**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company for Authority to Establish A Standard Service Offer Pursuant to R.C. 4928.143, In the Form of an Electric Security Plan. | ) ) ) ) ) | Case No. 16-1852-EL-SSO |
| In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority. | ) ) ) ) | Case No. 16-1853-EL-AAM |

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# APPLICATION FOR REHEARING
# BY
# THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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In this case the Public Utilities Commission of Ohio ("PUCO") approved yet another electric security plan ("ESP") – instead of a market rate offer – for Ohio Power Company ("AEP"). The result is a continuation, if not expansion, of state-approved subsidies that will be funded on the electric bills of 1.3 million AEP consumers. Consumers will pay subsidies for coal power plants, electric vehicle charging, microgrid(s), rate discounts for automakers, inflated compensation for industrial customer interruptible rates, and possibly renewable energy.

Further, the PUCO has allowed AEP's electric security plan to contain some so-called riders that are placeholders for unknown future charges to consumers. The known charges in the electric security plan are bad enough for consumers. But this "future-proofing" of AEP's revenue stream (at consumer expense) with charges to be identified later is a violation of the General Assembly's 2008 energy law that limited electric security plans to being more favorable to customers than a market rate offer.

To protect consumers, the Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing for the PUCO to modify and abrogate the ESP and its unreasonable and unlawful charges to consumers.

The Opinion and Order harms customers and is unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR 1: The PUCO's Opinion and Order is unreasonable and unlawful because it found that AEP's electric security plan is more favorable in the aggregate than a market rate offer, depriving consumers of a less expensive market rate offer. In approving the electric security plan with riders set at zero the PUCO acted against the public interest and violated R.C. 4928.143(C)(1) and important regulatory principles and practices.

ASSIGNMENT OF ERROR 2: The PUCO's Opinion and Order is unreasonable and unlawful because it requires AEP's customers to subsidize (through the Smart City Rider) electric vehicle charging stations and microgrids that most consumers will not use or benefit from. The Smart City Rider is against the public interest, violates R.C. 4928.141 and 4928.143(B)(2)(h) and important regulatory principles and practices, because it is not part of the utility's distribution service.

ASSIGNMENT OF ERROR 3: The PUCO's Opinion and Order is unreasonable and unlawful because it approves a Renewable Generation Rider, for charging consumers, under the purported authority of R.C. 4928.143(B)(2)(c), but without the required showing of need by AEP. This is also against the public interest and violates important regulatory principles and practices.

ASSIGNMENT OF ERROR 4: The PUCO's Opinion and Order is unreasonable and unlawful because it approved the Renewable Generation Rider, PowerForward Rider, Competition Incentive Rider, and the SSO Credit Rider, but set them at zero. These riders are entirely unnecessary and can only serve to harm consumers, and are therefore against the public interest and in violation of important regulatory principles and practices.

ASSIGNMENT OF ERROR 5: The PUCO's Opinion and Order is unreasonable and unlawful because it affirmed the Attorney Examiners' ruling denying the Office of the Ohio Consumers' Counsel's Motion to Reopen. As a result, the PUCO was prevented from hearing evidence that the caps on the Distribution Investment Rider should be reduced to reflect the recent federal tax cuts. Failing to reduce the caps violates the public interest and important regulatory principles and practices.

ASSIGNMENT OF ERROR 6: It was unreasonable and unlawful (under R.C. 4928.141(B)) for the PUCO to apply the three-prong settlement standard when the Utility had unequal bargaining power and the Settlement addressed issues unrelated to the Utility's electric security plan filing.

ASSIGNMENT OF ERROR 7: The PUCO erred in finding that the Stipulations benefit consumers and are in the public interest under Prong Two of the Three-Prong Test.

