BEFORE
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 Section 4928.143, Revised Code, 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

OHIO POWER COMPANY'S MEMORANDUM CONTRA THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S APPLICATION FOR REHEARING

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I. INTRODUCTION

The Public Utilities Commission of Ohio ("Commission") should deny the Office of the Ohio Consumers' Counsel's ("OCC") application for rehearing of the Commission's April 25, 2018 Opinion and Order ("Order"). OCC's superficial challenges to the Commission's approval and adoption of the Joint Stipulation and Recommendation ("Stipulation") that Ohio Power Company ("AEP Ohio" or the "Company"), Commission Staff, and numerous other parties filed to resolve these proceedings merely repeat the same assertions that OCC has already raised – and the Commission has already considered and rejected – in these (and other) proceedings. OCC has offered nothing new that justifies a grant of rehearing. With the exception of paragraph 252 of the Order, which is the subject of AEP Ohio's pending application for rehearing, the Commission's decision was reasonable, lawful, and conveys significant customer and other benefits.

OCC's challenges regarding the Commission's approval of zero-rate placeholder riders, the Smart City Rider, and the Renewable Generation Rider lack merit. So, too, do OCC's challenges regarding the Commission's denial of OCC's March 2, 2018 Motion to Reopen and the Commission's application of the well-established three-part settlement test to the Stipulation in this case. The Commission should deny OCC's application for rehearing in its entirety, for the reasons set forth in greater detail below.

II. ARGUMENT

A. The Commission properly approved zero-rate placeholder riders. (OCC Assignment of Error Nos. 1, 4, 7, 8)

OCC devotes much of its application for rehearing to its well-worn and oft-repeated challenge to the Commission's approval of zero-rate placeholder riders in an ESP. (OCC AFR at 3-4, 8-9.) OCC contends that the placeholder Retail Reconciliation Rider (RRR) and SSO Credit Rider (SSOCR) are "entirely unnecessary" because the Commission elected to wait until the Company's next base distribution rate case to populate those riders. (*Id.* at 8-9, citing Order at ¶ 213-214.) OCC also argues that the Commission failed to properly perform the statutory "ESP/MRO test" set forth in R.C. 4928.143(C)(1) because the Commission did not attempt to quantify the impact of the placeholder RRR, SSOCR, Renewable Generation Rider (RGR), or PowerForward Rider in the quantitative portion of that analysis. (*Id.* at 3-4.) OCC reiterates these arguments in its seventh and eighth assignments of error. (*Id.* at 14-15.) OCC has made these arguments already, in this case and others, and the Commission has carefully considered and rejected them. *See, e.g.*, Order at ¶ 263, 267. OCC's arguments on rehearing similarly lack merit.

Zero-rate placeholder riders are a commonly used tool in the Commission's ratemaking toolbox. The Commission has adopted placeholder riders in numerous prior ESP cases involving AEP Ohio, Duke Energy Ohio, and the FirstEnergy operating companies, and those companies continue to incorporate zero-rate placeholders in their ESP applications. *See, e.g.*, *In re Ohio Power Company*, 13-2385-EL-SSO, *et al.*, Opinion and Order at 25 (Feb. 25, 2015); *In re FirstEnergy*, Case No. 08-935-EL-SSO, *et al.*, Second Opinion and Order at 15 (Mar. 25, 2009); *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, *et al.*, Application at 14

(June 1, 2017) (proposing a nonbypassable Power Forward Rider, initially set at zero, to recover investments associated with certain Power Forward projects as they arise), and Stipulation and Recommendation at 16-17 (Apr. 13, 2018) (recommending adoption of Duke Energy Ohio, Inc.'s Power Forward Rider). In repeatedly adopting placeholder riders, the Commission has recognized – contrary to OCC's position – that placeholder riders are necessary and appropriate components of an ESP because an ESP has a term of years and requires a number of subordinate dockets to implement its complex rate components. Further, it is necessary and appropriate to include placeholder riders as part of an ESP decision in order to exercise the Commission's authority under R.C. 4928.143 when establishing the riders. Thus, the Commission's approval of the RRR, SSOCR, RGR, and PFR as zero-rate placeholder riders was reasonable, lawful, in the interests of ratepayers and the public, and consistent with established regulatory practice.

