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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

SECOND ENTRY ON REHEARING

Entered in the Journal on November 3, 2016

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I. SUMMARY

{¶ 1} The Commission grants, in part, and denies, in part, the application for rehearing of the March 31, 2016 Opinion and Order filed by Ohio Power Company d/b/a AEP Ohio and denies the applications for rehearing filed by the other parties to the proceedings.

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 (MRO) 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). 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

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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.

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{¶ 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

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determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 14} On April 29, 2016, applications for rehearing of the PPA Order were filed by Dynegy, Inc. (Dynegy); PJM Power Providers Group (P3) and EPSA (jointly, P3/EPSA); and Retail Energy Supply Association (RESA). On May 2, 2016, applications for rehearing were filed by AEP Ohio; Mid-Atlantic Renewable Energy Coalition (MAREC); Ohio Manufacturers' Association Energy Group (OMAEG); Environmental Law & Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, Environmental Intervenors); and Ohio Consumers' Counsel (OCC).

{¶ 15} By Entry dated May 3, 2016, the attorney examiner directed that all memoranda contra the parties' applications for rehearing be filed by May 12, 2016. In accordance with the Entry, memoranda contra the various applications for rehearing were filed by Industrial Energy Users-Ohio (IEU-Ohio); Interstate Gas Supply, Inc. (IGS); AEP Ohio; OCC and Appalachian Peace and Justice Network (APJN) (jointly, OCC/APJN); OMAEG; and P3/EPSA on May 12, 2016. MAREC filed a memorandum in support of AEP Ohio's application for rehearing on May 12, 2016.

{¶ 16} By Entry on Rehearing dated May 25, 2016, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing.

{¶ 17} The Commission has reviewed and considered all of the arguments raised in the applications for 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.

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III. DISCUSSION

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

{¶ 18} P3/EPISA and RESA argue the Commission gave the stipulation undue consideration and the stipulation lacks broad-based stakeholder support, as there are more parties opposing the stipulation than there are parties supporting the stipulation. Therefore, P3/EPISA and RESA state the stipulation fails to qualify as a true stipulation and was improperly given substantial weight and special evidentiary value. According to these intervenors, the Commission should have focused on an analysis of the PPA application and the record evidence as opposed to the stipulation.

{¶ 19} OCC contends the PPA Order is unreasonable to the extent the Commission applied the standard three-part test to evaluate the stipulation. OCC asserts the “hodgepodge nature” of the stipulation should prohibit its consideration as a package and the terms of the stipulation should have sufficient nexus to the context of the application.

{¶ 20} The Company submits that OCC’s assertion that there is a lack of any nexus between certain provisions in the stipulation and the application filed in these cases overlooks the nature of these proceedings, the Commission’s authority and broad discretion to manage its dockets, and the fact that a stipulation is an efficient and cost-effective means of resolving issues brought before the Commission. The terms of the stipulation, AEP Ohio points out, were open for discussion by all of the numerous interested parties in the negotiations and where the parties had an opportunity to raise a variety of issues for consideration. AEP Ohio views opposing intervenors’ accusation regarding the Commission’s ability to review the stipulation as unfounded. Finally, AEP Ohio reasons opposing intervenors’ attacks on the use of the three-part test for consideration of a stipulation overlook the long-standing use of the test in numerous Commission proceedings and recognition of the three-part test by the Supreme Court of

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Ohio. The Company declares that it is not an error that the Commission again applied the test in these proceedings, but an attempt by opposing intervenors to stand in the place of the Commission and change the standard because opposing intervenors do not want the test to apply in this instance.

{¶ 21} This Commission, as the Ohio Supreme Court has found, is not bound to the terms of any stipulation, but the terms of a stipulation are properly 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). The three-part test used for the evaluation of stipulations does not require that the stipulation be endorsed by a majority of the parties. Any two parties to a Commission case may enter into an agreement to propose the resolution of some or all of the issues raised. Ohio Adm.Code 4901-1-30. Indeed, it is not the mere comparison of the number of parties who support the stipulation to the number of parties who oppose the stipulation that this Commission undertakes to conclude whether the stipulation should be adopted, as such a cursory determination is insufficient. The three-part test involves a more in-depth analysis. For this reason, the Commission denies P3/EPSC's and RESA's request for rehearing on this issue. In regards to OCC's claimed lack of any nexus between AEP Ohio's application and the stipulation, no nexus or connection is required to be a condition precedent to a provision of a stipulation. Further, the Commission recognizes that the PPA rider is a provision of an ESP and ESPs, pursuant to R.C. 4928.143, may include and have included, as approved by this Commission, a vast array of terms, conditions, charges, and provisions. *In re Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, et al., Opinion and Order (Mar. 18, 2009); *In re Columbus Southern Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012); *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008). In this instance, the stipulation specifically included an agreement to file an application for the extension of the current ESP to coincide with the term of the affiliate

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PPA, among other proposed provisions. Accordingly, it was not unreasonable to expect that the parties would propose and negotiate provisions to be included in an ESP.

{¶ 22} P3/EPISA and RESA argue that the Commission's focus was on the stipulation as opposed to an analysis of the PPA application and posit the PPA Order was framed as an evaluation of the reasonableness of the stipulation. PPA Order at 48-49. For several reasons, the Commission finds intervenors' arguments on rehearing to be without merit. An analysis of the PPA application and the stipulation are not, as opposing intervenors' arguments imply, mutually exclusive. Many of the arguments of signatory and non-signatory parties on brief were framed from the perspective of the stipulation. The sections of the PPA Order cited by P3/EPISA and RESA address the standard of review for a stipulation and issues raised in regard to the stipulation. The amended PPA application was the starting point of the Commission's analysis, as subsequently modified by the stipulation and in consideration of the evidence of record. PPA Order at 20-48. The PPA Order clearly and repeatedly demonstrates the Commission's consideration of issues raised by parties regarding the application, including arguments raised regarding shifts of cost and risk, subsidies, development of competition, the benefit of auctions, market price forecasts, PPA benefits and costs, and need for the PPA units, as well as issues regarding the stipulation. PPA Order at 59-67. Thus, the Commission concludes that the PPA Order properly analyzed the issues raised by the amended application as well as the stipulation and, therefore, denies the applications for rehearing on these matters.

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

{¶ 23} In its fourth and fifth grounds for rehearing, OCC contends provisions of the stipulation are so vague, ambiguous, and uncertain as to render the standards for evaluating the conduct of signatory parties unenforceable, which OCC asserts only invites future disputes. OCC specifically notes that the stipulation includes a

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commitment by AEP Ohio to advocate “in good faith” before PJM Interconnection, LLC (PJM) and FERC for market enhancements and AEP Ohio agreed to “work with” the Ohio Hospital Association (OHA) on an annual energy efficiency program (Joint Ex. 1 at 9, 13). Thus, OCC argues it is evident that the stipulation is not the product of serious bargaining among knowledgeable parties nor consistent with regulatory principles and practices.

{¶ 24} The Commission finds these assignments of error to be without merit. The express terms of the stipulation are as negotiated by the signatory parties and 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. The Commission notes that OCC attempts to raise a signatory party’s decision to opt out of a particular provision of the stipulation as evidence of a lack of serious bargaining. The Commission disagrees. The Commission is not required to review the negotiation process to the extent requested by OCC and other parties opposing the stipulation. The Commission refuses to overturn any signatory party’s assessment of its interest and the decision to support the stipulation or otherwise based on the arguments of the opposing parties. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 45-47.

{¶ 25} The stipulation includes provisions from which certain signatory parties elected to opt out. OCC, in its fifth assignment of error, reasons that these exclusions make it impossible to determine the four corners of the stipulation or to identify the package of benefits. OCC asserts the Commission did not address this argument in the PPA Order but was required to do so. *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio-1607, ¶ 55. OCC requests that the Commission address this issue and reject the stipulation.

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{¶ 26} The PPA Order specifically recognized, in its summary of the stipulation, that certain signatory parties opted out of select provisions of the stipulation, while, in each case, the signatory party also agreed not to oppose the provision. The Commission finds the signatory parties' agreement not to oppose the provision as key. PPA Order at 23-48. The Commission disagrees that a signatory party's election to opt out of a particular provision renders the benefits of the stipulation undeterminable. The signatory party's decision to opt out of a particular provision or provisions, and simultaneous election not to oppose the provision, merely reflects the signatory party's support of the stipulation as a total package and supports the likelihood that other parties to the case negotiated for certain provisions of the stipulation that were not of particular interest. The Commission is not persuaded that, in this instance, the benefits of the stipulation are affected. Therefore, the Commission finds the benefits of the stipulation, as reflected in the stipulation and modified in the PPA Order, are unaffected by any signatory party's decision to opt out of a particular provision or provisions. Accordingly, the Commission denies OCC's request for rehearing on this issue.

{¶ 27} Again relying on its claim that certain terms in the stipulation are vague, ambiguous, and unenforceable, OCC, in the last subpart of its fifth ground for rehearing, argues the Commission has foreclosed the ability to rely on extrinsic evidence to interpret vague and ambiguous terms in a stipulation as a result of the Commission's application of the settlement confidentiality privilege. As a result, OCC reasons the stipulation is rendered unenforceable. *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 2011-Ohio-2720, 953 N.E.2d 285 (*Sunoco*); *In re Complaints of ICG Telecom Group, Inc., MCI Metro Access Transmission Services, Inc., and Time Warner Telecom of Ohio, L.P. v. Ameritech Ohio*, Case No. 97-1557-TP-CSS, et al. (*ICG Telecom Group*), Entry on Rehearing (May 5, 1999). For that reason, OCC reiterates that the stipulation is not the product of serious bargaining among knowledgeable parties or consistent with regulatory principles and practices. Therefore, OCC requests the Commission grant rehearing.

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{¶ 28} The Commission finds OCC's argument that the stipulation is vague, ambiguous, and likely to invite future disputes is premature and OCC's reliance on *Sunoco* and *ICG Telecom Group* is misplaced. OCC requests that the Commission reverse its approval of the stipulation on the possibility that there will be a dispute. The *Sunoco* and *ICG Telecom Group* cases did not arise upon the adoption of the reasonable arrangement in *Sunoco* or the approval of the interconnection agreements in *ICG Telecom Group*. Subsequently, the parties to *Sunoco* and *ICG Telecom Group* sought an interpretation of the arrangement or agreement to resolve a dispute. While OCC anticipates such will be the case with respect to the stipulation in these proceedings, it is not the situation at this time. Accordingly, the Commission denies OCC's application for rehearing of the PPA Order on the grounds that the stipulation fails to comply with the first and third parts of the three-part test.

{¶ 29} In its fourth assignment of error, OCC submits that the Commission misunderstood the claims OCC raised in its brief regarding the lack of specific details on compliance, costs, and rate impacts for the commitments in the stipulation (OCC Br. at 53-54). OCC notes that OCC witness Dormady testified to 17 provisions of the stipulation with various degrees of uncertainty. OCC emphasizes that AEP Ohio failed to provide any details regarding the proposals in the stipulation, to perform any analyses to determine the costs or rate impact, to perform a cost benefit analysis, or to demonstrate the technical feasibility of provisions in the stipulation. Accordingly, OCC requests that the Commission grant rehearing.

{¶ 30} The Commission considered the position advocated by OCC and determined, at this stage, it was not necessary to have all of the details to consider the stipulation and OCC's arguments on rehearing do not persuade the Commission otherwise. We again note that OCC references pages in its brief that discuss a rider to be included in the Company's application to extend the current ESP. AEP Ohio has the duty

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to present information regarding the proposed rider and OCC and other intervenors will have an opportunity to evaluate the proposal. Accordingly, the Commission rejects OCC's request for rehearing on its fourth assignment of error.

{¶ 31} In their thirteenth and fourteenth grounds for rehearing, RESA and P3/EP SA argue that before evaluating the reasonableness of the stipulation, the Commission should have first evaluated whether the stipulation qualified as a valid stipulation. RESA and P3/EP SA claim that, because the signatory parties agreed to provisions in the stipulation that favor the signatory parties, such provisions are not an indication of serious bargaining, fairness, or any beneficial public interest. As applied in these cases, RESA and P3/EP SA submit the three-part test does not truly evaluate reasonableness. The opposing parties argue the settlement does not constitute a stipulation in any judicial sense. RESA and P3/EP SA claim that the Commission erred, as a matter of law, in using its three-part test to approve the stipulation because parties agreed to provisions as a result of favor trading and side deals.

{¶ 32} AEP Ohio reasons opposing intervenors' arguments, taken in whole or in part, are an unconvincing attack on the three-part test. AEP Ohio notes that the three-part test for evaluating stipulations has been recognized by the Supreme Court of Ohio and is used extensively in Commission cases. According to AEP Ohio, opposing intervenors' argument that the three-part test should not apply in this instance is not an error entitled to rehearing, but reflects the intervenors' attempt to stand in the shoes of the Commission and change the standard. AEP Ohio asks that the Commission confirm its decision in the PPA Order and deny the request for rehearing.

{¶ 33} The Commission will not replace the decision of any signatory party to enter into the stipulation based on the mere assertion of a non-signatory party that the stipulation is the result of what the non-signatory party characterizes as favor trading as opposed to compromise and negotiation. Our focus, as expressed in the first criterion of

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the three-part test, is whether each party is afforded the opportunity to participate in negotiations, is proficient in the negotiation process, and sufficiently understands the matters at issue. Further, there is no evidence that P3/EP SA or RESA, or any other party, was foreclosed from participating in the negotiations that resulted in the stipulation. The Commission applied the recognized and long-standing test for evaluating the stipulation. The Commission also determined the first criterion had been met and that decision was thoroughly addressed in the PPA Order. PPA Order at 51-53. Accordingly, the Commission denies the opposing intervenors' request for rehearing.

[¶ 34] The stipulation, according to OCC in its third assignment of error, consists of unrelated terms to induce parties to become signatories and lacks any nexus to the PPA application. Similarly, in their respective forty-fourth assignment of error, RESA and P3/EP SA state the stipulation includes a host of provisions unrelated to the amended PPA application for which notice was not provided under R.C. 4928.141(B). In its third ground for rehearing, OCC also argues that evaluating the stipulation as a package allows for terms that would not withstand Commission scrutiny individually. OCC submits that the public and potential parties are deprived of notice of the issues addressed in the stipulation and, therefore, the Commission is deprived of their input. OCC also argues that the stipulation cannot be considered a package in light of various signatory parties electing to opt out of material provisions of the stipulation.

[¶ 35] OCC's arguments, in the Company's opinion, ignore the Commission's broad discretion to manage its dockets. *In re Duke Energy Ohio, Inc.*, Case No. 14-1160-EL-UNC, et al., Entry (Sept. 16, 2015) at 2-3; *In re Ohio Power Co.*, Case No. 15-386-EL-WVR, Entry (Apr. 22, 2015) at 4. Furthermore, AEP Ohio notes that, as the Commission discussed in the PPA Order, the Company will be required to provide details in the ESP 3 extension application and other future filings agreed to in the stipulation, and intervening parties will be provided an opportunity to explore the proposals.

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{¶ 36} In regards to the notice arguments, AEP Ohio notes that opposing parties did not raise this issue in December 2015, when the stipulation was filed with the Commission, but raised the matter first in their initial briefs. The Company avers that the Commission considered such claims and rejected this argument. AEP Ohio contends P3/EP SA and RESA have failed to present any new arguments on this issue that the Commission did not previously consider and reject. Since opposing intervenors have failed to present any new arguments for the Commission's consideration, AEP Ohio recommends the Commission reject the request for rehearing.

{¶ 37} Furthermore, AEP Ohio avers the argument presented by P3/EP SA and RESA is substantively flawed for several reasons. AEP Ohio notes that R.C. 4928.141(B) applies, by its express terms, only to an SSO application filed under R.C. 4928.142 or 4928.143 and these proceedings are not SSO proceedings. AEP Ohio concludes, therefore, the SSO statute's notice and publication requirements do not apply here. Further, AEP Ohio reasons, as the Commission recognized in its PPA Order, it is hardly novel for a stipulation to address a wide variety of issues, often resolving several pending proceedings at the same time. Moreover, AEP Ohio declares it is common for a stipulation to include terms and conditions that address numerous issues of importance to the diverse stakeholders involved in a proceeding. Thus, it was proper for the signatory parties to include in the stipulation the provisions about which opposing intervenors complain. Accordingly, the Company reasons the Commission correctly approved the terms of the stipulation as a comprehensive settlement package.

{¶ 38} The Commission finds that the requests for rehearing by OCC, RESA, and P3/EP SA should be denied. The PPA rider is an approved component of AEP Ohio's ESP, effective beginning June 1, 2015, and continuing through May 31, 2018. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25. Opposing intervenors' arguments disregard the fact that the PPA application is a request for cost recovery through the PPA rider

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mechanism and the stipulation includes a provision for AEP Ohio to file an application to extend ESP 3 to coincide with the term of the proposed affiliate PPA, through May 31, 2024, among other provisions. As previously noted, ESPs may include numerous terms, conditions, charges, and provisions pursuant to R.C. 4928.143 and, therefore, it is not unreasonable nor unforeseeable that parties negotiated, as part of the stipulation, provisions to be included in the ESP extension application. Interested parties will have an opportunity to further review each provision proposed as a part of the ESP extension application in those proceedings.

{¶ 39} The Commission finds OCC's claims regarding the evaluation of the stipulation as a package to be without merit. The second part of the three-part test endorsed by the Ohio Supreme Court to evaluate stipulations and used in numerous Commission proceedings specifically dictates that the stipulation be considered as a package. OCC's argument to revise the test in this instance is unpersuasive and, therefore, should be denied.

{¶ 40} Opposing parties argue R.C. 4928.143(C)(2)(a) permits an electric distribution utility to withdraw an ESP application that has been modified and approved by the Commission. For this reason, OCC, in its third ground for rehearing, as well as RESA and P3/EPSC, in their respective fourteenth grounds for rehearing, argue the electric utility possesses superior bargaining power, relative to the other parties to the proceeding, rendering the three-part test to evaluate stipulations meaningless. OCC notes that prior Commissioners have recognized the asymmetrical bargaining power in the ESP statute. *In re FirstEnergy*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) (Commissioner Cheryl L. Roberto, concurring, in part, and dissenting, in part; Commissioners Paul A. Centolella and Valerie A. Lemmie, concurring).

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{¶ 41} In response to opposing intervenors, AEP Ohio notes that OCC relies on the partial concurrence and partial dissent of a former Commissioner. AEP Ohio offers that the dissenting opinion is not an accepted amendment to the Commission's three-part test. Indeed, the Company submits the three-part test was applied to stipulations filed in subsequent ESP cases. *See, e.g., In re FirstEnergy, Case No. 12-1230-EL-SSO (FirstEnergy ESP 3 Case), Opinion and Order (July 18, 2012) at 24.* According to AEP Ohio, the Company's right to withdraw an ESP is embedded within the statute, as a safety mechanism, in case modifications significantly inhibit the utility's ability or willingness to carry out the ESP. AEP Ohio declares the utility's ability to withdraw from a modified ESP is not a question of bargaining position; the statute is presumed in the public interest. AEP Ohio asserts the Commission does not need to add a requirement to the three-part test based on a right provided by the General Assembly. Accordingly, AEP Ohio submits the intervenors' attempt to create a new test to review stipulations reached in ESP cases is without merit and should be rejected.

{¶ 42} The Commission disagrees with opposing parties that R.C. 4928.143(C)(2)(a) affords the electric utility superior bargaining power in settlement negotiations, as a result of the electric utility's ability to withdraw an ESP modified and approved by the Commission. Acceptance of opposing parties' argument would nullify the parties' ability to resolve any ESP by stipulation. The General Assembly did not include any such prohibition in the ESP statute and, therefore, the Commission will not impose any such limitation. Accordingly, we deny the applications for rehearing on such grounds.

1. SERIOUS BARGAINING

{¶ 43} RESA and P3/EPSC, in their respective fifteenth assignment of error, and OMAEG, in its second assignment of error, claim the Commission cannot conclude that the stipulation is the product of serious bargaining among capable, knowledgeable

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parties, where the record includes evidence of \$9.9 million in favors for signatories. Parties opposing the stipulation assert that financial payments by AEP Ohio and supplier-consolidated billing for CRES signatory parties are examples that the stipulation was not the result of serious bargaining, but provisions were merely exchanged for support of the stipulation. In RESA's and P3/EPSA's opinion, the severability clause of the stipulation (Joint Ex. 1 at 35) supports this argument. RESA and P3/EPSA interpret the payments to OHA and Ohio Partners for Affordable Energy (OPAE) for specific programs as contrary to the reasonableness of the stipulation. Accordingly, opposing intervenors argue the Commission should reconsider its finding that the stipulation is the result of serious bargaining.

{¶ 44} AEP Ohio reiterates that the IEU-Ohio/AEP Ohio agreement involved a number of cases before the Supreme Court of Ohio and at the Commission and emphasizes that IEU-Ohio is not a signatory party to the stipulation. The Company asserts opposing intervenors' oversimplification of the IEU-Ohio/AEP Ohio agreement and attempt to assert some nefarious intent is not supported by the face of the agreement, the transparency with which it was provided to the parties, or the precedent dealing with agreements among signatory parties.

{¶ 45} Further, AEP Ohio notes that opposing intervenors continue to mischaracterize the case law, *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, and disregard the distinctions between that case and the present proceedings as discussed in the PPA Order. AEP Ohio emphasizes that the Commission has previously determined that agreements disclosed in the stipulation pending before the Commission are not considered side deals. *FirstEnergy ESP 3 Case*, Opinion and Order (July 18, 2012) at 27. Further, the Commission held that it expects parties to bargain in support of their own interests in deciding whether or not to support a stipulation. *FirstEnergy ESP 3 Case* at 27.

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{¶ 46} The basis of opposing intervenors' argument on rehearing amounts to a conclusion that serious bargaining did not occur as a result of financial incentives or other benefits received by the signatory parties. The Commission rejects this proposition. PPA Order at 51. Contrary to the representations of opposing intervenors, financial benefits as a provision of a stipulation are not conclusively indicative of a lack of serious bargaining nor sufficient to nullify the first part of the three-part test. Financial incentives may be a part of negotiation and compromise to reach a settlement in Commission proceedings and it is up to each party to determine the point where opposition meets neutrality and where neutrality meets support in light of the party's interest. The Commission expects that each party will support its respective interest and bargain in support of that interest, which may or may not result in the party's support of the stipulation. OMAEG cites, in support of its arguments on this issue, the Commission's disfavor of the financial benefits provided in the stipulation in *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 05-376-EL-UNC (*IGCC Case*), Order on Remand (Feb. 11, 2015) at 11. In the *IGCC Case*, a stipulation agreed to by AEP Ohio, Staff, and several but not all the parties to the *IGCC Case* was filed for the Commission's consideration. In the stipulation in the *IGCC Case*, the signatory parties agreed to refund more than AEP Ohio advocated but less than the amount collected from ratepayers, with interest, as intervenors advocated. Of the total \$13 million refunded to ratepayers, \$11.35 million was returned to ratepayers through bill credits. The remainder of the amount refunded, and the provision and process disfavored by the Commission, refunded \$1.65 million to the commercial and industrial customer members of the four signatory parties that represented such customers in the case. It is important to note that the Commission did not modify the stipulation in the *IGCC Case* and that the stipulation required that the entirety of the funds received by the signatory party organizations be passed on to its members. *IGCC Case* at 8. There is not a parallel provision in the stipulation at issue in

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these cases or in the IEU-Ohio/AEP Ohio agreement. The Commission affirms its decision that the stipulation meets the first part of the three-part test.

2. SIDE AGREEMENTS

{¶ 47} RESA and P3/EPSC, in their respective sixteenth and seventeenth grounds for rehearing, submit that the Commission erred in its finding that the reasonableness of the stipulation is not affected by the existence of the IEU-Ohio/AEP Ohio agreement. Further, RESA and P3/EPSC, as well as OMAEG, in its second ground for rehearing, claim the PPA Order misses the point on the IEU-Ohio/AEP Ohio agreement. According to opposing parties, if the IEU-Ohio/AEP Ohio agreement is the reason IEU-Ohio elected not to oppose the stipulation and not all parties were aware of the agreement until after the negotiations on the stipulation were completed, the stipulation did not result from serious bargaining. Parties opposing the stipulation argue the IEU-Ohio/AEP Ohio agreement needed to be disclosed to all parties during the negotiations of the stipulation and the failure to disclose the agreement gave AEP Ohio an unfair advantage during bargaining, especially in light of the fact that AEP Ohio fully disclosed the Sierra Club agreement with AEPGR. RESA and P3/EPSC characterize the IEU-Ohio/AEP Ohio agreement as a secret and exclusionary side deal that prevented serious bargaining in the negotiation of the stipulation. OMAEG states AEP Ohio's failure to disclose the side agreements during the bargaining process deprived parties of information necessary to evaluate the impact of the stipulation on their respective interests. Further, OMAEG asserts that, if the parties had known of the agreement, they may have adopted a different litigation position. For these reasons, opposing parties argue the Commission should reverse its ruling that the first part of the three-part test for the evaluation of stipulations was met.

