

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE APPLICATION  
SEEKING APPROVAL OF OHIO POWER  
COMPANY'S PROPOSAL TO ENTER INTO  
AN AFFILIATE POWER PURCHASE  
AGREEMENT FOR INCLUSION IN THE  
POWER PURCHASE AGREEMENT RIDER.**

**CASE No. 14-1693-EL-RDR**

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

**CASE No. 14-1694-EL-AAM**

**FIFTH ENTRY ON REHEARING**

Entered in the Journal on April 5, 2017

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## I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing of the November 3, 2016 Second Entry on Rehearing.

## II. PROCEDURAL BACKGROUND

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility 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 in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission concluded that AEP Ohio's proposed power purchase agreement (PPA) rider, which would flow through to customers the net impact of the Company's contractual entitlement associated with the Ohio Valley Electric Corporation (OVEC), satisfies the requirements of R.C. 4928.143(B)(2)(d) and, therefore, is a permissible provision of an ESP. The Commission stated, however, that it was not persuaded, based on the evidence of record, that AEP Ohio's PPA rider proposal would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that is commensurate with the

rider's potential cost. Noting that a properly conceived PPA rider proposal may provide significant customer benefits, the Commission authorized AEP Ohio to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP, with the Company being required to justify any future request for cost recovery. Finally, the Commission determined that all of the implementation details with respect to the placeholder PPA rider would be determined in a future proceeding, following the filing of a proposal by AEP Ohio that addresses a number of specific factors, which the Commission will consider, but not be bound by, in its evaluation of the Company's filing. In addition, the Commission indicated that AEP Ohio's PPA rider proposal must address several other issues specified by the Commission. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 5} On October 3, 2014, in the above-captioned proceedings, AEP Ohio filed an application seeking approval of a proposal to enter into a new affiliate PPA with AEP Generation Resources, Inc. (AEPGR).

{¶ 6} Following the issuance of the Commission's Opinion and Order in the *ESP 3 Case*, AEP Ohio filed, on May 15, 2015, an amended application and supporting testimony, again seeking approval of a new affiliate PPA with AEPGR and also requesting authority to include the net impacts of both the affiliate PPA and the Company's OVEC contractual entitlement in the placeholder PPA rider approved in the *ESP 3 Case*.

{¶ 7} An evidentiary hearing in these proceedings commenced on September 28, 2015, and concluded on November 3, 2015.

{¶ 8} On December 14, 2015, AEP Ohio filed a joint stipulation and recommendation (stipulation) for the Commission's consideration.

{¶ 9} The evidentiary hearing on the stipulation commenced on January 4, 2016, and concluded on January 8, 2016.

{¶ 10} On January 27, 2016, the Electric Power Supply Association (EPSA) and several other parties filed a complaint with the Federal Energy Regulatory Commission (FERC), in Docket No. EL16-33-000, against AEP Ohio and AEPGR. In the complaint, EPSA and the other parties requested that FERC rescind a previously granted waiver of its affiliate restrictions with respect to the proposed affiliate PPA between AEP Ohio and AEPGR.

{¶ 11} On March 31, 2016, the Commission issued an Opinion and Order (PPA Order) that approved the stipulation with modifications.

{¶ 12} On April 27, 2016, FERC issued an Order Granting Complaint, which rescinded the waiver of the affiliate restrictions with regard to the affiliate PPA. *Electric Power Supply Association v. AEP Generation Resources, Inc.*, 155 FERC ¶ 61,102 (2016) (FERC Affiliate PPA Order). FERC determined that AEP Ohio's retail ratepayers are captive to the extent that they would be subject to a non-bypassable charge associated with the affiliate PPA. FERC also noted that, if AEPGR wishes to make sales under the affiliate PPA, AEPGR must submit the PPA to FERC under section 205 of the Federal Power Act for analysis under FERC's affiliate transaction standards set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) and *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004).

{¶ 13} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 14} On May 25, 2016, the Commission issued an Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the PPA Order.

{¶ 15} By Second Entry on Rehearing dated November 3, 2016, the Commission granted, in part, and denied, in part, the applications for rehearing filed with respect to the PPA Order.

{¶ 16} On December 5, 2016, applications for rehearing of the November 3, 2016 Second Entry on Rehearing were filed by the Ohio Consumers' Counsel (OCC); Ohio Manufacturers' Association Energy Group (OMAEG); Environmental Law & Policy Center (ELPC); PJM Power Providers Group (P3) and EPSA (jointly, P3/EP3A); and Buckeye Power, Inc. (Buckeye). AEP Ohio, Buckeye, Sierra Club, and Industrial Energy Users-Ohio (IEU-Ohio) filed memoranda contra the various applications for rehearing on December 15, 2016.

{¶ 17} On January 4, 2017, the Commission issued a Third Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the Second Entry on Rehearing.

{¶ 18} OCC filed an application for rehearing with respect to the Third Entry on Rehearing, which was denied in a Fourth Entry on Rehearing issued by the Commission on February 8, 2017.

{¶ 19} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing with respect to the Second Entry on Rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

### III. DISCUSSION

#### A. *Use of the Three-Part Test to Evaluate Stipulations*

{¶ 20} In its first ground for rehearing, OCC argues that the Second Entry on Rehearing is unreasonable and unlawful, because it approved a stipulation that was beyond the reasonably foreseeable scope of the PPA rider sought in AEP Ohio's amended

application. OCC emphasizes that, because these are not ESP proceedings, the scope must be limited to the PPA rider and other issues such as the development of renewable energy resources are outside the bounds of the proceedings. OCC asserts that issues beyond the PPA rider could not have been reasonably foreseen by intervenors, prospective intervenors, or the general public. According to OCC, the Commission unreasonably concluded in the Second Entry on Rehearing that, because the stipulation calls for AEP Ohio to extend its ESP, it was foreseeable that the stipulation would include terms that might appear in the extended ESP.

{¶ 21} Similarly, in its fourth ground for rehearing, OCC asserts that the Second Entry on Rehearing is unreasonable and unlawful, because it was unforeseeable that the Commission would approve, in rider adjustment proceedings, a stipulation that contains terms without any nexus to the initially proposed PPA rider. OCC argues that the Commission unreasonably concluded that, because the stipulation requires AEP Ohio to seek to extend its ESP, it was not unforeseeable that the parties would include provisions to be included in the ESP. OCC emphasizes that the present cases are not ESP proceedings and, therefore, intervenors and the general public could not conceivably have been expected to foresee the filing of a stipulation calling for an extension of AEP Ohio's ESP and other provisions unrelated to the PPA rider. OCC adds that stakeholders were deprived of a fair process, including notice and an opportunity to be heard on the unrelated provisions.

{¶ 22} In response to OCC's first and fourth grounds for rehearing, AEP Ohio responds that OCC concedes that its arguments have already been considered and rejected by the Commission. AEP Ohio adds that OCC fails to explain the import of its observation that the present cases are not ESP proceedings. According to AEP Ohio, all parties, including OCC, fully participated in the settlement process, were well aware of the provisions being discussed, and were afforded the opportunity to oppose the stipulation. AEP Ohio asserts that OCC essentially requests that the Commission

abandon its precedent finding value in the parties' resolution of pending matters through a stipulation package.

{¶ 23} The Commission finds that OCC's first and fourth grounds for rehearing should be denied. The arguments raised by OCC have already been fully considered and rejected by the Commission. PPA Order at 49, 77-78; Second Entry on Rehearing at 9-10, 16-17. As the Commission has previously found, R.C. 4903.10 "does not allow persons who enter appearances to have 'two bites at the apple' or to file rehearing upon rehearing of the same issue." *In re Ohio Power Co.*, Case No. 96-999-EL-AEC, et al., Second Entry on Rehearing (Sept. 13, 2006) at 3-4, citing *In re The East Ohio Gas Co. d.b.a. Dominion East Ohio and Columbia Gas of Ohio, Inc.*, Case No. 05-1421-GA-PIP, et al., Second Entry on Rehearing (May 3, 2006) at 4.

{¶ 24} Further, we again find no merit in OCC's claims that the Commission unlawfully and unreasonably approved a stipulation that lacks a sufficient nexus to AEP Ohio's amended application and includes provisions that were unforeseeable. In its application for rehearing, OCC essentially contends that the Commission regarded the present cases as involving an ESP rather than a rider and, thereby, exceeded the proper scope of these cases and deprived the parties of a fair process. Contrary to OCC's position, the Commission has specifically noted, several times, that the present cases are not ESP proceedings. *See, e.g.*, PPA Order at 4, 105; Second Entry on Rehearing at 105-106. Additionally, as we have also noted, the terms of the stipulation that OCC finds unforeseeable, such as the renewable energy resource provisions, are commitments on AEP Ohio's part to offer specific proposals for the Commission's consideration in future proceedings. PPA Order at 84; Second Entry on Rehearing at 53. The proposals are, therefore, subject to further review, with the outcome to be decided based on the record in each case. In any event, all of the parties, including OCC, were involved in the settlement process culminating in the stipulation and were aware of the terms at issue. PPA Order at 52. Following the filing of the stipulation, OCC was afforded ample

opportunity to present evidence at the hearing on the stipulation, as well as post-hearing briefs, in opposition to any of the stipulation's provisions. PPA Order at 10-11; Second Entry on Rehearing at 113. We, therefore, reject the claim that intervenors were deprived of notice and an opportunity to be heard.