Moreover, as noted above, and as the Commission recognized in its Order, the Commission's application of the ESP/MRO test was consistent with both Commission and Ohio Supreme Court precedent. Order at ¶ 267. The Court has recognized that the Commission may exercise broad discretion in conducting the test and that the test "does not bind the commission to a strict price comparison. On the contrary, in evaluating the favorability of a plan, the statute instructs the commission to consider 'pricing *and all other terms and conditions.*'" (Emphasis sic.) *In re Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, ¶ 27; *see also In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 48 (recognizing that when a statute does not prescribe a particular analysis, the Commission is vested with broad discretion), citing *In re Application of Columbus S. Power Co.*,

128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 68, and *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 25.

The Commission thoroughly evaluated all aspects of the pricing, terms, and conditions of the ESP. Order at ¶ 255-270. R.C. 4928.143(C)(1) does not require the Commission to attempt to quantify the price impact of a placeholder rider that the Commission sets at an initial rate of zero. It would have been speculative for the Commission to attempt to do so, as the Commission aptly recognized. *Id.* at ¶ 267. The Commission properly left considerations regarding the price impact of proposals to populate the RRR, SSOCR, RGR, and PFR for future filings where the details of such proposals will be thoroughly analyzed. The Commission should deny OCC's first and fourth assignments of error.

B. The Commission properly approved the RGR without adjudicating the need for specific renewable generating facilities in these proceedings. (OCC Assignment of Error Nos. 3, 7, 8)

OCC devotes only a short paragraph to its third assignment of error, in which OCC complains that the Commission's Order is unreasonable 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." (*See* OCC AFR at 7.) OCC contends that the Commission's approval of a placeholder RGR, set to zero, is "against the public interest and violates important regulatory principles and practices." (*Id.*) OCC repeats this same contention in assignments of error 7 and 8. (*Id.* at 15-16.) OCC raised similar concerns in its Post Hearing Brief (*see* OCC Br. at 31-32), which did not gain any traction with the Commission. *See* Order at ¶ 223-228. OCC is off-track on rehearing as well, and it is apparent that OCC is simply recycling its unsuccessful post-hearing arguments on this topic without bringing anything new to the table.

As the Commission noted in its Order, the Commission established the current PPA Rider in Case No. 14-1693-EL-RDR, *et al*. both to fund new renewable generation projects that may

later be approved by the Commission and to recover the net costs associated with the Ohio Valley Electric Corporation (OVEC). *Id.* at ¶ 50. To further enhance transparency and better distinguish those two separate issues, the Signatory Parties agreed in the Stipulation to create a separate, nonbypassable RGR as a placeholder rider, initially set to zero. *Id.* The Commission expressly confirmed that the RGR would only be activated by a "subsequent Commission order authorizing specific project(s)," and that any costs included in the rider would be subject to annual prudence audits. *Id.* There is no small irony in the fact that OCC now seeks to derail a zero-rate placeholder rider that the Signatory Parties intended to enhance transparency for consumers.

In its post-hearing brief, OCC raised the same statutory argument that it does now on rehearing – that R.C. 4928.143(B)(2)(c) required the Company to establish the "need" for the renewable energy projects in these ESP proceedings. (OCC Br. at 31-32.) AEP Ohio and Staff noted that the Commission had previously rejected OCC's flawed interpretation of the statute, and the Commission agreed, finding:

> With respect to OCC's contention that the statute requires AEP Ohio to establish the need for the facility in these ESP proceedings, the Commission has previously rejected the argument, as OCC acknowledges. *ESP 2 Case,* Opinion and Order (Aug. 8, 2012) at 24; *In re Ohio Power Co.*, Case No. 10-501-EL-FOR, et al., Opinion and Order (Jan. 9, 2013) at 23, Entry on Rehearing (Mar. 6, 2013) at 3-4. In pertinent part, R.C. 4928.143(B)(2)(c) provides that "no surcharge shall be authorized unless the [C]ommission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility." Recognizing the Commission's broad discretion to manage its dockets, we determined that the statute requires that a proceeding be held before any recovery is authorized and, therefore, does not restrict the determination of need to the time at which the ESP is approved. *ESP 2 Case* at 24, citing *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). OCC has raised no argument that

> overcomes this precedent. In each EL-RDR proceeding proposing a specific project, AEP Ohio will be required to demonstrate need for each proposed facility and to satisfy all of the other criteria in R.C. 4928.143(B)(2)(c), and OCC will have a full and fair opportunity to raise its concerns on the issue of need.

