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

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| In the Matter of the 2016 Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Company | ) ) ) ) ) | Case No. 17-38-EL-RDR |
| In the Matter of the 2017 Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Company | ) ) ) ) | Case No. 18-230-EL-RDR |

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**INITIAL POST-HEARING BRIEF**
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTLITIES COMMISSION OF OHIO

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## INTRODUCTION

The Stipulation presented in this case enhances the benefits to rate payers identified in the Ohio Power Company's (AEP Ohio or the Company) Application and addresses the concerns raised by the Staff of the Public Utilities Commission of Ohio (Staff) in the Staff's audit of AEP Ohio's Distribution Investment Rider (DIR). The Stipulation in this case addresses the annual review of the DIR for the years of 2016 and 2017. The Stipulation acknowledges that several operational areas will continue to be examined in the next audit to ensure that customers are paying for Company expenditures that are well controlled. The Stipulation also, taking effect with the next rate case order, changes AEP Ohio's policy with respect to the capitalization of vegetation management costs for tree removal which will result in customers paying less overall for this activity. Finally, AEP Ohio must provide information on the reduction of outages caused by the removal of trees outside of the right-of-way and an explanation for any circuit on which there has not been an improvement. This information will permit the Commission to monitor and confirm that these expenditures are benefitting AEP Ohio customers.

The Stipulation between AEP Ohio and the Staff provides a reasonable outcome for AEP Ohio customers. The Ohio Consumers' Counsel's (OCC) arguments regarding incentive pay, capitalization of spare equipment, and capitalization of tree removal costs are misguided. The Stipulation is reasonable and meets the Commission's three-part test for approval of stipulations. It should be adopted by this Commission.

## DISCUSSION

### I. The Stipulation meets the Three-Part Test for reasonableness.

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[1] The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.[2] In considering the reasonableness of a stipulation, the Commission has used the following criteria:

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[1] *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St, 3d 123, at 125, citing *Akron v. Pub. Util. Comm*. (1978), 55 Ohio St, 2d 155.

[2] See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio*

(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?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.[3] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of a stipulation," it "must determine, from the evidence, what is just and reasonable."[4] The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.[5]

AEP Ohio and Staff respectfully submit that the stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

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*Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records* (Zimmer Plant); Case No, 84-1187-EL-UNC (November 26, 1985).

[3] *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing, *Consumers' Counsel, supra,* at 126.

[4] *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370.

[5] *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46.

### A. The Stipulation is a product of serious bargaining among capable, knowledgeable parties.

This Stipulation and Recommendation is the product of an open process in which all parties were represented by able counsel and technical experts experienced in regulatory matters before the Commission, and the decisions made were based upon thorough analysis of complex issues.[6] The Stipulation represents a comprehensive compromise of issues raised by parties with diverse interests.[7] Overall, the Stipulation presents a fair and reasonable result.[8] All of the parties (including Staff) to this proceeding were present at negotiations that resulted in the Stipulation.[9] Settlement meetings were noticed to all parties and all parties were present either in person or by phone or they chose not to participate.[10] Staff was present at all of the negotiations.[11]

In sum, the Stipulation represents a comprehensive, reasonable resolution of the issues in this case by informed parties with diverse interests.

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6 Staff Ex. 2 (McCarter Direct) at 3.

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

### B. The Stipulation, as a package, benefits ratepayers and the public interest.

The Stipulation, as a package, benefits customers and the public interest and represents a just and reasonable resolution of all issues in this proceeding. The Stipulation results in an acknowledgement that several operational areas will continue to be examined in the next audit to determine AEP Ohio's adherence to good business practices.[12] The continued focus upon the examination of these areas will allow the Commission to ensure that customers are paying for expenditures by AEP Ohio that are well controlled.[13] The Stipulation provides for an agreement with the Company to change its policy with respect to the capitalization of vegetation management costs, particularly with respect to the removal of trees, which will take effect with the next rate case order.[14] The rate case is to be filed June 1, 2020.[15] This accounting treatment will result in customers paying overall less for this activity.[16]

The Stipulation also results in a commitment by AEP Ohio to provide information which shows the reduction of outages caused by the removal of trees outside of the right-of-way and an explanation for any circuit on which there has not been an improvement.[17]

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12 *Id.* at 4.