{¶ 48} AEP Ohio states, at this stage of the proceedings, given the withdrawal of the proposed affiliate PPA between AEP Ohio and AEPGR, any agreement between

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AEPGR and Sierra Club should have no bearing on these matters and such arguments are moot or irrelevant. In any event, however, AEP Ohio concludes the Commission correctly decided the first part of the three-part test for the evaluation of stipulations was met as set forth in the PPA Order. Further, AEP Ohio espouses opposing intervenors' arguments regarding the agreements and their alleged effect on other parties' litigation positions are meritless. According to AEP Ohio, opposing intervenors misstate and misapply prior rulings concerning side deals to support their arguments and ignore the Commission's authority and discretion to manage its dockets. *In re Duke Energy Ohio, Inc.*, Case No. 14-1160-EL-UNC, et al., Entry (Sept. 16, 2015) at 2-3; *In re Ohio Power Co.*, Case No. 15-386-EL-WVR, Entry (Apr. 22, 2015) at 4.

{¶ 49} The Commission denies opposing intervenors' request for rehearing. Opposing parties contend, because the IEU-Ohio/AEP Ohio agreement was not known to all parties during negotiations, AEP Ohio had an unfair bargaining advantage and intervenors were prevented from evaluating the impact of the stipulation on their interests and, therefore, the first part of the three-part test cannot be met. As previously discussed, the first part of the three-part test utilized by the Commission and recognized by the Ohio Supreme Court dictates that the parties be capable and knowledgeable. Hence, it is incumbent upon each party to determine its respective interest and evaluate the stipulation in light of its interest without reliance on other parties. Further, despite the claims of OMAEG, opposing intervenors had the opportunity to change or reconsider their respective litigation positions after receiving notice of the IEU-Ohio/AEP Ohio agreement; IEU-Ohio filed notice of its position after the stipulation was filed but before testimony in opposition to the stipulation was due. Thus, we find no merit in the claim that the IEU-Ohio/AEP Ohio agreement prevented other parties from evaluating the impact of the stipulation on their respective interests.

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

1. Amended PPA Rider Proposal

{¶ 50} In its first ground for rehearing, AEP Ohio asserts that only the OVEC PPA should be included in the PPA rider, in light of the *FERC Affiliate PPA Order*. Specifically, AEP Ohio claims that the affiliate PPA is no longer in effect as a result of the *FERC Affiliate PPA Order*. According to AEP Ohio, FERC previously accepted the OVEC PPA, which this Commission then approved for inclusion in the PPA rider based on R.C. 4928.143(B)(2)(d) and the record in these proceedings. AEP Ohio argues that, even using the costs and revenues of the OVEC PPA on its own, the PPA rider will continue to offer customers a financial hedging mechanism that has the effect of stabilizing or providing certainty regarding retail electric service, consistent with the requirements of R.C. 4928.143(B)(2)(d). AEP Ohio further argues that the rate stability benefits of the PPA rider, if only the OVEC PPA is included in the rider, will still flow through to customers and provide a clear benefit, with a projected net credit of \$110 million through May 31, 2024. AEP Ohio adds that, if the Commission is concerned that the “captive customer” finding in the *FERC Affiliate PPA Order* could negatively impact the inclusion of only the OVEC PPA in the PPA rider, the Commission could direct that the PPA rider be bypassable. AEP Ohio states that it will continue to meet its obligations and commitments under the stipulation, with the exception of the \$100 million credit commitment. Because the affiliate PPA will no longer be included in the PPA rider, AEP Ohio requests that the \$100 million credit commitment be reduced, such that the new credit commitment would be \$1.5 million for Planning Year 2020/2021, \$3 million for Planning Year 2021/2022, \$4.5 million for Planning Year 2022/2023, and \$6 million for Planning Year 2023/2024. AEP Ohio notes that the reduced total credit commitment of \$15 million is 15 percent of the prior \$100 million credit, which reflects the fact that OVEC’s 440 megawatts (MW) of capacity is less than 15 percent of the combined 3,111 MW of capacity from the OVEC PPA and the affiliate PPA. In addition to scaling back

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the credit commitment, AEP Ohio also requests, as discussed below, that several of the Commission's modifications to the stipulation be reversed or clarified. AEP Ohio concludes that, if its application for rehearing is not granted, the Company will exercise its right to withdraw from the stipulation under Section IV.G.¹

{¶ 51} OCC/ APJN respond that, in the *ESP 3 Case*, the Commission rejected AEP Ohio's request for an OVEC-only PPA rider and directed the Company to continue its efforts to divest the OVEC asset. OCC/APJN claim that there is no reason for the Commission to depart from its decision in the *ESP 3 Case*, particularly given that AEP Ohio presented no evidence in the present proceedings that an OVEC-only PPA rider would benefit customers. OCC/ APJN add that AEP Ohio cannot invoke the stipulation's severability provision, Section IV.D, because it applies only where a court of competent jurisdiction, and not FERC, invalidates the PPA proposal. Further, OCC/ APJN note that FERC did not actually invalidate the proposal and, instead, rescinded the waiver on affiliate transaction restrictions.

{¶ 52} OMAEG argues that, in light of AEP Ohio's decision to forgo the affiliate PPA following the *FERC Affiliate PPA Order*, as well as the Commission's decision in the *ESP 3 Case*, the Commission should state unequivocally that no costs may be recovered from customers through the PPA rider. OMAEG points out that the Commission already rejected an OVEC-only PPA rider in the *ESP 3 Case*. OMAEG argues that the Commission should follow its precedent and again reject AEP Ohio's request for an OVEC-only PPA rider, as well as reject the Company's tariff filing of May 3, 2016, which was premised on an OVEC-only PPA rider that has not been authorized by the Commission. OMAEG

¹ AEP Ohio also notes that it reserves the right to pursue, either before the Commission or the General Assembly, any other remedy or solution relating to the affiliate PPA units. Further, AEP Ohio states that it invokes Section IV.D of the stipulation, based on the *FERC Affiliate PPA Order*, and reserves the right to pursue a replacement provision of equivalent value to inclusion of the affiliate PPA in the PPA rider.

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adds that AEP Ohio's request runs afoul of the Commission's rehearing process set forth in Ohio Adm.Code 4901-1-35(D), given that the Company argues the merits of its OVEC proposal in both the present proceedings and the *ESP 3 Case*. Next, OMAEG contends that approval of AEP Ohio's request for an OVEC-only PPA rider would violate R.C. 4903.09, because there is no evidence to support such a proposal, given that the Company's amended application and the stipulation were premised on both the affiliate PPA and the OVEC PPA. Further, OMAEG claims that nothing precluded AEP Ohio from offering its OVEC-only proposal at the original hearing in these proceedings and, therefore, the proposal should be rejected, consistent with R.C. 4903.10(B), as impermissible rehearing evidence and an improper motion to reopen the record. With respect to AEP Ohio's suggestion that the OVEC-only PPA rider could be made bypassable, OMAEG responds that, while it would be an improvement over a non-bypassable rider, the benefits of a bypassable OVEC-only PPA rider would not outweigh the harm to the competitive market and the increased costs spread over a smaller pool of customers. Additionally, OMAEG argues that the Commission should deny AEP Ohio's request to scale back its credit commitments, because it ignores the fact that the stipulation imposes several other costs on customers that are unrelated to the affiliate PPA.

{¶ 53} P3/EP SA argue that AEP Ohio's request for an OVEC-only PPA rider is no different than the proposal that was previously rejected by the Commission in the *ESP 3 Case*. Regarding the question of ratepayer benefit, P3/EP SA note that AEP Ohio relies on an initial workpaper that was replaced by an updated exhibit during the stipulation phase of the proceedings and that, in any event, shows an approximate net credit of only \$13 million over the current ESP term, which, according to P3/EP SA, cannot be found to have a rate stabilizing effect once it is spread across the Company's many ratepayers. P3/EP SA add that the Commission has acknowledged that the PPA rider projections are uncertain and that AEP Ohio's estimated OVEC-only credit of \$110 million over the

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extended ESP term is contradicted by the Company's other projections. According to P3/EP SA, AEP Ohio has conceded that the OVEC PPA does not offer ratepayers a sufficient hedge against rate volatility, as required by the Commission in the *ESP 3 Case*. Next, P3/EP SA argue that AEP Ohio failed to address the Commission's factors from the *ESP 3 Case* as they pertain to an OVEC-only PPA rider. Specifically, P3/EP SA assert that AEP Ohio has not presented any evidence as to the financial need of the OVEC plants; has failed to show that the plants are required for future reliability; has failed to show any adverse impact to electric prices or economic development, because the plants are not at risk of closing; and has failed to commit to either rigorous oversight or full information sharing regarding the plants. Finally, P3/EP SA claim that an OVEC-only PPA rider would violate R.C. 4928.143(B)(2)(d). If the Commission nevertheless approves an OVEC-only PPA rider, P3/EP SA request that the rider be made bypassable, because they believe that FERC's conclusions, in the *FERC Affiliate PPA Order*, apply equally to the OVEC PPA. P3/EP SA also recommend that, because AEP Ohio's projected \$110 million credit from the OVEC PPA represents approximately 51 percent of the projected \$214 million net credit from the affiliate PPA and the OVEC PPA adopted by the Commission, the Company's credit commitment should be reduced, if at all, to no less than \$51 million (i.e., 51 percent of the original \$100 million commitment).

{¶ 54} In its first ground for rehearing, OMAEG argues that, in light of the *FERC Affiliate PPA Order*, the Commission should hold that no costs associated with the affiliate PPA can be collected from customers through the PPA rider until the affiliate PPA is reviewed and approved by FERC. With respect to the OVEC PPA, OMAEG contends that, consistent with the *ESP 3 Case*, the Commission should again declare that the OVEC PPA, on its own, does not promote rate stability, is not in the public interest, and, therefore, cannot be included in the PPA rider.

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{¶ 55} In their forty-fifth ground for rehearing, P3/EPSC and RESA contend that the Commission erred by not rejecting the OVEC component of the PPA proposal, because it was rejected by the Commission in the *ESP 3 Case*. P3/EPSC and RESA further contend that AEP Ohio presented no new information in the present proceedings to address OVEC costs or sales, while also failing to address the Commission's factors from the *ESP 3 Case* with respect to OVEC. P3/EPSC and RESA also note that, in light of the *FERC Affiliate PPA Order*, AEP Ohio cannot, without initiating further FERC proceedings, recover costs related to the affiliate PPA units, thus leaving the OVEC entitlement as the only part of the PPA rider. P3/EPSC and RESA argue that the Commission should not allow an OVEC-only PPA rider, because it would be contrary to the Commission's finding, in the *ESP 3 Case*, that an OVEC-only PPA rider would fail to provide a sufficient benefit for customers that would be commensurate with the rider's potential cost.

{¶ 56} AEP Ohio replies that the arguments of OMAEG, P3/EPSC, and RESA were already considered and rejected by the Commission. In any event, AEP Ohio contends that the inclusion of the OVEC PPA in the PPA rider, as part of a package with the stipulation's other provisions, will benefit ratepayers and the public interest, which could be supplemented by additional rate stability proposals on rehearing. AEP Ohio also asserts that the Commission's decision in the *ESP 3 Case* was based on the record in that case and was not intended to preclude the Company from seeking recovery of its OVEC costs in a future filing. AEP Ohio adds that it addressed the Commission's factors from the *ESP 3 Case* with respect to the OVEC units.

{¶ 57} Following a thorough review of the parties' arguments, the Commission finds that AEP Ohio's first ground for rehearing has merit and that the Company's application for rehearing on this issue should, therefore, be granted. In the memorandum in support of its application for rehearing, AEP Ohio states that the proposed affiliate PPA with AEPGR is no longer in effect as a result of the *FERC Affiliate PPA Order*. Given

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this change in circumstances, we find that AEP Ohio's proposal to move forward with the implementation of the other provisions of the stipulation, which conceptually is not opposed by any of the signatory parties to the stipulation, is reasonable and should be approved. In the PPA Order, the Commission found, based on the record evidence, that the stipulation will provide numerous benefits for customers that are in the public interest and consistent with the policy of the state, as set forth in R.C. 4928.02. In addition to the rate stability and financial hedging benefits provided by the PPA rider, the Commission addressed the fuel supply diversity and economic development benefits of the stipulation, as well as AEP Ohio's many commitments in the stipulation to offer proposals in future proceedings that are intended to promote economic development and retail competition, facilitate energy efficiency measures, reduce carbon emissions, expand the development of renewable resources, and pursue grid modernization in the state. PPA Order at 82-86. In order to preserve the customer benefits of the stipulation, we approve 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.

[¶ 58] We emphasize that, in keeping with AEP Ohio's commitment to full information sharing with the Commission and Staff, the Company will be expected to provide any necessary information regarding the OVEC units, including information obtained through the Company's access to OVEC's books, records, and accounts. Such information shall be provided by AEP Ohio pursuant to a reasonable request from Staff or from an auditor selected by the Commission to complete the annual audit process. Additionally, the Commission reserves the right to reevaluate the PPA rider, when AEP Ohio divests or transfers its share of the OVEC asset to an affiliate or any other third party. AEP Ohio should provide notice to the Commission in advance of the divestiture or transfer of the OVEC entitlement.

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{¶ 59} For the reasons set forth in the *ESP 3 Case* and the PPA Order, we find that the PPA rider, which is designed to stabilize the market-based rates of both shopping and non-shopping customers, should remain a non-bypassable rider. *ESP 3 Case* at 21, 22; PPA Order at 96. The Commission, however, may revisit the issue of bypassability in AEP Ohio's extended ESP proceedings, based upon the evidence of record in those proceedings. Further, we direct AEP Ohio to defer, without carrying charges, any OVEC costs incurred for the period of June 2016 through December 2016, with recovery of such costs to occur beginning with the first billing cycle of January 2017 and continuing over the 12 months of calendar year 2017. AEP Ohio should file proposed tariffs with supporting schedules, consistent with this Second Entry on Rehearing.

{¶ 60} Given that the affiliate PPA will not be included in the PPA rider, the Commission finds that AEP Ohio's request, on rehearing, to revise the \$100 million credit commitment should be granted. The stipulation's credit commitment provision (Joint Ex. 1 at 5-6) should be modified such that AEP Ohio's credit commitment is \$1.5 million for Planning Year 2020/2021, \$3 million for Planning Year 2021/2022, \$4.5 million for Planning Year 2022/2023, and \$6 million for Planning Year 2023/2024. We find that the reduced total credit commitment of \$15 million is reasonable and commensurate with OVEC's portion of the combined 3,111 MW of capacity from the OVEC PPA and the affiliate PPA.

{¶ 61} As the opposing intervenors correctly note, the Commission stated, in the *ESP 3 Case*, that it was not persuaded, based on the evidence of record, that AEP Ohio's PPA rider proposal, which included only the OVEC PPA, would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that would be commensurate with the rider's potential cost. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25. We do not agree, however, with the opposing intervenors' contention that inclusion of only the OVEC PPA in the PPA rider is foreclosed by the

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Commission's decision in the *ESP 3 Case*. The Commission emphasized, no less than four times, that its decision in the *ESP 3 Case* was based on the record then before it. *ESP 3 Case* at 23-26, citing *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999). The record in the *ESP 3 Case* consisted of a number of varying OVEC-based PPA rider projections from the parties, including multiple projections from AEP Ohio ranging from a \$52 million net cost to an \$8.4 million net credit over the three-year term of the ESP. *ESP 3 Case* at 23-24. Noting that AEP Ohio had made no offer to ensure that customers would receive the alleged long-term benefits of the PPA rider or any type of proposal to continue the rider in subsequent ESP proceedings, the Commission found that the record reflected that, during the three-year period of the ESP, the PPA rider would, in all likelihood, result in a net cost to customers and that, only over a longer timeframe, would customers perhaps benefit from a credit under the rider. *ESP 3 Case* at 24. The Commission, therefore, declined, at that time, to approve AEP Ohio's OVEC-based PPA rider proposal. Acknowledging that a properly conceived PPA rider proposal could benefit customers, the Commission authorized AEP Ohio to establish a placeholder PPA rider and specifically noted that the Company was not precluded from seeking recovery of its OVEC costs in a future filing. *ESP 3 Case* at 25, 26.

{¶ 62} In the PPA Order, based on the record in the present proceedings, the Commission modified and adopted the stipulation and, thereby, approved the inclusion of the OVEC PPA in the PPA rider. The Commission determined, based on the record in these proceedings, that the PPA rider is projected to provide a net credit of \$37 million over the current ESP term, or \$214 million over the PPA rider term, for AEP Ohio's ratepayers. PPA Order at 80. We also found that the modified stipulation, consistent with state policy, provided numerous benefits intended to protect consumers against rate volatility and price fluctuations by promoting retail rate stability, modernize the grid through the deployment of advanced technology and development of renewable energy resources, and promote retail competition by enabling competitive providers to offer

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innovative products to serve customers' needs. PPA Order at 77, 82-86, 92. The Commission concluded that the modified stipulation, as a package, benefits ratepayers and the public interest and otherwise meets the Commission's three-part test for the consideration of stipulations. PPA Order at 53, 92, 103-104.

{¶ 63} The Commission's decision, as fully set forth in the PPA Order, was based on the record in the present cases, as well as our analysis of the stipulation under the three-part test. Although we approve, on rehearing, AEP Ohio's request to forgo the affiliate PPA and include only the OVEC PPA in the PPA rider, the stipulation's many other provisions addressing grid modernization, renewable energy resources, and retail competition will be implemented by the signatory parties to the benefit of consumers. None of these benefits were proposed for the Commission's consideration in the *ESP 3 Case*. Further, contrary to AEP Ohio's proposal in the *ESP 3 Case*, the stipulation's PPA rider proposal, as modified now to include only the OVEC PPA, is projected to provide ratepayers with a net credit of approximately \$110 million, without accounting for the effect of PJM's Capacity Performance auctions, over the period of October 31, 2015, through December 31, 2024, or approximately \$11 million over the current ESP term (IGS Ex. 1). Additionally, the modified stipulation, as further modified above, requires AEP Ohio to fund ratepayer credits of up to \$15 million over four years, if the actual revenues under the PPA rider are at a level that would otherwise impose a charge or provide a credit that is less than the amount of the credit commitment. For these reasons, we find that our approval today of the PPA rider with the OVEC PPA alone is based on a different set of facts and circumstances, as well as a distinct evidentiary record, and is, thus, not inconsistent with our prior decision in the *ESP 3 Case*. For these reasons, we find that the applications for rehearing filed by OMAEG, P3/EPSC, and RESA with respect to the OVEC PPA should be denied.

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{¶ 64} Further, OMAEG argues that the Commission should preclude AEP Ohio from collecting any costs associated with the affiliate PPA until the agreement has been reviewed and approved by FERC. In light of AEP Ohio's decision to forgo the affiliate PPA, the Commission finds that OMAEG's application for rehearing on this issue should be denied as moot.

{¶ 65} As a final matter, the Commission notes that, in AEP Ohio's memorandum contra the opposing intervenors' applications for rehearing, the Company stated that, "[i]f the Commission wants to explore additional hedging options for rate stability beyond the OVEC-only version of the PPA [r]ider suggested by the Company on rehearing, it can first approve the OVEC-only PPA [r]ider on rehearing and then direct AEP Ohio to develop an additional hedging proposal for further consideration." The Commission finds that AEP Ohio's proposal is procedurally improper as it should have been raised in the Company's application for rehearing. In any event, we find that AEP Ohio's proposal is unnecessary and unwarranted under the circumstances. Although we acknowledge, as discussed further below, that the PPA rider's value as a cost-based hedging mechanism is moderated by the exclusion of the affiliate PPA, the Commission finds that the rider, which will include the OVEC PPA and potentially a number of renewable energy PPAs in the future, will provide a rate stability benefit over the extended term of the rider. We conclude that the stipulation, as modified by the PPA Order and this Second Entry on Rehearing, achieves a balanced outcome that will benefit AEP Ohio, ratepayers, and the public interest.

2. PPA RIDER PROJECTIONS

{¶ 66} In its sixth ground for rehearing, OCC argues that the PPA Order is unlawful and unreasonable in that the Commission found OCC witness Wilson's PPA rider projection flawed, without considering record evidence regarding its reliability. Specifically, in subpart A, OCC argues that Mr. Wilson's testimony shows that futures

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prices represent economic principles of demand, supply, and the resulting price. OCC adds that, without citation to the record, the Commission noted that futures prices are not forecasts of future spot market prices.

{¶ 67} In subpart B of its sixth ground for rehearing, OCC contends that the record evidence shows that there is sufficient liquidity in electric energy forwards. OCC notes that there are multiple exchanges and hubs on which futures are traded.

{¶ 68} In subpart C of its sixth ground for rehearing, OCC claims that parties to futures transactions are concerned with the actual future price of energy and account for factors such as future carbon emission regulations. According to OCC, Mr. Wilson's testimony indicates that futures prices reflect market participants' expectations based on all relevant supply and demand factors, including carbon emission policies.

{¶ 69} In subpart D of its sixth ground for rehearing, OCC asserts that OCC witness Wilson did not concede a lack of liquidity after October 2020 and, instead, accepted the pattern reflected in AEP Ohio's energy price forecast and scaled the Company's energy prices to match, on average, forwards prices. OCC claims that this is the best evidence available.

{¶ 70} In subpart E of its sixth ground for rehearing, OCC maintains that the record evidence shows that OCC witness Wilson's forecast was subject to the most rigorous sanity check available, given that forwards prices reflect the consensus of market participants.

{¶ 71} In its third ground for rehearing, OMAEG contends that the Commission unreasonably and unlawfully found that the stipulation, as a package, benefits ratepayers and is in the public interest, while also failing to rely on record evidence to support its findings, in violation of R.C. 4903.09. Specifically, in subpart A of its third ground for rehearing, OMAEG asserts that the Commission erred in finding that the PPA rider will

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generate a \$214 million credit through May 31, 2024. OMAEG claims that the Commission's reliance on the weather normalized case lacks record support, given that no party recommended it; the Commission improperly shifted the burden of proof to OCC to rebut a presumption that AEP Ohio's forecast is reliable; the Company's projections are flawed and have no grounding in current market fundamentals; and the Commission's criticisms of OCC witness Wilson's projection, particularly his use of forward prices, are flawed and unsupported by the record.

{¶ 72} In their twentieth ground for rehearing, P3/EPSC and RESA argue that the Commission erred in adopting projections of witnesses that it believed are better than projections of other witnesses, without regard for whether such projections are sufficiently reliable to meet AEP Ohio's burden of proof. Specifically, P3/EPSC and RESA claim that the Commission adopted AEP Ohio's projections, without presenting a detailed analysis of the Company's methodology that explains whether the Company carried its burden of proof.

{¶ 73} In their twenty-first ground for rehearing, P3/EPSC and RESA claim that the Commission erred in finding that the weather normalized financial projection of AEP Ohio witness Pearce is reliable and reasonable. Specifically, P3/EPSC and RESA argue that the Commission failed to explain why the weather normalized case is reasonable and conservative; failed to compare or analyze the weather normalized case in relation to AEP Ohio's other projections; and ignored testimony from the Company indicating that the weather normalized case is not the most reasonable of its projections, as well as testimony showing that the Company's projections are not credible or reliable evidence.

{¶ 74} In their twenty-second ground for rehearing, P3/EPSC and RESA maintain that the Commission erred in failing to consider the testimony of P3/EPSC witness Cavicchi regarding AEP Ohio's financial projections.

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{¶ 75} In their twenty-third ground for rehearing, P3/EP SA and RESA contend that the Commission erred in discounting criticisms of AEP Ohio's projections for the reason that the critics failed to present a full projection of energy prices and net revenues under the PPA rider, which, according to P3/EP SA and RESA, has no bearing on whether the Company's projections are reliable or properly subject to such criticisms.

{¶ 76} In their twenty-fifth ground for rehearing, P3/EP SA and RESA contend that the Commission erred in ignoring known downward trends in natural gas prices, when considering the parties' PPA rider projections. P3/EP SA and RESA note that the Commission determined that AEP Ohio's projections are reliable, despite the fact that they assume higher natural gas prices for the entire PPA term, while other evidence demonstrates that, at present, natural gas prices are low.

{¶ 77} In their twenty-seventh ground for rehearing, P3/EP SA and RESA argue that the Commission erred in finding that the PPA rider will result in a net credit to ratepayers over its eight-year term and ignored credible evidence from multiple expert witnesses to the contrary.

{¶ 78} In their twenty-eighth ground for rehearing, P3/EP SA and RESA contend that the Commission erred in evaluating the impact of the PPA rider over the eight-year term, while ignoring the short-term impacts, which predict charges to ratepayers. P3/EP SA and RESA note that the Commission found that the PPA rider will result in a net credit over the eight-year term, which, according to P3/EP SA and RESA, fails to account for the actual distribution of charges and credits over the years and the inherent risk of the PPA proposal.

{¶ 79} In their twenty-ninth ground for rehearing, P3/EP SA and RESA assert that the Commission erred in approving the PPA rider for an eight-year term based on an outdated forecast, while directing that the outdated forecast be promptly replaced

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with an updated forecast for the first quarterly rider adjustment. According to P3/EPISA and RESA, AEP Ohio should have been required to provide an updated forecast in presenting its case.