{¶ 25} In its fifth ground for rehearing, OCC contends that the Second Entry on Rehearing is unreasonable and unlawful, because the three-part settlement test is not appropriate for ESP cases, given that AEP Ohio and other utilities have unequal bargaining power. OCC notes that the Commission is not bound to apply the test as it has traditionally done and, therefore, the Commission should apply a heightened level of scrutiny to settlements in ESP cases in recognition of the utilities' unequal bargaining power.

{¶ 26} AEP Ohio responds that OCC's argument is meritless and amounts to a disagreement with R.C. 4928.143. AEP Ohio asserts that the Commission is required to apply the ESP statute and presume that it is in the public interest. AEP Ohio adds that the three-part settlement test is well established, has been endorsed by the Ohio Supreme Court, and has been applied in prior ESP cases.

{¶ 27} The Commission finds that OCC's fifth ground for rehearing should be denied, as the same argument was previously raised by OCC and was rejected by the Commission. Second Entry on Rehearing at 18. Additionally, as before, we find that OCC's argument lacks merit. In light of OCC's belief that AEP Ohio has unequal bargaining power, OCC claims that, in an ESP case, the Commission should not apply the three-part test and should instead use a heightened level of scrutiny. Initially, we note that, as discussed above, the present cases are not ESP proceedings, as OCC agrees, and, therefore, OCC's argument is irrelevant. Further, as we recognized in the Second Entry on Rehearing, as well as in prior cases, it would not be appropriate to impose limitations on the parties' ability to reach a settlement agreement or to modify the three-part test. Second Entry on Rehearing at 18; *In re FirstEnergy*, Case No. 10-388-EL-SSO,

Opinion and Order (Aug. 25, 2010) at 20-21, Third Entry on Rehearing (Feb. 9, 2011) at 9-10; *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 41. We again find no error in having applied the three-part test, which, as endorsed by the Supreme Court of Ohio, enables the Commission to conduct a careful review of all of the terms and conditions set forth in the proposed stipulation, in order to determine whether it is in the public interest and should otherwise be approved. PPA Order at 49.

**B. *Is the settlement a product of serious bargaining among capable, knowledgeable parties?***

[¶ 28] In its second ground for rehearing, OCC argues that the Second Entry on Rehearing is unreasonable and unlawful, because the Commission must evaluate the bargaining process, the signatory parties must show that the stipulation is a product of serious bargaining, and intervenors are entitled to present extrinsic evidence about the meaning of the stipulation. Specifically, OCC asserts that the Commission incorrectly found that OCC and the other opponents of the stipulation, rather than the signatory parties, have the burden to show that the stipulation was not the product of serious bargaining. Arguing that the Commission unreasonably stated that it was not required to review the negotiation process to the extent requested by the opposing intervenors, OCC contends that the first part of the three-part test requires the Commission to closely evaluate the stipulation to determine whether serious bargaining occurred. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). Finally, OCC asserts that the Commission unreasonably rejected OCC's concerns regarding the necessity for extrinsic evidence. OCC notes that its concerns were rejected because there are no disputes at this time regarding the meaning of the stipulation. OCC argues that, because the stipulation's terms are ambiguous and may be subject to future litigation, the development of contemporaneous extrinsic evidence about the meaning of the stipulation is needed.

{¶ 29} AEP Ohio responds that OCC has offered no reason for the Commission to abandon its conclusion that the stipulation is the product of serious bargaining. AEP Ohio asserts that the Commission recognized that the signatory parties have the burden of proof and found that the signatory parties provided substantial evidence showing that the stipulation is the product of serious bargaining. AEP Ohio adds that the Commission reviewed the record to ensure that no customer class was excluded from the settlement negotiations, consistent with *Time Warner*. Further, AEP Ohio contends that, if a dispute arises regarding the meaning of the stipulation, the Commission can address it at that time.

{¶ 30} Initially, the Commission notes that the argument that the stipulation is not the product of serious bargaining was previously raised by OCC and other parties, and was considered and rejected by the Commission. PPA Order at 51-53; Second Entry on Rehearing at 20-21, 22. The arguments raised by OCC in its second ground for rehearing have also been considered and rejected by the Commission, although we will again address them here. Second Entry on Rehearing at 10-13. According to OCC, the Commission found that OCC failed to provide a conclusive indication that the stipulation is not the product of serious bargaining and, thereby, shifted the burden of proof to OCC. OCC, however, misinterprets the Second Entry on Rehearing, which, in relevant part, does not address the burden of proof and merely states that “the possibility that a dispute may arise regarding compliance with any particular provision of the stipulation cannot be taken as a conclusive indication of a lack of serious bargaining.” Second Entry on Rehearing at 11. The Commission has properly recognized, throughout these proceedings, that the burden of proof rests with the signatory parties. *See, e.g.*, PPA Order at 18; Second Entry on Rehearing at 40. Next, OCC takes issue with the extent of the Commission’s review of the negotiation process. Contrary to OCC’s claim that the Commission did not sufficiently evaluate the negotiation process to determine whether serious bargaining occurred, the Commission did, in fact, thoroughly review the testimony and arguments offered by all of the parties before concluding that the

stipulation is the product of serious bargaining. PPA Order at 51-53. As part of this review, the Commission expressly found that there is no evidence in the record indicating that an entire customer class was excluded from the settlement negotiations, as was the case in *Time Warner*. PPA Order at 53. Finally, OCC questions the Commission's rejection of OCC's call for additional extrinsic evidence addressing the stipulation's meaning. As we reasonably noted, OCC's concern for future disputes is premature at this point and, in any event, the parties opposing the stipulation were afforded a full and fair opportunity to cross-examine AEP Ohio witness Allen on the stipulation. PPA Order at 17; Second Entry on Rehearing at 13, 115.

{¶ 31} In its third ground for rehearing, OCC contends that the Second Entry on Rehearing is unreasonable and unlawful, because the Commission has a duty to evaluate the stipulation as proposed rather than as fleshed out or modified in a future ESP case. OCC asserts that, although certain components of the stipulation may be subject to further analysis in AEP Ohio's ESP extension proceedings, they are nevertheless part of the settlement package and must be evaluated at this time to determine how the costs to customers compare with the purported benefits of the stipulation.

{¶ 32} AEP Ohio argues that the Commission has adequately considered the value of the Company's commitments regarding the ESP extension proceedings. According to AEP Ohio, OCC continues to confuse the evaluation of a commitment to propose a rider with the evaluation of the rider itself.

{¶ 33} The Commission finds that OCC's third ground for rehearing should be denied. OCC's argument has already been raised and was rejected by the Commission. PPA Order at 52, 84; Second Entry on Rehearing at 13-14, 53. The Commission has repeatedly found that there is value for customers in AEP Ohio's commitment to offer, in future proceedings, proposals involving economic development, retail competition, energy efficiency, carbon emissions, renewable energy resources, and grid modernization, in light of the fact that the Company may not have otherwise offered the

future filings for the Commission's review and consideration. We have also noted that the outcome of each of these future proceedings will be based on the record in each case following a thorough review by the Commission. Because the future proposals have not been approved at this time, we do not agree with OCC's contention that it is necessary to have full details and cost information, in order to evaluate the stipulation under the three-part test. Again, we find that the stipulation benefits customers through AEP Ohio's commitment to file, in future proceedings, several proposals that the Company otherwise has no legal obligation to bring before the Commission.

{¶ 34} In its sixth ground for rehearing, OCC claims that the Second Entry on Rehearing is unreasonable and unlawful, because the parties could not possibly have sufficiently understood the matters at issue in the stipulation and, therefore, the first prong of the settlement test could not have been met. OCC emphasizes that the IEU-Ohio/AEP Ohio agreement was not disclosed to all parties during the settlement negotiations and, therefore, was not at issue during those negotiations. OCC argues that the Second Entry on Rehearing is internally inconsistent, because the Commission, in addressing the first part of the three-part test, stated at one point that the parties must sufficiently understand the matters at issue, but, with respect to the IEU-Ohio/AEP Ohio agreement, stated that the parties are responsible for evaluating their own interests and the stipulation. OCC adds that the Commission's reasoning lends itself to shirking its responsibility to independently evaluate the stipulation.

