BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company to Initiate Phase 2 of Its gridSMART Project and to Establish the gridSMART Phase 2 Rider.	))))	Case No. 13-1939-EL-RDR

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

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This case concerns whether Ohioans will pay a half billion dollars to Ohio Power Company ("AEP Ohio") for expansion of smart grid technology in a large portion of its service territory.[1] In the Order in this case,[2] the Public Utilities Commission of Ohio ("PUCO") approved a Settlement[3] that, among other things, would require consumers to pay for the installation of 894,000 smart meters over a four-year period, plus additional technology to be installed over a six-year period.[4]

The Office of the Ohio Consumers' Counsel ("OCC") initially opposed the Settlement. But, as part of a Global Settlement in other cases, OCC agreed to withdraw its opposition to the Settlement in this case, so long as certain conditions are met.[5] The conditions are that residential customers will pay 45 percent of the gridSMART Phase 2 costs (instead of 62.4 percent, as proposed in the Settlement), and that the PUCO would

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[1] *See* AEP Ohio Ex. 1 (Osterholt Direct Testimony), Exhibit SSO-1 at 9.

[2] Opinion and Order (February 1, 2017).

[3] Joint Ex. 1.

[4] Order at 8.

[5] *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, et al., Joint Stipulation and Recommendation (December 21, 2016) at 14-15.

approve the annual prudency audit and a review of the operational cost savings credit as modifications to the Settlement.[6] The PUCO addressed both conditions in its Order in this case.

OCC is filing this Application for Rehearing due to a timing concern. The Order (issued on February 1, 2017) in this case recognizes that OCC does not oppose the Settlement so long as the PUCO gives *final approval* to the conditions in *both* the Global Settlement *and* the Settlement in this case.[7] The Order in the Global Settlement case was issued on February 23, 2017,[8] with applications for rehearing due on March 27, 2017 and an entry on rehearing contemplated thirty days after that. In the Global Settlement case, only after no applications for rehearing are filed, or after the PUCO denies any filed application for rehearing, will there be "final approval" of the conditions. Should the PUCO modify its Global Settlement Order in response to an application for rehearing (due by March 27, 2017), then the conditions for OCC to not oppose the Settlement in this case will not have been met. And at that late date, OCC would have foregone its opportunity to oppose the Settlement in this case on rehearing, as the time would be long passed for OCC to file an application for rehearing.

So out of an abundance of caution, due to the timing issue discussed above, OCC files this Application for Rehearing of the PUCO's Order in this case, to protect residential customers' rights. Should the Global Settlement Order become a final

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[6] *Id.*

[7] Global Settlement at 14; Order at 25.

[8] Case No. 10-2929-EL-UNC, Order (February 23, 2017) ("Global Settlement Order").

appealable order that adopts the Global Settlement in its entirety,[9] OCC will withdraw this Application for Rehearing and the PUCO will not have to rule on it.

With the above discussion in mind, absent final approval of the conditions for OCC's non-opposition to the Settlement in this case through a final appealable order in the Global Settlement case, the PUCO's Order in this case is unlawful and unreasonable in the following respects:

1. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order is unlawful because it does not provide sufficient detail to support the PUCO's conclusion that the Settlement is the product of serious bargaining among capable, knowledgeable parties, in violation of R.C. 4903.09.

2. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unlawful because it does not show that the signatory parties have a diversity of interests, in violation of R.C. 4903.09.

3. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because residential consumers assume all the financial risks from Phase 2 deployment up-front, and would pay far more for Phase 2 deployment than they would realize in operational benefits.

4. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because it allows costs for Volt-Var Optimization to be collected through the gridSMART 2 rider instead of the Distribution Investment Rider, as directed by the PUCO, which would unreasonably increase consumers' electric bills.

5. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because there is no guarantee that customers will realize the technological benefits from Phase 2 deployment, even though customers will pay all the costs associated with the deployment.

6. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is

[9] That is, the Order is left intact because no applications for rehearing are filed or all applications for rehearing are denied. *See* R.C. 4903.11.

unreasonable because it approves a stipulation that violates important regulatory principles and practices that would cost consumers more money.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Under the Order in this case and the Global Settlement Order, the costs associated with gridSMART Phase 2 were reallocated so that residential consumers would pay a more equitable share of costs than they would pay through the Settlement. However, neither the Order in this case nor the Global Settlement Order is yet a final appealable order. That occurs when the rehearing process is complete.[10]

Without the cost reallocation in the Global Settlement, the Settlement in this case does not meet the PUCO's test for approving settlements. Hence, if the Global Settlement Order becomes a final appealable order that does not accept the conditions for OCC's non-opposition to the Settlement, the Order in this case is unreasonable and unlawful.

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

[10] R.C. 4903.11.

to any matters determined in the proceeding." OCC is an intervenor in this proceeding,[11] and participated in the hearing in this case. OCC filed testimony, an initial post-hearing brief, and a reply brief.

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." In addition, 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: "If, 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." As shown herein, if the Global Settlement Order becomes a final appealable order without the conditions for OCC's non-opposition to the Settlement, the statutory standard to modify the Order is met here.

[11] OCC's Motion to Intervene was granted in an Entry dated June 13, 2013 (at 3).

III. ERRORS

A. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order is unlawful because it does not provide sufficient detail to support the PUCO's conclusion that the Settlement is the product of serious bargaining among capable, knowledgeable parties, in violation of R.C. 4903.09.

R.C. 4903.09 requires the PUCO to file, in contested cases, "findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." The PUCO must show, in sufficient detail, the facts in the record upon which the order is based and the reasoning followed in reaching the conclusion.[12] Without the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case does not meet this requirement.

In its Order in this case, the PUCO provided some background in the record regarding the signatory parties' view of whether the Settlement meets the first prong of the three-prong test.[13] But the PUCO did not tie the record to its conclusion. Instead, the PUCO made four statements:

- "With respect to the first prong of the Commission's three-part test, we first note that this matter has been pending for over three years and involved the comments and reply comments by more than a dozen parties, which included environmental, residential and industrial advocate groups, and included four days of hearings from seven witnesses."[14]

[12] *See MCI Telecommunications Corp. v P.U.C.*, 32 Ohio St. 3d. 306, 513 N.E.2d 337 (1987).

[13] Order at 17-19.

[14] *Id.* at 19.

- "In determining whether a settlement is the product of serious bargaining among capable, knowledgeable parties, we consider the extent of negotiations and the diversity of the negotiating parties, but there is no requirement that any particular party be a signatory to satisfy this first prong."[15]
- "Further, there is no evidence in the record here that any class of customers was excluded from the settlement negotiations in this case."[16]
- "Moreover, we note the Company's commitment to the creation of the GS2 Collaborative in the Stipulation, and we trust that OCC and OPAE will fully participate in addressing the concerns raised in this proceeding as these new technologies and systems are installed in the AEP Ohio service territories."[17]

Based on these statements, the PUCO stated that the Settlement meets the first prong.[18] This is inadequate for parties, and the Supreme Court of Ohio if the case is appealed, to discern the PUCO's reasoning behind its conclusion.

OCC raised concerns about the seriousness of the negotiations concerning a number of provisions in the Settlement.[19] The provisions include: the doubling of the Volt-Var Optimization ("VVO")[20] program from 80 circuits, as proposed in AEP Ohio's

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[15] *Id.* (citations omitted).

[16] *Id.* at 20 (citations omitted).

[17] *Id.*

[18] *Id.*

[19] OCC Ex. 13 (Lanzalotta Testimony) at 4-6; OCC Initial Brief at 4-9.