ASSIGNMENT OF ERROR 8: The PUCO erred in finding that the settlement does not violate any important regulatory principle or practice.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**
**BY**
**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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## I. INTRODUCTION

The ESP approved by the PUCO for AEP is unreasonable and unlawful and harms consumers. The ESP, through numerous provisions, will impose tens of millions of dollars in subsidy charges on AEP's 1.3 million customers. Customers will be charged for programs that most Ohioans will not use. And customers will be paying for benefits related to people from other states. To add insult to injury, the programs are completely unrelated to AEP's role as an electric distribution utility. Instead, they will subsidize private enterprise with monopoly consumer dollars. As if that were not enough, so many of the programs approved by the PUCO have unknown costs such that the true cost of AEP's proposed ESP is unknown.

The PUCO should revisit its Opinion and Order and grant OCC's Application for Rehearing.

## II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC entered an appearance and filed testimony regarding AEP's Application and the Settlement. It participated in the evidentiary hearing on the Settlement.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." Additionally, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed."

The statutory standard for abrogating some portions of the Opinion and Order and modifying other portions are met here. The PUCO should grant and hold rehearing on the matters specified in this Application for Rehearing, and subsequently abrogate or modify its Opinion and Order.

## III. RECOMMENDATIONS

**ASSIGNMENT OF ERROR 1: The PUCO's Opinion and Order is unreasonable and unlawful because it found that AEP's electric security plan is more favorable in the aggregate than a market rate offer, depriving consumers of a less expensive market rate offer. In approving the electric security plan with riders set at zero the PUCO acted against the public interest and violated R.C. 4928.143(C)(1) and important regulatory principles and practices.**

The PUCO determined that the ESP passed the statutory ESP versus MRO test in R.C. 4928.143(C)(1).[1] The PUCO should reconsider this determination because it did not consider, and due to the lack of evidence, could not have considered, the numerous riders approved but set at zero, including the Renewable Generation Rider ("RGR"), PowerForward Rider ("PFR"), Competition Incentive Rider ("CIR"), and SSO Credit Rider ("SSOCR").

According to R.C. 4928.143(C)(1), the PUCO cannot approve, or modify and approve, an ESP unless it finds that the ESP "including its pricing and all other terms and conditions, including any deferrals and future recovery of deferrals, is more favorable in the aggregate [to customers] as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." The PUCO must consider *all* terms and conditions in an ESP, including the costs of riders whose charges will be established in future proceedings, when it evaluates whether an ESP is more favorable in the aggregate than an expected MRO.[2] Without a quantification of all components to the ESP, including all charges, the quantitative analysis is incomplete, and the statutory test is unfulfilled. In this case, the PUCO violated the statutory ESP versus MRO test by approving an ESP with riders – the RGR, PFR, CIR, and SSOCR – having unknown

[1] See Opinion and Order at ¶269, 280.

[2] *In re Ohio Edison Co.*, 146 Ohio St.3d 222, 226 (2016).

costs. The PUCO could not possibly have determined if the ESP is more favorable in the aggregate to customers than the expected results under an MRO because it did not know, and could not have known, the cost of the ESP.

Regarding the RGR and PFR, the PUCO readily admitted as much. It stated, "in light of the fact that the RGR and PowerForward Rider have been established as placeholder riders set at zero and will be subject to future proceedings, we do not attempt to speculate as to the quantitative impact of these riders in the MRO/ESP analysis."[3] But R.C. 4928.143(C)(1) requires the PUCO to consider the costs of the ESP, including *all* of its terms and conditions. Without such consideration, the PUCO did not meet its statutory obligation under R.C. 4928.143(C)(1). For this reason, the PUCO's Opinion and Order is unreasonable and unlawful.

The PUCO should grant rehearing on Assignment of Error No. 1.

