate to consumers than an MRO.

{¶ 241} Despite the claims made by OCC, the Commission finds that the record evidence supports that the ESP, as revised by the Stipulation, includes significant quantitative benefits that would not be available with an MRO, including but not limited to (a) a shareholder contribution of \$450,000 annually for Economic Development, (b) provisions to assist low-income customers to reduce their usage and thereby reduce their bill, as part of the EE plan, which also reduces demand on the grid, (c) improved TOU rates to encourage off-peak EV charging; (d) adoption of the Ohio First Rider, which will allow AEP Ohio to pursue projects to be funded by federal grants on a streamlined basis without waiting for approval in a base rate case with a sunset provision. (Staff Ex. 1 at 12; Co. Ex. 2 at 16-17.)

{¶ 242} Further, in addition to the quantitative benefits, the ESP as amended by the Stipulation incorporates qualitative benefits. We find that in addition to the customer and public interest benefits and advancements to state policy objectives, the ESP with the modifications presented in the Stipulation facilitates investments in reliability, assurance that AEP Ohio's CIS investment includes functionalities that support the competitive market and security for customer data and support economic development in this state. In addition, we find it a significant benefit that the Stipulation includes a commitment by AEP Ohio to file a base rate distribution case by June 1, 2026. (Staff Ex. 1 at 12-13; Co. Ex. 2 at 16-18.) The Commission finds that these qualitative benefits, in combination with the quantitative benefits discussed above, support a finding 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 an MRO pursuant to R.C. 4928.142.

## 5. CONCLUSION

{¶ 243} The Commission notes that the riders continued under this ESP are cost-based, reconcilable, and subject to refund based upon audits to be performed by, or at the direction of, Staff.



{¶ 244} 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 5 will be subject to another application of the ESP/MRO test in its fourth year, pursuant to R.C. 4928.143(E).

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

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 247} On January 6, 2023, 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.

{¶ 248} On February 7, 2023, a technical conference was held regarding AEP Ohio's ESP Application.

{¶ 249} The following parties were granted intervention in these proceedings: OEG, Armada, OMAEG, CUB, OPAGE, Calpine, NEP, OHA, ChargePoint, Walmart, IGS, ELPC, Kroger, One Energy, OEC, OCC, RESA, OELC, Constellation, OhioTel, OCTA, NOPEC, Enel, and Direct Energy. ChargePoint subsequently filed a withdrawal of intervention, which the Commission granted herein.

{¶ 250} On September 6, 2023, the Stipulation was filed by AEP Ohio, Staff, OEG, Enel, Walmart, IGS, RESA, OEC, OP&E, ELPC, OELC, OMAEG, CUB, Direct Energy, OHA, Armada, and Kroger. OhioTel signed the Stipulation as a non-opposing party.

{¶ 251} The evidentiary hearing in these proceedings commenced on October 10, 2023, and concluded on November 3, 2023. On various dates in April and May, 2023, six public hearings were held – two in Columbus, one in Findlay, one in Zanesville, one in Marietta, and one was conducted virtually via Webex.

{¶ 252} Initial briefs were filed on December 1, 2023. Reply briefs were filed on December 22, 2023.

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

{¶ 254} 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

{¶ 255} It is, therefore,

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

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

{¶ 258} ORDERED, That OELC's motion for protective order be granted. It is, further,

{¶ 259} ORDERED, That One Energy's appeal of the August 16 Entry and Interlocutory Appeal Entry be denied. It is, further,

{¶ 260} ORDERED, That ChargePoint's notice of withdrawal from the proceedings be accepted. It is, further,

{¶ 261} ORDERED, That ELPC's motion for leave to file timely the post-hearing reply brief be granted. It is, further,

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

**COMMISSIONERS:**

*Approving:*

Jenifer French, Chair  
Daniel R. Conway  
Lawrence K. Friedeman  
Dennis P. Deters  
John D. Williams

DMH/GNS/dr

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**Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM**

Summary: Opinion & Order modifying and approving the Stipulation and Recommendation filed by the signatory parties and authorizes Ohio Power Company d/b/a AEP Ohio to implement an electric security plan for the period of June 1, 2024, through May 31, 2028 electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.