[20] VVO refers to technology which monitors the voltage and the reactive power needs on each segment of a distribution circuit and adjusts each on a segment by segment basis, thereby lowering the overall average voltage on the distribution circuit and reducing loads and consumption.

original Application, to 160 circuits; the breakdown of costs and benefits for the VVO program by circuit and substation; and that VVO deployment will be prioritized for circuits serving Ohio Hospital Association members.[21] The VVO expansion more than doubled the cost of the Phase 2 VVO deployment that AEP Ohio originally proposed. The estimated cost per-circuit to install VVO increased from $250,000 in the Application to $334,000 in the Settlement.[22] This cost increased, in part, because more expensive labor resources from outside AEP Ohio would be used to deploy VVO on 160 circuits.[23]

The PUCO should have explained in more detail why it determined that the Settlement meets the first prong of the test. Its failure to do so violates R.C. 4903.09.

B. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unlawful because it does not show that the signatory parties have a diversity of interests, in violation of R.C. 4903.09.

In reviewing stipulations, the PUCO considers whether the stipulation is the product of serious bargaining among capable, knowledgeable parties. As part of this review, the PUCO has long considered the diversity of the signatory parties.[24] For example, in AEP Ohio's 2011 Distribution Investment Rider ("DIR") case, the PUCO

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[21] OCC Ex. 13 (Lanzalotta Testimony) at 5, n. 7.

[22] Compare AEP Ohio Ex. 2, Attachment A at 8 to AEP Ohio Ex. 1 (Osterholt Direct Testimony), Exhibit SSO-1 at 8. *See also* Tr. Vol. I at 59.

[23] *See* OCC Ex. 13 (Lanzalotta Testimony) at 18.

[24] *See, e.g., In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company*, Case No. 84-1187-EL-UNC, Opinion and Order (November 26, 1985), 1985 Ohio PUC LEXIS 9, 71 P.U.R.4th 140; *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Revised Code Section 4929.11 of a Tariff to Recover Conservation Expenses and Decoupling Revenues*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007) at 15; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, et al., Opinion and Order (December 14, 2011) at 9.

stated that "the signatory parties represent a variety of diverse interests, including the Companies, residential customers and consumer advocacy groups, industrial and commercial customers, environmental advocacy groups, and Staff."[25] In fact, the PUCO has touted the diversity of signatory parties to a stipulation.[26]

Because, absent approval of the Global Settlement as filed in a final appealable order, the Settlement in this case unfairly allocates gridSMART Phase 2 costs to residential consumers, the diversity of the signatory parties to the Settlement is a significant issue in this case. The Settlement does not represent a diversity of interests because it was not signed by any representative of residential customers, who will pay more than 60 percent of the costs of Phase 2 deployment unless the Global Settlement is approved as filed.[27] Only OCC is the statutory representative of Ohio's residential customers,[28] and OCC declined to join the Settlement. Moreover, Ohio Partners for Affordable Energy ("OPAE") – which advocates for affordable energy policies for low and moderate income Ohioans[29] – also did not sign the Settlement.

The PUCO's Order did not address that the signatories to the Settlement did not include representatives of residential consumers. The pre-eminent issue in this proceeding is the charges to be imposed upon residential consumers from Phase 2 outweigh the benefits that residential consumers will receive. Thus, the PUCO should

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[25] Case No. 11-351-EL-AIR, Opinion and Order at 9.

[26] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) at 43.

[27] OCC Ex. 13 (Lanzalotta Testimony) at 4-5.

[28] R.C. 4911.02.

[29] *See* OPAE Motion to Intervene (October 18, 2013), Memorandum in Support at 1.

have explained how it could approve the Settlement given that no signatory parties represent residential customers. This violates R.C. 4903.09. If the PUCO does not approve the Global Settlement as filed in a final appealable order – so that Phase 2 costs are reallocated in more equitable manner for residential consumers – the PUCO should modify the Order to reallocate the costs as provided in the Global Settlement.

C. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because residential consumers assume all the financial risks from Phase 2 deployment up-front, and would pay far more for Phase 2 deployment than they would realize in operational benefits.