**ASSIGNMENT OF ERROR 2: The PUCO's Opinion and Order is unreasonable and unlawful because it allows AEP to charge customers through the Smart City Rider to deploy electric vehicle charging stations and microgrids that most consumers will not use or benefit from. The Smart City Rider is against the public interest, violates R.C. 4928.141 and 4928.143(B)(2)(h) and important regulatory principles and practices, because it is not related to the utility's distribution service.**

Utilities in Ohio are statutorily charged with providing consumers a standard service offer to maintain essential electric service. R.C. 4928.141. AEP's chosen method to provide the standard service offer, an electric security plan, does allow provisions regarding the utility's distribution service. R.C. 4928.143(B)(2)(h). The common theme under the governing statutes is that AEP's proposals must relate to distribution service. The Smart City Rider ("SCR") and the programs it funds do not. Rather, the programs

[3] See Opinion and Order at ¶267.

occupy space behind the customers' meter, and that space should be occupied by providers in the competitive market who can bring benefits of innovation and competitive pricing, not the monopoly utility. Therefore, the Rider is unreasonable and unlawful.

The SCR will require Ohioans to subsidize two demonstration projects, electric vehicle charging stations and microgrids.[4] For the charging stations, up to $10 million in rebates will be made available to third-party market participants.[5] The project "will provide AEP Ohio, the Commission, and other interested stakeholders with information regarding siting considerations, pricing, and affordability, in order to optimize resources, ensure system reliability, and facilitate well informed utility planning decisions."[6] Signatory parties endorsed the rebate program – and charging consumers to subsidize the program through the SCR – "for its ability to foster a scalable and sustainable competitive market for electric vehicles and charging stations in Ohio."[7] Others asserted that the program is "designed to balance the role and responsibilities of the regulated utility with the goal of fostering a competitive market for EV charging."[8] The PUCO found that it is "essential that drivers of electric vehicles be comfortable that there are accessible places to charge their electric vehicles, whether the driver is a resident of Ohio or traveling to or though Ohio."[9]

[4] Opinion and Oder at ¶158.

[5] *Id*. at ¶159.

[6] *Id.*

[7] *Id.*

[8] *Id*. at ¶166.

[9] *Id*. at ¶175; see also id. at ¶176 (same).

Similarly, the SCR's microgrid component will allow AEP to charge consumers up to $10.5 million for one or more projects.[10] Through the projects, AEP "will collect data to better inform the Company and the Commission regarding future deployment of microgrids."[11] AEP asserts that the SCR's cost is "justified by the benefits that the data collected on the demonstration projects will provide, in addition to promoting the technologies."[12]

Ultimately, the PUCO found that "[t]he SCR benefits AEP Ohio customers and the public interest by fostering the goal of increasing the number of electric vehicles locally, facilitating the travel of electric vehicles to and through the state, reducing carbon emissions, and supporting the provision of critical services in emergencies."[13] So the PUCO determined in its Opinion and Order that the SCR can and should be approved under R.C. 4928.143(B)(2)(h).

As is apparent from the PUCO's own rationale for approving the SCR, the Rider has nothing to do with providing customers essential electric service or AEP's distribution service. As such, it violates R.C. 4928.141 and R.C. 4928.143(B)(2)(h) and is against the public interest. Nowhere in the statutory regime governing Ohio's electric utilities are they charged with fostering a market, facilitating the travel of a certain type of vehicle within the state (or by citizens of other states to or through the state), or gathering data for a certain industry. Certainly, each of AEP's 1.3 million customers

[10] *Id.* at ¶167-68.

[11] *Id.* at ¶168.

[12] *Id.* at ¶171.

[13] *Id.* at ¶178.

should not be asked to subsidize such activity when the vast majority of them will not even be participating.

Further, ESP plans can include only those items listed in R.C. 4928.143(B)(2).[14] Nowhere in R.C. 4928.143(B)(2) are Ohio's electric utilities charged with fostering a market, facilitating the use of a certain type of vehicle within the state (or by citizens of other states to or through Ohio), or gathering data for a certain industry. The SCR is therefore unlawful. AEP has no authority to ask for it. The PUCO has no authority to grant it.