{¶ 35} With respect to the IEU-Ohio/AEP Ohio agreement, the Company responds that all parties were made aware of the agreement and were afforded an opportunity to present evidence and argument concerning the agreement.

{¶ 36} We find that OCC's sixth ground for rehearing should be denied, as the Commission has already rejected the argument that, because the IEU-Ohio/AEP Ohio agreement was not known to all parties during settlement negotiations, the first part of the three-part test cannot be met. PPA Order at 51; Second Entry on Rehearing at 22.

Further, the Commission finds no merit in OCC's contention that the Second Entry on Rehearing is internally inconsistent. OCC claims that the parties could not possibly have been able to sufficiently understand the matters at issue, because the IEU-Ohio/AEP Ohio agreement was not at issue during settlement negotiations. As we stated in the Second Entry on Rehearing, each party must determine its own interests in evaluating the stipulation, without reliance on the other parties. Second Entry on Rehearing at 22. Further, the IEU-Ohio/AEP Ohio agreement is not a matter at issue in these proceedings. As we have previously noted, the IEU-Ohio/AEP Ohio agreement has not been submitted to the Commission for approval, will not be enforced by the Commission, and, therefore, does not adversely affect whether serious bargaining occurred among capable and knowledge parties. PPA Order at 51.

**C. *Does the settlement, as a package, benefit ratepayers and the public interest?***

**1. AMENDED PPA RIDER PROPOSAL**

**a. OMAEG**

{¶ 37} In its first ground for rehearing, OMAEG argues that the Commission erred in approving AEP Ohio's request to modify the stipulation to recover the costs associated with its OVEC entitlement through the PPA rider. As an initial matter, OMAEG asserts that, in granting AEP Ohio's request for approval of the OVEC-only PPA rider on rehearing, the Commission effectively reversed its prior decision in the *ESP 3 Case*, which, according to OMAEG, establishes new and dangerous precedent for Ohio customers. More specifically, in the first part of its first ground for rehearing, OMAEG contends that the Commission's decision regarding the OVEC-only PPA rider violates R.C. 4903.09, as it was not based on record evidence in these proceedings. According to OMAEG, there is nothing in the record to support the Commission's approval of an OVEC-only PPA rider, because AEP Ohio's application and the stipulation in these proceedings were premised on the Company's recovery of the costs of both the OVEC

PPA and the affiliate PPA. OMAEG emphasizes that an OVEC-only PPA rider was not an issue that was proposed or litigated in these cases.

{¶ 38} AEP Ohio replies that the Commission's decision to approve the OVEC-only PPA rider was based on record evidence and complied with R.C. 4903.09. Specifically, AEP Ohio asserts that it has provided, throughout these proceedings, citations to record evidence that support the inclusion of the OVEC units in the PPA rider. AEP Ohio further asserts that the record evidence supporting the other provisions of the stipulation also supports the implementation of an OVEC-only PPA rider. AEP Ohio adds that the Commission rejected an earlier argument in OMAEG's first application for rehearing that no costs associated with the OVEC PPA should be passed on to retail customers.

{¶ 39} Buckeye notes that it opposes the applications for rehearing of OMAEG, OCC, and P3/EPSC to the extent that these parties object to the Commission's approval of the OVEC-only PPA rider. Buckeye further notes that circumstances have changed since the Commission's denial of an OVEC-only PPA rider in the *ESP 3 Case* and that a broader PPA rider including the affiliate PPA generating units may no longer be possible. Buckeye argues that the Commission should give no credence to the arguments of OMAEG, OCC, and P3/EPSC, because these parties have themselves caused the changed circumstances. Buckeye adds that there is sufficient evidence in the record that an OVEC-only PPA rider will provide benefits to Ohio ratepayers, even if there is also evidence in the record that a broader PPA rider, including both the OVEC units and the affiliate PPA units, would provide a broader hedge and greater rate stability. Buckeye concludes that, as an 18 percent owner of OVEC, it fully agrees with the inclusion of the OVEC units in the PPA rider as a hedge against volatile market prices and to support the jobs that the OVEC plants provide.

{¶ 40} In the Second Entry on Rehearing, the Commission thoroughly addressed arguments from various intervenors that the inclusion of the OVEC PPA, on its own, in

the PPA rider was foreclosed by the Commission's decision in the *ESP 3 Case*. Second Entry on Rehearing at 29-31. We emphasized that the Commission carefully considered the record in the present proceedings and found that it reflects a different set of facts and circumstances than was evident in the record of the *ESP 3 Case*. We, therefore, do not agree with OMAEG's contention that the Commission effectively reversed its prior decision in the *ESP 3 Case*. Further, we find no merit in OMAEG's claim that the Commission's decision to approve AEP Ohio's request for an OVEC-only PPA rider was not based on the record, in violation of R.C. 4903.09. Our approval of AEP Ohio's request was based on evidence in the record reflecting that the OVEC PPA alone is projected to provide ratepayers with a net credit of approximately \$110 million, without accounting for the effect of the Capacity Performance auctions held by PJM Interconnection, LLC (PJM), over the period of October 31, 2015, through December 31, 2024, or approximately \$11 million over the current ESP term (IGS Ex. 1). We also recognized that AEP Ohio agreed to move forward with the implementation of the other provisions in the stipulation that benefit consumers, such as those addressing grid modernization, renewable energy resources, and retail competition. These benefits, among others, all of which are supported with record evidence, were thoroughly discussed in the PPA Order and again noted in the Second Entry on Rehearing. PPA Order at 82-83, 84-86 (citing Co. Ex. 52 at 14; Tr. XIX at 4710-4711, 4863-4865, 4870; Tr. XX at 4932; ELPC Ex. 18); Second Entry on Rehearing at 27-28, 31. The Commission, therefore, finds that the first part of OMAEG's first ground for rehearing should be denied.

{¶ 41} In the second part of its first ground for rehearing, OMAEG contends that the Commission's approval of AEP Ohio's request to modify the stipulation to recover costs associated only with the OVEC PPA violates R.C. 4903.10, as the proposal includes additional information that could have been offered at the initial hearing. OMAEG notes that, under R.C. 4903.10, the Commission, in granting rehearing and permitting additional evidence, may not take any evidence that, with reasonable diligence, could have been offered upon the original hearing. OMAEG argues that AEP Ohio could have

proposed its OVEC-only PPA rider at the original hearing and instead elected to seek recovery of the costs associated with both the OVEC PPA and the affiliate PPA. OMAEG further argues that the issuance of the *FERC Affiliate PPA Order* does not enable AEP Ohio to raise new proposals and new evidence on rehearing.

{¶ 42} AEP Ohio, in response, contends that OMAEG failed to identify any new evidence presented by the Company on rehearing or considered by the Commission in the Second Entry on Rehearing and, therefore, OMAEG's argument should be rejected. AEP Ohio emphasizes that the only new information in its application for rehearing seeking an OVEC-only PPA rider was the citation to the *FERC Affiliate PPA Order*, which, given its issuance date, could not have been offered upon the original hearing in these cases.

{¶ 43} The Commission finds that the second part of OMAEG's first ground for rehearing lacks merits and should be denied. The Commission's decision in the Second Entry on Rehearing to approve the OVEC-only PPA rider was based solely on the existing record in these cases, as discussed above. Although we noted the change in circumstances prompted by the *FERC Affiliate PPA Order*, which occurred after the issuance of the PPA Order, no new evidence was taken by the Commission on rehearing. We also disagree with OMAEG's contention that AEP Ohio was precluded from proposing the OVEC-only PPA rider on rehearing. AEP Ohio's request fully complied with the requirements of R.C. 4903.10 and our decision to approve the request, by granting the Company's first ground for rehearing in its May 2, 2016 application for rehearing, was consistent with Ohio Supreme Court precedent. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 15.

{¶ 44} In its second ground for rehearing, OMAEG asserts that the Commission erred in approving AEP Ohio's request to reduce its total credit commitment from \$100 million to \$15 million under the approved PPA rider. OMAEG contends that the Commission's decision ignores the overall impact of the stipulation and views the credit

commitment provision in a vacuum rather than as a total package, which the Commission has endorsed as the proper way to apply the three-part test used to evaluate stipulations. Arguing that the original credit commitment of \$100 million would offset some of the stipulation's costs and provide rate relief to customers, OMAEG asserts that the package of costs expected under the stipulation must be weighed against the promised benefits. Further, OMAEG claims that, contrary to R.C. 4903.09, the Commission failed to set forth a rationale for granting AEP Ohio's request to reduce the credit commitment, failed to offer any evidence in support of the reduction of the credit, and failed to address the impact of the reduction on customers.

