

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

I. INTRODUCTION

On March 3, 2017, the Office of the Ohio Consumers’ Counsel (“OCC”) filed an application for rehearing of the Commission’s February 1, 2017 Opinion and Order in this case. As OCC makes clear, it has filed the application for rehearing solely to preserve the arguments raised therein until the Commission’s February 23, 2017 Opinion and Order approving the Joint Stipulation and Recommendation filed in Case Nos. 10-2929-EL-UNC, *et al.* (“Global Settlement Order”) becomes a final appealable order. *See* OCC Appl. for Reh’g. at 1-3. After the Global Settlement Order becomes final and appealable, OCC has committed to withdraw its application for rehearing in this case.

To preserve its position on the issues that OCC has raised, Ohio Power Company (“AEP Ohio” or the “Company”) submits this memorandum contra OCC’s application for rehearing. As set forth below, the Commission correctly approved the Stipulation and Recommendation (“Stipulation”) that AEP Ohio, Commission Staff, and several intervening parties submitted in this case. OCC’s application for rehearing largely repeats the arguments that OCC advanced in its testimony and post-hearing briefs, and which the Commission already considered, and

otherwise lacks merit. The Commission, therefore, should affirm its Opinion and Order and deny OCC's application for rehearing in its entirety.

II. LAW AND ARGUMENT

In considering the Stipulation in this case, the Commission applied the three-prong test that it has established to determine whether a stipulation is reasonable and should be adopted and correctly found that the Stipulation (1) is the product of serious bargaining among capable, knowledgeable parties; (2) as a package, benefits ratepayers and is in the public interest; and (3) does not violate any important regulatory principle or practice. OCC has offered nothing on rehearing that warrants reconsideration or modification of that determination.

A. The Commission correctly found that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Commission correctly found that the Stipulation satisfies the first prong of the three-prong test. Opinion and Order at 19-20. On rehearing, OCC incorrectly contends that the Commission's determination in that regard lacked adequate citation to the record, and OCC repeats its misplaced assertion that this prong requires a stipulation to satisfy a "diversity of interest" standard that OCC has articulated. OCC Appl. for Reh'g. at 3-7. Neither argument has merit.

1. The Opinion and Order's discussion supporting the Commission's conclusion that the Stipulation is the product of serious bargaining among capable, knowledgeable parties satisfies R.C. 4903.09.

OCC first argues that the Opinion and Order does not satisfy R.C. 4903.09's requirement that the Commission set forth "the reasons prompting the decisions [it] arrived at" because the Commission allegedly "did not tie the record to its conclusion" that the Stipulation satisfies the first prong of the applicable three-prong test. *Id.* at 3-4. OCC's position, however, overlooks the

significant record evidence the Commission considered, and specifically discussed, in reaching that conclusion. *See* Opinion and Order at 17-18.

In its Opinion and Order, the Commission recognized that Staff witness Schweitzer and AEP Ohio witness Moore provided testimony supporting the first prong of the three-part test. Indeed, as the Commission noted, Mr. Schweitzer testified that the Signatory parties were “a part of shaping” the Stipulation’s terms over a period of more than two years, that each Signatory Party employs experts in the industry, and that each party is represented by experienced and competent counsel knowledgeable in regulatory matters who regularly participate in Commission proceedings. *Id.* at 18, citing Staff Ex. 1 at 2-3. Ms. Moore testified similarly, also pointing out several changes in the Stipulation compared to AEP Ohio’s original application that resulted from comments, discovery, and settlement negotiations, which also demonstrate that serious bargaining occurred. *Id.* at 18-19, citing AEP Ohio Ex. 3 at 5-8, Tr. II at 301, 305. Finally, the Commission recognized that the Stipulation in this case included several provisions from the Company’s PPA case settlement that were the subject of considerable compromise and negotiation amongst the same capable, knowledgeable parties in that proceeding. *Id.* at 19, citing Staff Br. at 4-6.