{¶ 80} In response to OCC, OMAEG, P3/EPISA, and RESA, AEP Ohio contends that the Commission properly rejected arguments regarding OCC witness Wilson's use of forwards prices and his projected PPA rider rate impact. AEP Ohio asserts that, based on the evidence in the record, the Commission reasonably concluded that the Company's PPA rider analysis is reliable and should be used to determine the rider's projected net impact, while also addressing the flaws in Mr. Wilson's approach. AEP Ohio emphasizes that the PPA Order includes, contrary to the opposing intervenors' contentions, a detailed review of the testimony and other evidence that the Company presented in support of its projections.

{¶ 81} Addressing P3/EPISA's and RESA's other arguments, AEP Ohio contends that it was not unreasonable for the Commission to select a more conservative projection of the PPA rider's impact based upon the Company's weather normalized case. AEP Ohio also asserts that the Commission addressed the substance of Mr. Cavicchi's testimony in the course of addressing and rejecting the opposing intervenors' criticisms of the Company's projections. AEP Ohio points out that the Commission rejected the opposing intervenors' use of forwards prices as a substitute for the Company's full projection of energy prices and net revenues, as well as their criticisms of the Company's 2013 fundamentals forecast.

{¶ 82} Further, AEP Ohio responds that the Commission properly recognized that intervenor criticisms that focus on one element of a forecast or one portion of the period addressed by the forecast miss the point of a long-term fundamentals forecast, which is to take into account all relevant factors over the longer term that it covers, and ignore offsetting adjustments that necessarily would be made if a comprehensive analysis

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had been undertaken. AEP Ohio, therefore, asserts that the Commission's observation that the Company presented the only comprehensive and actual forecast of long-term energy prices is also an observation that selective criticisms, such as Mr. Cavicchi's, are inherently unreliable.

{¶ 83} In response to arguments related to the eight-year term of the PPA rider, AEP Ohio asserts that there may be times when the rider produces a charge and other times when it produces a credit, which is due, in large part, to the rider's design as a cost-based hedging mechanism that operates in a manner that is countercyclical to wholesale market prices. AEP Ohio believes that it was appropriate for the Commission to evaluate the PPA rider's net impact over its eight-year term. AEP Ohio also contends that P3/EPSC and RESA confuse the purpose of the Company's long-term forecast to estimate the PPA rider's net rate impact over its eight-year term and, based on that estimate, to request the Commission's approval of its use for that eight-year term, on the one hand, and the task of establishing the quarterly rider rate for use in the fourth quarter of 2016, based on information available on September 1 regarding the expected impact of the rider in that upcoming quarter, on the other hand. AEP Ohio asserts that the Commission's approach to performing each of those separate tasks was appropriate and not inconsistent.

{¶ 84} In the PPA Order, the Commission acknowledged that the parties presented several different PPA rider scenarios based on differing data inputs and assumptions, all of which are predictions of future conditions. Following a review of the parties' projections, the Commission found, based on the evidence of record, that AEP Ohio's thorough PPA rider analysis is reliable and should be used to estimate the rider's net impact. In particular, the Commission concluded that AEP Ohio's weather normalized case, which projects a net credit of \$37 million over the current ESP term, or \$214 million over the term of the PPA rider, is a reasonable and conservative estimate of

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the rider's expected impact on ratepayers.² PPA Order at 78-81. Contrary to the argument of OCC, OMAEG, P3/EPSA, and RESA that the Commission's decision was not based on the record, we specifically discussed the evidence, including record citations, provided by AEP Ohio witnesses Pearce, Bletzacker, and Allen in support of the Company's projected net credit, which was based on a full projection of energy prices and net revenues for the eight-year term of the PPA rider. PPA Order at 78-79. Likewise, we addressed the opposing intervenors' projected net cost and found that the evidence offered by OCC witness Wilson and other intervenors was based on futures contracts, which are not a reliable indicator of long-term energy prices, particularly given the lack of liquidity beyond the immediate near term, while Mr. Wilson's analysis also did not account for factors such as the impact of future carbon emission regulations. Despite OCC's assertion to the contrary, record citations were included with our discussion of the flaws in Mr. Wilson's testimony. PPA Order at 79.

{¶ 85} Regarding Mr. Wilson's use of futures contracts, OCC claims that futures prices represent economic principles of demand, supply, and the resulting price, as well as reflect the consensus of market participants; there is sufficient energy futures market liquidity; and parties to futures transactions are concerned with the actual future price of energy and account for factors such as future carbon emission regulations. Citing AEP Ohio witness Bletzacker's rebuttal testimony, among other evidence, the Commission rejected these same arguments in the PPA Order. PPA Order at 79. Noting that energy industry consultancies do not rely upon the energy futures market for long-term energy market forecasts, Mr. Bletzacker testified that a futures price reflects the price point at which a buyer and seller realize price certainty for the purpose of speculating or avoiding

² As modified above, the PPA rider, including only the OVEC PPA, is projected, under AEP Ohio's weather normalized case, to provide ratepayers with a net credit of approximately \$110 million, without accounting for the effect of PJM's Capacity Performance auctions, over the period of October 31, 2015, through December 31, 2024 (IGS Ex. 1). For the current ESP term, the projected net credit is approximately \$11 million (IGS Ex. 1).

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price volatility through hedging, as opposed to an indication of the future spot market price of the commodity; there is little to no open interest in the energy futures market beyond 2019; and futures prices do not exhibit any salient inclusion of a carbon emissions allowance price to account for the Clean Power Plan (Co. Ex. 50 at 2-6). Additionally, Mr. Wilson used the monthly forwards prices for the period of November 2019 through October 2020 as proxies for the period of November 2020 through December 2024, in light of the fact that there were no AEP-Dayton Hub Day Ahead forwards prices for that time period. As we noted in the PPA Order, Mr. Wilson's approach of recycling through the monthly futures prices for November 2019 through October 2020 across roughly the final four years of the PPA rider is not reasonable. PPA Order at 79.

{¶ 86} As Mr. Bletzacker testified, rather than relying on energy futures prices, a comprehensive electricity market forecasting model that captures all aspects of the long-term energy markets should be used to forecast long-term energy prices (Co. Ex. 50 at 1-2), which is what the Company provided in support of its amended application and, subsequently, the stipulation. PPA Order at 78. We specifically found that AEP Ohio's analysis was thorough and reliable; provided an actual, complete forecast of long-term energy prices; and offered four cases demonstrating the effect of variation in load, including a weather normalized case that was used by the signatory parties as the basis for their recommended PPA rider rate. PPA Order at 78-80. The Commission, therefore, finds no merit in the opposing intervenors' claims with respect to the burden of proof or support for the weather normalized case. The Commission cited the evidence provided by AEP Ohio in support of its methodology and each of the four cases and we find no error in having adopted the weather normalized case as a reasonable, yet conservative, projection among the cases that were presented and supported by the Company, particularly given that it was the basis for the signatory parties' recommended PPA rider rate. Further, we do not agree with the opposing intervenors' arguments that it was necessary for AEP Ohio to use a more recent fundamentals forecast and, in any event, the

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record reflects that, if the Company had done so, higher electricity prices may have resulted in a more favorable outcome for ratepayers. PPA Order at 80.

{¶ 87} Turning to the issue of P3/EPSC witness Cavicchi's testimony, although Mr. Cavicchi was not mentioned by name, the Commission addressed the substance of the opposing intervenors' criticisms, including those of Mr. Cavicchi, with respect to AEP Ohio's forecast. The Commission focused on OCC witness Wilson's testimony, in light of the fact that Mr. Wilson offered the only projection of the PPA rider's expected rate impact under the stipulation. Nonetheless, the Commission also generally rejected the opposing intervenors' reliance on futures prices over the long term, as well as their claims regarding near-term gas prices and other arguments against AEP Ohio's analysis and its 2013 fundamentals forecast in particular. PPA Order at 79-80. Concluding that we were not persuaded by the non-signatory parties' criticisms of AEP Ohio's forecast, the Commission noted that no party, other than the Company, had presented a full projection of energy prices and net revenues. PPA Order at 80. This point was not made to shift the burden of proof to the opposing intervenors, as P3/EPSC and RESA claim, but rather was made for the purpose of highlighting that the opposing intervenors incorporated, to a considerable extent, elements of AEP Ohio's forecast in their own testimony, while offering criticisms of other elements. As AEP Ohio notes, the opposing intervenors' selective focus on isolated elements of the Company's long-term forecast over a near-term period fails to take into account the countervailing impacts that the broader and longer view would have on the overall assessment. We agree that a long-term fundamentals forecast must account for all relevant factors over the entire period in question.

{¶ 88} Finally, we find no merit in P3/EPSC's and RESA's arguments regarding the Commission's evaluation of the PPA rider's projected overall impact over the eight-year term of the rider. Having found that AEP Ohio's PPA rider analysis is reliable and

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should be used to determine the rider's projected impact, we concluded that the rider is reasonably estimated to provide ratepayers with a near-term net credit of \$37 million over the current ESP term, or a long-term net credit of \$214 million over the full term of the rider. PPA Order at 80. We, therefore, considered both the short- and long-term impacts of the PPA rider.³

{¶ 89} For these reasons, we find that the applications for rehearing filed by OCC, OMAEG, P3/EPSC, and RESA with respect to our analysis of the parties' PPA rider projections should be denied.

3. PPA RIDER RATE IMPACT MECHANISM

{¶ 90} In subpart C of its second ground for rehearing, AEP Ohio maintains that the Commission should reverse the five percent customer bill cap imposed for the PPA rider, if the rider is made bypassable on rehearing. AEP Ohio points out that, in the event that there are unanticipated future circumstances that lead the Commission to desire rate mitigation for SSO customers, the Commission can authorize a deferral at that time and, in any event, SSO customers retain the opportunity to shop and avoid the PPA rider.

{¶ 91} OCC/ APJN argue that the five percent limit should be retained, because, if more customers elect to shop in order to bypass the PPA rider, non-shopping customers will face increased rates.

{¶ 92} OMAEG also contends that any customer subject to an OVEC-only PPA rider should be eligible for protection under the rate impact mechanism established by the Commission, consistent with the Commission's duty under R.C. 4928.02(A) to ensure reasonably priced retail electric service.

³ As modified above, the OVEC-only PPA rider is projected to result in a net credit of approximately \$11 million and \$110 million over the rider's short- and long-term periods, respectively (IGS Ex. 1).

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{¶ 93} Although P3/EP SA dispute the effectiveness of the rate impact mechanism imposed by the Commission, P3/EP SA assert that the mechanism should be retained, even if the PPA rider is made bypassable, in order to protect SSO customers from the risks associated with the rider.

{¶ 94} In its seventh ground for rehearing, OCC claims that the Commission's PPA rider rate impact mechanism is unreasonable. OCC argues that, in order to protect consumers, the Commission should confirm that customer rate increases through May 31, 2018, are capped at five percent of the generation component of the June 1, 2015 SSO rate plan bill; confirm that any lost revenue due to the rate impact mechanism sought to be recovered in a subsequent quarter is subject to the five percent cap; and confirm that AEP Ohio cannot charge customers for any revenue reduction resulting from the implementation of the rate impact mechanism after May 31, 2018.

{¶ 95} In their twenty-fourth ground for rehearing, P3/EP SA and RESA argue that the Commission erred in finding that a two-year limit on rate increases related to the PPA rider will protect customers against price fluctuations and provide additional rate stability. Specifically, P3/EP SA and RESA claim that the actual effect of the limit on ratepayers is unclear; the Commission failed to explain why the limit applies only for the first two years; the limit will not negate the price fluctuations caused by the PPA rider's quarterly reconciliation process; and AEP Ohio was permitted to roll over any amounts not recovered due to the limit on rate increases in the first two years.

{¶ 96} In their twenty-sixth ground for rehearing, P3/EP SA and RESA maintain that the Commission erred by not imposing annual and aggregate limits on PPA rider charges. P3/EP SA and RESA claim that, in the absence of such limits, significant charges would undermine the Commission's conclusion that the PPA rider benefits ratepayers and the rider's use as a hedge would have an unlimited downside.

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{¶ 97} In their thirty-fifth ground for rehearing, P3/EP SA and RESA argue that the Commission erred in adopting a limitation on the PPA rider during the first two years, without providing a coherent formula for the calculation of the limitation. According to P3/EP SA and RESA, both the mechanics and impact of the Commission's *limitation are unclear.*

{¶ 98} In response to OCC, P3/EP SA, and RESA, AEP Ohio points out that, if the bill cap is eliminated as proposed by the Company, the arguments of the parties will be moot. Additionally, AEP Ohio contends that OCC's attempts to convert the bill cap from a deferral and future recovery mechanism to a revenue disallowance mechanism should be rejected. According to AEP Ohio, the Commission appropriately exercised its judgment in specifying the bill cap that should be applied. AEP Ohio also believes that P3/EP SA's and RESA's arguments miss the point of the rate impact mechanism, which, according to the Company, is to provide a cap on the magnitude of PPA rider charges during the first two years of its term and is not to eliminate the possibility of charges.

{¶ 99} In the PPA Order, the Commission directed AEP Ohio to limit customer rate increases related to the PPA rider at five percent of the June 1, 2015 SSO rate plan bill schedules for the remainder of the current ESP period through May 31, 2018. PPA Order at 81-82. AEP Ohio requests that the Commission eliminate the PPA rider rate impact mechanism, if the rider is made bypassable on rehearing. In light of our directive above that the PPA rider should remain a non-bypassable rider, subpart C of AEP Ohio's second ground for rehearing should be denied as moot.

{¶ 100} The Commission also finds that the requests for rehearing filed by OCC, P3/EP SA, and RESA regarding the PPA rider rate impact mechanism should be denied. In the PPA Order, the Commission acknowledged that the PPA rider projections in these cases are merely predictions and that even the most reliable projections may be proven wrong in the future, particularly over an eight-year timeframe. The Commission,

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~~therefore, found it appropriate to implement a rate impact mechanism, in order to~~
provide additional rate stability for customers. PPA Order at 81. We concluded that a five percent limit for the first two years of the PPA rider is appropriate, and the parties have offered no reason for concluding that our judgment regarding the level or duration of the rate impact mechanism was unreasonable. With respect to their arguments that the rate impact mechanism is unclearly defined, it appears that OCC, P3/EPSC, and RESA are actually seeking a redesign of the mechanism, as they disagree with the Commission's directive that any revenue reduction resulting from the implementation of the mechanism shall be reflected in the calculation of the PPA rider's over/under-recovery balance for recovery in AEP Ohio's next quarterly update filing. Again, the specific rate impact mechanism set forth in the PPA Order is intended to provide additional rate stability for customers and, as with other modifications to the stipulation, was deemed necessary to ensure that the stipulation benefits ratepayers and the public interest. In any event, the Commission notes that similar mechanisms have been implemented for AEP Ohio's ratepayers in the past. *See, e.g., In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 70, Entry on Rehearing (Jan. 30, 2013) at 40.

4. BENEFITS OF THE STIPULATION

a. General

{¶ 101} In its second ground for rehearing, AEP Ohio argues that the Commission's large number of modifications to the stipulation were not necessary to meet the Commission's three-part test for reviewing and adopting stipulations. AEP Ohio further argues that the Commission's modifications will discourage parties from participating in settlement negotiations in future proceedings. Therefore, in addition to requesting the inclusion of only the OVEC PPA in the PPA rider, AEP Ohio also requests that certain modifications be reversed or clarified with respect to renewable energy

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resources, Capacity Performance penalties, and the PPA rider rate impact mechanism, as further addressed elsewhere in this Second Entry on Rehearing.

{¶ 102} P3/EPISA note that AEP Ohio failed to perfect its second ground for rehearing. P3/EPISA argue that it is unclear whether AEP Ohio intended for this argument to stand alone as a separate ground for rehearing and, in any event, the Company did not comply with the specificity requirements of R.C. 4903.10. P3/EPISA point out that AEP Ohio failed to identify the large number of modifications that it believes were unnecessary to satisfy the three-part test, as well as the modifications that it believes will discourage parties from participating in settlement negotiations in future proceedings.

{¶ 103} The Commission agrees with P3/EPISA that AEP Ohio has not sufficiently identified the "large number of modifications" to the stipulation that the Company finds unnecessary, given that the Company has specifically questioned only a few of the modifications in its application for rehearing. In any event, the Commission does not agree with AEP Ohio's contention that the modifications to the stipulation exceeded what was necessary to ensure that the stipulation satisfies the three-part test. The Commission's modifications to the stipulation in these proceedings were fully explained in the PPA Order and were found necessary to enable us to determine that the stipulation, as modified, meets the three-part test. Neither do we agree with AEP Ohio's assertion that our modifications will discourage parties from engaging in settlement discussions in the future. The parties to Commission proceedings are certainly aware that, in any stipulated case, there is always a possibility that the Commission may determine, in evaluating a stipulation under the three-part test, that modifications to the stipulation are necessary. AEP Ohio's request for rehearing on this issue should, therefore, be denied.

{¶ 104} In its eighth ground for rehearing, OCC argues, as a general matter, that the PPA Order is unlawful and unreasonable because the Commission misapplied the

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settlement test and did not determine if the stipulation, as a package, benefits ratepayers and the public interest. OCC also raises a number of specific arguments on this point, which are addressed elsewhere in this Second Entry on Rehearing.

{¶ 105} In their eighteenth ground for rehearing, P3/EPSC and RESA contend that the Commission erred in finding that the stipulation is reasonable if it benefits ratepayers and the public interest as a package, regardless of the nature and extent of its harmful effects. P3/EPSC and RESA claim that the Commission should have determined whether provisions in the stipulation that harm ratepayers and the public interest are so essential to the proper functioning of the stipulation that they must be retained in order to achieve the other benefits that the stipulation provides. According to P3/EPSC and RESA, the Commission skipped that type of analysis, instead erroneously finding that, because certain parts of the stipulation provide benefits, the stipulation is beneficial as a package.

{¶ 106} According to AEP Ohio, a settlement agreement, by its nature, typically involves parties to a case compromising their litigation positions in order to reach an accord, which, as the Commission recognized, has value and avoids the time and expense of litigation. Noting that the PPA Order addresses a number of specific stipulation provisions that the Commission weighed and modified, AEP Ohio disagrees with the claim that the Commission blindly accepted a settlement package without sufficient review.

{¶ 107} We disagree with OCC's general contention that the Commission misapplied the settlement test and did not determine whether the stipulation benefits ratepayers and the public interest. We also disagree with the position of P3/EPSC and RESA that the Commission erred in finding that the stipulation is reasonable because it benefits ratepayers and the public interest as a package. The second part of the three part test used by the Commission to consider the reasonableness of a stipulation, which has

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been endorsed by the Supreme Court of Ohio, is whether the settlement, as a package, benefits ratepayers and the public interest. PPA Order at 48-49, 77-78, citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994); *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). In concluding that the modified stipulation, as a package, does benefit ratepayers and the public interest, the Commission provided an approximately 15-page analysis of our application of the second part of the three-part test based on the evidence of record, including a detailed discussion of the stipulation's numerous benefits. PPA Order at 77-92. Contrary to P3/EPSC's and RESA's assertion, the Commission also addressed the purported harms raised by the opposing intervenors and modified the stipulation as necessary. For example, we addressed OCC witness Wilson's PPA rider projection, which was supported by several of the non-signatory parties. PPA Order at 79. Although the Commission found that Mr. Wilson's projection was flawed for numerous reasons, we nevertheless imposed a PPA rider rate impact mechanism in order to protect customers. PPA Order at 81. Further, in response to the opposing intervenors' concerns, the Commission set forth a number of parameters regarding bidding behavior, as well as limitations with respect to recovery of certain costs through the PPA rider, such as excluding the costs associated with Capacity Performance penalties, certain forced outages, and conversion of the PPA units. PPA Order at 87-88, 89, 90-91. We find that the requests of OCC, P3/EPSC, and RESA for a reweighing of the evidence with respect to the second part of the three-part test should be denied.

{¶ 108} In its application for rehearing, MAREC requests that the Commission consider MAREC's position in these proceedings when reviewing the *FERC Affiliate PPA Order* and the other applications for rehearing. MAREC emphasizes the necessity of preserving the benefits of the stipulation.

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{¶ 109} The Commission finds that MAREC failed to identify any basis on which the PPA Order is unlawful or unreasonable. Accordingly, MAREC's application for rehearing is procedurally deficient under R.C. 4903.10 and should be denied.

b. Retail Rate Stability and Other Benefits of the PPA Rider

{¶ 110} In subpart G of its third ground for rehearing, OMAEG argues that the Commission erred in concluding that the PPA rider will function as a financial hedge and provide rate stability. OMAEG notes that considerable uncertainty regarding cost management and unit performance, along with unilateral imposition of the PPA rider on customers, prohibits the rider from functioning as a true hedge. Regarding rate stability, OMAEG claims that AEP Ohio did not quantify customers' exposure to retail rate volatility or even demonstrate that such volatility is a problem. According to OMAEG, customers will experience significant swings in PPA rider rates due to the quarterly reconciliation process.

{¶ 111} In its eighth ground for rehearing, Dynegy maintains that the Commission unreasonably and unlawfully found that the PPA rider promotes retail rate stability. According to Dynegy, the Commission ignored evidence that the PPA rider will have no positive effect on retail rate stability and may, due to the quarterly reconciliation process, destabilize retail rates.

{¶ 112} In their thirty-first ground for rehearing, P3/EPSC and RESA argue that the Commission erred in finding that the PPA rider will provide rate stability for all ratepayers in the state. P3/EPSC and RESA point out that the PPA rider will only apply to AEP Ohio's ratepayers.

{¶ 113} In their thirty-second ground for rehearing, P3/EPSC and RESA contend that the Commission erred in finding that the PPA rider will stabilize rates, even though the PPA rider does not guarantee a sufficient net credit to ratepayers to offset the rider's

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volatility. In particular, P3/EPSC and RESA claim that retail markets in Ohio are not at the mercy of wholesale spot market prices; the PPA rider will not correspond to actual costs or be countercyclical to the movement of wholesale prices due to the quarterly reconciliation process; small changes in power prices could result in completely different rate results; and there is a lack of reliable evidence that the rider will reduce retail price volatility.

{¶ 114} In their thirty-third ground for rehearing, P3/EPSC and RESA maintain that the Commission erred in finding that quarterly adjustments of forecasted values will provide rate stability, when they will actually, according to P3/EPSC and RESA, lead to instability.

{¶ 115} In their thirty-fourth ground for rehearing, P3/EPSC and RESA assert that the Commission erred in finding that the PPA rider provides a more balanced approach than relying exclusively on the market, when there are existing mechanisms to protect against rate volatility.

{¶ 116} In response to OMAEG, Dynegy, P3/EPSC, and RESA, AEP Ohio asserts that the Commission already considered and rejected their arguments, in finding that the PPA rider will benefit customers as a financial hedging mechanism that protects against price volatility in the market. AEP Ohio contends that the evidence reflects that the PPA rider is designed to hedge against longer term changes in market prices in a way that cannot be accomplished through fixed price CRES contracts or the staggering and laddering of SSO auctions. AEP Ohio adds that the PPA rider's quarterly reconciliation process will not impact the rider's long-term dampening effect on rate volatility. AEP Ohio argues that the PPA rider's design ensures that the rider will act in a countercyclical manner to wholesale market price changes and will dampen, over the entire course of the rider, the overall impact of the wholesale market on retail rates, while the quarterly

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reconciliation process will provide customers with a more stable and predictable effect due to the timely rider updates.

{¶ 117} Emphasizing that rate stability is an essential component of an ESP that may be established under R.C. 4928.143(B)(2)(d), the Commission found, in the PPA Order, that the PPA rider will protect retail customers from price volatility in the market. Based on the record in these proceedings, we noted that the PPA rider will provide added rate stability during periods of extreme weather, when the rider is expected to offset severe price spikes, as confirmed by AEP Ohio's different scenarios showing the asymmetric impact that harsh weather and economic factors have on electric prices, where increases in load tend to increase prices more so than load reductions decrease prices. We recognized that, if load increases due to weather or economic conditions, shopping and SSO customers will be exposed to the resulting higher wholesale prices, which the PPA rider will partially offset. The Commission concluded that the PPA rider, as a cost-based hedging mechanism, provides the benefit of a more balanced approach than relying exclusively on the market. PPA Order at 83. Although the value of the PPA rider as a cost-based hedging mechanism is diminished by the affiliate PPA's exclusion from the rider, we find that the OVEC PPA will nevertheless provide some measure of rate stability benefit over the extended term of the rider, particularly when combined with the renewable energy PPAs that may be included in the rider in the future. For these reasons, the Commission again finds that the PPA rider will protect retail ratepayers against volatile market prices over the course of the rider's entire term and, therefore, we do not agree that the quarterly reconciliation process will negate the rider's rate stability benefits. Finally, we find no merit in the position of P3/EPSC and RESA that the Commission erred in finding that the modified stipulation will promote retail rate stability for all ratepayers in this state. We certainly agree that the PPA rider is applicable only to ratepayers in AEP Ohio's service territory, and our reference to "all ratepayers in this state" was not intended to suggest otherwise. Accordingly, the applications for

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rehearing filed by OMAEG, Dynegy, P3/EPSC, and RESA with respect to the issue of rate stability should, therefore, be denied.