{¶ 45} Asserting that the credit commitment is inextricably linked to the PPA rider in the stipulation, AEP Ohio argues that the Commission reasonably reduced the credit commitment in proportion to OVEC's capacity as compared to the total capacity for the OVEC units and the affiliate PPA units. With respect to OMAEG's argument that the credit commitment should provide rate relief to customers for costs unrelated to the PPA rider, AEP Ohio responds that OMAEG failed to specify those costs or any formula for calculating an appropriate credit commitment other than the one adopted by the Commission in the Second Entry on Rehearing.

{¶ 46} In the Second Entry on Rehearing, the Commission found, in light of AEP Ohio's decision to forgo the affiliate PPA, that the Company's request to revise the \$100 million credit commitment should be granted. Specifically, we found that a reduced credit commitment of \$15 million is reasonable, as it is commensurate with OVEC's portion of the combined 3,111 megawatts (MW) of capacity from the OVEC PPA and the affiliate PPA. Second Entry on Rehearing at 29. As AEP Ohio explained in its May 2, 2016 application for rehearing, the reduced total credit commitment of \$15 million is 15 percent of the prior \$100 million credit, and is based on the fact that OVEC's 440 MW of capacity is less than 15 percent of the combined 3,111 MW of capacity from the OVEC PPA and the affiliate PPA, as reflected in the record (Co. Ex. 1 at 12). As AEP Ohio asserts

in its memorandum contra, the credit commitment is, without question, linked to the PPA rider. The stipulation clearly provides that the credit commitment was intended to encourage AEP Ohio to exercise its contractual rights under the affiliate PPA to ensure that the PPA units are managed in an efficient and cost-effective manner (Joint Ex. 1 at 5). With the affiliate PPA no longer included in the PPA rider, it is appropriate to reduce the credit commitment in proportion to the OVEC PPA's share of the rider. Additionally, the Commission does not agree with OMAEG's claim that we failed to account for the impact of the credit reduction on customers or to consider the overall impact of the stipulation as a package. As discussed above, we specifically found that the stipulation, as modified in the Second Entry on Rehearing, would benefit customers, with the OVEC-only PPA rider projected to provide a net credit of approximately \$11 million over the current ESP term and many other provisions in the stipulation expected to promote economic development, retail competition, and grid modernization; facilitate energy efficiency measures; reduce carbon emissions; and expand the development of renewable resources. Second Entry on Rehearing at 27-28, 31. For these reasons, we find that OMAEG's second ground for rehearing should be denied.

b. *P3/EP SA*

{¶ 47} In their third ground for rehearing, P3/EP SA assert that the Commission erred by allowing AEP Ohio to defer and recover any OVEC costs incurred for the period of June 2016 through December 2016. P3/EP SA claim that the Commission imposed no regulatory oversight with respect to this cost recovery and should have done so to ensure that the costs were reasonably incurred. According to P3/EP SA, the Commission should also have required that the deferred costs be net of any revenues received as a result of the OVEC entitlement, and that any net credit over that time period be paid to ratepayers over the 12 months of 2017.

{¶ 48} AEP Ohio responds that P3/EP SA's argument lacks merit, because the PPA Order already provides that there will be oversight of any cost recovery through the

annual prudency review. AEP Ohio further responds that, because the deferred costs flow through the PPA rider, they will necessarily be net of any revenue. AEP Ohio notes that the fundamental premise of the PPA rider, as approved, has not changed and, therefore, costs are only passed through the rider to the extent that they exceed revenue.

{¶ 49} As AEP Ohio correctly notes in its memorandum contra, the annual prudency review required by the Commission will provide the necessary oversight of any recovery of OVEC costs through the PPA rider. PPA Order at 87-90. We also agree with AEP Ohio's assertion that, because any deferred OVEC costs will flow through the PPA rider, such costs will be net of any revenue, consistent with the basic operation of the rider. *See, e.g.*, PPA Order at 21, 24, 25. Nothing in the Second Entry on Rehearing modified the PPA Order on these issues. We, therefore, find that P3/EPISA's third ground for rehearing should be denied.

c. OCC

{¶ 50} In its seventh ground for rehearing, OCC contends that the Second Entry on Rehearing is unreasonable and unlawful, because it approved the OVEC PPA without addressing material arguments made by OCC against the OVEC PPA and results from a fundamentally unfair process. Specifically, OCC asserts that the Commission failed to address certain arguments raised by OCC in its memorandum contra AEP Ohio's application for rehearing requesting the OVEC-only PPA rider in reliance on the stipulation's severability provision. OCC maintains that the Commission should now address OCC's position that the severability provision does not apply; the OVEC-only PPA rider inhibits the implementation of the Commission's directive that the OVEC asset should be divested; and the parties were deprived of notice and the opportunity to challenge the OVEC-only PPA rider. OCC adds that the Commission failed to evaluate the stipulation package with the OVEC-only PPA rider under the second part of the three-part test and instead found that the OVEC-only PPA rider should be approved to preserve the stipulation's other benefits.

{¶ 51} In response to OCC, AEP Ohio argues that the Commission evaluated the overall package and reasonably approved the OVEC-only PPA rider in order to maintain the stipulation's benefits. According to AEP Ohio, OCC misreads the Second Entry on Rehearing, because, in agreeing to remove the affiliate PPA from the PPA rider, the Commission included the OVEC-only PPA rider in its evaluation of the benefits of the remaining provisions of the stipulation.

{¶ 52} Initially, we note that OCC's arguments against AEP Ohio's proposed OVEC-only PPA rider were fully considered by the Commission in the Second Entry on Rehearing. Second Entry on Rehearing at 24. Ultimately, the Commission found, following a thorough review of the parties' arguments, that AEP Ohio's request for approval of an OVEC-only PPA rider, in conjunction with implementation of the stipulation's other provisions, should be granted. Second Entry on Rehearing at 27-28. In granting AEP Ohio's request, the Commission thoroughly explained the basis for its decision and, contrary to OCC's claim, evaluated the stipulation, as a package that includes the OVEC-only PPA rider, as well as the stipulation's other provisions. Second Entry on Rehearing at 31. With respect to OCC's other arguments, we disagree with OCC's contention that AEP Ohio relied on the stipulation's severability provision in requesting approval of the OVEC-only PPA rider. In its application for rehearing dated May 2, 2016, AEP Ohio invoked the severability provision for the sole purpose of noting that the Company intended to reserve the right to pursue a replacement provision of equivalent value to the affiliate PPA. The severability provision was, therefore, not the basis of the approval of the OVEC-only PPA rider. Regarding divestment of the OVEC asset, we note that, in the stipulation, AEP Ohio agreed to continue reasonable efforts to explore divestiture of the OVEC asset and nothing in the PPA Order or the Second Entry on Rehearing relieves the Company of this obligation. PPA Order at 24, 39; Second Entry on Rehearing at 28. Finally, we find no merit in OCC's claim that the parties were deprived of a fair process with respect to the OVEC PPA. The OVEC PPA was proposed to be included in the PPA rider from the time that AEP Ohio filed its amended application

on May 15, 2015, following the Commission's decision in the *ESP 3 Case*. Nothing precluded the parties, during either of the evidentiary hearings or in their post-hearing briefs, from arguing against the inclusion of the OVEC PPA in the PPA rider and, in fact, some of them did. *See, e.g.*, PPA Order at 61. For these reasons, we find that OCC's seventh ground for rehearing should be denied.

d. *Buckeye*

{¶ 53} As an initial matter, Buckeye notes that it withdraws from the stipulation pursuant to Section IV.G of the stipulation, in light of the Commission's approval of AEP Ohio's request for an OVEC-only PPA rider, which, according to Buckeye, is a material modification of the stipulation. Buckeye further notes that it requests additional modifications to the stipulation that could render the stipulation once again acceptable to Buckeye, even without the inclusion of the affiliate PPA generating units in the PPA rider or a replacement provision of equivalent value.

{¶ 54} In its first ground for rehearing, Buckeye argues that the Commission, contrary to the record, modified the stipulation to eliminate cost support for the generating units included in the PPA rider, with the exception of the OVEC asset, while retaining the stipulation's mandatory retirement, refueling, and repowering provisions for these generating units. Buckeye requests that these provisions be eliminated from the stipulation, if cost support for the units or a replacement provision of equivalent value will not be included in the stipulation. In support of its request, Buckeye asserts that, despite the fact that the Commission recognized in the PPA Order that the affiliate PPA generating units provide economic and other benefits to Ohio ratepayers, the Commission has left these units stranded and worse off than they would have been if AEP Ohio had never filed its application in these proceedings. Buckeye contends that, by eliminating the mandatory retirement, repowering, and refueling provisions of the stipulation, the Commission would ensure that the affiliate PPA generating units have an opportunity to continue to survive as participants in a market unhampered by

arbitrary retirement obligations unrelated to their potential remaining economic and physical lives. Buckeye adds that, if the provisions remain in the stipulation, the likelihood that AEP Ohio will be able to sell the affiliate PPA generating units to a new owner willing to invest in the units is greatly reduced. With respect to the Cardinal plant in particular, Buckeye asserts that it should not be harmed as it works to transition the plant to another joint owner that could partner with Buckeye on investments. Buckeye adds that, if Cardinal Unit 1 is retired prematurely, Buckeye and its members, which plan to continue to operate and invest in the remaining Cardinal generating units for the long term, could experience increased costs, because the cost of common facilities for the plant would have to be borne entirely by Buckeye instead of shared among three units.