The Commission’s Opinion and Order clearly and concisely set forth “the reasons prompting” its decision that the Stipulation satisfies the first prong of the applicable test in satisfaction of R.C. 4903.09. OCC’s arguments to the contrary are misplaced, and the Commission should disregard them.

2. R.C. 4903.09 does not require that the Signatory Parties have a “diversity of interests,” but if it did, that requirement would be met here.

As it did in its post-hearing briefs and its testimony in this case, OCC argues that the Commission should require that the Stipulation represent a diversity of interests that must include a representative of residential customers. OCC Appl. for Reh’g. at 6-7; *see also* OCC Br. at 4-6, OCC Reply Br. at 5-9. The Commission should decline to consider this argument a second time on rehearing. Moreover, as AEP Ohio previously explained, although the Commission has discussed diversity of interests in the context of evaluating a stipulation – and did so here, *see* Opinion and Order at 19 – neither statute nor any Commission precedent has applied a diversity of interests requirement as a condition to adopting a settlement. *See* AEP Ohio Reply Br. at 2. In fact, the Commission has repeatedly *declined* to require OCC’s approval of a stipulation as a prerequisite to Commission approval. *See id.*; *see also* Opinion and Order at 19 (repeating that “there is no requirement that any particular party be a signatory to satisfy [the] first prong” of the stipulation test). Thus, it is simply not true that the Commission applies a “diversity of interests” standard to stipulations.

Nonetheless, in approving the Stipulation after noting that it considered the diversity of the negotiating parties here, the Commission implicitly recognized that the Stipulation includes multiple parties that represent residential customers among the broad coalition of customer groups and interests that support it. Opinion and Order at 19-20; *see also* AEP Ohio Br. at 7-8 (demonstrating that the Stipulation includes multiple parties that represent residential customers). The Commission also correctly found that no class of customers was excluded from settlement negotiations in this case, and that OCC and OPAE, in addition to the Signatory Parties that represent residential customers, may fully participate in the GS2 Collaborative that will be

created as result of the Stipulation. Opinion and Order at 20. For these reasons, OCC's contention that residential customers must sign a settlement in order for it to satisfy the first prong of the settlement test is misplaced, as is OCC's position that residential customer interests were not represented by the Signatory Parties or addressed by the Commission here.

B. The Commission correctly found that the Stipulation, as a package, benefits ratepayers and the public interest.

In its Opinion and Order, the Commission properly determined that the Stipulation satisfied the second prong of its three-prong test and benefits ratepayers and the public interest. Opinion and Order at 26. On rehearing, OCC repeats previous challenges regarding the gridSMART Phase 2 Rider's rate design, AEP Ohio's recovery of Volt/VAR optimization ("VVO") costs through the rider, and the benefits customers will realize as a result of gridSMART Phase 2 deployment. OCC Appl. for Reh'g. at 7-12. OCC raised each of these arguments in its post-hearing briefs, and it has offered nothing new in support of its position now.

1. The Commission properly approved the cost allocation agreed upon in the Stipulation.

OCC repeats its argument that the rate design for the recovery of costs under the gridSMART Phase 2 Rider is unreasonable, claiming that residential customers pay an unfair proportion of Phase 2 costs in exchange for a small percentage of benefits. OCC Appl. for Reh'g. at 7-8; *see also* OCC Br. at 16-18, OCC Reply Br. at 14-15. As an initial matter, as AEP Ohio previously demonstrated, OCC's position regarding the size of the benefit residential customers are likely to receive from the Stipulation is ill-conceived and based upon flawed calculations. *See* AEP Ohio Br. at 26-28.

Beyond its flawed calculations, OCC has offered no support for its rate design argument. As AEP Ohio previously explained, the Stipulation merely provides that Phase 2 costs will continue to be allocated and recovered from customers in the same manner as gridSMART Phase 1 costs. *See* AEP Ohio Br. at 25-28; AEP Ohio Reply Br. at 19. The Commission has repeatedly recognized that it is reasonable to allocate gridSMART costs as a percentage of base distribution rates and recover them through a fixed monthly per bill charge. *See* Opinion and Order at 25; AEP Ohio Br. at 25-26. There is no reason to deviate from that decision here.