The law requires AEP to provide essential electric service. The SCR is not commensurate with that requirement. Rather, these services are on the customers' side of the meter that Ohioans are being asked to subsidize. These services should be provided through the competitive market, and should not be included in an ESP for Ohioans to subsidize. It is unreasonable and unlawful.

The PUCO should grant rehearing on Assignment of Error No. 2.

**ASSIGNMENT OF ERROR 3: The PUCO's Opinion and Order is unreasonable and unlawful because it approves a Renewable Generation Rider under the purported authority of R.C. 4928.143(B)(2)(c), but without the required showing of need by AEP. This is against the public interest and violates important regulatory principles and practices.**

The PUCO-approved RGR will require customers to subsidize costs associated with new renewable generation facilities.[15] Under R.C. 4928.143(B)(2)(c), the PUCO can only approve a non-bypassable surcharge for new generation when the utility shows a need for the plant in the pending ESP proceeding. The statute states clearly, "No

[14] *In re Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011).

[15] See Opinion and Order at ¶40.

surcharge shall be authorized unless the commission first determines *in the proceeding* that there is need for the facility based on resource planning projections submitted by the electric distribution utility."[16] No such projections were submitted by AEP in this proceeding. And since there was not determination that there is a need for the facility, the Rider is an unlawful subsidy for new renewable energy generation. The PUCO lacked authority to approve the charge.[17] It should be disallowed. And the building of power plants should be left to the competitive market for innovation and pricing, not to monopoly utilities for charging their captive customers.

The PUCO should grant rehearing on Assignment of Error No. 3.

**ASSIGNMENT OF ERROR 4: The PUCO's Opinion and Order is unreasonable and unlawful because it approved the Renewable Generation Rider, PowerForward Rider, Competition Incentive Rider, and the SSO Credit Rider, but set them at zero. These riders are entirely unnecessary and can only serve to harm consumers, and are therefore against the public interest and in violation of important regulatory principles and practices.**

OCC argued that the anti-consumer CIR and the SSOCR should not be addressed in this case.[18] In response, the PUCO approved the CIR and SSOCR and set them at zero, such that AEP will not be authorized to charge customers under the Riders until a thorough analysis of AEP's distribution costs can be conducted in its next base distribution rate case.[19] The PUCO states that only after this future analysis will it be able to determine whether the CIR and SSOCR are necessary.[20]

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[16] R.C. 4928.143(B)(2)(c) (italics added).

[17] *See, e.g., Discount Cellular, Inc. v. PUCO*, 112 Ohio St. 3d 360 (2007) (the PUCO, having been created by statute, has no authority except that conferred upon it by the General Assembly); *City of Columbus v. PUCO*, 103 Ohio St. 79 (1921) (same).

[18] OCC Initial Brief at 48.

[19] See Opinion and Order at ¶213-214.

[20] See Opinion and Order at ¶213-216.

This ruling vindicates OCC's position that, if the charges are to be approved over OCC's objection, this proceeding is not the time nor the place to do so. There is no reason the PUCO should authorize AEP to charge customers for these costs through riders. Indeed, there is no good reason to charge Ohioans more for the standard offer in any type of charge, as the standard offer is a competitive rate option that consumers should have for generation. And because the PUCO set the riders at zero until AEP's next distribution rate case, these riders are entirely unnecessary. And the riders are unlawful as violating the statutory test where electric security plans, to be approved, are to be proven more favorable in the aggregate than market rate offers. As explained earlier in OCC's first assignment of error, riders allowing for future charges violate the statutory test.

The PUCO should reconsider its determination to approve these riders as placeholders and remove them from the ESP.

The PUCO should grant rehearing on Assignment of Error No. 4.