(¶ 55) In its second ground for rehearing, Buckeye asserts that a recent decision by AEP Ohio's corporate parent to write down and abandon the affiliate PPA generating units, rather than continue to pursue cost support at the Commission or before the General Assembly, is contrary to the record, including the Company's application and testimony, and the PPA Order, which establish the need for the continued operation of the units and their benefits in terms of jobs, reliability, and supply diversity. Buckeye requests that AEP Ohio be required to pursue the transfer or sale of the affiliate PPA generating units, or at the least to not retire them. Buckeye asserts that, at a minimum, AEPGR should not be permitted to retire the units without meeting all of its obligations to the joint owners and without Commission approval. Buckeye also requests that AEP Ohio be required to make necessary investments in the affiliate PPA generating units until the transfer or sale is completed, in order to avoid the premature and imminent retirement or degradation of the units. According to Buckeye, AEPGR should be required to comply with its obligations to the joint owners to make necessary investments in the generating units until the units are sold or transferred to other parties committed to making such investments.

{¶ 56} AEP Ohio argues that Buckeye's application for rehearing is untimely, because Buckeye did not, within the allotted ten days, oppose or respond to the Company's May 2, 2016 application for rehearing proposing the OVEC-only PPA rider. With respect to Buckeye's withdrawal from the stipulation, AEP Ohio asserts that Buckeye has acted prematurely, because Section IV.G of the stipulation requires a signatory party, in response to an unacceptable modification of the stipulation, to file for rehearing first and then to withdraw, if necessary, following the Commission's rehearing decision.

{¶ 57} Further, AEP Ohio argues that the Commission should reaffirm the stipulation, as modified by the Second Entry on Rehearing, without Buckeye's support as a signatory party. Specifically, with respect to Buckeye's request for the elimination of AEP Ohio's commitment to refuel, repower, or retire certain units, the Company notes that Buckeye did not join in these provisions of the stipulation from the outset. According to AEP Ohio, Buckeye should have registered its concerns as part of the initial rehearing process. AEP Ohio adds that Buckeye ignores the fact that the stipulation represents a balanced outcome of negotiation, as well as the fact that, after the *FERC Affiliate PPA Order*, the Company appropriately elected to proceed with the OVEC-only PPA rider and its commitments under the stipulation rather than abandon the stipulation entirely. Regarding Buckeye's request that AEP Ohio be required to continue to maintain and ultimately sell the affiliate PPA generating units rather than retire them, the Company responds that it makes no sense to suggest that investments be made without cost recovery and, in any event, the Commission has no basis to order AEPGR to make such investments. AEP Ohio also asserts that the Commission has disavowed any authority over the retirement of legacy generation. *In re Ohio Power Co.*, Case No. 10-1454-EL-RDR, Finding and Order (Jan. 11, 2012).

{¶ 58} Sierra Club responds that Buckeye has waived the right to challenge the stipulation provision that requires AEP Ohio to retire, repower, or refuel Cardinal Unit

1, by failing to raise any argument with respect to the provision within 30 days of the PPA Order. Sierra Club asserts that the Second Entry on Rehearing did not address the retirement, refueling, and repowering provision and, therefore, Buckeye is now precluded from re-litigating this provision of the stipulation. Sierra Club adds that, even if Buckeye had not waived the argument, Buckeye failed to assert any legal ground for removing the provision from the stipulation and relies on speculative and irrelevant future harm to Cardinal Units 2 and 3, which are not covered by the stipulation. Further, Sierra Club contends that Buckeye has waived its right to request that the Commission require AEP Ohio and its affiliate to make necessary investments in the PPA units before selling or transferring them. Sierra Club argues that, if Buckeye wanted to suggest an alternative vehicle to allow for cost recovery and spending with respect to the PPA units, it should have raised the issue in response to AEP Ohio's May 2, 2016 application for rehearing requesting an OVEC-only PPA rider. Finally, Sierra Club maintains that, if Buckeye is permitted to attack a single provision of a complex settlement agreement via an application for rehearing, parties will be discouraged from entering into such agreements in future Commission cases.

{¶ 59} In the Second Entry on Rehearing, the Commission granted AEP Ohio's request to modify the stipulation, such that the OVEC PPA is included in the PPA rider, the affiliate PPA is not included in the rider, and all other provisions of the stipulation remain in effect as approved or modified by the Commission. Second Entry on Rehearing at 28. In light of changed circumstances, specifically the fact that the proposed affiliate PPA is no longer in effect following the *FERC Affiliate PPA Order*, we found that AEP Ohio had reasonably proposed to exclude the affiliate PPA from the PPA rider and move forward with the implementation of the other provisions of the stipulation. We also noted that AEP Ohio's proposal was not opposed by any of the signatory parties, as evidenced by the fact that no signatory party, including Buckeye, filed a memorandum contra the Company's application for rehearing. Second Entry on Rehearing at 27-28. As noted by AEP Ohio and Sierra Club, Buckeye has delayed in bringing its concerns before

the Commission. Regardless, we will address the merits of Buckeye's application for rehearing.

{¶ 60} In its first ground for rehearing, Buckeye asserts that the Commission's decision to modify the stipulation to exclude the affiliate PPA from the PPA rider, while retaining the stipulation's other provisions, specifically AEP Ohio's commitment to retire, refuel, or repower certain generating units, was contrary to the record evidence. Buckeye contends that, in the PPA Order, the Commission recognized that the record in these proceedings reflects that the affiliate PPA units provide economic and fuel diversity benefits. PPA Order at 83-84. However, as we recognized in the Second Entry on Rehearing, circumstances have changed following the issuance of the *FERC Affiliate PPA Order*. In light of FERC's withdrawal of the affiliate waiver and AEP Ohio's subsequent decision to forgo the proposed affiliate PPA, the stipulation's economic and fuel diversity benefits provided by the affiliate PPA generating units, as a practical matter, can no longer be realized as the Commission had intended. The affiliate PPA, quite simply, is not in effect between AEP Ohio and AEPGR. Given these changed circumstances, we affirm our finding that the stipulation, as modified by the PPA Order and the Second Entry on Rehearing, achieves a balance that will benefit AEP Ohio, ratepayers, and the public interest. Second Entry on Rehearing at 32. As AEP Ohio emphasizes, the stipulation represents the balanced outcome of lengthy negotiations among numerous parties with adverse interests, including those parties that bargained for the Company's commitment to retire, refuel, or repower the affiliate PPA generating units. We agree that the balance achieved by the signatory parties should not be disturbed, except as otherwise necessitated by the *FERC Affiliate PPA Order*.

{¶ 61} In excluding the affiliate PPA from the PPA rider and retaining AEP Ohio's commitment to retire, refuel, or repower the affiliate PPA generating units, the Commission, according to Buckeye, has left these generating units stranded and subject to abandonment by AEPGR through imminent retirement or an ill-advised sale. We

disagree. Under the terms of the stipulation, AEP Ohio and its affiliates have committed to take steps to retire, refuel, or repower the generating units, including Cardinal Unit 1, by the dates specified in the stipulation (Joint Ex. 1 at 19-26). Further, the stipulation does not preclude AEP Ohio or its affiliates from selling any of the generating units; in fact, AEP Ohio and its affiliates specifically agreed, in the stipulation, to continue to pursue the transfer or sale of the jointly owned generating units (Joint Ex. 1 at 25). The stipulation, therefore, has always contemplated that the generating units may be sold by AEP Ohio's affiliates. Buckeye contends that the likelihood of a sale of the generating units by AEP Ohio and its affiliates to an appropriate buyer will be reduced, if the retirement, repowering, and refueling provisions are retained in the stipulation. Although the Commission appreciates Buckeye's concern, it is speculative and, in any event, Buckeye's interest in obtaining a new partner to invest in the Cardinal plant is not a matter for the Commission's regulatory authority.