(Emphasis added.) Order at ¶ 227.

OCC's third assignment of error merely retreads this well-trodden ground. OCC again quotes R.C. 4928.143(B)(2)(c) for the unremarkable proposition that "'[n]o 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.'" (*See* OCC AFR at 7-8 (emphasis added by OCC).) Based on that statutory language, OCC complains that AEP Ohio submitted no such resource planning projections in these proceedings, and that "since there was not [*sic*] determination that there is a need for the facility, the Rider is an unlawful subsidy for new renewable energy generation." *Id.* OCC's contentions would be more compelling if the Commission had, in fact, actually approved a charge in a proceeding that lacked the resource planning projections required by the statute. But that is not what the Commission did in this case. In these proceedings, no facility was proposed whose costs would be collected through the RGR, and no charge was approved to be recovered through the rider. On the contrary, as the Commission made clear in its Order, the Company will be required to demonstrate need for each proposed facility in each proceeding proposing a specific renewable project, and to satisfy all other criteria set forth in R.C. 4928.143(B)(2)(c), and OCC will have a full and fair opportunity to address the issue of need in those separate proceedings. Order at ¶

227. Accordingly, the Commission should reject OCC's third assignment of error on the same bases on which it rejected OCC's argument on this issue in its Order.

C. The Commission properly approved the Smart City Rider. (OCC Assignment of Error Nos. 2, 7, 8)

In its second assignment of error, OCC argues that "[t]he Smart City Rider is against the public interest, [and] 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." (OCC AFR at 4.) OCC repeats these arguments nearly verbatim in its seventh and eighth assignments of error. (*Id.* at 14-16.) However, the Commission correctly concluded that the Smart City Rider and the EV and microgrid demonstration programs "fall squarely within the parameters of R.C. 4928.143(B)(2)(h)." Order at ¶ 238. The Commission also found that the Smart City Rider and demonstration programs further state policies related to safe and reliable electric service, competition, innovation, and access to information. *See id.* (finding that the Smart City Rider demonstration programs "further the state policy in R.C. 4928.02(A), (C), (D), (E), (F), and (N), among others").) OCC provides no basis for the Commission to undo these findings, and its arguments should be rejected.

The Commission correctly found that the Smart City Rider is authorized by the ESP statute because it is directly related to AEP Ohio's "distribution service," the Company's "distribution infrastructure," and AEP Ohio's efforts at "modernization." R.C. 4928.143(B)(2)(h). With respect to the EV rebate program in particular, the Commission recognized that "a significant increase in the number of electric vehicles will have an impact on electric demand." Order at ¶ 175. The Commission further recognized that "[n]ow is the time" for AEP Ohio "to be aware of and prepare for the potential impact on the electric market" and "the impact on the electric grid, electric distribution, and distribution infrastructure" that will

come from EV adoption. *Id.* Therefore, the Commission found that the EV charging station demonstration project approved in the Stipulation will directly respond to these challenges to the distribution grid and "allow AEP Ohio, this Commission, and other interested stakeholders to analyze the data from the project regarding load growth at peak and off-peak hours, rates, and rate design criteria, and to determine potential concerns and benefits." *Id.* at ¶176. These justifications for the Smart City Rider show that it is directly related to "the utility's distribution service," "distribution infrastructure," and "modernization." R.C. 4928.143(B)(2)(h). Growth in EV adoption will significantly impact AEP Ohio's distribution grid. Thus, the EV rebate program is directly related to AEP Ohio's "distribution infrastructure" (among other things) since it will allow AEP Ohio to gather many types of data that will help AEP Ohio, stakeholders, and the Commission respond to the load growth and grid impacts that will result from EV adoption.

The Smart City Rider demonstration programs are also directly related to the distribution *rates* that AEP Ohio charges for EV and microgrid load. As the Commission recognized, the data gathered in the demonstration programs will aid AEP Ohio, stakeholders, and the Commission in designing rates for EV charging stations and microgrids. The Commission stated that it "expects that AEP Ohio will incorporate lessons learned from the EV charging station and microgrid demonstration projects into the PEV tariff and other future tariff filings, including rate design that encourages load management to enhance potential reliability benefits to the distribution system as a result of EV charging." Order at ¶ 179. AEP Ohio's "PEV tariff," "rate design that encourages load management," and "potential reliability benefits to the distribution system" are core distribution concepts. Thus, the Smart City Rider is a "provision[] regarding

distribution infrastructure and modernization incentives for the electric distribution utility." R.C. 4928.143(B)(2)(h).