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.*

The provisioning of this information will permit the Commission to monitor and confirm that these expenditures are benefitting AEP Ohio customers by reducing outages caused by outside the right of-way tree failures.[18]

Overall, as a package, the Stipulation benefits customers and is in the public interest.

### C. The Stipulation does not violate any important regulatory principle or practice.

The final prong of the Commission's three-part test is passed, as the Stipulation does not violate any important regulatory principle or practice. The Stipulation complies with all relevant and important regulatory principles and practices.[19] The terms of the Stipulation represent a compromise of the Signatory Parties. None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice.

### D. OCC Arguments

#### 1. Incentive Payments

OCC argues that the Stipulation does not benefit customers and violates regulatory principles because the Stipulation does not resolve the Auditor's finding that AEP Ohio overcharged customers through the DIR for incentive compensation through 2016.[20] The

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18 *Id.*

19 *Id.* at 5.

20 OCC Ex. 1 (Hecker Direct) at 4.

Commission-approved Stipulation from prior AEP Ohio DIR audits, Case Nos. 14-255-EL-RDR, 15-66-EL-RDR and 16-21-EL-RDR, which OCC did not oppose, stated that the issue of incentive payments would be better addressed as part of the base distribution case to be filed by June 2020.[21] It is premature to address the incentive-payment issue in this case because the Commission has already decided that this issue is best addressed in the next AEP rate case. OCC's argument should be rejected.

**2. Capital Spares**

The Auditor recommended that the Company's inclusion of capital spares in the DIR be given further review. AEP Ohio accepted that recommendation and the Stipulation in this case provides that a further review by the next DIR auditor of the capital spares activity will be conducted in a future DIR audit.[22] This is appropriate. OCC argues that the Auditor's recommendation does not go far enough and allowing AEP Ohio to charge consumers now through the DIR for spare equipment is improper because the equipment is not used and useful and it is not necessary for infrastructure modernization.[23] The next audit will explore the propriety of the capital-spare issue.

[21] Joint Ex. 1 (Stipulation and Recommendation) at 8.

[22] *Id.* at 5.

[23] OCC Ex. 1 (Hecker Direct) at 8.

OCC will have the opportunity to explore that issue in the next case when the review is more fully developed. OCC could not even point to the amount of its alleged "excessive spend" on capital spares.[24] Therefore, OCC's argument should be rejected.

### 3. Tree Removal and Reliability Standards.

OCC argues the Stipulation's tree-removal policy creates an incentive for AEP Ohio to remove trees unnecessarily to earn a return on investment; makes it difficult to accurately audit AEP Ohio's vegetation management costs.[25] OCC also argues that the DIR overall is unreasonable because AEP Ohio's reliability performance standards have suffered.[26] As discussed by AEP Ohio witness Kratt, however, the Stipulation allows the Company to focus on reliability by performing necessary removal of outside of right-of-way (ROW) trees which has trended to be the number one cause of customer minutes of interruption in 2018.[27] The Company has agreed to provide transparency on outside of ROW activity.[28] The Company has also agreed to provide additional information – production data, reliability data, and resources data – in order to better track improvement on trees outside the ROW.[29] All of these activities are designed to drive a reduction in

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24 Tr. at 35-36.

25 OCC Ex. 1 (Hecker Direct) at 10.

26 OCC Ex. 2 (Williams Direct) at 5-7.

27 AEP Ohio Ex. 2 (Kratt Supplemental) at 5.

28 *Id.* at 8.

29 *Id.*

outages and improve the customer experience, which helps confirm the DIR investments continue to favorably impact reliability.[30]

As described above, the Stipulation changes AEP Ohio's policy with respect to the capitalization of vegetation management costs for tree removal, but this accounting treatment will result in customers paying overall less for this activity.[31] The Stipulation further requires AEP Ohio to provide information that will permit the Commission to monitor and confirm that these expenditures are benefitting AEP Ohio customers by reducing outages caused by outside the right of-way tree failures.[32] This is an appropriate result for settlement of this case and for the future of AEP Ohio's reliability. OCC's arguments should be rejected.

## CONCLUSION

The Stipulation meets all prongs of the three-part test. OCC's arguments to the contrary should be rejected. The Commission should adopt the Stipulation as its order in this case.

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30 *Id.*

31 Staff Ex. 2 (McCarter Direct) at 4.

32 *Id.*

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Initial Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 4th day of October, 2019.

/s/ *Steven L. Beeler*
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