**ASSIGNMENT OF ERROR 5: The PUCO's Opinion and Order is unreasonable and unlawful because it affirmed the Attorney Examiners' ruling denying the Office of the Ohio Consumers' Counsel's Motion to Reopen. As a result, the PUCO was prevented from hearing evidence that the caps on the Distribution Investment Rider should be reduced to reflect the recent federal tax cuts. Failing to reduce the caps violates the public interest and important regulatory principles and practices.**

The PUCO authorized AEP to continue to charge customers through the Distribution Investment Rider ("DIR"), but with higher revenue caps. The PUCO approved the following revenue caps for the DIR:

2018: $215 million

2019: $240 million

2020: $265 million

2021: $290 million [21]

These are the same revenue caps proposed by the parties to the Settlement in this case.[22]

The problem is that the DIR caps on charges to consumers are based upon a 35% federal tax rate. Between the time the Settlement was filed and the PUCO issued its Opinion and Order, Congress passed the Tax Cuts and Jobs Act of 2017.[23] The Tax Cuts and Jobs Act reduced the federal corporate income tax rate applicable to AEP from 35% to 21%. By failing to lower the DIR rate caps using the lower 21% corporate tax rate, the PUCO essentially has authorized a rate increase. AEP will be able to use its lower tax rate as a way to spend more while remaining under the DIR cap. The result will be a utility sleight-of-hand where AEP spends more under the cap, and charges consumers instead of lowering both the cap and consumer rates to give consumers the benefit of the federal tax cut. This is contrary to the PUCO's recent ruling (and fairness to a million Ohio consumers) where it affirmed that "we intend that all impacts resulting from the Tax Cuts and Jobs Act of 2017 will be returned to customers."[24]

The Supreme Court has held that when the PUCO approves a tax rate different than one it knew would be assessed, its Order is arbitrary and unreasonable.[25] In fact, the Court found that the PUCO has a duty to compute and assess the taxes that a utility will actually be assessed.[26]

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[21] *Id.* at ¶46; note, the 2021 cap may be adjusted by AEP's forthcoming 2020 distribution rate case.

[22] Joint Stipulation and Recommendation at 4-5.

[23] Tax Cuts and Jobs Act of 2017, Public Law No. 115-97.

[24] In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies, Case No. 18-47-TP-COI, Second Entry on Rehearing at ¶1 (Apr. 25, 2018).

[25] *East Ohio Gas Co. v. PUCO*, 133 Ohio St. 212 (1938).

[26] *Id.*

In *General Tel. Co. v. Pub. Util. Com.*,[27] the Court again found that the PUCO has a duty to adjust for known tax assessments. The Court held "the income tax which the company is required to pay to the federal government under the income tax law on its annual dollar return can be calculated mathematically according to the federal income tax law to an exact accurate amount."[28] The Court went on to say that doing otherwise is "contrary to law."[29]

In addition to being arbitrary and unreasonable, failing to reduce the DIR caps is inconsistent with PUCO precedent. The Court has instructed the commission to "respect its own precedents in its decisions to assure the predictability which is essential in all areas of law, including administrative law."[30] Further, the Court instructs the PUCO that when it does depart from a precedent it *must* explain why and the new order must be substantively reasonable and lawful.[31] Sadly, the PUCO has departed from prior precedent with no explanation. Also, the order is not substantively reasonable or lawful.

The PUCO precedent on this matter is clear. In Case No. 86-2025-EL-AIR, the PUCO approved rates that reflected the federal income tax rate the company actually paid as opposed to a previous higher rate.[32] PUCO Staff had testified that "the Commission has consistently ruled that known and measurable tax changes should be recognized in the revenue requirement calculation."[33] In addition the PUCO's order in that case

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[27] 174 Ohio St.575 (1963).

[28] *Id.*

[29] *Id.*

[30] *In re Ohio Power Co.,* 144 Ohio St.3d 1, ¶16 (2015).

[31] *Id.* ¶17.

[32] Case No. 86-2025-EL-AIR, Opinion and Order (December 16, 1987).

[33] *Id.*

recognized that its ruling "is in keeping with prior Commission decisions."[34] Thus, the PUCO's own precedent requires that AEP's DIR caps must be reduced to reflect the known and measurable over-collection of federal income tax.