In addition, the Smart City Rider microgrid demonstration pilot is directly related to AEP Ohio's provision of reliable distribution service to critical public infrastructure. As the Commission recognized, under Ohio Adm. Code 4901:1-10-08, "every electric utility's emergency plan must take into account the restoration of electric service to hospitals, fire, and police, usually restoring service to these entities first." Order at ¶ 174. The Commission correctly concluded that "[t]he implementation of this microgrid demonstration pilot may afford AEP Ohio a better method to improve service reliability to hospitals, fire, and police stations." *Id.* This is yet another way in which the Smart City Rider programs relate to AEP Ohio's "distribution service," "distribution infrastructure," and "modernization." R.C. 4928.143(B)(2)(h).

OCC claims that the Smart City Rider programs are not related to distribution service, arguing that "the programs 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." (OCC AFR at 5.) This argument is flawed in multiple respects. To begin with, OCC overlooks the fact that AEP Ohio is providing only rebates in the EV demonstration program; it will not own the EV charging stations. As the Commission recognized, "[r]ebate programs, as a general matter, are not equivalent to an anticompetitive subsidy." Order at ¶ 239. Indeed, the actual EV charging station development itself will be done not by the utility, but by the "providers in the competitive market" (to use OCC's words). As the Stipulation makes clear, the Company will qualify multiple equipment vendors and the participating customers will directly purchase the EV charging station on a

competitive basis. (Joint Ex. 1 at ¶ III.H.1.a.) This factual distinction undercuts OCC's claim that AEP Ohio is somehow attempting to "occupy space behind the customer's meter." (*See* OCC AFR at 5.)

Moreover, the Commission has authorized such appliance rebate programs in the past, even under its traditional ratemaking authority. For example, consistent with R.C. 4909.15 and R.C. 4905.13, the Commission established a process decades ago for deferral and recovery of Demand-Side Management expenses including rebates on customer-owned heat pumps and other customer-owned load management devices. *In the Matter of the Commission's Investigation into the Impacts of Demand-Side Management Programs*, Case No. 90-723-EL-COI, Entry on Rehearing (Apr. 4, 1991) (adopting Revised Appendix A which permits deferral and recovery of cost-effective appliance rebate program costs); *In re Columbus Southern Power Company*, Case No. 94-1812-EL-AAM, Entry (Apr. 13, 1995) (allowing deferral of demand-side management program costs included heat pump rebates to be deferred for recovery in base rates); *In re Ohio Power Company*, Case No. 94-996-EL-AIR, Opinion and Order (Mar. 23, 1995) (allowing demand-side management costs to be deferred and reflected in base rates). If such rebate costs are permitted under traditional ratemaking in R.C. Chapter 4909, such costs are surely permitted in the more flexible and progressive alternative ratemaking provisions in division (B)(2)(h) of the ESP statute – especially given that the programs advance energy policy goals in R.C. 4928.02.

The Commission should also reject OCC's attempt to create a false dichotomy between "the customers' side of the meter" and AEP Ohio's "side" of the meter. The "side" of the meter is not the relevant legal test for determining whether an activity relates to distribution service or whether provisions can be included in an ESP. The statute does not use this concept, and

tellingly OCC cites no authority supporting its flawed premise that distribution service cannot occupy space behind the meter. (*Id.* at 7.) Rather, the statute authorizes for inclusion in an ESP "[p]rovisions regarding the utility's distribution service," including (among other things) "provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility." R.C. 4928.143(B)(2)(h). Even if OCC were correct that the EV charging rebate program or the microgrid demonstration do not constitute distribution service (which it is not), the statute only requires that the Smart City Rider be a provision "regarding" distribution infrastructure – which is a much broader concept that was fully proven out in the record and supported in the Order. For the reasons discussed above and in the Commission's Order, the Smart City Rider and its demonstration programs meet that statutory test. Thus, the Commission need not – and should not – give credence to OCC's "side of the meter" concept or attempt to delineate permissible and impermissible utility action using this concept. The Smart City Rider is just and reasonable, authorized by statute, and in the public interest; that should be the end of the inquiry.