{¶ 118} In subpart B of its eighth ground for rehearing, OCC argues that reducing the return on equity (ROE) and shortening the PPA's length are benefits only to the degree that the stipulation is compared to AEP Ohio's amended application, which is not the proper standard. Rather, OCC notes that the Commission must determine whether the stipulation, standing on its own, benefits customers and the public interest.

{¶ 119} AEP Ohio responds that the Commission addressed many other benefits of the stipulation and, taken in combination, it was appropriate for the Commission to consider the Company's compromises on the ROE and the term of the PPA, in weighing the overall stipulation package under review.

{¶ 120} The Commission agrees with OCC that the stipulation, of its own accord, must benefit ratepayers and the public interest to satisfy the second part of the three-part test. However, particularly under the circumstances of these proceedings, where AEP Ohio's amended application was filed with supporting testimony and subject to a full evidentiary hearing, we find no error in having noted that, in the stipulation, AEP Ohio agreed to concessions with respect to the ROE and the term of the affiliate PPA. Among all of the other benefits in the stipulation, which we addressed in the PPA Order, we specifically found that the stipulation's fixed ROE of 10.38 percent and the eight-year term of the affiliate PPA "will also benefit customers," noting the considerable extent of the differences between the stipulation and the amended application as another measure of the stipulation's overall reasonableness as a package. PPA Order at 84. We, therefore, find that subpart B of OCC's eighth ground for rehearing lacks merit and should be denied. Further, to the extent that subpart B of OCC's eighth ground for rehearing pertains to the affiliate PPA, we find that it should also be denied as moot.

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c. Future Proposals

{¶ 121} In subpart A of its eighth ground for rehearing, OCC argues that the stipulation's purported benefits are contingent, may not come to fruition, and may result in increased costs for consumers.

{¶ 122} In subpart J of its third ground for rehearing, OMAEG asserts that the Commission erred in finding that customers derive benefits from future filings where the outcome is uncertain. According to OMAEG, in order for there to be value for customers, there must be concrete benefits flowing to customers that can be specifically identified in the filing. OMAEG adds that portions of the PPA Order imply that future filings related to grid modernization and retail competition will be approved. OMAEG, therefore, requests that the Commission clarify that any future filings will be judged on their merits, following a full and fair opportunity for intervenor participation.

{¶ 123} In their nineteenth ground for rehearing, P3/EPSC and RESA contend that the Commission erred in finding that the stipulation is reasonable on the basis of AEP Ohio's commitments to make proposals in future proceedings. According to P3/EPSC and RESA, any benefit from such commitments is illusory, given that ratepayers will not benefit from the future filings unless and until they are approved by the Commission.

{¶ 124} In response to OCC, OMAEG, P3/EPSC, and RESA, AEP Ohio replies that the Commission appropriately recognized that there is value in the Company's commitment to make a number of future filings for the Commission's consideration, which may not have otherwise occurred in the absence of the stipulation. AEP Ohio also notes that any potential cost impact for consumers can be considered by the Commission at the point at which the future filing is reviewed. Noting that any future filing will be subject to further Commission review, AEP Ohio disagrees with OMAEG's contention that the Commission may have predetermined the outcome of future proceedings.

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{¶ 125} The Commission finds that the applications for rehearing filed by OCC, OMAEG, P3/EPSC, and RESA regarding the issue of AEP Ohio's future filings should be denied. We affirm our finding, in the PPA Order, that there is value for customers in AEP Ohio's commitment to offer proposals in future proceedings that are intended to promote economic development and retail competition, facilitate energy efficiency measures, reduce carbon emissions, expand the development of renewable resources, and pursue grid modernization in the state. PPA Order at 84. There is a benefit in AEP Ohio's commitment to make the future filings required by the stipulation, given that there is no guarantee that the Company would have otherwise offered the filings for the Commission's consideration. Further, potential costs associated with any of the proposals will be considered as part of the Commission's review of the proposal in the future proceeding. Finally, in the PPA Order, we specifically noted that our recognition of the benefit in AEP Ohio's commitment to offer the proposals should not be construed as a predetermination of the outcome of the future proceedings, which will be decided based upon the record in each case. PPA Order at 84. The Commission, therefore, finds no merit in OMAEG's contention that the PPA Order predetermined the outcome of future proceedings related to grid modernization and retail competition. Although we recognized the benefit in AEP Ohio's commitment to file grid modernization and retail competition proposals for our future consideration, there was no indication in the PPA Order that any such proposal will be approved by the Commission without a thorough review and decision on the proposal's merits or without the opportunity for intervenor participation in the review process.

d. Renewable Energy Resources, Energy Efficiency, and Fuel Diversity

{¶ 126} In subpart A of its second ground for rehearing, AEP Ohio asserts, with respect to the stipulation's provisions related to the development of additional renewable energy resources in Ohio, that the Commission should either reverse or clarify its directives that the Company should focus first on enhancing solar projects and

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demonstrate that bilateral opportunities were explored. AEP Ohio requests that the Commission confirm that the rapidly waning opportunity to take advantage of tax credits for wind generation should also be expeditiously pursued, while also affirming that the right of the Company's affiliates to own up to 50 percent of such projects remains intact under the stipulation. AEP Ohio urges the Commission to determine, first, that the Company is not required to prioritize the development of solar projects over wind projects and may, therefore, submit cost recovery filings for either type of renewable project as the opportunities for each are presented; and, second, that the Company's affiliates may own up to 50 percent of solar projects and 50 percent of wind projects on an aggregate net basis based on installed capacity.

{¶ 127} MAREC argues that the Commission should grant AEP Ohio's application for rehearing, in order to preserve the public policy benefits provided by the renewable energy provisions of the stipulation. MAREC adds that it supports AEP Ohio's request that the Commission reverse or clarify its directive that solar projects be pursued before wind projects. MAREC notes that, because AEP Ohio is already committed to develop both types of projects, there is no need to prioritize the development of one resource before the other, while delaying wind projects may hinder the Company's ability to qualify for tax credits.

{¶ 128} In response to AEP Ohio's request, OCC/ APJN claim that the renewable energy provisions in the stipulation would be costly for consumers and should be rejected. Aside from this argument, OCC/ APJN assert that the Commission's directives regarding this provision should be retained, as they provide some measure of consumer protection. OCC/ APJN add that FERC's recent decision confirms that AEP Ohio cannot enter into a transaction with an unregulated affiliate unless the transaction is reviewed by FERC or is subject to a waiver.

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{¶ 129} OMAEG contends that requiring customers to pay charges under the PPA rider for the costs associated with a renewable energy PPA reached between AEP Ohio and an affiliate would portend the same harms that prompted FERC to rescind the waiver on affiliate sales restrictions granted to AEPGR and the Company with regard to the affiliate PPA. According to OMAEG, the Commission should follow FERC's reasoning and deny AEP Ohio's request to permit an affiliate to claim an ownership stake in the renewable projects as contemplated by the stipulation.

{¶ 130} P3/EPISA note that they take no position on the Commission's determination regarding the priority of solar and wind projects. P3/EPISA request, however, that the Commission deny AEP Ohio's request for clarification regarding affiliate ownership of such projects. P3/EPISA assert that the Commission's directives regarding bilateral contracting opportunities and a competitive bid process for renewable energy projects *require no clarification, are just and reasonable, and are supported by strong public policy.*

{¶ 131} In subpart A of its eighth ground for rehearing, OCC argues that the cost associated with AEP Ohio's commitment to develop 900 MW of renewable resources is unknown and will not benefit consumers.

{¶ 132} In its eighteenth ground for rehearing, OCC asserts that the PPA Order is unreasonable and unlawful because the stipulation's provision for 900 MW of wind and solar renewable generation resources is contrary to the public interest and governing law. OCC notes that the Ohio General Assembly has determined that customers will benefit from market pricing for electric generation service and from freezing Ohio's renewable energy mandate. OCC also argues that the purported public benefits of the renewable energy provisions in the stipulation are counter to the evidence of record, which, according to OCC, shows that the renewable energy projects will not result in permanent manufacturing jobs or equipment purchases from Ohio manufacturers.

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{¶ 133} AEP Ohio replies that there is no indication that the Ohio General Assembly has expressed its disfavor for the construction of renewable energy in the state. Further, AEP Ohio notes that its commitments to develop 900 MW of renewable energy resources are subject to future Commission review and approval, including the question of cost recovery. With respect to the evidence of record, AEP Ohio asserts that OCC witness Dormady acknowledged that the proposed development of 900 MW of renewable energy resources has the potential to provide economic benefit to the region. AEP Ohio concludes that OCC failed to demonstrate that the PPA Order is contrary to the record evidence, law, or public interest with respect to the stipulation's renewable energy proposals.

{¶ 134} In the PPA Order, the Commission, in addressing AEP Ohio's commitment in the stipulation to develop 500 MW of wind capacity and 400 MW of solar capacity, noted that a number of wind projects have been approved for siting in the state, although solar projects have not been as prevalent. PPA Order at 83. We also noted that, as the markets should be the primary drivers of renewable energy, bilateral contracts that lead to the development of renewable projects are supported by the Commission. PPA Order at 82-83. We, therefore, directed that bilateral contracting opportunities should be explored to support the construction of renewable energy projects and that, to the extent such opportunities are not available, the Commission would review a cost recovery filing, with the focus to be first on solar projects. PPA Order at 83.

{¶ 135} In response to the issues raised by AEP Ohio in its application for rehearing, we note that, although the Commission intended to encourage AEP Ohio to make the development of solar projects a priority, the PPA Order does not preclude the Company from pursuing wind projects simultaneously with solar projects. We further note that nothing in the PPA Order would preclude AEP Ohio or its affiliates from owning up to 50 percent of solar projects and 50 percent of wind projects on an aggregate

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net basis based on installed capacity. As to bilateral contracting, the Commission clarifies that AEP Ohio should adhere to the stipulation and competitively bid the projects for both the remaining ownership share and for construction. Consistent with the stipulation, we expect 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. With these clarifications, the Commission finds that subpart A of AEP Ohio's second ground for rehearing should be denied.

{¶ 136} The Commission also finds that OCC's request for rehearing with respect to the stipulation's renewable energy provisions should be denied. We find that OCC's concerns regarding the potential costs associated with any renewable energy project to be proposed are premature at this point, as any cost recovery filing that occurs will be subject to the review of the Commission. Further, we do not agree with OCC's position that the stipulation's renewable energy provisions are contrary to the public interest or governing law. As we expressly noted in the PPA Order, renewable energy plays an integral role in promoting a reliable and cost-effective grid, and furthers the policy objectives set forth in R.C. 4928.02. PPA Order at 82.

{¶ 137} In subpart K of its third ground for rehearing, OMAEG argues that the Commission erred in failing to find that providing specific payments to select beneficiaries contravenes the interests of customers and the public. OMAEG maintains that the Commission should strike the stipulation's provisions directing payments to OHA and OPAE, because, according to OMAEG, not all customers benefit from the provisions.

{¶ 138} AEP Ohio replies that the Commission distinguished the payments to OHA and OPAE from other types of payments in stipulations that the Commission has

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previously questioned. AEP Ohio also notes that the Commission required greater compliance reporting with respect to the payments to OHA and OP&E.

{¶ 139} The Commission found, in the PPA Order, that, although the stipulation directs that payments will be made to OHA and OP&E, the stipulation also requires OHA and OP&E to implement energy efficiency programs on behalf of Ohio hospitals and low-income customers, respectively. Noting that energy efficiency measures provide significant customer benefits, we concluded that the payments will be made in exchange for specific services and programs that add value to the stipulation as a package. PPA Order at 91. We do not agree with OMAEG's contention that these provisions of the stipulation are contrary to the public interest, merely because they may not benefit all customers. Again, the second part of the three-part test requires that the stipulation's benefits be considered as a package; there is no requirement that any single provision of the settlement package must benefit each and every ratepayer. Therefore, OMAEG's request for rehearing on this issue should be denied.

{¶ 140} In subpart A of its eighth ground for rehearing, OCC argues that the stipulation is not necessary to facilitate fuel diversity, which should be left to market forces.

{¶ 141} In the PPA Order, the Commission found that the PPA proposal in the stipulation will facilitate generation fuel supply diversity and work to offset the price volatility impact that any single fuel source may have on electric rates. Contrary to OCC's implication that the Commission indicated that the stipulation is absolutely necessary to facilitate fuel diversity, we found that the stipulation will help to ensure that a diverse fuel source mix is maintained in Ohio and will afford the state flexibility in complying with any future requirements of the Clean Power Plan. PPA Order at 83-84. Accordingly, we find that OCC's request for rehearing on this issue should be denied.

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e. Grid Modernization

[¶ 142] In its twenty-first ground for rehearing, OCC argues that the PPA Order is unreasonable and unlawful because it approves the stipulation's grid modernization proposal, which contains few details or obligations that could conceivably be in the public interest or consistent with important regulatory principles and practices. OCC claims that the grid modernization proposal in the stipulation does not have any binding effect on AEP Ohio; any future grid modernization initiatives are subject to Commission review in another proceeding and may not come to fruition; and the Company has failed to provide a cost/benefit analysis, business case, or any other details regarding its grid modernization proposal.

[¶ 143] In their fortieth ground for rehearing, P3/EPSC and RESA claim that the Commission erred in finding that the stipulation, as modified, will modernize the grid through the deployment of advanced technology and development of renewable energy resources. P3/EPSC and RESA point out that the grid modernization terms of the stipulation require only that AEP Ohio file future applications that will be subject to the Commission's approval.

[¶ 144] AEP Ohio responds that it has made a concrete commitment to file a grid modernization business plan by June 1, 2016, which will include a number of specific initiatives related to advanced metering infrastructure installation, investment in distribution automation circuit reconfigurations, Volt/VAR Optimization, removing obstacles to distributed generation, and net metering tariffs. AEP Ohio adds that it will provide the requisite detail supporting its grid modernization business plan in the filing. According to AEP Ohio, the fact that the Commission will consider and approve the Company's specific grid modernization proposals in another case does not diminish or make inappropriate the Commission's recognition, in these proceedings, of the benefit that results from the Company's commitment to file the proposals.

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{¶ 145} We find that the applications for rehearing filed by OCC, P3/EPSC, and RESA regarding the grid modernization plan lack merit and should be denied. In the PPA Order, the Commission found that AEP Ohio's commitment to file a grid modernization plan by June 1, 2016, addressing several important initiatives, would further the state policy set forth in R.C. 4928.02 and benefit the public interest and ratepayers, consistent with our prior recognition that there is significant long-term value and benefit for customers with the implementation of advanced metering infrastructure, distribution automation, and other smart grid technologies. PPA Order at 85, citing *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 51-52. Contrary to the opposing intervenors' claim that the grid modernization plan has no binding effect, AEP Ohio's obligation to propose these initiatives is the first concrete step toward modernization of the grid through the deployment of advanced technology. As discussed above, although we find that there is value in AEP Ohio's commitment to file the grid modernization plan, the plan will be subject to review by the Commission in a future proceeding, in which the costs, benefits, and implementation details of the Company's proposed grid modernization initiatives will be considered for approval.

{¶ 146} As required by the stipulation, on June 1, 2016, AEP Ohio filed its grid modernization plan in the present proceedings. We direct AEP Ohio to refile its grid modernization plan in a new docket to facilitate our review of the plan. Additionally, the Commission recently noted that we will undertake, in the near future, a detailed policy review of grid modernization. *In re FirstEnergy*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP 4 Case*), Fifth Entry on Rehearing (Oct. 12, 2016) at 96-97. Following this policy review, the Commission will address AEP Ohio's pending grid modernization application and, informed by the results of that review, we will grant approval of the grid modernization programs as we deem appropriate in light of the policy review. We note, however, that nothing in the PPA Order or in this Second on Rehearing should be construed as preapproval of any of AEP Ohio's grid modernization programs or as

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predetermining the outcome of the Company's gridSMART Phase 2 proceeding, Case No. 13-1939-EL-RDR, which will be addressed separately from our grid modernization policy review.

f. Economic Development

{¶ 147} In their thirtieth ground for rehearing, P3/EPSC and RESA argue that the Commission erred in finding that the PPA rider and the stipulation will promote economic development by providing jobs and other economic benefits to the region. Specifically, P3/EPSC and RESA maintain that the PPA rider will not guarantee that the plants will continue to operate during the eight-year term; the stipulation will not guarantee that the PPA units will continue to provide the same number of jobs; and the stipulation will not guarantee the continuation of other economic benefits, given that numerous provisions in the stipulation are only commitments to file future applications. P3/EPSC and RESA add that the Commission unreasonably concluded, without analysis, that the PPA proposal will avoid increased transmission costs.

{¶ 148} In response to the criticism that AEP Ohio did not propose to create any new jobs, the Company responds that the Commission's factor from the *ESP 3 Case* required the Company to address the impact that a generating plant closure would have on electric prices and economic development. AEP Ohio adds that retaining a job and creating a job have an equal effect on the employment rate and economic prosperity. With respect to avoided transmission costs, AEP Ohio points out that P3/EPSC and RESA failed to explain how the Commission erred in crediting the Company's evidence on this issue.

{¶ 149} In the PPA Order, the Commission found that the stipulation's PPA proposal will ensure that the PPA units continue to provide jobs and other economic benefits to the region, while avoiding the potential for increased transmission costs that may result from premature retirements. PPA Order at 84. The Commission cited the

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evidence of record in support of this finding. Contrary to P3/EPSA's and RESA's claim, the Commission did not find that the stipulation would necessarily guarantee either avoided transmission costs or a particular level of jobs or other economic benefits. P3/EPSA and RESA have misconstrued the extent of the Commission's finding and, therefore, their requests for rehearing on this issue should be denied.

g. Retail Competition

{¶ 150} In their forty-first ground for rehearing, P3/EPSA and RESA argue that the Commission erred in finding that the stipulation, as modified, will promote retail competition by enabling competitive providers to offer innovative products to serve customers' needs. P3/EPSA and RESA note that, under the stipulation's provisions related to retail competition, AEP Ohio is only required to file future applications that will be subject to regulatory review and approval.

{¶ 151} AEP Ohio asserts that, by approving the signatory parties' agreement to address the details of each retail competition related proposal in future filings that will include thorough Commission review and oversight, the Commission has guaranteed that each proposal, if approved, will be based on the facts and circumstances attendant at that time, will incorporate the most advanced analysis and considerations then available, and will promote the most current Ohio energy policies. AEP Ohio adds that the Commission has also properly exercised its ample discretion over the management of its dockets, in recognizing the benefit of the proposals but choosing to address the details of their approval and implementation in separate proceedings.

{¶ 152} In the PPA Order, the Commission found that there is value in AEP Ohio's commitment to offer certain proposals intended to promote retail competition, including a supplier consolidated billing pilot program, with half of the costs to be paid by certain signatory parties. PPA Order at 84, 85. Although the supplier consolidated billing pilot program and other retail competition proposals will be subject to review by the

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Commission in a future proceeding, customers benefit from AEP Ohio's obligation to offer these proposals for the Commission's consideration, which may not have otherwise occurred in the absence of the stipulation. We, therefore, find that the requests of P3/EPSC and RESA for rehearing on this issue should be denied.

5. COMMISSION'S FACTORS

{¶ 153} In its ninth ground for rehearing, OCC argues that the Commission's evaluation of the stipulation based on the factors discussed in the *ESP 3 Case* was unlawful because there is no final appealable order in that case. OCC adds that treating the *ESP 3 Case* as final and appealable deprived the parties of their rights of appeal and due process. According to OCC, it is improper to rely on the *ESP 3 Case* as legal precedent.

{¶ 154} In response, AEP Ohio asserts that the Commission's consideration of the factors from the *ESP 3 Case* was proper. Further, AEP Ohio argues that OCC raised this issue for the first time in its application for rehearing, despite the fact that OCC had ample opportunity to address whether consideration of the factors in these proceedings would run counter to the parties' due process rights. AEP Ohio believes that OCC has relinquished any right to question, at this stage in the proceedings, the procedural propriety of the application of the Commission's factors.

{¶ 155} In its tenth ground for rehearing, OCC claims that the Commission's decision that AEP Ohio met its burden under the factors from the *ESP 3 Case* is unreasonable and against the manifest weight of the evidence. OCC argues that the PPA Order includes little analysis of the factors from the *ESP 3 Case* and fails to address any of OCC's recommended factors to ensure that consumers are protected.

{¶ 156} AEP Ohio responds that the record evidence supports the Commission's findings regarding the factors set forth in the *ESP 3 Case*.

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{¶ 157} In subpart B of its third ground for rehearing, OMAEG argues that the Commission erred in finding that a financial need exists to keep the PPA units in operation; the units are at risk of retirement; and Capacity Performance revenues will be insufficient to support the units.

{¶ 158} In its memorandum contra, AEP Ohio argues that, without the PPA rider, the generating units face a materially elevated risk of early retirement and have a significant financial need, because near-term PJM capacity market revenues are far below the fixed costs of the plants.

{¶ 159} In subpart C of its third ground for rehearing, OMAEG contends that the Commission erred in finding that the PPA units are necessary to maintain reliability and support supply diversity. According to OMAEG, decisions regarding reliability should be made by PJM; there is ample resource adequacy in the PJM region; and PJM's reliability must-run arrangement is an existing means to address any reliability concerns. Regarding supply diversity, OMAEG argues that the PPA Order solidifies coal's hegemony over all other generation resources in the state. OMAEG further argues that the Commission failed to explain its finding that the PPA proposal may protect against a potential over-reliance on natural gas generation.

{¶ 160} AEP Ohio replies that OMAEG's argument improperly ignores the traditional role of the Commission in resource planning at the retail level, which is complementary to the resource planning role of PJM and FERC at the wholesale level.

{¶ 161} In subpart D of its third ground for rehearing, OMAEG argues that the Commission erred in failing to prohibit AEP Ohio from recovering environmental compliance costs from customers. Specifically, OMAEG contends that the Commission has no statutory authority to consider environmental compliance; requiring customers to bear the risk associated with current and future environmental regulations will harm the

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state's effectiveness in the global economy; and there is a likelihood that the PPA units will be subject to increasingly strict limits on carbon emissions, resulting in increased customer costs.

{¶ 162} AEP Ohio contends that OMAEG's argument has no relation to the environmental compliance factor set forth by the Commission in the *ESP 3 Case*. AEP Ohio adds that OMAEG's position has already been considered and rejected by the Commission.

{¶ 163} In subpart E of its third ground for rehearing, OMAEG maintains that the Commission erred in relying on AEP Ohio's flawed economic impact analysis. According to OMAEG, AEP Ohio's economic analysis was sponsored by a witness lacking the requisite expertise; rests on a rudimentary economic impact methodology; inappropriately assumes that all coal workers in Ohio that supply coal to the PPA units would retire if the units close; and ignores the countervailing economic benefits that could result from a plant closure.

{¶ 164} In response, AEP Ohio asserts that there is considerable evidence in the record showing the economic impact of the PPA units, including the number of workers employed, direct annual payroll income of these workers, annual property taxes, and additional supported jobs and income. With respect to the OVEC units in particular, AEP Ohio notes that the record reflects that the units provide annual economic benefits of over \$40 million in the surrounding region and \$100 million in the state. Regarding OMAEG's criticism of AEP Ohio's use of the economic base model, the Company responds that its chosen method was a straightforward way in which to measure the overall economic impact of a generating facility on its community, including the likely economic impact of a plant closure. AEP Ohio adds that no other party introduced an alternative economic model or any specific figures showing an alternative view of the PPA units' economic impact.

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{¶ 165} In the *ESP 3 Case*, the Commission directed AEP Ohio, at a minimum, to address four specific factors, which the Commission would consider in deciding whether to approve any future PPA rider filing seeking cost recovery. The Commission indicated, however, that we would not be bound by these factors. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25. We, therefore, find no merit in OCC's argument that it was in some way prejudiced, given that we clearly stated that our decision regarding any future cost recovery filing would not be limited to consideration of the factors. Further, although we addressed, in the PPA Order, the evidence of record related to the factors from the *ESP 3 Case*, we specifically noted that our decision regarding the stipulation's PPA rider proposal was based on the Commission's retail ratemaking authority and our application of the three-part test, rather than the factors from the *ESP 3 Case*. PPA Order at 86. Because we expressly noted that our decision in these proceedings did not turn on the factors, we disagree with OCC's and OMAEG's contentions that the PPA Order is against the manifest weight of the evidence. The Commission did not, at any point, make any specific findings regarding the PPA units' financial need, reliability, or environmental compliance, or regarding the economic impact of plant closures on electric prices, as OMAEG alleges. Neither did the Commission find, as OCC claims, that AEP Ohio "met its burden under the factors." Instead, we merely noted that the Commission had considered the evidence addressing the factors, as we indicated in the *ESP 3 Case* that we would do. We then summarized the testimony offered by AEP Ohio in response to our directive in the *ESP 3 Case*, in the interest of conducting a complete review of the evidence of record.