The PUCO should reconsider this unjust and unreasonable result for consumers. The PUCO should have granted OCC's motion to reopen the record to permit the presentation of additional evidence, as permitted by Ohio Adm. Code 4901-1-34.[35] Instead, the PUCO denied OCC's motion, finding that it has already taken steps to ensure customers are charged proper rates.[36]

The PUCO should grant rehearing on Assignment of Error No. 5.

**ASSIGNMENT OF ERROR 6: It was unreasonable and unlawful (under R.C. 4928.141(B)) for the PUCO to apply the three-prong settlement standard when the Utility had unequal bargaining power and the Settlement addressed issues unrelated to the Utility's electric security plan filing.**

The standard of review for considering a settlement has been discussed in a number of PUCO cases and by the Ohio Supreme Court. As the Ohio Supreme Court stated in *Duff v. Pub. Util. Comm.*, [37] a settlement is merely a recommendation that is not legally binding upon the PUCO. The PUCO "may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing." *Id.*

[34] *Id.*

[35] See OCC Motion to Protect Consumers by Reopening Proceeding (Mar. 2, 2018).

[36] Opinion and Order at ¶34.

[37] *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367 (1978).

The Court in *Consumers' Counsel v. Pub. Util. Com.*[38] considered whether a just and reasonable result was achieved under the criteria adopted by the PUCO in evaluating settlements:

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

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

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

But in evaluating settlements in ESP cases, the PUCO should recognize the asymmetrical bargaining positions of the parties. The unequal bargaining power and the problems that presents are noted in Commissioner Roberto's concurrence and dissent in the PUCO's Order deciding FirstEnergy's initial ESP case filed in 2008. [39]

Here, the PUCO's application of the three-prong settlement standard is unlawful and unreasonable. First, the PUCO failed to recognize and account in its decision for the asymmetrical bargaining positions of the parties[40]—where AEP has a superior bargaining position because it can reject the PUCO's order (and other parties' recommendations that may be incorporated in the order) under the 2008 law.[41] Commissioner Roberto commented that, under such circumstances, "a party's

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[38] Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123, 126 (1992).

[39] *In re FirstEnergy's 2008 ESP Case*, Case No. 08-935-EL-SSO, Second Opinion and Order, Opinion of Commissioner Cheryl L. Roberto Concurring in Part and Dissenting in Part (Mar. 25, 2009) at 1-2 (citations omitted).

[40] The problems of unequal bargaining power are discussed in Commissioner Roberto's dissent in the PUCO's Order in FirstEnergy's initial electric security plan filed in 2008. *See In re FirstEnergy's 2008 ESP Case*, Case No. 08-935-EL-SSO, Second Opinion and Order, Opinion of Commissioner Cheryl L. Roberto Concurring in Part and Dissenting in Part (Mar. 25, 2009) at 1-2 (citations omitted).

[41] *Id.*

willingness to agree with an electric distribution utility's application cannot be afforded the same weight due as when an agreement arises within the context of other regulatory frameworks." Second, the PUCO ignored and failed to address the problem that the settlement resulted largely from AEP's- funding of financial inducements for parties to sign, mainly using other people's (its consumers) money. The PUCO thereby erred.

The PUCO should grant rehearing on Assignment of Error No. 6.

**ASSIGNMENT OF ERROR 7: The PUCO erred in finding that the Settlement benefits consumers and is in the public interest under Prong Two of the Three-Prong Test.**

The Settlement, as a package, does not benefit ratepayers or the public interest. The PUCO did not consider, and due to the lack of evidence, could not have considered, the numerous riders approved but set at zero, including the RGR, PFR, CIR, and SSOCR. Approving riders without knowing their costs harms ratepayers and the public interest.