{¶ 62} In its second ground for rehearing, Buckeye argues that a decision by AEP Ohio's corporate parent to write down the affiliate PPA generating units, rather than continue to pursue cost support for the units, is contrary to the record in these proceedings. As an initial matter, we note that Buckeye's second ground for rehearing is procedurally deficient, as it fails to comply with R.C. 4903.10, which provides that an application for rehearing may be filed "in respect to any matters determined in the proceeding." An application for rehearing must "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." R.C. 4903.10. Although Buckeye claims that the decision to write down the generating units is contrary to the record, Buckeye has failed to explain how that renders the Second Entry on Rehearing unlawful or unreasonable. In the Second Entry on Rehearing, the Commission made no findings regarding a decision by AEP Ohio's corporate parent to write down the affiliate PPA generating units and there is nothing in the record on this issue. Any such decision on the part of AEP Ohio or its affiliates, therefore, cannot form the basis of our decision on rehearing. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706

N.E.2d 1255 (1999). For these reasons, the Commission finds that Buckeye's application for rehearing should be denied.

## **2. PPA RIDER RATE IMPACT MECHANISM**

{¶ 63} OCC, in its eighth ground for rehearing, claims that the Second Entry on Rehearing is unreasonable, because it does not provide customers with rate stability. Specifically, OCC argues that the Commission should implement a rate impact mechanism that will prevent large rate increases from impacting customers. OCC further argues that, as currently implemented by the Commission, the rate impact mechanism will provide no rate stability for customers after May 31, 2018, because AEP Ohio will initially defer any costs above the five percent cap and then recover them after that date.

{¶ 64} AEP Ohio responds that the Commission should again reject OCC's request for modifications to the rate impact mechanism. AEP Ohio adds that OCC offers no evidence to support its belief that customers will face large and volatile charges and no justification for waiting until its second application for rehearing to question the duration of the rate impact mechanism.

{¶ 65} The Commission has previously considered and rejected OCC's arguments regarding the rate impact mechanism. Second Entry on Rehearing at 42, 43-44. We affirm our prior finding that a five percent limit for the first two years of the PPA rider is appropriate, in order to provide additional rate stability for customers. PPA Order at 81-82; Second Entry on Rehearing at 43-44. With respect to OCC's argument that the rate impact mechanism will provide no rate stability for customers after May 31, 2018, we find that the argument is improper and untimely under R.C. 4903.10, because OCC should have raised the argument in its prior application for rehearing. In any event, the Commission has rejected arguments raised by other parties regarding the duration of the rate impact mechanism. Second Entry on Rehearing at 44. OCC's eighth ground for rehearing should, therefore, be denied.

**3. BENEFITS OF THE STIPULATION**

**a. *Retail Rate Stability***

{¶ 66} In their second ground for rehearing, P3/EP SA argue that the Commission erred by finding that the OVEC-only PPA rider will provide rate stability. P3/EP SA emphasize that AEP Ohio has admitted that little hedging benefit exists in an OVEC-only PPA rider, as it represents approximately five percent of the Company's load, and that the rider, therefore, does not provide the kind of hedge against rate volatility found necessary by the Commission in the *ESP 3 Case*. P3/EP SA add that, in AEP Ohio's pending ESP proceedings, Case No. 16-1852-EL-SSO, et al., the Company proposes to eliminate the OVEC-only PPA rider and instead use the OVEC asset to serve its SSO load, which, according to P3/EP SA, confirms that the PPA rider has always been intended to transfer market risk to ratepayers rather than to provide rate stability.

{¶ 67} AEP Ohio replies that P3/EP SA concede that the Commission has previously considered and rejected the argument that the PPA rider does not provide sufficient benefit in terms of rate stability. AEP Ohio adds that it would be improper to evaluate the merits of the PPA rider based on a proposal to terminate the rider in the ESP extension proceedings. According to AEP Ohio, stakeholders and the Commission must remain open to new programs and initiatives that will provide stability and certainty for retail electric service, in light of the challenges in the current energy markets and the regulatory scheme. AEP Ohio points out, however, that the fact that the PPA rider is proposed to be replaced in the future with two alternative mechanisms does not mean that the rider in its current form is unreasonable.

{¶ 68} The Commission finds that P3/EP SA's second ground for rehearing should be denied. In the PPA Order and again in the Second Entry on Rehearing, we thoroughly addressed the retail rate stability benefits of the PPA rider. We concluded that, as a cost-based hedging mechanism, the PPA rider offers customers the benefit of a more balanced approach than exclusive reliance on the market. PPA Order at 83; Second

Entry on Rehearing at 50. We acknowledged in the Second Entry on Rehearing that the exclusion of the affiliate PPA from the PPA rider can be expected to diminish the rider's value as a financial hedging mechanism. However, the Commission also found that the OVEC PPA, on its own, will provide some degree of rate stability benefit, particularly over the extended term of the rider. Second Entry on Rehearing at 32, 50. Although P3/EPSCA continue to rely on the Commission's decision in the *ESP 3 Case*, we have explained, in the Second Entry on Rehearing, and as discussed again above, that the Commission's approval of the OVEC-only PPA rider was based on the record in the present proceedings, as well as our analysis of the stipulation and its benefits, which is separate and apart from the evidentiary record in the *ESP 3 Case*. Second Entry on Rehearing at 29-31. P3/EPSCA also point to AEP Ohio's application in its pending ESP proceedings, Case No. 16-1852-EL-SSO, et al. As AEP Ohio correctly notes, it would be improper to reevaluate, at this time, the benefits of the PPA rider, based solely on the Company's application in another case. We must base our decision on the record in the present proceedings. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999).

b. *Renewable Energy Resources*

{¶ 69} In its thirteenth ground for rehearing, OCC contends that the Second Entry on Rehearing is unreasonable and unlawful, because it allows AEP Ohio to charge consumers anticompetitive subsidies for renewable generation. OCC asserts that the Commission unreasonably noted that renewable energy plays an integral role in promoting a reliable and cost-effective grid, as well as furthers the policy objectives of R.C. 4928.02. First, OCC claims that generation reliability in Ohio is ensured by PJM, with recent base residual auction reserve margins indicating that available generation is more than adequate to maintain reliability. Additionally, OCC argues that the guaranteed funding for new renewable generation facilities provided by captive customers will distort PJM's markets and unfairly ensure AEP Ohio's market share to the detriment of competition in Ohio. According to OCC, customers could be responsible for the entire

cost of the facilities if they do not clear the base residual auction. OCC adds that, under an alternative scenario, customers will be harmed by artificial price suppression and inefficient market operation, if AEP Ohio liquidates the subsidized generation in the PJM markets. Finally, OCC asserts that, if the generation is dedicated exclusively to the customers that pay for it, competition in the market for the provision of SSO service will be foreclosed and CRES suppliers will be disadvantaged in trying to attract shopping customers.

{¶ 70} In response, AEP Ohio asserts that prior arguments from OCC regarding the stipulation's renewable energy resource provisions have already been considered and rejected by the Commission. With respect to the arguments raised in OCC's second application for rehearing, AEP Ohio responds that OCC has waived the arguments by failing to raise them in its first application for rehearing. Further, AEP Ohio contends that OCC's position regarding reliability is incorrect, because the state of Ohio has retained jurisdiction over the adequacy and reliability of electric service, consistent with R.C. 4928.02(A) and the Energy Policy Act of 2005. In response to OCC's argument regarding generation reserve margins in PJM, AEP Ohio argues that OCC relies, in part, on non-record information and ignores the Commission's role in resource planning at the retail level. AEP Ohio concludes that OCC's other arguments are speculative and unsupported.

{¶ 71} The Commission has previously considered and rejected arguments raised by OCC regarding the stipulation's renewable energy provisions. Second Entry on Rehearing at 57. In its second application for rehearing, OCC disputes the Commission's finding that renewable energy plays an integral role in promoting a reliable and cost-effective grid, in furtherance of the state policy set forth in R.C. 4928.02. We find that OCC's request for rehearing on this issue is untimely under R.C. 4903.10. The Commission noted in the PPA Order that renewable energy furthers the state policy set forth in R.C. 4928.02 by playing an integral role in promoting a reliable and cost-

effective grid. PPA Order at 82-83. OCC failed to seek rehearing on this issue in its first application for rehearing and, in any event, has not offered any reason for the Commission to question our prior conclusion. With respect to OCC's argument that the Second Entry on Rehearing permits AEP Ohio to charge customers anticompetitive subsidies for renewable generation, we note again that any concerns regarding cost recovery are premature at this point, because the Commission has not, at this time, approved the recovery of any costs for any renewable energy project through the PPA rider. Any cost recovery filing will be subject to the review of the Commission. As we stated in the Second Entry on Rehearing, the Commission expects that AEP Ohio will work with Staff to develop each renewable energy project, file the EL-RDR application for each project in a separate docket, and request and obtain the Commission's approval for any associated cost recovery in advance of the commencement of construction of each project. Second Entry on Rehearing at 57. Following the filing of each application by AEP Ohio, the Commission will thoroughly evaluate the costs of the proposed project in considering whether to approve the application. We will also weigh the total cost impact of the proposed project in combination with all of AEP Ohio's other pending or approved renewable energy resource projects. For these reasons, we find that OCC's thirteenth ground for rehearing should be denied.