D. The Commission correctly denied OCC's Motion to Reopen. (OCC Assignment of Error Nos. 5, 7, 8)

OCC's fifth assignment of error complains that the Commission's Opinion and Order is unreasonable because it denied OCC's March 2, 2018 Motion to Reopen, thereby preventing OCC from offering "evidence that the caps on the Distribution Investment Rider [(DIR)] should be reduced to reflect the recent federal tax cuts" in the Tax Cuts and Jobs Act of 2017. (OCC AFR at 9.) OCC recasts this argument in its seventh and eighth assignments or error as claims that the Commission's denial of OCC's Motion to Reopen "is contrary to the interests of ratepayers and the public" and the Commission's April 25, 2018 Second Entry on Rehearing in Case No. 18-47-AU-COI (the "*Tax COI* Case"). (*Id.* at 15-16.) The DIR was established in

AEP Ohio's *ESP 2 Case* "to facilitate the timely and efficient replacement of aging infrastructure to improve service reliability." Order at ¶ 181. It was subsequently expanded to "support the installation of gridSMART technologies." *Id.* In this case, the parties jointly stipulated to set the annual authorized DIR revenue caps for calendar years 2018 through 2021 at $215 million, $240 million, $265 million, and (if AEP Ohio files a distribution rate case application by June 1, 2020) $290 million, respectively. (Joint Ex. 1 4-5.)

OCC is not complaining that the DIR *rates* should be reduced to reflect the recent federal tax cuts, and for good reason. AEP Ohio's tariffs have already been revised to "explicitly clarify that the DIR is subject to reconciliation and adjustment, including, but not limited to, refunds to customers, based upon the impact of the reduced federal corporate income tax rate on the rider's carrying charges." *In re Application of Ohio Power Co. to Update Its Distribution Investment Rider*, Case No. 14-1696-EL-RDR, Finding and Order, ¶ 12 (Feb. 21, 2018). In this case, moreover, the Commission has made clear that "all of AEP Ohio's riders with a tax component will be subject to adjustment and reconciliation" once the Commission completes its investigation of the impacts in the *Tax COI* Case. Order at ¶ 35. Thus, the various opinions OCC cites for the proposition that "PUCO approved rates [must reflect] the federal income tax rate the company actually paid" (OCC AFR at 11; *see also id.* at 10) are irrelevant.[1] DIR rates will reflect the reduced federal corporate income tax rate.

[1] In *East Ohio Gas Co. v. Pub. Util. Comm.*, the Supreme Court of Ohio held that the Commission must make "[a]n allowance for the payment of federal income taxes * * * in rate cases" and that a Commission "order permitting only such deductions for taxes as are based upon the amounts appearing on the books of the company during a test period[ ] is unlawful and unreasonable when the evidence discloses that the rate of taxation was higher in years subsequent to the test period." 133 Ohio St. 212, 226, 12 N.E.2d 765 (1938); *see also id.* at paragraph 7 of the syllabus. In *General Tel. Co. v. Pub. Util. Comm.*, the Court held that, in a rate case, the Commission must "allow, as an item of expense for payment of federal income tax, that amount of dollars which the company is actually required to pay * * * under the federal

Instead, OCC contends the Commission "*essentially* has authorized a rate increase" by "failing to lower the DIR rate *caps* using the [new] lower 21% corporate tax rate . . ." (Emphasis added.) (*Id.* at 10.) In effect, OCC is arguing that AEP Ohio will inevitably spend up to its rate caps, even where such spending is not prudent or in furtherance of the DIR program's goals. But, the DIR is subject to an annual review for "accounting accuracy, prudency, and for compliance with the program directives." Order at ¶ 181. As the Commission previously held, if OCC believes AEP Ohio's spending under the DIR is not "incremental, prudent, and consistent with the Commission's orders, rules, and Ohio statutes[,]" OCC may intervene in future DIR audit cases and raise such arguments then. *Id.* The Commission need not reopen these proceedings at this point to reconsider rate caps that may never be reached, to prevent theoretical imprudent DIR spending that could be addressed (if it occurred) in future audits.