Further, the PUCO found that "[t]he SCR benefits AEP Ohio customers and the public interest by fostering the goal of increasing the number of electric vehicles locally, facilitating the travel of electric vehicles to and through the state, reducing carbon emissions, and supporting the provision of critical services in emergencies."[42] As is apparent from the PUCO's own rationale for approving the SCR, the Rider has nothing to do with providing customers essential electric service or AEP's distribution service.

Rather, these services are on the customers' side of the meter that Ohioans are being asked to subsidize. As such, it is against ratepayers' and the public's interest and outside the PUCO's authority regarding distribution service. Behind-the-meter services

[42] *Id.* at ¶178.

such as electric vehicle charging should be the province of the competitive market, instead of monopoly subsidy charges to consumers. In the competitive market that the PUCO should foster, innovation and market pricing will benefit consumers of the services – and subsidies (like what the PUCO ordered) will be avoided to the benefit of a million AEP consumers.

The PUCO approved the RGR notwithstanding that AEP made no showing of need for the renewable generation facilities that will be subsidized through the RGR. Charging all of AEP's customers to subsidize renewable generation facilities without any showing of need for those facilities is not in the interest of ratepayers or the public.

By failing to lower the DIR rate caps using the lower 21% corporate tax rate, the PUCO essentially has authorized a rate increase. AEP will be able to use its lower tax rate as a way to spend more while remaining under the DIR cap. The result will be a utility sleight-of-hand where AEP spends more under the cap, and charges consumers instead of lowering both the cap and consumer rates to give consumers the benefit of the federal tax cut. It is contrary to the interests of ratepayers and the public.

The PUCO should grant rehearing on Assignment of Error No. 7.

**ASSIGNMENT OF ERROR 8: The PUCO erred in finding that the Settlement does not violate any important regulatory principle or practice.**

The Settlement violates important regulatory practices and principles. The PUCO did not consider, and due to the lack of evidence, could not have considered, the numerous riders approved but set at zero, including the RGR, PFR, CIR, and SSOCR. Approving riders without knowing their costs does not lead to just and reasonable rates, contrary to R.C. 4905.22. Further, the SCR has nothing to do with providing customers essential electric service or AEP's distribution service. Rather, these services are on the

customers' side of the meter that Ohioans are being asked to subsidize. Such subsidization does not lead to just and reasonable rates, contrary to R.C. 4905.22, and charges consumers to subsidize programs that are not related to essential electric service, contrary to R.C. 4928.141.

The PUCO approved the RGR notwithstanding that AEP made no showing of need for the renewable generation facilities that will be subsidized through the RGR. Charging all of AEP's customers to subsidize renewable generation facilities without any showing of need for those facilities is not consistent with R.C. 4928.143(B)(2)(c).

By failing to calculate the DIR rate caps using the lower 21% corporate tax rate, the PUCO essentially authorized a rate increase, where AEP will be permitted to increase its level of spending under the DIR instead of lowering the amount it charges customers through the Rider. This is contrary to the PUCO's recent ruling where it affirmed that "we intend that all impacts resulting from the Tax Cuts and Jobs Act of 2017 will be returned to customers."[43]

The PUCO should grant rehearing on Assignment of Error No. 8.

## IV. CONCLUSION

The PUCO should grant rehearing on OCC's assignments of error and modify or abrogate its Opinion and Order because it is unreasonable and unlawful. The ESP harms consumers and violates Ohio law by circumventing the statutory ESP versus MRO test. Further, it violates Ohio law and is unreasonable because it allows AEP to charge consumers (including with more subsidy charges) for programs that are completely

[43] In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies, Case No. 18-47-TP-COI, Second Entry on Rehearing at ¶1 (Apr. 25, 2018).

unrelated to electric distribution service. The PUCO approved numerous unlawful and completely unnecessary riders. And the PUCO failed to reopen the proceedings to hear additional evidence on the impact of the federal tax reductions, which (unfortunately for consumers) means AEP can increase its spend under the DIR and not return to customers the reductions from the 2017 tax cuts.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic service, this 25th day of May 2018.

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.