#### **4. REFUNDS AND SEVERABILITY**

[¶ 72] In its ninth ground for rehearing, OCC argues that the Second Entry on Rehearing is unreasonable, because it is unclear if the revenues collected under the PPA rider are being collected subject to refund. OCC asserts that the Commission appears to have found that it is unnecessary and inappropriate to direct that the PPA rider be made subject to refund, because the Commission modified the stipulation to eliminate its prohibition on refunds in the event of an invalidation of the PPA rider. OCC requests that the Commission clarify that a refund of charges collected under the OVEC-only PPA rider is permissible because the stipulation's prohibition on refunds has been eliminated.

{¶ 73} AEP Ohio responds that OCC's request for clarification on this issue is unnecessary, because it is clear that the PPA rider is not being collected subject to refund, and the Commission has already rejected arguments that it should be collected subject to refund.

{¶ 74} In the Second Entry on Rehearing, we clearly stated that it would be unnecessary and inappropriate to direct that the PPA rider be made subject to refund, on the basis that Commission orders generally are effective immediately, under R.C. 4903.15, and the parties had offered no justification for a departure from that usual practice. Second Entry on Rehearing at 78. Although we noted the balancing of the parties' interests through our removal of the stipulation's prohibition against refunds, the Commission at no point stated that the PPA rider should be collected subject to refund. In removing the provision in the stipulation that sought to prohibit refunds, we clearly stated that, if the PPA rider is invalidated, the question of customer refunds would be a matter for determination by the Commission or reviewing court. PPA Order at 87. OCC has misconstrued the Second Entry on Rehearing and, accordingly, its ninth ground for rehearing should be denied.

***D. Does the settlement package violate any important regulatory principle or practice?***

**1. STATUTORY AUTHORITY**

{¶ 75} In their first ground for rehearing, P3/EP SA contend that the Commission erred in approving the OVEC-only PPA rider, because the rider is not authorized under R.C. 4928.143(B)(2)(d). Noting that the OVEC-only PPA rider could be either a charge or a credit, P3/EP SA argue that the Commission cannot approve the rider under R.C. 4928.143(B)(2)(d), because the word "credit" does not appear in the statute. *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 32; *In re Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 49. Further, P3/EP SA maintain that, under the plain meaning of R.C. 4928.143(B)(2)(d), the OVEC-

only PPA rider does not constitute a limitation on customer shopping for retail electric generation service, because it does not inhibit, restrict, or impair ratepayers from shopping. P3/EP SA add that, when the projected \$11 million net credit over the ESP term is spread across all customers, the OVEC-only PPA rider cannot be considered a financial limitation on shopping. Finally, P3/EP SA assert that the OVEC-only PPA rider would not have the effect of stabilizing or providing certainty regarding retail electric service as required by R.C. 4928.143(B)(2)(d). P3/EP SA argue that the \$11 million net credit projected for the OVEC-only PPA rider and the 440 MW of capacity provided by the OVEC PPA cannot offer the kind of rate stability or certainty envisioned in the *ESP 3 Case*.

{¶ 76} AEP Ohio responds that P3/EP SA concede that they have not raised any new argument and that they are instead urging the Commission again to reverse its prior findings on this issue. According to AEP Ohio, the Commission fully considered and rejected P3/EP SA's arguments regarding each part of R.C. 4928.143(B)(2)(d) in the Second Entry on Rehearing. AEP Ohio adds that the Commission has reasonably interpreted the meaning of "charges" and "limitations on customer shopping" in the statute. AEP Ohio also asserts that the Commission properly approved the PPA rider as a retail rate stability mechanism based on the evidence of record. With respect to the concern that the OVEC-only PPA rider may be less effective as a retail rate stability mechanism than a rider including the affiliate PPA, AEP Ohio responds that the OVEC-only PPA rider is nevertheless a beneficial retail rate stability mechanism.

{¶ 77} In the PPA Order and again in the Second Entry on Rehearing, the Commission thoroughly addressed and rejected various arguments that the Commission is not authorized to approve the PPA rider under R.C. 4928.143(B)(2)(d), which have also been rejected by the Commission in the *ESP 3 Case*. PPA Order at 92-95; Second Entry on Rehearing at 80-85; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, Fourth Entry on Rehearing (Nov. 3, 2016) at 15-23, Seventh Entry on Rehearing (Apr. 5, 2017). In the

Second Entry on Rehearing, we explicitly disagreed with P3/EPSC's narrow interpretation of "charges" in R.C. 4928.143(B)(2)(d) and rejected the contention that, because "credit" does not appear in the statute, the Commission cannot approve the PPA rider. Second Entry on Rehearing at 81. We affirm our prior interpretation of "charges" to more broadly mean a price term. As designed, the PPA rider can result in either a cost or a credit reflected on a customer's bill and, therefore, we continue to find that the rider consists of a charge within the meaning of R.C. 4928.143(B)(2)(d). We also continue to find that the PPA rider constitutes a financial limitation on customer shopping for retail electric generation service. As we have stated, R.C. 4928.143(B)(2)(d) is not limited to any particular type of limitation on customer shopping. Second Entry on Rehearing at 83. The non-bypassable PPA rider acts as a financial limitation on customer shopping by providing all customers a financial hedge against complete reliance on the retail market for the pricing of retail electric generation service. PPA Order at 94. Although we recognize that the hedging effect may be diminished with the exclusion of the affiliate PPA, the OVEC-only PPA rider nevertheless continues to operate as a financial limitation on customer shopping, as customer bills will still reflect a price for retail electric generation service that is, in part, based on the cost of service of the OVEC units, with the remainder based on the retail market. Finally, we again find that the PPA rider will have the effect of stabilizing or providing certainty regarding retail electric service as required by R.C. 4928.143(B)(2)(d). As we have noted, the PPA rider is designed to provide customers with more stable retail pricing by smoothing out fluctuations in market prices. Further, the PPA rider has the potential to benefit customers by offsetting a portion of the costs of retail electric service, in the event that market prices rise. PPA Order at 83, 94; Second Entry on Rehearing at 50, 85. Again, although the rate stability effect of the PPA rider may be diminished by the affiliate PPA's exclusion from the rider, the basic operation of the rider does not change. For these reasons, we find that P3/EPSC's first ground for rehearing should be denied.

## 2. STATE POLICY

{¶ 78} In its tenth ground for rehearing, OCC contends that the Second Entry on Rehearing is unreasonable and unlawful, because it found that AEP Ohio's customers are not captive to a non-bypassable OVEC PPA. OCC asserts that the Commission failed to address OCC's argument that the Commission's position on this issue is counter to FERC's.

{¶ 79} AEP Ohio responds that its customers are not captive, as they may select a CRES provider or return to the SSO. AEP Ohio adds that the Commission has twice rejected OCC's position on this issue and that, at this point, OCC has offered no new arguments for the Commission's consideration.

{¶ 80} In addressing several arguments raised by the parties related to the state policy set forth in R.C. 4928.02, the Commission expressly rejected OCC's argument that AEP Ohio's customers are captive under a non-bypassable PPA rider, which was also rejected in the PPA Order. PPA Order at 95; Second Entry on Rehearing at 88. We find that OCC's tenth ground for rehearing should be denied on that basis. Further, in light of the fact that the *FERC Affiliate PPA Order* pertains solely to the affiliate PPA, we reiterate that OCC's argument should also be denied as moot, given that AEP Ohio has elected not to proceed with the affiliate PPA. Second Entry on Rehearing at 88.

## 3. TRANSITION REVENUES

{¶ 81} In its eleventh ground for rehearing, OCC asserts that the Second Entry on Rehearing is unreasonable and unlawful, because the OVEC PPA allows AEP Ohio to collect transition charges. OCC claims that the Commission's reasoning on this issue elevates form over substance by calling the PPA rider a rate stability mechanism and finding no "transition" in the present ESP, which, according to OCC, is contrary to recent Ohio Supreme Court precedent addressing transition revenues. *In re Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734. Further, OCC argues that,

because the OVEC contract, which was in effect before 2001, facilitated AEP Ohio's purchase of power to serve its customers, the contract falls within R.C. 4928.39(B) and (D), despite the Commission's conclusion to the contrary. OCC requests that the Commission take administrative notice of a lengthy excerpt from the Inter-Company Power Agreement dated July 10, 1953, between OVEC and the sponsoring companies.