In a recent opinion involving the application of Columbia Gas of Ohio, Inc. ("Columbia") to continue its Infrastructure Replacement Program (IRP), the Commission denied an OCC application for rehearing much like the one OCC has filed here. In that case, OCC argued for the first time after hearing that the Commission had erred by failing to revise the rate caps on Columbia's Rider IRP to reflect the recent federal corporate income tax rate cut. The Commission denied the application for rehearing, finding that the Commission's approval of tariff language that "addresse[d] the reconciliation or adjustment of the Rider IRP rate * * * to reflect the Commission's ultimate decision in the *Tax COI* Case" rendered OCC's application for

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income tax law * * *." 174 Ohio St. 575, 191 N.E.2d 341 (1963), at syllabus. And in *In re Application of The Cleveland Elec. Illum. Co. for Authority to Amend and Increase Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service*, the Commission held that, when calculating federal income tax expense in a rate case, the Commission should use a rate that "reflects the rate the company will be paying during the period [the utility's] new rates will be in effect." Case No. 86-2025-EL-AIR, 1987 Ohio PUC LEXIS 28, Opinion and Order, *197 (Dec. 16 1987). None of these opinions relates to the calculation of rate caps.

rehearing "moot." *In re Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Extend and Increase its Infrastructure Replacement Program*, Case No. 16-2422-GA-ALT, Second Entry on Rehearing at ¶ 13 (May 9, 2018). Moreover, because the Commission reviews and reconciles Columbia's Rider IRP rates annually and sets the Rider IRP rates in separate rider adjustment proceedings that will account for the reduced tax rate, the Commission found it was "not necessary that the *caps* * * * be adjusted to reflect the reduced corporate tax rate." (Emphasis added.) *Id.*

For the same reason, it is unnecessary to reopen these proceedings at this late date to reduce the DIR rate caps. AEP Ohio's DIR rates will be reviewed annually and adjusted and reconciled to reflect the effects of the recent federal tax law changes. Reopening these proceedings to adjust the *caps* on those rates would simply delay the resolution of this case, with no meaningful benefit to AEP Ohio's customers. The Commission should reject OCC's fifth assignment of error.

E. The Commission properly applied the three-part settlement test. (OCC Assignment of Error Nos. 6, 7, 8)

OCC's sixth, seventh, and eighth assignments of error each challenge, in a cursory fashion, the reasonableness and lawfulness of the Commission's application of the three-part test for contested settlements to the Stipulation filed in these proceedings. (OCC AFR at 12-16.) OCC's seventh and eighth assignments of error merely repeat (in some cases verbatim) the substantive arguments that OCC raises elsewhere in its application for rehearing. (*Id.* at 14-16.) AEP Ohio has fully responded to each of those arguments above (in addition to having done so already on brief). The record in this case clearly demonstrates that the Stipulation, as a package, benefits ratepayers and the public interest and does not violate any important regulatory principle or practice, as the Commission found. *See* Order at ¶ 204, 250, 254.

OCC's contention that the Commission should abandon the well-established and accepted three-part test entirely when it considers settlements in ESP cases is without merit, and the Commission should reject it. (*See* OCC AFR at 12-14.) OCC previously raised this argument in its reply brief (*see* OCC Reply Br. at 2), and the Commission properly disregarded it. *See* Order at ¶ 125-126. The Commission should do so again on rehearing. As an initial matter, OCC's position is inconsistent with the standard for rehearing set forth in R.C. 4903.10, which requires a showing that a Commission order was unreasonable or unlawful. The Commission clearly did not act unreasonably or unlawfully by adhering to the well-established test that it has applied to evaluate settlements in all Commission proceedings, including ESP cases, for more than 25 years. Moreover, the three-part settlement test ultimately is intended to assist the Commission in considering "whether [an] agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted." *Id.* at ¶ 125. The record in this case unequivocally reflects that the Stipulation – which was the result of months of negotiations among sophisticated parties, including OCC, and signed by nearly every party – satisfies this standard. That AEP Ohio has a statutory right to withdraw from an ESP under certain circumstances does not in any way alter the reasonableness of the beneficial package the Stipulation embodies. The Commission should deny OCC's sixth, seventh, and eighth assignments of error for these reasons.

III. CONCLUSION

OCC's application for rehearing fails to identify any respect in which the Commission's Order was unjust or unreasonable, or to make any new argument that the Commission has not already fully considered and rejected in this case. For the reasons set forth above, therefore, the Commission should deny OCC's application for rehearing in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 4th day of June, 2018.

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Summary: Memorandum - Ohio Power Company's Memorandum Contra The Office of the Ohio Consumers' Counsel's Application for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company