{¶ 166} Additionally, OCC and the other parties were afforded a full and fair opportunity to provide testimony and cross-examine witnesses during the evidentiary hearings on the amended application and the stipulation, and the testimony offered and admitted into the record was not limited to the factors identified in the *ESP 3 Case*. The parties were also afforded the opportunity to conduct discovery and file briefs in these

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proceedings. Contrary to OCC's claim, the Commission considered all of the evidence offered by the parties, and made a number of modifications to the stipulation, in order to ensure that the stipulation benefits ratepayers and the public interest. Finally, we do not agree with OCC's contention that the Commission improperly relied on the *ESP 3 Case* as precedent, given that Commission orders become effective immediately, pursuant to R.C. 4903.15. Accordingly, OCC's and OMAEG's requests for rehearing regarding the factors from the *ESP 3 Case* should be denied.

6. ANNUAL PRUDENCY REVIEW

a. Commission Oversight

{¶ 167} In subpart I of its third ground for rehearing, OMAEG argues that the Commission erred in finding that the requirements from the *ESP 3 Case* pertaining to information sharing, review, and oversight were met. OMAEG notes that neither the affiliate PPA nor the OVEC PPA directly provides information access rights to the Commission or Staff. OMAEG adds that the stipulation fails to establish any means for the Commission or Staff to obtain information regarding the OVEC PPA.

{¶ 168} In its sixth ground for rehearing, Dynegy contends that the Commission unreasonably and unlawfully found that its oversight over the PPA rider would be sufficient. Specifically, Dynegy asserts that the Commission failed to address intervenors' arguments that the stipulation does not provide for a broad review of the PPA rider, oversight of AEPGR's books, or sufficient information sharing between AEPGR and Staff.

{¶ 169} AEP Ohio replies that the Commission addressed the oversight and information sharing process at length and disagreed with claims that the annual prudency review would be inadequate or illusory. AEP Ohio points out that the Commission will review both PPA rider revenues and costs, as well as the Company's

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decisions concerning those costs. AEP Ohio adds that it must be permitted reasonable access to OVEC's books, records, and accounts and, accordingly, the Company will exercise its contractual rights and provide the Commission with OVEC cost information, as part of the audit process or pursuant to a reasonable Staff request. AEP Ohio emphasizes that Staff has considerable expertise in conducting similar audits and will have ample opportunity to submit reasonable requests for information concerning the source and nature of OVEC costs. AEP Ohio also asserts that the annual audit of the PPA rider will provide for intervenor participation, as with other audits regularly conducted by the Commission.

[¶ 170] In its seventh ground for rehearing, Dynegy asserts that the Commission unreasonably and unlawfully failed to address concerns that the PPA rider threatens competitive markets and impedes the development of new sources of generation in Ohio. Dynegy claims that the Commission ignored testimony provided by several parties, including Dynegy, regarding the price suppressive effects of the PPA rider. Dynegy acknowledges that the Commission noted that AEP Ohio would bear, during the annual prudence reviews, the burden of proof to demonstrate that its bidding behavior was prudent and in the best interest of retail ratepayers. According to Dynegy, these annual reviews will be inadequate to protect against the effects of the PPA rider on the wholesale markets, because AEP Ohio's bidding will send out pricing signals that will deter investment in new generation four years prior to the Commission's review.

[¶ 171] Initially, AEP Ohio notes that Dynegy's arguments are moot, in light of the limited scope of the Company's rehearing application and its request for approval of an OVEC-only PPA rider. AEP Ohio argues that the inclusion of the OVEC PPA in the PPA rider will not threaten the competitive markets, particularly in light of the relatively small size of the Company's OVEC entitlement, as well as the fact that FERC has already approved the OVEC PPA, the costs of which have been reflected in the Company's retail

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rates for many years. As applied to the former affiliate PPA or any other rate stability mechanism that AEP Ohio may seek, the Company contends that Dynegy's arguments are meritless, because the affiliate PPA's cost-based compensation model is commonplace in PJM.

{¶ 172} In their forty-second ground for rehearing, P3/EPSC and RESA assert that the Commission erred in approving AEP Ohio's collection of generation costs from ratepayers based on a PPA with an affiliate that was not the product of a competitive process. According to P3/EPSC and RESA, the no-bid nature of the PPA is contrary to the Commission's past and present practices and is not a market-based outcome.

{¶ 173} AEP Ohio replies that P3/EPSC's and RESA's argument is moot, in light of the *FERC Affiliate PPA Order*. In any event, AEP Ohio contends that there is no requirement that it must competitively procure SSO supply as part of an ESP and, moreover, nothing in the evidentiary record supports P3/EPSC's and RESA's presumption that there are viable alternatives to the PPA rider proposal.

{¶ 174} In its twelfth ground for rehearing, OCC asserts that the PPA Order is unreasonable and unlawful in terms of the Commission's oversight of bilateral contracts. Specifically, OCC claims that the Commission has no jurisdiction to review bilateral contracts between AEP Ohio and its affiliates, which, according to OCC, are subject to FERC's exclusive authority. OCC adds that, in establishing safeguards for the annual prudency review process, the Commission failed to address how it will protect customers from market deficiencies and market power, consistent with R.C. 4928.02(I). Further, OCC believes that the Commission, if it asserts jurisdiction over bilateral contracts, should modify the PPA Order such that all bilateral contracts involving the PPA units, and not just those involving AEP Ohio's affiliates, are subject to stringent review by the Commission, in order to protect consumers.

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{¶ 175} In response to OCC's arguments, AEP Ohio points out that the Commission specifically noted, with respect to its authority to review bilateral contracts, that a state commission can review whether a utility prudently entered into a particular transaction in light of alternatives. *Pike County Light and Power Co. v. Pennsylvania Pub. Util. Comm.*, 77 Pa. Commw. 268, 465 A.2d 735 (1983); *Duke Energy Retail Sales, LLC*, 127 FERC ¶ 61,027 (2009); *Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm.*, 837 F.2d 600, 609 (3d Cir. 1988). According to AEP Ohio, OCC failed to explain how this well-established precedent would not apply to the Commission's oversight of the PPA rider.

{¶ 176} In subpart H of its third ground for rehearing, OMAEG contends that the Commission erred in stating that customers are not captive. OMAEG notes that FERC determined, in the *FERC Affiliate PPA Order*, that, with respect to the affiliate PPA, AEP Ohio's retail customers are captive, given that they are unable to avoid the non-bypassable PPA rider by selecting an alternate provider. *FERC Affiliate PPA Order* at ¶ 62-63. OMAEG asserts, therefore, that the Commission should find that the PPA rider is inconsistent with the policy of the state, as it operates as an anticompetitive subsidy that holds retail customers captive to an affiliate agreement that is subject to affiliate abuse.

{¶ 177} AEP Ohio replies that OMAEG's argument is moot, given that the Company seeks approval of a bypassable OVEC-only PPA rider in its application for rehearing. In any event, AEP Ohio argues that retail ratepayers are not captive, because the PPA rider does not impact their ability to shop or return to the SSO.

{¶ 178} The Commission emphasized, in the PPA Order, that we will conduct an annual prudency review of any retail charges flowing through the PPA rider. The Commission also addressed the annual audit process and set forth clear expectations, in response to certain intervenors' concerns, regarding a number of specific issues related to retail cost recovery, such as Capacity Performance penalties and bonuses, forced outages, and bidding behavior. We also directed that AEP Ohio will bear the burden of

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proof, in each annual audit, to establish the prudence of all costs and sales flowing through the PPA rider and to demonstrate that the Company's actions were in the best interest of retail ratepayers. With respect to bilateral transactions between AEP Ohio and affiliates, we instructed that any such transactions will be stringently reviewed and that no presumption of management prudence will apply to any bilateral sales by the Company to affiliates. Further, noting that the Commission typically conducts a review and reconciliation of riders established under an ESP, consistent with our well-established authority to review public utility transactions for prudence, we rejected claims that the annual prudence review will be inadequate or illusory. PPA Order at 87-90, citing *Pike County Light and Power Co. v. Pennsylvania Pub. Util. Comm.*, 77 Pa. Commw. 268, 465 A.2d 735 (1983). Having thoroughly considered the parties' arguments and explained the basis for our decision in the PPA Order, we find that OMAEG, Dynegy, P3/EPSC, RESA, and OCC have raised no new arguments for our consideration regarding oversight of the PPA rider, bilateral contracts, or the alleged impacts of the affiliate PPA on the competitive markets or ratepayers and, accordingly, their applications for rehearing on these issues should be denied. Further, to the extent that the applications for rehearing of OMAEG, Dynegy, P3/EPSC, RESA, and OCC on these issues pertain to the affiliate PPA, we find that they should also be denied as moot.

b. Capacity Performance

{¶ 179} In subpart B of its second ground for rehearing, AEP Ohio contends that the Commission should reverse the modification to the stipulation that precludes the Company from including Capacity Performance penalties in the PPA rider, particularly in light of the fact that only the OVEC PPA will be included in the rider. AEP Ohio asserts that it is not possible, in advance of the imposition of any specific Capacity Performance penalties, to know whether the circumstances that led to the penalties were the result of imprudent management of the generating units.

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{¶ 180} OCC/APJN reply that AEP Ohio is best suited to avoid Capacity Performance penalties by reliably operating, maintaining, and upgrading its affiliated generation. OCC/APJN assert that AEP Ohio should not be permitted to shift the risk of non-performance to consumers.

{¶ 181} OMAEG also responds that AEP Ohio should not be authorized to charge customers for Capacity Performance penalties. OMAEG asserts that it would be economically irrational to shift the risks associated with the generating plants to customers, because customers do not own or operate the plants and are, therefore, least equipped to manage the risks.

{¶ 182} P3/EPSC argue that ratepayers should not be responsible for Capacity Performance penalties. Noting that AEP Ohio has a seat on OVEC's operating committee and its president is on OVEC's board of directors, P3/EPSC assert that the Company is best positioned to influence decision making at the OVEC plants so as to avoid Capacity Performance penalties, given that ratepayers have no role in OVEC's operations.

{¶ 183} In its thirteenth ground for rehearing, OCC argues that the PPA Order is unreasonable because it deprives consumers of the benefits of Capacity Performance bonuses. OCC contends that AEP Ohio bears no risk associated with the PPA units and is guaranteed full cost recovery for its investments and, therefore, customers should be entitled to any Capacity Performance bonuses. OCC adds that the Commission's current position regarding Capacity Performance bonuses and penalties may create improper incentives and, therefore, the PPA units should be required to clear PJM's annual base residual auction as a price taker, as a means to maximize revenues to the benefit of consumers.

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{¶ 184} AEP Ohio replies that OCC's position is unreasonable, internally inconsistent, and punitive. AEP Ohio reiterates its request that both Capacity Performance penalties and bonuses be permitted to flow through the PPA rider.

{¶ 185} In the PPA Order, the Commission modified the stipulation to ensure that any Capacity Performance penalties imposed by PJM on AEP Ohio will not be recovered from ratepayers. At the same time, we directed that AEP Ohio should retain any Capacity Performance bonuses. PPA Order at 87-88. We find that this even-handed approach to the risk and reward associated with PJM's Capacity Performance auctions is reasonable and properly recognizes that AEP Ohio shares responsibility for the operation and maintenance of the generating units through its role on OVEC's board and operating committee. Regardless of the circumstances that may result in the assessment of Capacity Performance penalties, the Commission finds that it is appropriate, from the outset of the PPA rider, to deem both Capacity Performance penalties and bonuses beyond the scope of the costs and revenues that flow through the rider. With respect to OCC's concerns about bidding behavior and disincentives to maximize revenues, the Commission already stated, in the PPA Order, that retail cost recovery may be disallowed, following the annual prudency review, if the output from the PPA units was not bid in a manner consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues. We further noted that AEP Ohio will bear the burden of proof to demonstrate that bidding behavior is prudent and in the best interest of retail ratepayers. PPA Order at 89. Accordingly, the Commission finds that AEP Ohio's and OCC's applications for rehearing on the issue of Capacity Performance penalties and bonuses should be denied.

c. Co-Ownership of Generating Units

{¶ 186} In its first ground for rehearing, Dynegy argues that the Commission unreasonably and unlawfully failed to exclude the co-owned units from cost recovery

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under the PPA rider. Dynegy notes that it owns certain units at the Stuart, Zimmer, and Conesville plants with AEPGR and The Dayton Power and Light Company. Dynegy argues that, under the stipulation, AEPGR has a disincentive to make financially rational decisions concerning the co-owned units, because it has guaranteed cost recovery and a guaranteed ROE. Dynegy further argues that, under the PPA Order, AEP Ohio and AEPGR have an incentive to maximize investment in the co-owned units in order to earn Capacity Performance bonuses, even if such investment would be uneconomic for Dynegy.

{¶ 187} AEP Ohio responds that the Commission already considered and rejected Dynegy's arguments and, in any event, the arguments are moot, in light of the current scope of the Company's rehearing request. AEP Ohio notes that Dynegy owns no part of the OVEC units. With respect to the former affiliate PPA or any other rate stability mechanism that AEP Ohio may seek, the Company claims that Dynegy's position fails to account for the Commission's ability to review PPA rider costs during the annual audit and to disallow recovery of any costs that were not prudently incurred by the Company.

{¶ 188} Given AEP Ohio's decision to forgo the affiliate PPA, the Commission finds that Dynegy's first ground for rehearing should be denied as moot. We also find that Dynegy's arguments are without merit, in light of the fact that the stipulation provides for an annual prudency review of the PPA rider, with AEP Ohio bearing the burden of proof to demonstrate that all costs and sales associated with the generating units were prudently incurred, as well as to show that the Company's actions were in the best interest of retail ratepayers. PPA Order at 89.

d. Premature Retirements

{¶ 189} In its ninth ground for rehearing, Dynegy asserts that the Commission, in accepting AEP Ohio's claim that the PPA plants are at risk of premature retirement, ignored evidence that AEPGR and OVEC will not, in fact, close their plants. Specifically,

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Dynegy asserts that the record reflects that the majority of the generating units are co-owned and cannot be unilaterally retired by a single owner.

{¶ 190} AEP Ohio responds that Dynegy's arguments are not credible. According to AEP Ohio, the Commission should not be convinced by Dynegy's claim that, as a co-owner, it would ignore the elevated risks of premature retirement and continue to operate and invest in the generating units without regard to those risks.

{¶ 191} In its tenth ground for rehearing, Dynegy argues that the Commission unreasonably and unlawfully found that the PPA rider promotes grid reliability or fuel diversity, because the Commission wrongly assumed that the PPA units will close if the rider is not approved. Dynegy reiterates its contention that the PPA units will not close in the absence of the PPA rider. Dynegy concludes, therefore, that the state will continue to have a reliable grid with coal-fired generation in its fuel mix, even if the PPA rider is not approved by the Commission.

{¶ 192} In its memorandum contra, AEP Ohio argues that Dynegy inappropriately frames the issue of supply diversity in a binary manner, while the Commission's approval of the stipulation will unquestionably promote such diversity by discouraging the premature retirement of the PPA units.

{¶ 193} The Commission finds that Dynegy's ninth and tenth grounds for rehearing are moot to the extent they pertain to the affiliate PPA units, otherwise lack merit, and should be denied. In the PPA Order, we specifically acknowledged that many of the generating units proposed to be included in the PPA rider, including the OVEC units, are co-owned. PPA Order at 21-22. At no point, however, did the Commission suggest that any co-owned unit may be unilaterally retired by one of its owners. The Commission merely found, based on the evidence in the record, that the PPA rider proposal in the stipulation would benefit customers by avoiding the potential for

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increased transmission costs that may result from premature retirements, as well as maintaining a diverse fuel source mix in the state. PPA Order at 83-84. In making these findings, the Commission did not, by any means, ignore the co-ownership status of the generating units. In any event, we are not persuaded that co-ownership will necessarily protect the generating units from their current economic circumstances, including the potential for premature retirement.

7. REFUNDS AND SEVERABILITY

{¶ 194} In its eleventh ground for rehearing, OCC contends that the PPA Order is unreasonable and should be modified such that PPA rider charges are subject to refund. Specifically, in subpart A, OCC claims that, in light of the *FERC Affiliate PPA Order* and potential market rule changes by PJM and FERC, the public interest and fundamental fairness necessitate that the PPA rider be subject to refund.

{¶ 195} In subpart B of its eleventh ground for rehearing, OCC maintains that questions regarding the Commission's jurisdiction require that the PPA rider be subject to refund. According to OCC, if a court determines that the Commission does not have jurisdiction to authorize the PPA rider, customers should be refunded any amount that they were charged under the rider, particularly given that the Commission has declined to address the jurisdictional issue.

{¶ 196} In their thirty-ninth ground for rehearing, P3/EP SA and RESA argue that the Commission erred by not directing AEP Ohio to return all amounts collected from customers through the PPA rider in the event that the rider or the PPA is invalidated. Noting that customers would not be entitled to a refund of charges that are collected and later reversed on appeal, P3/EP SA and RESA note that AEP Ohio will likely begin collecting PPA rider charges before any legal challenges are resolved.

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{¶ 197} In their forty-sixth ground for rehearing, P3/EP SA and RESA contend that the Commission erred in allowing the PPA rider to take effect as of June 1, 2016. According to P3/EP SA and RESA, the Commission should direct that the PPA rider cannot take effect until the date on which the Supreme Court of Ohio issues a final decision upholding the rider or the date on which FERC authorizes the PPA, whichever is later.

{¶ 198} In subpart F of its third ground for rehearing, OMAEG asserts that the Commission erred in failing to require an adequate sharing of the financial risk associated with the PPA units between AEP Ohio and its customers. Claiming that the Commission's modifications to the stipulation do not adequately protect customers, OMAEG argues that the PPA rider should be made subject to refund; the stipulation's provision requiring the initial rider rate to be based on a \$4 million credit should be reinstated; all costs associated with the stipulation should be subject to the five percent limit on customer rate increases for the first two years; recovery of any deferrals associated with the rate impact limitation should not be guaranteed but should instead be examined in a future proceeding; and the Commission's discretion to prohibit cost recovery related to forced outages exceeding 90 days should be replaced with an outright prohibition on cost recovery or a mandate that customers are not required to bear any costs associated with a unit that is idle.

{¶ 199} In response to OCC, P3/EP SA, RESA, and OMAEG, AEP Ohio asserts that it would be inappropriate and contrary to existing precedent to make the PPA rider subject to refund. Addressing OMAEG's other arguments, AEP Ohio notes, with respect to the stipulation's proposal to base the initial PPA rider rate on a \$4 million credit, that it does not oppose the Commission's elimination of that provision of the stipulation, although the Company had agreed to the initial rate in the stipulation. Regarding the five percent bill cap, AEP Ohio argues that the cap should be eliminated or, alternatively,

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retained in the form in which it was imposed by the Commission. Finally, responding to OMAEG's argument regarding forced outages of more than 90 days, AEP Ohio asserts that it is appropriate for the Commission to evaluate the prudence of costs associated with such outages during the annual audit process, at which point the Commission will have the benefit of evidence concerning the specific circumstances of the outage.

{¶ 200} In response to P3/EPISA's and RESA's request for a delay in the implementation of the PPA rider, AEP Ohio asserts that their request is moot, given the scope of the Company's rehearing application. AEP Ohio points out that FERC has already approved the OVEC PPA and, because the Company is not presently requesting that the affiliate PPA be included in the PPA rider, the rider's implementation date is not tied to FERC's approval of the affiliate PPA. With respect to P3/EPISA's and RESA's request that the Commission delay the PPA rider's implementation until the Ohio Supreme Court decides any appeals, the Company argues that the request is procedurally improper, substantively without merit, and disregards established Commission and judicial precedent governing a stay.

{¶ 201} The Commission finds that it would be unnecessary and inappropriate to direct that the PPA rider be made subject to refund or to delay the implementation date of the rider. As noted above, pursuant to R.C. 4903.15, Commission orders generally take effect immediately, and the parties have demonstrated no reason to depart from this usual practice. Further, in the PPA Order, the Commission modified the stipulation to eliminate its prohibition on refunds, in the event of an invalidation of the PPA rider proposal. We believe that this modification strikes a proper balance among the parties' interests. PPA Order at 87. Therefore, the applications for rehearing filed by OCC, P3/EPISA, RESA, and OMAEG on this issue should be denied. We also find that OMAEG's request for additional modifications to the stipulation should be denied, as the proposed modifications are unnecessary to ensure that the stipulation is in the public

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interest or that there is a proper sharing of the PPA rider's financial risk between AEP Ohio and ratepayers.

{¶ 202} In their forty-third ground for rehearing, P3/EPSC and RESA argue that the Commission erred in approving the stipulation's severability provision, given that it will not apply if FERC strikes down the PPA. P3/EPSC and RESA note that the severability provision will only be triggered if a court of competent jurisdiction strikes down the PPA. P3/EPSC and RESA recommend that the severability provision be modified to state that it applies if a court of competent jurisdiction or a regulatory authority invalidates or precludes the application of the PPA rider proposal in whole or in part.

{¶ 203} AEP Ohio responds that, although FERC has authority over the Company's wholesale purchases under the OVEC PPA, FERC has no authority to invalidate the PPA rider or to determine the rider's retail rate treatment. AEP Ohio notes that FERC has already approved the OVEC PPA. AEP Ohio believes that it, therefore, would be unnecessary and inappropriate to modify the severability provision as recommended by P3/EPSC and RESA.

{¶ 204} In the *ESP 3 Case*, the Commission directed that AEP Ohio must include, in any future filing seeking to recover costs through the PPA rider, a severability provision that recognizes that all other provisions of the Company's ESP will continue, in the event that the PPA rider is invalidated, in whole or in part at any point, by a court of competent jurisdiction. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25-26. In the PPA Order, we approved the severability provision included in the stipulation, with the exception of the elimination of its prohibition on refunds. PPA Order at 87. We also noted that our approval of the PPA rider was based upon our retail ratemaking authority under state law, which does not conflict with FERC's responsibility to regulate electricity

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at wholesale. PPA Order at 82. For this reason, the Commission finds that P3/EPSA's and RESA's request for rehearing on this issue is unnecessary and should be denied.

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

1. STATUTORY AUTHORITY

{¶ 205} In its fourteenth assignment of error, OCC submits that the PPA Order is unreasonable and unlawful on the basis that the PPA rider is authorized under R.C. 4928.143(B)(2)(d) as a component of an ESP. P3/EPSA and RESA, in their third ground for rehearing, and Dynegy, in its second ground for rehearing, make similar arguments. Dynegy notes the PPA Order determined that the PPA rider is reasonably estimated to provide Ohio ratepayers a net credit of \$37 million during the current ESP term through May 31, 2018, or \$214 million over the eight-year term of the PPA rider. Also, because the PPA rider will appear on customers' bills as a credit or charge, P3/EPSA, RESA, and Dynegy reason the PPA Order does not comply with R.C. 4928.143(B)(2)(d) as the statute does not include any reference to a credit, only a charge. Opposing intervenors assert the Commission lacks the authority to interpret the statute to include a credit. *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 32; *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608. Therefore, OCC, P3/EPSA, RESA, and Dynegy declare that the PPA Order is unlawful and should be reversed.

{¶ 206} The Company recognizes that the PPA rider is projected to result in a net credit to Ohio ratepayers over the life of the PPA. AEP Ohio submits that it is undisputed that the PPA rider will be listed on Ohio ratepayers' monthly invoices for the term of the ESP and, in any consumer transaction where there is an ongoing relationship with the service provider, charges and credits are commonplace. Furthermore, AEP Ohio asserts that there is no reason why a credit to Ohio ratepayers could not be considered within the meaning of "conditions" under R.C. 4928.143(B)(2)(d). Finally, AEP Ohio argues that

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for opposing intervenors to interpret the statute so narrowly is simply unreasonable, as it seeks to punish AEP Ohio for returning money to ratepayers.

{¶ 207} The Commission reaffirms its rationale as presented in the *ESP 3 Case* and the PPA Order. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 19-22; PPA Order at 92-94. None of the arguments presented by opposing intervenors persuade the Commission otherwise. Further, we find that opposing parties apply an extremely narrow interpretation of the word “charges” in the statute. As used in the statute, the Commission interprets the term “charges” more broadly to be a price term, not exclusively descriptive of a debt owed by a customer, but encompassing both debits and credits that may accrue to a customer’s account, like any other account held by a customer. Following AEP Ohio’s decision to proceed with only the OVEC PPA units, the PPA rider has the potential to result in a \$110 million credit over its term through 2024 (IGS Ex. 1). We, therefore, find that the opposing parties’ requests for rehearing on this issue should be denied.

{¶ 208} Several intervenors challenge the Commission’s finding that the PPA rider will operate as a financial limitation on customer shopping for retail electric generation service. PPA Order at 94. OCC, in its fourteenth ground for rehearing, and P3/EPSC and RESA, in their fourth ground for rehearing, contend R.C. 4928.143(B)(2)(d) does not permit a financial limitation on customer shopping, as shopping is synonymous with switching from SSO service to a CRES provider. P3/EPSC and RESA declare that, even if the PPA rider operated to moderate prices, such would not limit customer shopping, as ratepayers will continue to obtain generation service through the SSO or by contract with a CRES provider or through aggregation. P3/EPSC and RESA submit the PPA rider does not limit shopping; rather, it has an economic impact on all customers, whether shopping or not, because it is a non-bypassable charge or credit. According to opposing parties, the PPA rider does not control or limit the number or the size of AEP

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Ohio ratepayers who may shop for generation service with a CRES provider or control the migration of AEP Ohio ratepayers to or from the Company's SSO load.