2. The Commission properly approved the recovery of VVO costs through the gridSMART Phase 2 Rider.

OCC also repeats its flawed argument that VVO costs should be recovered through AEP Ohio's Distribution Investment Rider ("DIR") instead of through the gridSMART Phase 2 Rider. OCC Appl. for Reh'g. at 9-10; *see also* OCC Br. at 18-21. As AEP Ohio previously explained, however, that position is based upon an incorrect reading of the Commission's *ESP II* Opinion and Order and, if accepted, would unnecessarily and inappropriately deviate from well-established precedent authorizing the recovery of VVO costs through the gridSMART Rider. *See* AEP Ohio Reply Br. at 19-21. VVO has been and continues to be a critical part of AEP Ohio's gridSMART program, with an additional \$210 million in customer bill savings expected from the Phase 2 VVO deployment. For these reasons, as set forth in AEP Ohio's reply brief, the Commission should decline to alter the collection of VVO costs on rehearing.

3. The evidentiary record supporting the Stipulation shows that customers will realize substantial benefits from gridSMART Phase 2, and OCC's criticisms of that record lack merit.

The record in this case continues to refute OCC's repeated assertion that there is "no guarantee that customers will realize the technological benefits from Phase 2 deployment." OCC Appl. for Reh'g at 10-12; *see also* OCC Br. at 23-26. The Commission's Opinion and Order

correctly recognized that Phase 2 deployment benefits ratepayers. Opinion and Order at 26. The record demonstrates that the benefits of the gridSMART Phase 2 program include more than \$1 billion in customer value attributable to reduced outages resulting from distribution automation circuit reconfiguration (“DACR”) technology deployment, \$210 million in reduced consumption and capacity requirements from VVO deployment, and \$200 million in operational savings from advanced metering infrastructure (“AMI”) deployment. Opinion and Order at 21, citing AEP Ohio Ex. 1; *see also* AEP Ohio Reply Br. at 25.

AEP Ohio already fully responded to each of OCC’s specific arguments on the issues of operational savings and the benefits of the VVO and DACR deployments in AEP Ohio’s reply post-hearing brief. *See* AEP Ohio Reply Br. at 25-28. AEP Ohio relies upon those responses here. OCC has not presented any basis to question gridSMART Phase 2’s demonstrated customer benefits or for the Commission reverse its correct determination that the Stipulation satisfies the second prong of the three-prong test.

C. The Commission correctly found that the Stipulation does not violate any important regulatory principle or practice.

Finally, OCC again reiterates its previous contention that the Stipulation violates state energy policies. *See* OCC Appl. for Reh’g. at 13-14; *see also* OCC Br. at 26-27. AEP Ohio fully responded to each of those arguments in its post-hearing reply brief. *See* AEP Ohio Reply Br. at 31-32. As AEP Ohio has explained, and the Commission recognized in approving the Stipulation, *see* Opinion and Order at 28, the gridSMART Phase 2 deployment will not violate any regulatory principle or practice. AEP Ohio Reply Br. at 32. Rather, it furthers numerous state policies, including the express statutory policy supporting development of “smart grid programs” and “implementation of advanced metering infrastructure,” which are the foundation for AEP Ohio to provide its customers the ability better manage their energy usage and reduce

their energy costs. *Id.* The gridSMART Phase 2 deployment that the Commission has approved is a substantial step toward the Commission's – and the Company's – shared goal of modernizing the distribution grid and providing an enhanced experience for customers.

III. CONCLUSION

For the foregoing reasons, in event OCC's application for rehearing is not rendered moot by the Commission's approval of the Global Settlement and/or withdrawn by OCC, the Commission should deny OCC's application for rehearing and affirm the Commission's February 1, 2017 Opinion and Order 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 *Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Rehearing* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 13th day of March, 2017, via electronic transmission.

/s/ Steven T. Nourse
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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