If the Global Settlement is not approved as filed in a final appealable order, the Order in this case unreasonably misaligns Phase 2 costs and benefits, to the detriment of residential consumers. Without the reallocation of costs in the Global Settlement, residential consumers would pay an unfair proportion of Phase 2 costs. Under the Settlement in this case, for example, residential customers would pay 62.4 percent of the Phase 2 costs and non-residential customers would pay 37.6 percent of the costs.[30] AEP Ohio would begin collecting these costs from customers from the moment its Phase 2 tariff becomes effective. Thus, residential consumers would likely begin paying for Phase 2 costs even before the project has begun, and certainly before benefits of Phase 2 start accruing to them.[31]

The record in this case shows that the vast majority of Phase 2 benefits result from improved reliability.[32] Reliability benefits make up 77 percent of the claimed cash

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[30] OCC Ex. 13 (Lanzalotta Testimony) at 21.

[31] The $400,000 operational savings credit would not be included in the Phase 2 rider calculations until the fourth quarter of the first year of Phase 2 deployment. Stipulation at 10.

[32] *See* AEP Ohio Ex. 1 (Osterholt Direct Testimony), Exhibit SSO-1 at 9.

view total benefits, and 76 percent of the net present value view benefits.[33] Yet, nearly all reliability benefits – 98.4 percent – accrue to commercial and industrial customers.[34] Residential consumers would receive only 1.6 percent of the Phase 2 reliability benefits.[35]

Most of the claimed benefits for residential customers from the Settlement would come from operations and maintenance and from energy/capacity.[36] But even then, residential customers would receive only $272 million in total benefits over the 15-year period.[37] This is approximately only 19 percent of the total benefits for Phase 2.[38]

Absent the Global Settlement's cost reallocation, residential customers could pay as much as $322 million in Phase 2 costs, but receive only $272 million in benefits.[39] Thus, the costs to residential customers could exceed their benefits by $50 million.[40] The allocation would result in a negative benefit/cost ratio for residential customers.[41] This is unreasonable, and does not benefit consumers or the public interest. Unless the Global Settlement as filed is approved in a final appealable order – so that Phase 2 costs are reallocated more equitably for residential consumers – the PUCO should modify the Order in this case to adopt the reallocation of costs as provided in the Global Settlement.

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[33] OCC Ex. 13 (Lanzalotta Testimony) at 23.

[34] *Id.* at 24, Table 3.

[35] *Id.*

[36] *Id.* at 27, Table 5.

[37] *Id.*

[38] *Id.* Mr. Lanzalotta explained that the residential customer class's share of the total benefits, $272 million divided by $1.426 billion equals 0.191, or about 19%.

[39] *Id.*

[40] *Id.* at 28.

[41] *Id.*

D. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because it allows costs for Volt-Var Optimization to be collected through the gridSMART 2 rider instead of the Distribution Investment Rider, as directed by the PUCO, which would unreasonably increase consumers' electric bills.

If the Global Settlement as filed is not approved in a final appealable order, the Order in this case would unreasonably allow VVO-related costs to be collected through the wrong rider. In AEP Ohio's second electric security plan case, the PUCO ruled that costs associated with VVO should be collected through AEP Ohio's DIR.[42] To protect consumers, the PUCO capped the costs they must pay through the DIR.[43]

The Settlement, however, would allow the Phase 2 costs of VVO to be collected from consumers through the uncapped gridSMART Phase 2 rider, not through the capped DIR.[44] This would mean that AEP Ohio's residential consumers would pay more for their electric service.

This is important because residential consumers' bills have increased substantially since 2009 due to the various riders AEP Ohio has implemented through the years. For example, in May 2016 the average electric bill for residential customers using 750 kWh in AEP Ohio's Columbus Southern Power rate zone was $103.93.[45] But in May 2009, the average bill for a Columbus Southern Power residential customer using 750 kWh was

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[42] *See* OCC Ex. 13 (Lanzalotta Testimony) at 19, citing *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al, Opinion and Order (August 8, 2012) at 62.