{¶ 209} Dynegy, in its second ground for rehearing, notes that AEP Ohio witness Fetter acknowledged that, as proposed, the PPA rider is non-bypassable, such that every customer is subject to the charge or credit and the "dynamic between CRES customers and those subject to the SSO auction price will not be skewed by the presence of the proposed PPA" (Co. Ex. 3 at 9). Therefore, opposing parties assert the PPA rider does not meet the definition of a limitation and the Commission lacks the authority to ignore or subvert the plain and unambiguous meaning of the statute. *See Doe v. Marlinton Local Sch. Dist. Bd. of Educ.*, 122 Ohio St.3d 12, 2009-Ohio-1360, 907 N.E.2d 706, ¶ 29. P3/EPSC and RESA, in their fourth ground for rehearing, aver the PPA Order should be reversed on the basis that R.C. 4928.143(B)(2)(d) does not address financial limitations, only limitations. Opposing intervenors state, in accordance with R.C. 1.42, the Commission cannot insert or delete words into or from the statute and, therefore, cannot expand the statute to include financial limitations. *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 32; *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608, ¶ 49. Therefore, opposing parties request the PPA Order be reversed, to the extent that the Commission determined the PPA rider complies with R.C. 4928.143(B)(2)(d) as a limitation on customer shopping.

{¶ 210} AEP Ohio contends that opposing parties' challenge that the PPA rider cannot be authorized under R.C. 4928.143(B)(2)(d) is unreasonable and would restrict the development of innovative rate stability offerings in contravention of the legislature's intent. AEP Ohio notes that OCC, Dynegy, P3/EPSC, and RESA challenge the approval of the PPA rider on the basis that there is no actual or physical limitation on customer shopping for retail electric generation service. The fact that the limitation in this instance

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is financial rather than physical does not, according to AEP Ohio, change the fact that it is a limitation on shopping that satisfies the statutory requirement.

{¶ 211} The Commission rejects each of the arguments made by opposing intervenors. The Commission's analysis of the scope of R.C. 4928.143(B)(2)(d) begins with the plain language of the statute. As the Commission interprets the statute, the General Assembly did not specify the scope or particular type of limitation on customer shopping under the statute, as opposing intervenors argue. Therefore, the Commission interprets the statute to permit various types of limitations on customer shopping, which gives the Commission the discretion to determine the types of limitations that meet the criteria set forth in the statute. *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 68 ("Any lack of statutory guidance on that point should be read as a grant of discretion."). For that reason, the Commission finds that the statute does not prohibit a financial limitation on customer shopping and, therefore, we deny the applications for rehearing on such grounds.

{¶ 212} OCC, in its fourteenth ground for rehearing, and P3/EPSC and RESA, in their respective fifth ground for rehearing, criticize the approval of the PPA rider, as a rate stability mechanism pursuant to R.C. 4928.143(B)(2)(d), and request the Commission reverse this aspect of the PPA Order. OCC reiterates the claims presented in its briefs that, as a result of the PPA rider being based on forecasts, and the need to reconcile the rider either quarterly or annually, revise the rider for over- and under-collections, and true up the rider, the PPA rider is more likely to increase rate volatility.

{¶ 213} In their fifth ground for rehearing, P3/EPSC and RESA state the record evidence does not support AEP Ohio's claims that the rider will stabilize rates, especially during periods of extreme weather or retail price certainty. Opposing parties argue the Commission ignored record evidence that (a) the price the majority of retail customers pay for electricity is based on stable forward market prices, not spot power prices; (b)

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SSO customer rates are based on the fixed-contract prices in periodic blended auctions; and (c) shopping customers have fixed-price contracts for an extended period. P3/EPSA and RESA note that the initial rate of the PPA rider proposed in the stipulation prevents the PPA rider from, until it is reconciled, operating counter-cyclical to wholesale market prices. Opposing parties argue it was improper for the Commission to conclude that the PPA rider will stabilize rates or provide retail rate certainty throughout the eight-year term of the PPA.

{¶ 214} In Dynegy's second ground for rehearing, the opposing intervenor opines the PPA Order fails to consider, in any substantive manner, the evidence presented that the PPA rider will increase retail rate instability, contrary to R.C. 4928.143(B)(2)(d) and R.C. 4903.09. *MCI Telecomm. Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312, 513 N.E.2d 337 (1987). Dynegy notes that P3/EPSA project PPA reconciliation adjustments amounting to tens of millions of dollars per quarter and, therefore, the PPA rider as it is adjusted quarterly will increase rate instability. Turning to wholesale rate stability, Dynegy asserts the Commission failed to consider the evidence presented by Dynegy witness Ellis and P3/EPSA witness Cavicchi that PJM wholesale prices have been relatively stable over the past decade and declining. Nor did the Commission consider, according to Dynegy, that PJM has taken steps since the polar vortex of 2014 to further eliminate wholesale price volatility by establishing Capacity Performance to incent capacity suppliers to perform.

{¶ 215} AEP Ohio submits opposing parties' arguments, in regards to the rate stability and price fluctuation benefits of the PPA rider, are meritless and a repeat of claims made in their respective briefs, which were rejected by the Commission. AEP Ohio avers testimony admitted into the record demonstrates the limited benefits of laddering and staggering and demonstrates the real risk of volatility in the market. AEP Ohio notes that it offered record evidence to support the PPA rider as a means to combat long-term

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market volatility not addressed by staggering and laddering of SSO auctions. Therefore, AEP Ohio avers opposing intervenors' arguments should again be rejected on rehearing.

{¶ 216} The Commission finds that the opposing intervenors' arguments regarding the approval of the PPA rider as a rate stability mechanism under R.C. 4928.143(B)(2)(d) have already been thoroughly considered and rejected. PPA Order at 94. The PPA rider avoids complete reliance on the retail market and, in the event that prices rise, the rider, as designed, has the potential to offset a portion of the costs of retail electric service. Although the Commission has acknowledged that the record evidence on which the Commission relied to approve the PPA rider mechanism is based on projected costs and market prices, the rider's impact will nevertheless be reflected as a charge or credit for a generation-related hedging service that stabilizes rates for retail electric service by moving in the opposite direction of market prices. Further, in light of the fact that the PPA rider will include only the OVEC units, opposing intervenors' arguments regarding the potential for extreme volatility in the rider's reconciliation adjustments have been significantly abated. Accordingly, the claims of opposing intervenors in regard to R.C. 4928.143(B)(2)(d) should be denied.

2. STATE POLICY

{¶ 217} As an initial matter, the Commission believes that the state policies codified by the General Assembly in R.C. 4928.02 set forth important objectives that the Commission must keep in mind when considering an ESP and other cases filed under this chapter. The Commission considers the policy provisions enumerated in R.C. 4928.02 and uses these policies as a guide in our implementation of the ESP statute and, therefore, this PPA mechanism, as a component of AEP Ohio's ESP.

{¶ 218} Based on OCC's analysis of the PPA rider's projected rate impact, OMAEG, in subpart A of its fourth ground for rehearing, declares that the PPA Order

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does not comply with the state policy goal of providing customers access to reasonably priced retail electric service pursuant to R.C. 4928.02(A).

{¶ 219} AEP Ohio contends that OMAEG's argument ignores the Commission's finding that the PPA rider is reasonably estimated to provide a net credit of \$37 million over the term of the existing ESP, through May 31, 2018, or \$214 million over the extended ESP term. PPA Order at 80, 96. Further, AEP Ohio notes the Commission determined that the PPA rider is consistent with the Commission's obligation under R.C. 4928.02(A). Accordingly, AEP Ohio states that OMAEG's request for rehearing merely expresses its disagreement with the Commission's findings and the request for rehearing should be denied.

{¶ 220} The Commission finds that the substance of opposing arguments related to R.C. 4928.02(A) have already been addressed and should again be denied. PPA Order at 96. At this point, with the exclusion of the affiliate PPA units, the potential impact of the financial hedge is reduced, over the term of the extended ESP, with only the OVEC units. Despite the change in the value of the projected hedge, the Commission's justification for approval of the PPA rider mechanism, as modified by the stipulation and the PPA Order, has not changed. The PPA rider mechanism will prevent customers' total reliance on the market, particularly in extreme weather, and will promote other customer benefits as discussed and affirmed in the PPA Order and the previous section of this Second Entry on Rehearing. Furthermore, recognizing the inherent difficulty in predicting future market prices and costs, the Commission implemented a rate impact mechanism to protect customers. Accordingly, the Commission finds OMAEG's grounds for rehearing as to R.C. 4928.02(A) should be denied.

{¶ 221} Under R.C. 4928.02(B), it is the state policy to ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective

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needs. OMAEG, in its fourth ground for rehearing, notes that the Commission acknowledges that the non-bypassable nature of the PPA rider creates no advantage to shopping and no disadvantage to shopping. PPA Order at 97. Thus, according to OMAEG, the PPA rider does not promote or encourage customers to shop, despite the Commission's goal otherwise.

{¶ 222} In its memorandum contra, AEP Ohio states OMAEG's argument on rehearing is not ripe for consideration if the Commission adopts AEP Ohio's request on rehearing to include only the OVEC units in the PPA rider on a bypassable basis. Further, AEP Ohio states OMAEG's claims overlook the Commission's authority, under R.C. 4928.143(B)(2)(d), to adopt a non-bypassable PPA rider. AEP Ohio also reasons OMAEG's arguments fail to acknowledge the Commission's specific grant of authority supersedes the general policy goal to the extent there is any conflict. AEP Ohio contends there is not a conflict.

{¶ 223} OCC, in its seventeenth ground for rehearing, submits the PPA rider and the associated PPA would eliminate retail choice to the extent AEP Ohio ratepayers would incur the cost of AEP Ohio's purchase of energy from AEPGR. OCC reasons AEP Ohio customers are captive customers, as they cannot avoid the PPA rider charges. For that reason, OCC submits that the PPA Order is unreasonable and unlawful in its determination that AEP Ohio customers are not captive for purposes of the PPA rider and OCC requests rehearing on the issue.

{¶ 224} The Commission finds that arguments regarding R.C. 4928.02(B) have already been addressed and should again be rejected. PPA Order at 96-97. OMAEG's arguments ignore the intricate task of balancing the interests of shopping and SSO customers. The Commission finds there is a benefit where the PPA mechanism is adopted as a hedge against the potential volatility of retail electric rates and avoids any advantage or disadvantage to shopping customers or to SSO customers, at the expense

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of the other customers, in addition to the other benefits offered in the stipulation, as amended by the PPA Order. Neither do we find any merit in OCC's claim that the PPA rider would eliminate retail choice, because ratepayers are captive and would incur the cost of AEP Ohio's PPA with AEPGR. The Commission expressly determined that shopping and SSO customers are not captive; they continue to have the ability to select a CRES provider or return to the SSO. PPA Order at 95. Accordingly, the Commission finds OCC's and OMAEG's arguments on rehearing should be denied. Additionally, OCC's argument, to the extent that it pertains to the affiliate PPA, should also be denied as moot, in light of AEP Ohio's decision not to proceed with the affiliate PPA with AEPGR.

{¶ 225} R.C. 4928.02(H) requires that the Commission ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a non-competitive service to a competitive service and vice versa, including prohibiting the recovery of any generation-related costs through distribution or transmission rates. P3/EPSC, RESA, OMAEG, and Environmental Intervenors raise arguments on rehearing that the PPA Order fails to comply with R.C. 4928.02(H). In their respective thirty-seventh and thirty-eighth grounds for rehearing, P3/EPSC and RESA argue the Commission, without any substantive explanation, erroneously concluded the PPA rider does not provide AEP Ohio's affiliate a subsidy or an anticompetitive benefit over the claims of intervenors otherwise.

{¶ 226} OMAEG, in its fourth assignment of error, and Environmental Intervenors, in their first assignment of error, aver the PPA rider is in direct contravention of R.C. 4928.02(H), as AEP Ohio, the regulated distribution utility, will be subsidizing its unregulated generation affiliate via the PPA rider.

{¶ 227} Further, Environmental Intervenors make several arguments on rehearing that the PPA rider facilitates an anticompetitive subsidy in contravention of

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R.C. 4928.02(H). In their first ground for rehearing, Environmental Intervenors aver the PPA Order is a violation of the policy expressed in R.C. 4928.02(H). Environmental Intervenors state the statute lists one example of the type of subsidy barred by state policy, but it is not the exclusive means by which an anticompetitive subsidy can violate the statute. Environmental Intervenors note that the Ohio Supreme Court did not rely on precise labels when it rejected a utility's proposal to collect increases in generation-related fuel costs through its distribution rates as violating this policy in a prior version of the statute. *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 48. In comparison, Environmental Intervenors contend the Commission has approved a non-bypassable rider funding only AEP Ohio's affiliate-owned plants, causing AEP Ohio's distribution and captive customers to pay for a financial hedge resting only on AEPGR's generation business.

{¶ 228} Environmental Intervenors, in the second subpart of their first ground for rehearing, note that the Commission has previously recognized that competitive suppliers are already seeking to provide some protections against price volatility. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 24. Therefore, Environmental Intervenors reason the PPA rider undercuts further development of a competitive market to provide hedges to customers who want the service in some form by forcing those customers to pay for AEP Ohio's version of a hedge instead of allowing interested customers to choose from among competing options.

{¶ 229} As part of their first assignment of error, Environmental Intervenors argue that, although the Commission recognized the risk of bidding the PPA units into the wholesale market and required annual reviews to evaluate AEP Ohio's bidding behavior, the approach overlooks the possibility that it may be in the best interest of Ohio's retail ratepayers to bid the PPA units' output into the wholesale market at below costs. Further, Environmental Intervenors note that this approach would likely

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artificially depress market prices, deterring AEPGR's competitors from constructing new generation.

{¶ 230} Environmental Intervenors, in their second ground for rehearing, argue the Commission erroneously approved the stipulation as reasonable without any consideration that AEP Ohio ratepayers will be required to accept the PPA rider hedge irrespective of whether the customers want a hedge or not or already have a hedging mechanism. These opposing parties advocate a heightened scrutiny for the PPA rider as a result of the affiliate PPA with AEPGR, as well as the possibility that the magnitude of the cost imposed on ratepayers could be significant without any consideration of alternatives or a competitive bidding process.

{¶ 231} P3/EPSC and RESA, each in their respective eighth ground for rehearing, argue the Commission is statutorily required, pursuant to R.C. 4928.06, to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies between noncompetitive and competitive retail electric service or to a product or service other than retail electric service, including the recovery of any generation-related costs through distribution or transmission rates. P3/EPSC and RESA claim that the Commission rejected opposing parties' claims that the PPA and the PPA rider violate R.C. 4928.02(H) without analyzing the arguments raised. P3/EPSC and RESA contend the PPA and the PPA rider are an anticompetitive subsidy in two respects. First, they reason AEP Ohio ratepayers will be required to pay the net cost of AEPGR and OVEC wholesale generation. Second, they submit that the PPA rider will provide AEP Ohio a non-bypassable distribution rider imposed on ratepayers when it is actually a generation-related cost. P3/EPSC claim that the Commission is required to address these claims. *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608, ¶ 66. Further, P3/EPSC and RESA note that the PPA rider will be one of AEP Ohio's tariffed services and reason that AEP Ohio, a wires-only entity, will be collecting a distribution charge for

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the benefit of its generation affiliate, which also, according to P3/EPSC and RESA, violates R.C. 4928.02(H).

{¶ 232} P3/EPSC and RESA, in their second ground for rehearing, contend approval of the PPA rider is unreasonable and unlawful as it is a departure from the legislative directive to promote competition, to the benefit of AEP Ohio's affiliate and its parent corporation. Opposing intervenors argue that approving the PPA rider would be a step backward from a fully competitive retail market. P3/EPSC and RESA claim the PPA rider functions to transfer the market risk to ratepayers, not to provide rate stability. Further, opposing parties claim, as the Commission previously acknowledged, there are several other methods to mitigate generation price volatility and fixed-price contracts are available in the market. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 24. P3/EPSC and RESA argue the Commission changed the regulatory landscape for generation by approving the PPA rider and should reverse this decision on rehearing.

{¶ 233} AEP Ohio submits that opposing intervenors' arguments are based on the incorrect premise that the PPA rider is a distribution charge, which it is not. AEP Ohio emphasizes, as the Commission previously concluded, that the PPA rider is a generation-related charge designed to recover generation-related costs. *ESP 3 Case*, Opinion and Order at 21, 26. As to the issues raised by Environmental Intervenors, AEP Ohio states Environmental Intervenors' logic is flawed, as the hedging service that is the basis of the PPA rider cannot simultaneously be the source and the recipient of the subsidy. AEP Ohio asserts the one and only service provided by the PPA rider is a generation service that is priced based on net cost. The Company reasons there must be two separate services for anticompetitive cross-subsidization to occur. Opposing parties' arguments also overlook S.B. 221, according to AEP Ohio, which allows an electric distribution utility to provide both bypassable and non-bypassable generation service as a component of an ESP. In AEP Ohio's opinion, OMAEG's arguments fail to recognize that the rate

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stabilizing hedging service the PPA rider provides to customers is not a subsidy, particularly not an anticompetitive subsidy, as a result of being a cost-based charge or a credit.

{¶ 234} AEP Ohio characterizes Environmental Intervenors' arguments as suggesting that any anticompetitive subsidy is prohibited under R.C. 4928.02(H). Further, AEP Ohio declares the PPA rider is not a subsidy or anticompetitive, like opposing intervenors argue, given that the Commission specifically determined the PPA rider supports competition rather than undermines competition. PPA Order at 96-97. The Company avers the PPA rider is based on the recovery of net cost in exchange for AEP Ohio customers receiving a financial hedge on generation service and, therefore, the PPA rider cannot be considered a subsidy.

{¶ 235} Further, AEP Ohio avers the claims by P3/EPISA and RESA merely rehash the litigation position advocated by the parties and rejected by the Commission in the PPA Order. The Company encourages the Commission, consistent with its prior ruling, to again reject P3/EPISA's and RESA's claims on rehearing.

{¶ 236} In addition, AEP Ohio states that opposing intervenors' claims that the PPA rider is an anticompetitive subsidy are based on the flawed premise that the PPA rider is a distribution charge. AEP Ohio declares that the PPA rider is not a distribution charge and does not involve a distribution service. AEP Ohio argues, as the Commission previously determined in the *ESP 3 Case*, the PPA rider would not permit the recovery of generation-related costs through distribution or transmission rates. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 21, 26. Thus, AEP Ohio declares the Commission has rejected the claims of opposing parties regarding R.C. 4928.02(H) and, furthermore, the Commission reinforced its findings in these cases where such arguments were again rejected. PPA Order at 96.

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{¶ 237} Because AEP Ohio has elected not to pursue the affiliate PPA with AEPGR, as a result of the *FERC Affiliate PPA Order*, the Commission finds that opposing intervenors' arguments that the PPA Order violates R.C. 4928.02(H) are moot, to the extent that they pertain to the affiliate PPA or affiliate subsidies. Notably, FERC's discussion regarding whether AEP Ohio customers are captive pertains to the affiliate PPA with AEPGR and not to the OVEC entitlement. We emphasize that AEP Ohio customers are free to shop with a CRES provider or to secure service under the SSO. Further, the Commission finds that we have not foreclosed the ability of CRES providers or customers to secure additional hedging mechanisms to meet customers' wishes for retail rate stability. The PPA rider mechanism, with only the OVEC entitlement, will, as designed, be based on the net cost of the OVEC PPA units. The PPA charge, whether a credit or debit on customer bills, is merely derived, in part, based on such cost. The PPA rider will serve AEP Ohio's retail customers, whether they are SSO customers or are served by a CRES provider. Accordingly, the Commission finds that the arguments of the opposing intervenors that the PPA Order violates R.C. 4928.02(H) should be denied.

{¶ 238} It is the state policy, under R.C. 4928.02(I), to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power. OMAEG, in its fourth assignment of error, argues the affiliate PPA with AEPGR violates R.C. 4928.02(I), to the extent that AEP Ohio customers have no option to avoid the costs associated with the contract with AEPGR.

{¶ 239} AEP Ohio reasons that, in light of its request on rehearing to limit these cases to an OVEC-only proposal, OMAEG's arguments are moot. Further, according to AEP Ohio, OMAEG's arguments deny that the purpose and design of the PPA mechanism is to act as a hedge against market volatility, particularly in extreme weather, and to provide a measure of retail rate stability. AEP Ohio emphasizes that the Commission determined the stipulation will provide numerous benefits to customers

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that are in the public interest and consistent with the policies of the state, as set forth in R.C. 4928.02. PPA Order at 82. AEP Ohio declares the opposing intervenors have not set forth any valid arguments to demonstrate that the PPA rider will subject ratepayers to unreasonable sales practices, market deficiencies, and market power, as OMAEG asserts.

{¶ 240} AEP Ohio also notes that the OVEC agreement has existed and will continue to exist irrespective of the Commission's decision in these proceedings and that the Company will continue to be required to pay its share of OVEC unit costs. AEP Ohio points out that the OVEC entitlement has the potential to provide customers a substantial retail price hedge. Importantly, the Company states the OVEC PPA has been approved by FERC. AEP Ohio reminds the parties that the costs of the OVEC units, as recently as 2014, were recovered as part of the Company's retail rates through the fuel adjustment clause mechanism and fixed cost rider, as well as in various other forms over the last 50 years. AEP Ohio reasons the claims of opposing intervenors regarding market distortion and skewed incentives have not manifested since the existence of OVEC and should be rejected by the Commission as meritless. Accordingly, AEP Ohio reasons, because the PPA rider does not violate Ohio policy as set forth in R.C. 4928.02(I), the application for rehearing should be denied.

{¶ 241} At this stage of the proceedings, in light of the Company's decision not to continue with the affiliate PPA, as a result of the *FERC Affiliate PPA Order*, the Commission finds that OMAEG's argument that the affiliate PPA violates R.C. 4928.02(I) should be denied as moot. OMAEG did not specifically make the claim that the OVEC entitlement would create market deficiencies and market power in contravention of R.C. 4928.02(I). However, the Commission finds such claims that the PPA mechanism, including only AEP Ohio's OVEC entitlement, will deter new entry into the generation market to be meritless, based on the proportion of AEP Ohio's OVEC entitlement in comparison to the megawatts generated throughout PJM and the ability of new

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generators to enter the market in Ohio, not to mention PJM, during the existence of the OVEC units (Tr. XII at 3057-3058; P3/EP SA Ex. 3; P3/EP SA Ex. 4; P3/EP SA Ex. 5; P3/EP SA Ex. 7).

{¶ 242} In its fourth ground for rehearing, OMAEG contends that the PPA Order does not encourage competition in the generation sector and will deter new entry into the generation market. Thus, according to OMAEG, the Commission abdicated its duty to ensure the state is effective in the global economy as required under R.C. 4928.02(N). OMAEG submits the PPA Order is likely to cause damage to commerce beyond Ohio's borders, as other utilities may request other state commissions provide similar regulatory treatment.

{¶ 243} In light of AEP Ohio's election not to continue with the affiliate PPA as a result of the *FERC Affiliate PPA Order*, we find the arguments presented on rehearing in regards to R.C. 4928.02(N), to the extent that they pertain to the affiliate PPA, should be denied as moot. As to the PPA rider mechanism to the extent it includes the OVEC entitlement, the Commission finds that such arguments lack merit for the same reasons we find that an OVEC-only PPA rider is consistent with the policy objectives set forth in R.C. 4928.02(I). Namely, the size of the OVEC entitlement in comparison to the megawatts generated in PJM is relatively insignificant. Further, OMAEG did not indicate any specific harm, either experienced or expected, to the state's effectiveness in the global economy from including the OVEC units in the PPA rider mechanism, as reflected in the amended application and modified by the stipulation and the PPA Order. Thus, the Commission finds that the arguments are unfounded and that the application for rehearing should be denied.

{¶ 244} The substance of opposing intervenors' arguments regarding the state policy objectives set forth in R.C. 4928.02 have been considered in the PPA Order and this Second Entry on Rehearing. We find that all such claims that the PPA rider mechanism,

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as modified by the stipulation and the PPA Order, is not in compliance with the state policy objectives should be denied.

3. CORPORATE SEPARATION

{¶ 245} In the *ESP 3 Case* and the PPA Order, the Commission concluded that the PPA rider is a generation-related charge. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 21; PPA Order at 94. In the PPA Order, the Commission found that the PPA rider did not violate AEP Ohio's code of conduct in its open access distribution (OAD) tariff, as the premise of the PPA rider is to operate as a financial hedge for retail customers rather than a physical hedge. PPA Order at 101-102. In their ninth ground for rehearing, P3/EPSA and RESA aver the Commission erred, as a matter of law, in its decisions where the Commission determined the PPA rider does not violate the separation of services requirements of R.C. 4928.03, as the statute expressly includes retail electric generation as a competitive service. The opposing parties reason the rider requires shopping customers to pay AEP Ohio's affiliate for generation, which merges competitive service (affiliated generation) with regulated services (AEP Ohio's wires-only rider) in violation of R.C. 4928.03.