{¶ 82} AEP Ohio responds that the Commission has already rejected the argument that PPA rider charges constitute transition charges. AEP Ohio adds that there is no evidence in the record showing that the Company purchased excess power from OVEC to serve its customers before 2001 and, even if there were such evidence, OCC failed to explain how the PPA rider permits the Company to charge customers for transition costs, as such costs were recently described by the Ohio Supreme Court. *Columbus S. Power Co.* at ¶ 15 (noting that transition costs generally "are generation costs that the utility incurred to serve its customers that would have been recovered through regulated rates before competition began, but that are no longer recoverable from customers who have switched to another generation provider"). AEP Ohio urges the Commission to disregard OCC's request for administrative notice of a portion of the 1953 OVEC agreement, because OCC's transition charge argument is not supported by the agreement and the argument is not properly before the Commission at this point.

{¶ 83} The Commission finds that OCC's eleventh ground for rehearing should be denied, as the Commission has previously considered and rejected the claim that the PPA rider enables AEP Ohio to collect transition charges from customers. PPA Order at 102; Second Entry on Rehearing at 99-100. We again find that the OVEC contract does not meet the criteria for transition costs under R.C. 4928.39(B) and (D) and, therefore, the OVEC agreement cannot be the basis for transition charges or their equivalent. Second Entry on Rehearing at 100. Although OCC disagrees with the Commission's reasoning on this issue, OCC has offered no new argument for the Commission's consideration. Instead, OCC notes that AEP Ohio witness Allen testified that the OVEC agreement has

provided, over the years, for the sale of excess energy not used by the U.S. Department of Energy and its predecessors to the sponsoring companies (Co. Ex. 10 at 4-5).<sup>1</sup> OCC, however, fails to explain how Mr. Allen's testimony negates our finding that the OVEC contract, which was a wholesale transaction, was not "directly assignable or allocable to retail electric generation service provided to electric consumers in this state," as required by R.C. 4928.39(B), or that the Company was not "entitled an opportunity to recover the costs," within the meaning of R.C. 4928.39(D). Second Entry on Rehearing at 100. Further, as AEP Ohio emphasizes, nothing in the record supports OCC's claim that the Company purchased excess power from OVEC to serve its customers before 2001. We, therefore, find that OCC's argument lacks merit, in addition to being procedurally improper.

#### **4. ENERGY EFFICIENCY OPT-OUT PROVISION**

{¶ 84} ELPC argues that the Second Entry on Rehearing is unlawful and unreasonable to the extent that it fails to prevent AEP Ohio, prior to a decision in the ESP extension proceedings, from allowing customers that have opted out of its energy efficiency and peak demand reduction (EE/PDR) programs under R.C. 4928.6611 to participate in the Company's interruptible power (IRP) tariff. ELPC requests that the Commission clarify that no customer that has opted out of the EE/PDR programs under R.C. 4928.6611 may participate in the IRP tariff unless and until the Commission endorses, in the ESP extension proceedings, such participation as consistent with R.C. 4928.6613.

{¶ 85} AEP Ohio responds that ELPC has raised no new basis for its substantive argument that the Commission has not already considered. AEP Ohio contends that ELPC should raise its concerns in the ESP extension proceedings, if ELPC believes that

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<sup>1</sup> We limit our discussion here to evidence in the record and deny OCC's request, at this late stage of the proceedings, for administrative notice of a portion of the 1953 OVEC agreement.

IRP costs should be moved to another rider to ensure that customers opting out of the EE/PDR rider contribute to the IRP costs.

{¶ 86} IEU-Ohio asserts that ELPC's application for rehearing should be denied, because it does not raise a matter at issue in these proceedings. IEU-Ohio notes that the Commission has already stated that this issue should be addressed in the ESP extension proceedings. Further, IEU-Ohio argues that ELPC's application for rehearing presents no new argument that has not already been addressed by the Commission. Finally, with respect to the merits of ELPC's application for rehearing, IEU-Ohio contends that, consistent with Ohio law, Commission precedent, and sound public policy, certain customers have the right to opt out of the benefits and costs of AEP Ohio's EE/PDR programs and that IRP customers remain eligible to make that election while they are taking interruptible service.

{¶ 87} The Commission has previously considered arguments raised by ELPC regarding the energy efficiency opt-out provision in the stipulation. PPA Order at 97-98; Second Entry on Rehearing at 106-107. In the Second Entry on Rehearing, we noted that the opt-out provision found in Section III.C.11 of the stipulation is a commitment by AEP Ohio to propose the provision in its ESP extension application for review by the Commission, ELPC, and other interested stakeholders in that future proceeding. We, therefore, clarified that the Commission has not approved the opt-out provision for immediate implementation by AEP Ohio. We find that no further clarification is necessary and, accordingly, ELPC's sole ground for rehearing should be denied.

#### ***E. Procedural Matters***

{¶ 88} In its twelfth ground for rehearing, OCC argues that the Second Entry on Rehearing is unreasonable and unlawful, because a document cannot speak for itself and non-signatory parties are entitled to fully cross-examine signatory parties. OCC emphasizes that the Commission unreasonably concluded that the stipulation speaks for

itself, in light of the fact that it was negotiated by a large number of parties to resolve numerous and complex issues. OCC adds that Ohio Adm.Code 4901-1-30(D), which requires that testimony be filed in support of a stipulation, is a recognition that stipulations will inherently need explanation outside of the four corners of the document.

[¶ 89] AEP Ohio responds that OCC's argument should be rejected, because OCC failed to identify the evidentiary rulings in question and, thus, did not comply with the requirements of R.C. 4903.10. AEP Ohio adds that OCC's argument is also improper to the extent that it seeks to reargue issues already considered and rejected by the Commission.

[¶ 90] As an initial matter, we note that the Commission has thoroughly considered and rejected numerous arguments raised by OCC regarding several evidentiary rulings of the attorney examiners. PPA Order at 17-18; Second Entry on Rehearing at 115-118. Further, we agree with AEP Ohio that OCC's application for rehearing, contrary to the requirements of R.C. 4903.10, fails to identify any specific evidentiary ruling that OCC continues to dispute. OCC argues only, in general terms, that the non-signatory parties were precluded from fully questioning the signatory parties regarding the meaning of the stipulation. The Commission has previously rejected the notion that the parties were prevented from conducting a full and fair cross-examination. PPA Order at 17; Second Entry on Rehearing at 115. OCC also argues that, contrary to the Commission's position, the stipulation cannot speak for itself. In the Second Entry on Rehearing, we noted, in response to arguments raised by OCC, that the intentions of any particular signatory party do not change the settlement agreement set forth by all of the signatory parties in the stipulation, which speaks for itself, and that the parties' motives in deciding whether to sign a stipulation do not affect the Commission's determination of whether the stipulation is reasonable. We find no error in this position, which is consistent with our precedent. Second Entry on Rehearing at 117, citing *In re Dayton Power & Light Co.*, Case No. 02-2779-EL-ATA, et al., Opinion and Order (Sept. 2,

2003) at 12; *In re The Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP, et al., Opinion and Order (Aug. 31, 2000) at 58. For these reasons, we find that OCC's twelfth ground for rehearing should be denied.

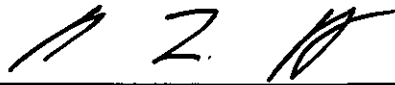
#### IV. ORDER

{¶ 91} It is, therefore,

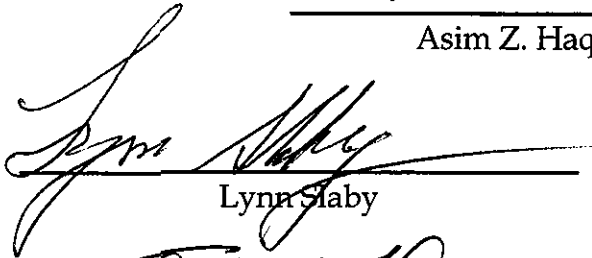
{¶ 92} ORDERED, That the applications for rehearing filed by OCC, OMAEG, ELPC, P3/EPSC, and Buckeye on December 5, 2016, be denied. It is, further,

{¶ 93} ORDERED, That a copy of this Fifth Entry on Rehearing be served upon all parties of record.

#### THE PUBLIC UTILITIES COMMISSION OF OHIO



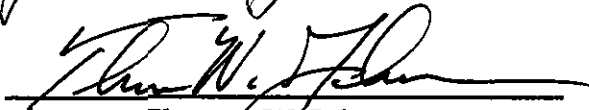
Asim Z. Haque, Chairman



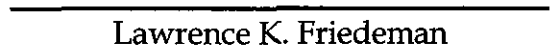
Lynn Slaby



M. Beth Trombold



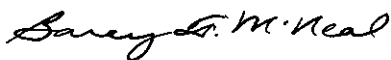
Thomas W. Johnson



Lawrence K. Friedeman

SJP/sc

Entered in the Journal **APR 05 2017**



Barcy F. McNeal  
Secretary