[43] *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, Opinion and Order (February 25, 2015) at 47. Customers pay no more than $146.2 million in 2016, $170 million in 2017, and $103 million for the first five months of 2018 through that rider.

[44] *See* Joint Ex. 1 at 9.

[45] OCC Ex. 21 (Williams Testimony) at 14.

$80.65.[46] That's $23.28 more than seven years earlier, an increase of 28.9 percent. In addition, in May 2016 the average electric bill for residential customers in AEP Ohio's Ohio Power rate zone who use 750kWh was $107.19.[47] For an Ohio Power residential customer using 750 kWh the average bill was $63.90 in May 2009.[48] That's an increase of $43.29 – 67.7 percent more – in seven years. Having consumers pay even more for Phase 2 VVO costs does not benefit the consumers or the public interest.

The Global Settlement helps ease the burden on consumers. Under the Global Settlement, residential consumers' monthly bills would *decrease*, not increase.[49] This would counter the effect of collecting VVO costs from consumers through the wrong rider. Thus, in order to make the Order in this case reasonable, the Global Settlement as filed must be approved in a final appealable order. If the Global Settlement is not approved as filed in a final appealable order, the PUCO should modify the Order in this case so that the VVO costs are collected from consumers through the DIR.

E. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because there is no guarantee that customers will realize the technological benefits from Phase 2 deployment, even though customers will pay all the costs associated with the deployment.

There are risks that the technology underlying one or more of the Phase 2 programs will not produce the projected benefits. If the expected operational and/or investment benefits from the Phase 2 programs do not materialize, or are smaller than what was assumed in estimating expected benefits, then consumers will not receive the

[46] *Id.* at 15.

[47] *Id.* at 14.

[48] *Id.* at 15.

[49] *See* Global Settlement Order at 43.

projected Phase 2 benefits. This approach puts all the financial risk for the Phase 2 programs on consumers.

There is also a risk that by deploying the technology now, equipment could become obsolete sooner. This would advance the time that the equipment would need to be replaced in order to properly interface with the systems that provide consumers with the tools to monitor and control their usage. These benefits claimed in the Settlement cannot come to fruition if the technology becomes obsolete.

The Order in this case doubles the number of circuits that will have VVO technology installed, as compared to AEP Ohio's Application. Instead of 80 circuits, the Order would allow VVO to be installed on 160 circuits. Doubling the size of the proposed VVO installation increases the capital cost of installing VVO technology from $250,000 per distribution circuit in the Application to $334,000 per circuit. The increased cost is due, in part, to the need to use more expensive labor from outside AEP Ohio to deploy the technology on 160 circuits.[50] If the Global Settlement as filed is not included in a final appealable order, residential consumers would bear an unfair share of the cost of this deployment.

But consumers might not realize the promised benefits from the large-scale VVO deployment. The deployment is based on studies of only 17 circuits with VVO technology installed in Phase 1.[51] It is likely that AEP Ohio's 17-circuit pilot program did not result in AEP Ohio learning everything it needs to know about installing this technology and operating it system-wide.

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[50] *See* OCC Ex. 13 (Lanzalotta Testimony) at 18.

[51] *See id.* at 17.

A more moderate sized deployment of VVO would have permitted AEP Ohio to learn more about installing and operating the technology.[52] A less ambitious VVO deployment could also permit AEP Ohio to use less expensive internal labor for its deployment, as was done in Phase 1. Without the benefits in the Global Settlement, the expanded VVO deployment allowed in the Order in this case could needlessly cost consumers millions of dollars.