{¶ 246} Dynegy, in its fourth assignment of error, reiterates the argument set forth in its brief that the PPA rider violates the OAD tariff code of conduct as AEPGR will be bidding the PPA units and the non-PPA units into the PJM market. Dynegy argues that the Commission interpreted the term "services" far too narrowly to mean physical generation. Dynegy reasons that, under the stipulation, AEP Ohio's customers will be required to pay the PPA rider, which compensates AEP Ohio for its costs in purchasing the output of the PPA units from AEPGR and acts as a hedge for AEP Ohio's ratepayers only to the extent that generation services are taken from AEPGR. Dynegy argues, although AEP Ohio's ratepayers may not be directly receiving AEPGR's PPA unit generation, their receipt of AEP Ohio's regulated wires services is conditioned on paying

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for and receiving an economic value from the generation output of AEPGR in the form of a hedge. According to Dynegy, this structure is a violation of the tariff's code of conduct and, therefore, the Commission erred when it failed to find the PPA rider violates AEP Ohio's OAD tariff.

{¶ 247} Similarly, Dynegy, in its third ground for rehearing, and P3/EPISA and RESA, in their tenth ground for rehearing, declare that the PPA Order unreasonably and unlawfully concluded that the stipulation and the PPA rider do not violate the corporate separation provisions in R.C. 4928.17. Dynegy argues, based on the PPA's inclusion of generation units owned by AEPGR, that separation between AEP Ohio and AEPGR is unenforceable under the stipulation and the PPA. Several of the opposing parties claim that the PPA rider does not meet the requirements of R.C. 4928.143, as the foundation of the argument that the PPA rider and the stipulation cannot be an exception to R.C. 4928.17. Further, according to these intervenors, nothing in R.C. 4928.143 negates the corporate separation requirements of R.C. 4928.17. In any event, opposing intervenors submit R.C. 4928.143 does not excuse AEP Ohio's failure to comply with R.C. 4928.17.

{¶ 248} In its memorandum contra, AEP Ohio reiterates its request, in light of the *FERC Affiliate PPA Order*, to exclude the AEPGR PPA units from the amended application and the stipulation and proceed with the PPA rider including only the OVEC units. Accordingly, AEP Ohio states Dynegy's, P3/EPISA's, and RESA's arguments as to R.C. 4928.03 and R.C. 4928.17 are moot.

{¶ 249} Nonetheless, AEP Ohio declares the intervenors' arguments on this issue lack merit. The Company notes that the Commission addressed the code of conduct and corporate separation arguments presented in the PPA Order. PPA Order at 101-102. Despite opposing intervenors' claims, the Company declares, as the Commission found in the PPA Order, the PPA rider satisfies the criteria set forth in R.C. 4928.143(B)(2)(d). Accordingly, AEP Ohio states that the rider squarely fits into the delineated exception to

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R.C. 4928.17. Further, AEP Ohio offers, as the Company explained in its reply brief, it makes sense that the corporate separation statute defers to the ESP statute, because the former is aimed at ensuring that competitive generation services remain competitive, and is not aimed at SSO service or anything else provided by an electric distribution utility under the statute. AEP Ohio declares the PPA structure necessarily means that AEP Ohio does not own the generation assets and is buying power from a separate and distinct corporate entity. The Company notes affiliate transactions are not prohibited by the Revised Code or the Commission's code of conduct, and AEP Ohio is committed to following its corporate separation plan and applicable laws and regulations when conducting any such transactions. Accordingly, AEP Ohio avers opposing intervenors' arguments as to R.C. 4928.03 and 4928.17 are moot, but if the arguments are considered, they should be denied.

{¶ 250} The Commission finds that the opposing parties' arguments have already been thoroughly addressed and should again be denied. PPA Order at 101-102. Additionally, the Commission acknowledges that AEP Ohio has elected, in consideration of the *FERC Affiliate PPA Order*, to proceed with the amended PPA application only to the extent that it includes the OVEC units. Therefore, the Commission finds the intervenors' arguments regarding the inclusion of the affiliate PPA units and any alleged violation of R.C. 4928.03 and R.C. 4928.17 should also be denied as moot.

4. TRANSITION REVENUES

{¶ 251} In the PPA Order, the Commission concluded, over the arguments of opposing parties, that the PPA rider would not allow AEP Ohio to recover transition revenue and, therefore, did not violate R.C. 4928.38. OCC in its fifteenth ground for rehearing, P3/EPSC and RESA in their respective thirty-sixth ground for rehearing, and OMAEG in its fourth ground for rehearing advise the Commission this aspect of the PPA Order is unjust, unreasonable, and unlawful, given a recent decision of the Supreme

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Court of Ohio. *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-1608, ¶ 18, 21. P3/EPSC and RESA refer to the PPA costs as legacy costs, which include existing capital costs, existing debt, existing labor and fuel contracts, historical investment costs, and undepreciated plant-in-service balances. OMAEG, in its fourth ground for rehearing, and other opposing intervenors state that, even though the PPA rider charges are not designated as transition revenue, the PPA rider recovery mechanism constitutes the receipt of the equivalent of transition revenue as any deficiency in the PJM market will be recovered from AEP Ohio ratepayers. P3/EPSC and RESA interpret the PPA Order to implicitly accept the PPA units' legacy costs as prudent as part of the annual prudence review. PPA Order at 90. Thus, opposing intervenors state the Commission allowed AEP Ohio to include in the PPA rider unidentified and unverified costs, as prudent, and the matter should be corrected on rehearing.

{¶ 252} The Commission finds that the opposing intervenors' arguments have already been addressed and should again be denied. In the PPA Order, we disagreed with the contention that the PPA rider would permit AEP Ohio to collect untimely transition costs in violation of R.C. 4928.38. Consistent with our decision in the *ESP 3 Case*, we noted that the PPA rider constitutes a rate stability charge related to limitations on customer shopping for retail electric generation service and may, therefore, be authorized pursuant to R.C. 4928.143(B)(2)(d). PPA Order at 102, citing *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 26.

{¶ 253} Moreover, the Commission notes that the PPA rider is nothing like a transition charge. There is no "transition" in this ESP. SSO generation will continue to be sourced through a competitive bidding process in this ESP. AEP Ohio does not own generation assets except for the OVEC entitlement. All of the generation assets used to provide generation service prior to January 1, 2001, have been transferred to an affiliate. Further, we note that the purpose of transition revenue was to allow electric distribution

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utilities to recover the costs of generation assets used to provide generation service to customers prior to the unbundling of rates in S.B. 3 if such costs could not be recovered through the market. R.C. 4928.39. However, the OVEC contract was used to provide generation service to the U.S. Department of Energy and its predecessors prior to January 1, 2001. Therefore, 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." R.C. 4928.39(B). At the time of the enactment of S.B. 3 and at the time of the transition to a competitive market on January 1, 2001, OVEC's generation assets were used to serve OVEC's customer. (Co. Ex. 10 at 4-5.) Therefore, AEP Ohio was not "entitled an opportunity to recover the costs," within the meaning of the statute. R.C. 4928.39(D). Accordingly, we find that the OVEC contract does not meet the criteria for transition costs under R.C. 4928.39(B) or (D). Since the OVEC contract was used to provide generation service to the U.S. Department of Energy and its predecessors prior to the transition to a competitive market on January 1, 2001, the OVEC contract cannot be the basis for transition charges or their equivalent. For these reasons, the Commission concludes opposing intervenors' grounds for rehearing on this issue should be denied.

5. JUST AND REASONABLE CHARGES

{¶ 254} Dynegy, in its fifth assignment of error, and P3/EPSC and RESA, in their respective eleventh assignment of error, submit that the Commission did not directly address claims that the PPA rider violates the requirement in R.C. 4905.22 that charges be just and reasonable, but that the Commission implicitly rejected such arguments. According to Dynegy, the Commission is required to expressly address such arguments. *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 2016-Ohio-1607, ¶ 52. Further, opposing parties argue the PPA Order failed to consider the testimony of P3/EPSC witness Cavicchi, which was corroborated by witnesses for the Sierra Club and IGS, and challenged the projections offered by AEP Ohio and presented more recent projected

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natural gas price assumptions and revised electric demand assumptions, which, according to the witness, could result in significant charges under the PPA rider.

{¶ 255} In addition, Dynegy, as well as P3/EPSC and RESA, in their eleventh ground for rehearing, argue the PPA rider transfers future market risk to AEP Ohio's ratepayers. Therefore, P3/EPSC and RESA declare the PPA rider is per se unreasonable in violation of R.C. 4905.22. Dynegy acknowledges that the PPA Order imposed a two-year cap on the average customer bill increase of not more than five percent over June 1, 2015 SSO rates. PPA Order at 81. Nonetheless, Dynegy states this is unreasonable and difficult to decipher, and does not address the remaining years of the PPA rider term, as any rate cap set on the first two years of the PPA rider will be reflected in the calculation of the rider's over- and under-recovery calculation over the last six years. PPA Order at 81-82. Dynegy submits that the Commission could have imposed a monetary cap on the PPA rider charges or required the PPA be obtained through competitive bid. According to opposing intervenors, the Commission's failure to implement reasonable mechanisms to mitigate the risk of the PPA rider is unreasonable and contravenes R.C. 4905.22.

{¶ 256} AEP Ohio replies that opposing intervenors' arguments are incorrect for two reasons. First, AEP Ohio avers that opposing parties' arguments that the PPA rider violates R.C. 4905.22 are based on the misguided stance that AEP Ohio seeks to unlawfully transfer unknown future market risk from AEP Ohio to Ohio ratepayers. AEP Ohio submits that the argument, as it applies to the affiliate PPA units, is moot, as the Company requests that such units be eliminated from the application.

{¶ 257} Second, the Company argues the PPA rider is a rate stabilization mechanism. Furthermore, AEP Ohio points out that, as part of the stipulation, AEP Ohio agreed to reduce its ROE from a variable rate ranging from 11.24 percent to 15.9 percent, to a fixed rate of 10.38 percent, resulting in a savings to Ohio ratepayers of \$86 million.

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AEP Ohio notes that it also agreed to ratepayer credits of up to \$100 million over the last four years of the PPA term if actual revenues under the PPA rider are below projections. The foundation of opposing intervenors' arguments, according to AEP Ohio, is that the stable market will exist in perpetuity, and that staggering and laddering are sufficient to meet any future volatility. AEP Ohio states opposing parties' argument is an unrealistic approach. Accordingly, AEP Ohio argues the PPA rider is not an unreasonable charge under R.C. 4905.22 and requests that the applications for rehearing on this ground be denied.

{¶ 258} Opposing intervenors aver that the PPA Order failed to directly address intervenors' claims that the PPA rider violates R.C. 4905.22. R.C. 4905.22 states, in relevant part:

All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

{¶ 259} The Commission finds that the opposing parties' requests for rehearing should be denied. The charges associated with the amended PPA application and their compliance with various provisions of the statutes are discussed throughout the PPA Order. Without specifically referring to R.C. 4905.22, after considering the arguments of the parties on both sides of the issues, the Commission determined that the amended PPA application, as modified by the stipulation and further modified by the PPA Order, would protect customers against rate volatility and price fluctuations. In addition, the Commission specifically recognized that, while rate stability is an important consideration, the Commission must not impose unreasonable costs on customers. PPA Order at 77-78. The Commission offered its justification for concluding that the PPA rider

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would likely result in a net credit to AEP Ohio ratepayers over the term of the PPA rider. PPA Order at 80-81. For these reasons, the Commission concludes that there is sufficient justification in the PPA Order to conclude that the PPA rider complies with the requirements of R.C. 4905.22.

{¶ 260} Further, because AEP Ohio has elected to proceed with the amended PPA application with only the OVEC units as a result of the ruling in the *FERC Affiliate PPA Order*, the Commission finds the intervenors' arguments regarding any alleged violation of R.C. 4905.22, to the extent that they pertain to the affiliate PPA, should also be denied as moot. We note that the record evidence indicates the potential for the OVEC units to result in a \$110 million credit over the term of the PPA rider mechanism through 2024 (IGS Ex. 1).

{¶ 261} Nonetheless, the Commission recognizes that R.C. 4905.22 directs, in part, that all charges made or demanded for any service shall be just, reasonable, and not more than the charges allowed by law or by order of the Commission and no unjust or unreasonable charge shall be made or demanded in excess of that allowed by law or by order of the Commission. We also have recognized that the impact of the PPA rider mechanism is based on projections, whether the projections were presented by AEP Ohio, OCC, P3/EPSC, or any other party. As we stated in the PPA Order, even the most reliable projections may be proven wrong in the future. To that end, the Commission imposed an asymmetrical rate impact limit on the PPA rider mechanism for the remainder of the current ESP term, through May 31, 2018, of five percent on an individual customer basis. PPA Order at 81. The Commission's implementation of the rate impact mechanism is intended to ensure that the charges under the PPA rider mechanism are reasonable, consistent with the requirements of R.C. 4905.22.

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6. POPULATION OF THE PPA RIDER

{¶ 262} P3/EP SA and RESA note that the Commission in the PPA Order acknowledged that the current proceedings are “an outcome of the *ESP 3 Case*, in order to facilitate a more in-depth review of the Company’s PPA proposal, and, if approved by the Commission, to populate the rate in the PPA rider.” PPA Order at 93. Further, opposing intervenors, in their seventh ground for rehearing, interpret the quoted section of the PPA Order to mean that the current proceedings are not ESP proceedings, but are instead tariff proceedings to populate the PPA rider. P3/EP SA and RESA note that in the PPA Order the Commission subsequently acknowledged that “AEP Ohio has the option, under R.C. 4928.143, to reject any Commission modifications to the ESP and withdraw its application for an ESP.” PPA Order at 82. P3/EP SA and RESA argue these proceedings cannot be both tariff populating proceedings and ESP proceedings under the requirements of R.C. 4928.143. If these cases are ESP proceedings, according to P3/EP SA and RESA, a full ESP evaluation must be performed to modify the ESP and, if not, AEP Ohio lacks the option to withdraw its ESP. P3/EP SA and RESA submit the Commission cannot selectively apply some ESP statutory requirements and not others. Therefore, the opposing parties declare it was an error for the Commission to conclude these cases are tariff proceedings and that AEP Ohio can reject the modification made by the Commission to the ESP.

{¶ 263} AEP Ohio initially responds that opposing intervenors’ arguments in regard to non-OVEC capacity are moot in light of AEP Ohio’s rehearing application. Further, AEP Ohio submits the allegations that the Commission considered these cases to be merely for the purpose of populating the PPA rider mechanism overlook the Commission’s explicit decision to subject the PPA rider to a comprehensive ESP analysis under R.C. 4928.143(B)(2)(d). PPA Order at 93. The Company notes that the PPA Order specifically states that the Commission undertook such analysis to satisfy the concerns of numerous intervening parties, including P3/EP SA and RESA. Therefore, AEP Ohio

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interprets the PPA Order to conclude that the PPA rider is a statutorily permissible provision of an ESP, which also affords AEP Ohio the opportunity to withdraw from the ESP if the Company rejects modifications made by the Commission.

{¶ 264} In the *ESP 3 Case*, the Commission discussed extensively AEP Ohio's PPA rider proposal and various parties' opposition thereto, including whether the PPA rider proposal met the requirements to be included in an ESP. Ultimately, the Commission determined that the statutory requirements to establish the PPA rider mechanism had been met in the ESP proceedings and approved the PPA rider mechanism at an initial rate of zero. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 19-27. As previously stated, in both the *ESP 3 Case* and the PPA Order, the purpose of these cases was to facilitate a more in-depth review of the Company's PPA proposal, and, if approved by the Commission, to populate the rate in the PPA rider. PPA Order at 93. The Commission noted that, while we did not believe it was necessary to again consider whether the Company's PPA rider proposal met the requirements to be a component of the ESP, the Commission nonetheless reassessed the PPA rider as a provision of an ESP based on the record in these proceedings. We engaged in this exercise in response to the arguments raised by opposing parties, not because the Commission concluded that these rider proceedings are equivalent to an ESP case. We note that, for the same reason, the Commission performed an ESP/MRO analysis. PPA Order at 104-105. The Commission engaged in these analyses to consider and resolve the arguments presented and no more. Similarly, in light of the resources expended by all parties and the extensive litigation undertaken in these proceedings, as well as in the *ESP 3 Case*, in regards to the proposed PPA rider, the Commission sought to minimize extended uncertainty regarding whether the Company would implement the PPA rider, as modified, or attempt to withdraw the ESP. To that end, the Commission included the following:

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The Commission notes that, following the conclusion of rehearing, the filing of tariffs consistent with this Opinion and Order, including its modifications to the stipulation, shall be deemed as acceptance of the Order and the modifications by AEP Ohio. Any such acceptance, however, will be subject to rights of appeal under R.C. Chapter 4903.

PPA Order at 106. Accordingly, the Commission finds the request for rehearing on this issue should be denied.

~~7.~~ **ENERGY EFFICIENCY OPT-OUT PROVISION**

{¶ 265} In the PPA Order, the Commission rejected the Environmental Intervenors' claims that Section III.C.11 of the stipulation violates R.C. 4928.6613, which, according to the Environmental Intervenors, provides that customers that have opted out of a utility's energy efficiency and peak demand reduction (EE/PDR) portfolio plan are exempt from the associated cost of the utility's EE/PDR programs. The Environmental Intervenors interpreted Section III.C.11 of the stipulation to permit customers under AEP Ohio's interruptible power tariff to opt out of the obligation to pay for the EE/PDR rider, but still participate in the interruptible power tariff and receive the associated credit. Concluding that Environmental Intervenors' arguments were premature, the Commission noted that Section III.C.11 is one of the provisions to be included in AEP Ohio's ESP extension application. PPA Order at 97-98.

{¶ 266} On rehearing, Environmental Intervenors, in their third ground for rehearing, reiterate the argument, interpreting Section III.C.11 of the stipulation to indicate the signatory parties' intent that the provision take immediate effect. Accordingly, Environmental Intervenors seek either a ruling on the argument as set forth in their briefs or clarification that, pending resolution of this issue in the ESP extension proceeding, customers cannot opt out of paying AEP Ohio's EE/PDR rider while still receiving a credit through the interruptible power tariff.

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{¶ 267} The PPA Order notes that, as reflected in the stipulation, AEP Ohio commits to propose and support Section III.C.11 as part of the ESP extension application case where the parties will have an opportunity to evaluate the proposal. PPA Order at 98. The Commission clarifies that this provision of the stipulation has not been approved for immediate implementation upon either the issuance of the PPA Order or this Second Entry on Rehearing. With that clarification, we find that Environmental Intervenors' request for rehearing on this issue should be denied.

8. COMPETITION INCENTIVE RIDER

{¶ 268} The stipulation provides for the proposal of the competition incentive rider (CIR). OCC, in its nineteenth and twentieth grounds for rehearing, avers the CIR allows AEP Ohio and others, including marketers who compete with the SSO, to artificially inflate the SSO rate, facilitating an anticompetitive price increase in violation of R.C. 4928.02(A). OCC reasons that the CIR discriminates against AEP Ohio's SSO customers and does not produce reasonably priced service.

{¶ 269} AEP Ohio responds that OCC's claims are premature and not ripe for review at this time. The Company notes the provision of the stipulation, Section III.C.12, which proposes the creation of the CIR, reflects AEP Ohio's commitment to propose the CIR in its ESP 3 extension case and the signatory parties' commitment to advocate for the approval of the CIR. However, if the Commission elects to entertain OCC's challenge to the CIR at this point, AEP Ohio submits OCC's premise that the CIR is an increase to SSO rates is false, as SSO customers will get an offsetting credit for the CIR as noted in the stipulation at Section III.C.12.b. According to the Company, OCC's arguments overlook the fact that the Commission has previously approved shopping incentives and the waiver of regulatory transition charges for residential customers and discounted capacity for CRES providers to incent shopping. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 11, Entry on

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Rehearing (Nov. 21, 2000) at 2-4; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 51.

{¶ 270} As reflected in the stipulation and adopted by the Commission in the PPA Order, AEP Ohio commits to propose and support the CIR as part of the ESP extension proceeding, based on the premise that there may be costs associated with providing retail electric service that are not reflected in SSO rates. The Commission finds that OCC's arguments in regard to the CIR are premature. OCC's arguments are more appropriately raised in the ESP extension case. Accordingly, we deny OCC's application for rehearing of this issue.

E. ESP/MRO Test

{¶ 271} In its sixteenth ground for rehearing, OCC contends that the PPA Order is unlawful because the Commission found that the ESP passes the ESP/MRO test. Specifically, in subpart A, OCC claims that OCC witness Wilson's projected \$580 million PPA rider cost over the current ESP term is a reliable estimate that should be considered in the ESP/MRO analysis.

{¶ 272} In subpart B of its sixteenth ground for rehearing, OCC maintains that the Commission should not have considered qualitative benefits in applying the ESP/MRO test. OCC argues that an ESP may only include the categories of cost recovery set forth in R.C. 4928.143(B) and that qualitative factors are not included in the statute's enumerated categories.

{¶ 273} In subpart C of its sixteenth ground for rehearing, OCC argues that, because a substantial number of the proposals in the stipulation are subject to future filings and have unknown costs, the Commission cannot conclude that ESP/MRO test is passed.

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{¶ 274} In subpart B of its fourth ground for rehearing, OMAEG claims that the Commission erred in finding that the PPA rider's cost impact does not render the ESP less favorable in the aggregate than an MRO. OMAEG asserts that the PPA rider is projected to result in a net charge of \$580 million through May 31, 2018, which, after accounting for the \$53 million in benefits identified in the *ESP 3 Case*, renders the ESP less favorable by \$527 million.

{¶ 275} In their sixth ground for rehearing, P3/EPSC and RESA argue that the Commission erred in conducting a cursory ESP/MRO analysis, after concluding that R.C. 4928.143(C) does not apply in these proceedings. More specifically, P3/EPSC and RESA contend that the Commission should have required AEP Ohio to file a new ESP application proposing its PPA rider and, therefore, should have conducted a full ESP/MRO analysis. P3/EPSC and RESA further contend that the Commission's analysis was improper, because it is not clear whether the Commission evaluated the quantitative benefits for the current ESP term or the extended term, and the Commission failed to recognize that the current ESP term is partially complete. Finally, P3/EPSC and RESA claim that the Commission's ESP/MRO analysis was cursory and failed to address opposing arguments in a substantive manner, in violation of R.C. 4903.09.

{¶ 276} In response to OCC, OMAEG, P3/EPSC, and RESA, AEP Ohio contends that the Commission properly rejected OCC witness Wilson's flawed \$580 million cost projection for the PPA rider. AEP Ohio adds that the Commission properly determined that qualitative factors may be considered in the ESP/MRO analysis and that, regardless, the PPA rider is likely to result in a net quantitative benefit. Regarding the potential costs associated with the future filings required by the stipulation, AEP Ohio asserts that it would be inappropriate to speculate, at this point, about the costs and benefits of these proposals, which will be reviewed by the Commission in subsequent proceedings.

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{¶ 277} AEP Ohio further responds that the PPA Order includes a lengthy and detailed discussion of the Commission's ESP/MRO analysis, contrary to P3/EPSA's and RESA's contention. With respect to P3/EPSA's and RESA's criticism that it is unclear as to whether the Commission evaluated the quantitative benefits for the current ESP term or the extended term, AEP Ohio argues that the criticism is pointless, because, in either case, the PPA rider proposal is expected to provide a net quantitative benefit.

{¶ 278} The Commission finds that the applications for rehearing filed by OCC, OMAEG, P3/EPSA, and RESA with respect to the ESP/MRO test should be denied. The Commission concluded, in the PPA Order, that AEP Ohio's ESP, which is currently approved to continue through May 31, 2018, remains more favorable than the expected outcome under an MRO. We noted that, in the *ESP 3 Case*, the Commission determined that the ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, as modified by the Commission, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142. We further noted that, with respect to the quantitative benefits of the ESP, the Commission found that the ESP, as modified, results in a total of \$53,064,000 in quantifiable benefits over the ESP term that would not be possible under an MRO. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 94-95, Second Entry on Rehearing (May 28, 2015) at 51-52, 55-57. In the PPA Order, the Commission, therefore, concluded that, when the projected net positive benefit of the PPA rider proposal (\$37 million over the current ESP term through May 31, 2018, or \$214 million over the term of the rider) is combined with the existing net positive results of the ESP/MRO test conducted by the Commission in the *ESP 3 Case*, the result must remain, as a matter of basic addition, a net benefit, with the ESP becoming that much more favorable in the aggregate than the expected results of an MRO. Finally, we also noted that the stipulation, as modified, offers other quantitative and qualitative benefits. PPA Order at 105.

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[¶ 279] In the PPA Order, and as discussed above, the Commission specifically found that OCC witness Wilson's PPA rider projection is flawed. PPA Order at 79. We also found that AEP Ohio's PPA rider analysis is reliable and should be used to determine an estimate of the rider's net impact. We concluded that, under AEP Ohio's weather normalized case, the PPA rider is reasonably estimated to provide ratepayers with a net credit of \$37 million over the current ESP term, or \$214 million over the rider's term.⁴ PPA Order at 80. Consistent with these findings, as affirmed above, the Commission finds no merit in the opposing intervenors' argument that Mr. Wilson's projection, rather than AEP Ohio's weather normalized case, should have been used to conduct the ESP/MRO analysis. Neither do we agree with OCC's contention that the Commission erred in recognizing the stipulation's qualitative benefits. The Ohio Supreme Court has determined that R.C. 4928.143(C)(1) does not bind the Commission to a strict price comparison. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218; *In re Columbus Southern Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501. Finally, with respect to costs associated with future filings required by the stipulation, we find that OCC's concerns are premature at this point. The Commission will consider any such costs, if they are approved for recovery, in AEP Ohio's next ESP proceeding, when the ESP/MRO test is applied.

[¶ 280] In the PPA Order, the Commission initially noted that, because the ESP/MRO test set forth in R.C. 4928.143(C)(1) applies only to ESP proceedings, the test is not applicable here. The Commission nevertheless addressed the ESP/MRO test, in order to consider and resolve the parties' arguments regarding the test. PPA Order at

⁴ As modified above, the PPA rider, including only the OVEC PPA, is projected, under AEP Ohio's weather normalized case, to provide ratepayers with a net credit of approximately \$110 million, without accounting for the effect of PJM's Capacity Performance auctions, over the period of October 31, 2015, through December 31, 2024 (IGS Ex. 1). For the current ESP term, the projected net credit is approximately \$11 million (IGS Ex. 1).

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105. We find no merit in P3/EPSA's and RESA's contention that the Commission erred in conducting an ESP/MRO analysis, despite noting that the statute is not applicable to these proceedings. As we stated in the PPA Order, we addressed the ESP/MRO test solely for the purpose of settling the numerous arguments raised by the parties with respect to the test. Neither do we agree that AEP Ohio should have been required to file an ESP application. In the *ESP 3 Case*, the Commission approved AEP Ohio's current ESP through May 31, 2018, including approval of the placeholder PPA rider. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25. AEP Ohio, therefore, already has an ESP with a placeholder PPA rider in effect. In any event, although we noted that application of the ESP/MRO test is not strictly required under the present circumstances, the Commission nevertheless fully considered the test, just as P3/EPSA and RESA demand. We find no merit in P3/EPSA's and RESA's assertion that the Commission failed to conduct a sufficient ESP/MRO analysis. The PPA Order thoroughly explains the basis for the Commission's rejection of the non-signatory parties' arguments regarding the ESP/MRO test. PPA Order at 105. Finally, regarding P3/EPSA's and RESA's belief that it is not clear whether the Commission evaluated the quantitative benefits for the current ESP term or the extended term of the PPA rider, the PPA Order clearly indicates that both were considered and that, for either the near- or long-term, the rider is expected to provide a net quantitative benefit for customers.⁵ PPA Order at 105.

F. Procedural Matters

1. MOTIONS AND INTERLOCUTORY APPEAL REGARDING PROCEDURAL SCHEDULE

[¶ 281] In their twelfth ground for rehearing, P3/EPSA and RESA assert that the Commission erred in rejecting certain intervenors' arguments that due process

⁵ As modified above, the OVEC-only PPA rider is projected to result in a net credit of approximately \$11 million and \$110 million over the rider's short- and long-term periods, respectively (IGS Ex. 1).

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requirements were not met during the second phase of these proceedings. P3/EPISA and RESA add that the Commission failed to respond to the intervenors' due process arguments regarding unfair deadlines and a procedural schedule that coincided with the *FirstEnergy ESP 4 Case*.

[¶ 282] AEP Ohio replies that the Commission already addressed and denied P3/EPISA's and RESA's due process claims. AEP Ohio also asserts that it cannot be questioned that, in these proceedings, P3/EPISA and RESA had clear notice, were represented by experienced and competent counsel, and were given a meaningful opportunity to present their case through hearing and subsequent briefs.

[¶ 283] The Commission thoroughly considered and rejected P3/EPISA's and RESA's arguments regarding the procedural schedule in the PPA Order. In sum, the Commission found that the schedule established in these proceedings, including the deadlines for discovery, testimony, and briefs, as well as the dates for both evidentiary hearings, provided the intervenors with a fair and full opportunity to address the issues raised in AEP Ohio's amended application and the stipulation. PPA Order at 10-11. We find that P3/EPISA and RESA have raised no new arguments for our consideration and, accordingly, their applications for rehearing on this issue should be denied.

2. EVIDENTIARY RULINGS

[¶ 284] In its first ground for rehearing, OCC argues that the Commission should have reversed certain evidentiary rulings of the attorney examiners that prejudiced the intervenors and deprived the Commission of a complete and accurate record. Specifically, in subpart A, OCC claims that the settlement discussion confidentiality privilege was applied in a blanket fashion and contrary to Ohio Rule of Evidence 408, Ohio Adm.Code 4901-1-26(E), and Ohio Supreme Court precedent. OCC notes that the Commission did not disagree with OCC's contentions regarding the privilege's limits or the relevance of the information sought. OCC asserts that, instead, the Commission

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erroneously affirmed the rulings because OCC and other intervenors were permitted to pose questions on other limited topics and, thus, enabled the signatory parties to use the three-part test in conjunction with the privilege as a sword and a shield, contrary to the Court's determination that there is no blanket settlement privilege. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-578, 856 N.E.2d 213; *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 661 N.E.2d 1097 (1996). OCC claims that, as long as the information sought is relevant and admissible, it should be heard by the Commission.

{¶ 285} In subpart B of its first ground for rehearing, OCC contends that subpoenas for certain signatory party witnesses to attend and give testimony at the evidentiary hearing were quashed, contrary to Ohio Adm.Code 4901-1-25(A) and (C) and the rules and precedent governing discovery. In response to the Commission's concern that subpoenas such as OCC's would have a chilling effect on future settlement discussions, OCC argues that this important case is sufficiently different such that any chilling effect can be avoided in other cases. OCC points out that some of the signatory parties do not oppose certain provisions in the stipulation, although the sole witness testifying in support of the stipulation admitted that he could only speak for AEP Ohio. OCC concludes that these signatory parties should not be permitted to evade questioning or avoid having their written discovery responses entered into the record.

{¶ 286} In subpart C of its first ground for rehearing, OCC asserts that purported expert testimony was not excluded from the record, despite the fact that the witness was neither qualified to offer expert testimony nor a material participant in the economic analysis to which he testified. According to OCC, AEP Ohio witness Allen did not direct, in any meaningful way, the economic analysis attached to his direct testimony or have the required economic expertise.

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{¶ 287} In response to OCC's first ground for rehearing, AEP Ohio notes that the Commission already considered and rejected OCC's arguments. AEP Ohio asserts that the Commission appropriately determined that the attorney examiners' rulings did not deprive the Commission of a full record, contrary to OCC's position.

{¶ 288} In the PPA Order, the Commission thoroughly considered OCC's arguments and concluded that the evidentiary rulings of the attorney examiners should be affirmed. PPA Order at 17-18. First, with respect to the confidentiality of settlement discussions, the Commission specifically noted that Ohio Adm.Code 4901-1-26(E) precludes the admission of evidence of conduct or statements made in compromise negotiations. As we noted, the rule further provides that such evidence may be admitted if it is offered for another valid purpose. Relying on this portion of the rule, OCC claims that it was prevented from eliciting, on cross-examination, information relevant to the Commission's three-part test for stipulations, which, according to OCC, is a valid purpose. However, we found, in the PPA Order, that OCC's claim is refuted by the record, which reflects that OCC and the other non-signatory parties were not precluded from conducting a full and fair cross-examination of AEP Ohio witness Allen with respect to the three-part test. We further found that the record confirms that Mr. Allen was repeatedly directed by the attorney examiner to answer the questions of the non-signatory parties, despite objections from the Company's counsel based on the settlement privilege. PPA Order at 17. We, therefore, disagree with OCC's contention that Ohio Adm.Code 4901-1-26(E) was applied in a blanket fashion.

{¶ 289} With respect to the subpoenas served by OCC on certain signatory parties, the Commission concluded that it would be unreasonable to establish a precedent, in cases involving a contested stipulation, under which a non-signatory party could compel the testimony of a signatory party witness, or a signatory party could compel the testimony of a non-signatory party witness, seeking to determine the basis for

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a party's decision to either join or not join the stipulation. We found that such a precedent would have a chilling effect on settlement negotiations in Commission proceedings. PPA Order at 17-18. In its application for rehearing, OCC argues that the Commission should have reversed the attorney examiners' ruling, because the subpoenas were quashed contrary to Ohio Adm.Code 4901-1-25. However, as we noted in the PPA Order, the rule specifically provides that a subpoena may be quashed if it is unreasonable, which was the basis for the ruling quashing OCC's subpoenas. In response to the Commission's concern that subpoenas such as OCC's may have a chilling effect on settlement negotiations, OCC argues that the present proceedings are particularly important and involve many parties and, therefore, can be distinguished from other cases, such that any chilling effect can be avoided in other contexts. We do not agree. The Commission applies the same three-part test to any stipulation, regardless of the number of parties involved or the significance of the case. Again, we decline to establish a precedent that may dissuade a party from joining a stipulation, out of a concern that the party may be compelled to offer a witness to testify in support of the stipulation. As we noted in the PPA Order, Ohio Adm.Code 4901-1-30 requires only that the parties to a stipulation offer the testimony of at least one witness in support of the stipulation. The rule, therefore, properly enables the signatory parties to determine whether one or more witnesses are necessary to address the three-part test and establish that the stipulation is reasonable, as well as to identify which specific individual or individuals will offer testimony in support of the stipulation.

{¶ 290} OCC also contends that the Commission failed to consider the effect of the attorney examiners' ruling on the discovery process. The attorney examiners, however, were mindful of OCC's discovery rights, as evidenced by the portion of their ruling that required the subpoenaed parties to produce a witness for a deposition by OCC (Tr. XVIII at 4460-4461). OCC nevertheless argues that the subpoenaed parties' discovery responses have effectively been excluded from the record. Even assuming that the

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discovery responses are not privileged, OCC has not clearly explained how the responses would be relevant to the resolution of these proceedings. If the purpose of the discovery responses is to assess the motivations of the subpoenaed parties in joining the stipulation, we have previously noted that the parties' motives in deciding whether to sign a stipulation do not affect the Commission's determination of whether the stipulation is reasonable. *In re Dayton Power & Light Co.*, Case No. 02-2779-EL-ATA, et al., Opinion and Order (Sept. 2, 2003) at 12, citing *In re The Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP, Opinion and Order (Aug. 31, 2000). 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. Even if the discovery responses relate in some way to aspects of the Commission's three-part test for stipulations, the terms of the stipulation are either, on their face, beneficial to ratepayers and the public interest or they are not. Here, the Commission evaluated the terms of the stipulation as they appear in the document itself and concluded that the stipulation meets the three-part test.

{¶ 291} Finally, with respect to the economic analysis attached to AEP Ohio witness Allen's testimony, the Commission noted, in the PPA Order, that Mr. Allen provided, in his testimony, a summary of his significant educational and professional qualifications, which indicate that Mr. Allen is sufficiently knowledgeable to sponsor the economic analysis. Further, we noted that, although Mr. Allen is not an economist, the record reflects that Mr. Allen directed an economist at American Electric Power Service Corporation to run the economic model and that Mr. Allen was actually involved in the process of running the model, including gathering the necessary data and discussing how to account for various factors. PPA Order at 18. We, therefore, reject again OCC's arguments regarding Mr. Allen's expertise and his involvement in the process of undertaking the economic analysis attached to his testimony.

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{¶ 292} In sum, OCC has offered no new arguments for the Commission's consideration regarding the evidentiary rulings of the attorney examiners. We, therefore, find that OCC's first ground for rehearing should be denied.

3. MOTIONS TO STAY

{¶ 293} In its second ground for rehearing, OCC maintains that the Commission unreasonably and unlawfully ruled on OCC's motion for a stay, without considering OCC's reply in support of its motion, and, thus, failing to address the merits of the motion, departing from past precedent, and harming consumers. OCC claims that the Commission did not consider the reply in support of the motion, because it was filed the day prior to the issuance of the PPA Order. OCC notes that its reply cited prior Commission precedent staying proceedings pending a FERC ruling, as well as emphasized that the Commission should use its inherent authority to manage its dockets by staying the present proceedings.

{¶ 294} AEP Ohio responds that OCC erroneously argues that the Commission failed to consider OCC's reply in support of the motion for a stay. AEP Ohio notes that the Commission expressly acknowledged OCC's reply in the PPA Order.

{¶ 295} In the PPA Order, the Commission denied motions to stay these proceedings that were filed by OCC and other non-signatory parties. Initially, we found that the motions were procedurally improper, given that they were filed in advance of the Commission's issuance of the PPA Order. We also found that the motions should be denied on substantive grounds, in light of our finding that the stipulation is in the public interest. PPA Order at 20. With respect to OCC's claim that the Commission failed to consider OCC's reply in support of its motion to stay, we note that the PPA Order specifically acknowledged OCC's reply, which was fully considered by the Commission in ruling on the motion. PPA Order at 19. Accordingly, we find that OCC's second ground for rehearing should be denied.

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IV. ORDER

{¶ 296} It is, therefore,


{¶ 297} ORDERED, That AEP Ohio's application for rehearing be granted, in part, and denied, in part. It is, further,

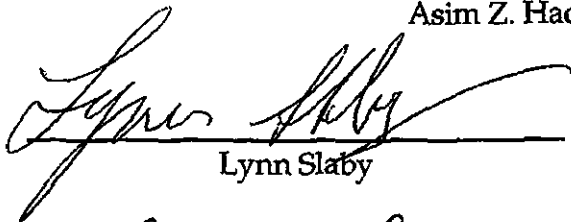
{¶ 298} ORDERED, That the applications for rehearing filed by Dynegy, P3/EPSCA, RESA, MAREC, OMAEG, Environmental Intervenors, and OCC be denied. It is, further,

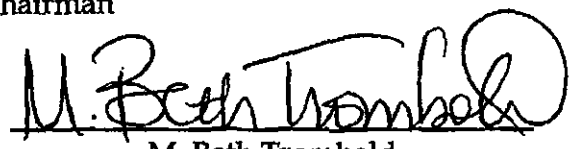
{¶ 299} ORDERED, That AEP Ohio shall file proposed tariffs with supporting schedules, consistent with this Second Entry on Rehearing. It is, further,

{¶ 300} ORDERED, That a copy of this Second 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


M. Howard Petricoff

SJP/GNS/sc

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NOV 03 2016



Barcy F. McNeal
Secretary

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION
OF OHIO POWER COMPANY FOR
AUTHORITY TO ESTABLISH A
STANDARD SERVICE OFFER PURSUANT
TO R.C. 4928.143, IN THE FORM OF AN
ELECTRIC SECURITY PLAN.**

CASE NO. 13-2385-EL-SSO

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

CASE NO. 13-2386-EL-AAM

**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

CONCURRING OPINION OF CHAIRMAN ASIM Z. HAQUE

The Commission decided two related AEP Ohio cases on rehearing today. As these decisions collectively comprise a significant amount of technical reading, this concurrence is meant to explain, from my vantage point, the Commission's decisions today.

I. Granting the OVEC PPA Request

A. What Is The Ohio Valley Electric Corporation?

The Commission today provided financial certainty to AEP Ohio for its ownership interest in the Ohio Valley Electric Corporation (OVEC), and more specifically, its interest in power plants owned and operated by OVEC. OVEC was created in 1952 by investor-

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owned utilities furnishing electric service in the Ohio River Valley area. OVEC's creation arose from a national security need — to provide power to a uranium enrichment facility constructed by the Atomic Energy Commission (AEC) in Portsmouth.

To advance this national security need, OVEC constructed two coal-fired generating units, Kyger Creek and Clifty Creek, and entered into a long-term power purchase contract with the federal government that ensured the availability of power for the facility's substantial electricity demand. In 2003, the U.S. Department of Energy officially terminated this power purchase relationship with OVEC, and the megawatts produced by Kyger Creek and Clifty Creek were available to be offered on the open market.

We have *historically, and will continue to ask through an annual filing, that AEP Ohio try and shed their interest in these plants. AEP Ohio has been unable to do so because divestment requires the agreement of all of OVEC's many and diverse owners. The Commission today, however, has affirmed its willingness to provide certainty to AEP Ohio during the duration of their ESP or until their interests in OVEC are divested, whichever comes first.*

B. How Did We Get Here?

Let me provide a quick overview of how we arrived at these decisions today from a procedural perspective. The Commission resolves two cases today: 13-2385-EL-SSO and 14-1693-EL-RDR. There will be one more major case in the AEP Ohio purchase power lineage, but that case, 16-1852-EL-SSO, will primarily serve to simply combine elements of the two cases being decided today for an extended period.

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1. 13-2385-EL-SSO (Three Year ESP Application)

Case No. 13-2385-EL-SSO is a three year electric security plan application that was filed by AEP Ohio in December 2013. Recall that our distribution utilities, by statute, are obligated to either file an ESP or a Market Rate Offer (MRO) in perpetuity until an MRO is approved by the Commission. It was in this case that AEP Ohio made its original request for the power purchase construct for only its ownership interest in the OVEC generating units. On Feb. 25, 2015, after lengthy debate and an en banc hearing, the Commission determined that AEP Ohio's power purchase construct was legal under state law. The Commission, however, declined to place OVEC or any other generating unit in the PPA rider it created. The rider was created, set at zero, and further debate over whether the rider would be populated, by what units and by how many megawatts, was to take place in another case.

2. 14-1693-EL-RDR (PPA Rider Application)

That other case was/is 14-1693-EL-RDR. On March 31, 2016, the Commission unanimously approved a settlement Stipulation filed by AEP Ohio and a number of intervening parties in 14-1693-EL-RDR. The Stipulation included a number of negotiated provisions, including provisions that would promote grid modernization, retail competition, and the development of renewable energy resources. However, the centerpiece of the approved Stipulation was an arrangement whereby AEP Ohio (the distribution company) would purchase power from American Electric Power Generation Resources, Inc. (AEPGR) (the generation affiliate), in addition to a PPA for the OVEC entitlement. That core arrangement would have allowed AEP Ohio to purchase power from AEPGR at a fixed price that would then be liquidated into the regional wholesale market. AEP Ohio would then pass through to its customers the difference between the cost of the power under the agreement and the profits received from the wholesale markets, whether charges or credits. This is the PPA "hedge" concept.

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On April 27, 2016, the Federal Energy Regulatory Commission (FERC) essentially prevented that core part of the decision from being implemented, finding that the power purchase agreement would need to be submitted to the FERC for review. Based upon the legal standard that FERC would apply to that review, it is possible that the AEP Ohio/AEPGR purchase power agreement would not have survived FERC scrutiny, and the agreement was never in fact submitted to the FERC for review.

On May 2, 2016, after the FERC ruling, AEP Ohio filed for rehearing with the Commission, withdrawing the core power purchase arrangement with AEPGR, and requesting that the Commission uphold its decision to grant a PPA for AEP Ohio's OVEC entitlement. This represents a substantially pared down power purchase arrangement from 3,111 MW to 440 MW. Commission approval of this pared down request would enable the other provisions of the Stipulation, an agreement signed by several parties representing diverse interests, to stay intact.

3. 16-1852-EL-SSO (Eight Year ESP Extension Case)

There will be one more case in the true lineage of these PPA cases, and that is the ESP extension case that is currently pending before the Commission. This case will serve to combine provisions of 13-2385-EL-SSO and 14-1693-EL-RDR to extend AEP Ohio's current ESP to an 8 year duration.

C. Why Grant the OVEC PPA Request?

The reasons for granting AEP Ohio's OVEC PPA request are set forth collectively in the Entries that that this concurrence is affixed to. The reasoning is sensible and has received universal approval from my colleagues. Let me provide a little more color though.

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When talking about OVEC, I always recall a conversation that I had with a former colleague at the PUCO very early during my time here. The gist: OVEC is different than the rest. The recited history of OVEC above would alone separate OVEC from other, more conventional generating units constructed either during Ohio's fully regulated cost-of-service era, or through private funding during our hybrid deregulation era. There is more though.

First, the federal dynamics are far different with the OVEC PPA than with the AEPGR PPA that FERC essentially precluded. As AEP Ohio holds the OVEC entitlement, the power purchase agreement does not receive the same type of FERC analysis that applies to the expanded PPA arrangement between AEP Ohio and AEPGR. In fact, FERC has already accepted the power agreement for OVEC and it has been operating under that agreement for years.

Further, I again note AEP's OVEC interests are owned by the distribution utility. As I stated in my FirstEnergy concurrence, the distribution utility falls squarely within our jurisdiction, and we are in the midst of addressing some odd outlier issues that are impacting our distribution utilities. In the FirstEnergy case, it was credit ratings that had the potential to deleteriously affect the FirstEnergy distribution utility. Here, it is the OVEC generating units that are still owned by the distribution utility, AEP Ohio.

And finally, recall that 14-1693-EL-RDR came to conclusion via a settlement Stipulation. AEP Ohio entered into this Stipulation with the understanding that it would receive a PPA for about 3,111 MW. It made concessions to signatory parties based upon that understanding. The Stipulation, again, was signed by several diverse parties. AEP Ohio is now stating that it will honor the agreement if it receives a substantially pared down version of its original PPA request in terms of MWs, cost/credit impacts, and that

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is just a fraction of the overall installed capacity of PJM (less than .25%). If the Commission denied this request, per AEP Ohio's own suggestion in its pleadings, one must contemplate whether the Stipulation would survive. Understandably, non-signatory parties wouldn't mind this. However, the Commission believes the Stipulation, considering all of its provisions, is still in the public's interest and should be retained.

This case has been pending for almost the entirety of my time on the Commission. It's time to move forward. We have provided certainty to AEP Ohio for OVEC today. Done. Now let's figure out what Ohio's energy future is supposed to look like and move forward.

D. What These Entries Are Not

I can't say it enough. From my vantage point, OVEC is different. It is different than the typical plant owned by distribution company affiliates or independent power producers. As such, the Entries and my concurrence should not be read in a manner that would ascribe or create a position as to possible re-regulation in this State.

II. Granting Provisions Allowing for Renewable Construction

Within the body of the Stipulation are provisions allowing cost recovery for the construction of utility-scale renewables in the State. AEP has the authority now to develop up to 900 MW of utility-scale wind (500 MW) and solar (400 MW), own up to 50% of it through an AEP affiliate, and enter into long-term PPAs. The remaining ownership and construction of these projects will be competitively bid.

A blank check does not accompany the renewable provisions of the Stipulation though. AEP Ohio will need to work with Staff prior to any filing to ensure that competitive processes and cost containment are accomplished. Each proposed project

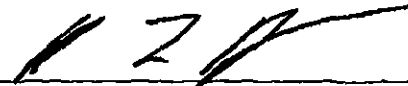
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will need to be approved by the Commission, and again, cost containment will be key in determining whether or not the project receives the requisite approval. Every party involved must be transparent and work towards the betterment of this endeavor, especially early on as appropriate processes are developed, all the while being mindful of ratepayer impacts.

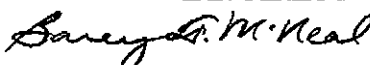
I have asked myself many times by allowing AEP cost recovery for utility-scale renewable development, we will actually hinder overall development as this is not a fully market based solution. Eventually, would the large-scale projects being contemplated by AEP be constructed through purely competitive forces? Perhaps. Competitive utility-scale renewable developers still have the ability to partially own the AEP projects through a competitive bid process though. We will take each project as it comes and, as already stated, we will consider cost containment with each individual application that is filed.

I have always tried to listen to and carefully analyze the positions of all stakeholders in this State. I have tried not to play favorites. I have tried to create the best balance I can possibly create. As I have already stated in my previous concurrence in this case, we cannot simply ignore what I have witnessed to be overwhelming consumer sentiment to add renewable energy to our generation mix. AEP, the largest owner of coal-fired generation in this State, recognizes that. And if AEP recognizes it, along with the numerous stakeholders that have signed the settlement Stipulation, then I'm on board too.



Asim Z. Haque, Chairman

Entered in the Journal
NOV 03 2016



Barcy F. McNeal
Secretary

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

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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.

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{¶ 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.

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{¶ 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/EPSA); 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

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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

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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

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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,

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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.

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{¶ 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

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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

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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.

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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

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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

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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

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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

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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

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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

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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/EPSC'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.

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{¶ 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

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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

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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.

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{¶ 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

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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

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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

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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

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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.

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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

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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

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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-

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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.

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[¶ 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/EPSC 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/EPSC 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/EPSC maintain that, under the plain meaning of R.C. 4928.143(B)(2)(d), the OVEC-

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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

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Second Entry on Rehearing, we explicitly disagreed with P3/EPSA'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/EPSA's first ground for rehearing should be denied.

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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,

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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

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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).¹ 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

¹ 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.

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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

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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,

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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

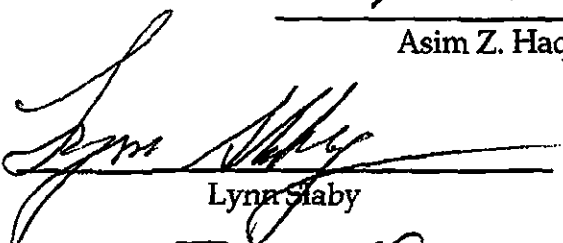
{¶ 91} It is, therefore,

{¶ 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

Barcy F. McNeal
Secretary