Further, alleged reliability improvements attributed to installation of Distribution Automation Circuit Reconfiguration Outage Reduction ("DACR") technology might not occur. The data presented by Mr. Lanzalotta (provided by AEP Ohio) contradict assertions made in AEP Ohio's Application. The Application claimed that the 2013 performance of the DACR circuits as having initial results more favorable than 2012, which also was improved over the previous year.[53] AEP Ohio based its predictions of future DACR performance on the claims in its Application. But, as Mr. Lanzalotta noted, AEP Ohio's predictions were faulty. Mr. Lanzalotta's testimony also shows the Phase 1 DACR feeders, excluding major events, became less reliable over the 2013-2015 timeframe, not more reliable as AEP Ohio claimed.[54]

Without the consumer benefits found in the Global Settlement, the Order in this case would cost Ohioans more, without a guarantee that they will receive better and more reliable service. If the Global Settlement as filed is not approved in a final appealable order, the PUCO should modify the Order in this case to reduce the amount residential consumers pay by reallocating the costs as provided in the Global Settlement.

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[52] *Id.*

[53] *See* AEP Ohio Ex. 2, Attachment A at 4.

[54] OCC Ex. 13 (Lanzalotta Testimony) at 31, Table 6.

F. Absent approval of the conditions for OCC's non-opposition to the Settlement in a final appealable order, the Order in this case is unreasonable because it approves a stipulation that violates important regulatory principles and practices that would cost consumers more money.

Without the consumer benefits contained in the Global Settlement, several important regulatory principles and practices would be violated. For one, absent the Global Settlement's reallocation of Phase 2 costs, the economic justification of Phase 2 projects is discriminatory. The estimated reliability benefits, which make up more than 75 percent of the total 15-year cash benefits projected for the Phase 2 projects, accrue primarily to commercial and industrial customer classes.[55] But more than 60 percent of the costs of the Phase 2 projects are allocated to residential customers.

In addition, without the consumer benefits contained in the Global Settlement the Order would approve the Settlement even though it violates the important regulatory principle of cost causation. The web portal proposed to be used by competitive retail electric service providers ("Marketers") is there only because they need access to customer information in order to offer and provide their time-of-use ("TOU") products to customers.[56] AEP Ohio witness Osterholt stated that the data portal provides Marketers "an important tool" in identifying which customers are "the best candidates for TOU rates."[57] Yet, the Marketers will not pay any of the costs associated with this tool. Instead, the costs will be borne by residential customers[58] – even those who are not are

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[55] *See id.* at 8.

[56] *See* Direct Energy Ex. 1 (Ringenbach Testimony) at 4, 5 (where she notes that the products and services planned by Direct Energy would be available when Phase 2 is complete and the revised AMI portal is available to offer interval data).

[57] AEP Ohio Ex. 1 (Osterholt Direct Testimony) at 22. *See also* Joint Ex. 1 at 9 (referring to the "CRES AMI interval data portal").

[58] *See* Tr. Vol. I at 78.

not on a TOU rate or cannot even participate in a TOU program.[59] This is unjust and unreasonable.

The Order needs the consumer benefits found in the Global Settlement to ensure that the Settlement in this case does not violate important regulatory principles and practices. If the Global Settlement as filed is not approved in a final appealable order, the PUCO should modify the Order in this case to adopt the reallocation of costs as provided in the Global Settlement.

IV. CONCLUSION

The Global Settlement contains important consumer benefits and protections that are lacking in the Settlement in this case. The Global Settlement reallocates Phase 2 costs in a more equitable manner for consumers. And it retains the annual prudency audit and a review of the operational cost savings credit for consumers. Thus, the Global Settlement as filed is the lynchpin for the Order in this case to be lawful and reasonable.

The Global Settlement Order should remain intact in a final appealable order. Therefore, it is out of an abundance of caution in order to protect consumers' rights, OCC files this Application for Rehearing of the PUCO's Order. Again, if the Global Settlement as filed is approved in a final appealable order, OCC will withdraw this Application for Rehearing. However, if the PUCO alters the Global Settlement so that either of the consumer benefits and protections is reduced, the PUCO should modify the Order in this case as discussed herein.

[59] Tr. Vol. II at 249.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by electronic mail to the persons listed below, on this 3rd day of March 2017.

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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 Etter, Terry L.