

**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) Case No. 16-1852-EL-SSO
Pursuant to R.C. 4928.143, in the Form of)
an Electric Security Plan.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 16-1853-EL-AAM
Accounting Authority.)

**SUPPLEMENTAL TESTIMONY
OF
DAVID J. EFFRON**

**IN OPPOSITION TO THE
JOINT STIPULATION AND RECOMMENDATION**

On Behalf of
The Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

October 11, 2017

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On Behalf of the Office of the Ohio Consumers' Counsel
PUCO Case No. 16-1852-EL-SSO, et al.*

1 **I. INTRODUCTION**

2

3 **A. QUALIFICATIONS**

4

5 ***Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.***

6 ***A1.*** My name is David J. Effron. My address is 12 Pond Path, North Hampton, New
7 Hampshire 03862.

8

9 ***Q2. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CASE?***

10 ***A2.*** Yes. I filed Direct Testimony in this case on May 2, 2017. My experience and
11 qualifications are included in that Direct Testimony.

12

13 **B. PURPOSE OF TESTIMONY**

14

15 ***Q3. ON WHOSE BEHALF ARE YOU TESTIFYING?***

16 ***A3.*** I am testifying on behalf of the Office of the Ohio Consumers' Counsel ("OCC").

17

18 ***Q4. WHAT IS THE PURPOSE OF THIS YOUR SUPPLEMENTAL TESTIMONY?***

19 ***A4.*** On August 25, 2017, Ohio Power Company ("AEP Ohio" or "the Utility") filed a
20 Joint Stipulation and Recommendation ("the Settlement") with the Public Utilities
21 Commission of Ohio ("PUCO"), which was signed and/or supported by certain
22 parties to this case. Included in the Settlement is a provision continuing the
23 Distribution Investment Rider ("DIR") through the extension of the ESP term

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1 through May 31, 2024. The purpose of this testimony is to address the inclusion of
2 the DIR in the Settlement as it relates to the criteria used by the PUCO to evaluate
3 settlements.

4

5 ***Q5. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE CRITERIA USED***
6 ***BY THE PUCO TO EVALUATE STIPULATIONS AND SETTLEMENTS.***

7 ***A5.*** I understand that the PUCO uses the following criteria to evaluate the
8 reasonableness of proposed stipulations/settlements:

- 9 1. Is the proposed stipulation a product of serious bargaining among
10 capable, knowledgeable parties?
- 11 2. Does the proposed stipulation, as a package, benefit customers and
12 the public interest?
- 13 3. Does the proposed stipulation violate any important regulatory
14 principle or practice?

15

16 In addition to these three criteria, the PUCO also routinely considers whether the
17 parties to the stipulation represent diverse interests.

18

19 ***Q6. WOULD CONTINUATION OF THE DIR BE INCONSISTENT WITH ANY***
20 ***OF THESE CRITERIA?***

21 ***A6.*** Yes. Based on actual experience, continuation of the DIR will not benefit
22 customers and the public interest. In addition, providing utility service at the

1 lowest reasonable cost is an important regulatory principle, and the existence of the
2 DIR has diminished incentives for the Utility to do so.

3
4 **II. DISTRIBUTION INVESTMENT RIDER**

5
6 ***Q7. DESCRIBE AEP OHIO'S DISTRIBUTION INVESTMENT RIDER.***

7 ***A7.*** The PUCO originally approved AEP Ohio's current DIR as part of the Utility's
8 ESP II in Case No. 11-346-EL-SSO, et al.¹ The purpose of the DIR is to collect
9 the incremental revenue requirement associated with increases in net distribution
10 plant since August 31, 2010 (the date certain in Case Nos. 11-351-EL-AIR and 11-
11 352-EL-AIR, the most recent base distribution rate cases at the time of the
12 implementation of the DIR).

13
14 ***Q8. WHAT ARE THE COMPONENTS OF THE DIR REVENUE***
15 ***REQUIREMENT?***

16 ***A8.*** There are three components of the DIR revenue requirement. The first component
17 is the return on the increase in net rate base, defined as the increase in gross
18 distribution plant in service less the increase in related accumulated depreciation
19 and accumulated deferred income taxes. The second component is the
20 depreciation on additions to distribution plant in service. The third component is
21 the property taxes on the additions to distribution plant in service.

¹ *In the Matter of Columbus Southern Power and Ohio Power Company, Inc.* Case No. 11-346-EL-SSO, Opinion and Order at 42-47, (August 8, 2012).

1 ***Q9. WHAT DO THE ACCUMULATED DEFERRED INCOME TAXES***
2 ***DEDUCTED FROM PLANT IN SERVICE IN THE DETERMINATION OF***
3 ***THE DIR RATE BASE REPRESENT?***

4 ***A9.*** Accumulated deferred income taxes (or “ADIT”) represent the cumulative effect of
5 taxable temporary differences, in particular the income tax effect of accelerated
6 depreciation and other plant related income tax deductions. The excess tax of
7 accelerated depreciation over book depreciation and other plant related deductions
8 reduce income taxes currently payable. However, the reduction to current income
9 taxes is not treated as a permanent tax savings; rather it is treated as deferred tax
10 liability (a credit on the balance sheet) to be paid in the future when the
11 depreciation “turns around” and the book depreciation is greater than the tax
12 depreciation. Because the ADIT represents non-investor supplied funds, the
13 balance of ADIT is deducted from plant in service in the determination of the net
14 rate base.

15
16 In addition to the tax accelerated depreciation available under the modified
17 accelerated cost recovery system (“MACRS”), available plant related tax
18 deductions in recent years have also included bonus depreciation (50% of
19 qualifying plant investment in 2016, for example) and what is often referred to as
20 “capital repairs” income tax deductions. Tax savings related to these other plant
21 related accelerated tax deductions also affect the balance of ADIT.

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1 ***Q10. WHAT ARE THE CAPITAL REPAIRS INCOME TAX DEDUCTIONS?***

2 ***A10.*** In March 2008, the Internal Revenue Service (“IRS”) issued proposed regulations
3 expanding the current deductibility of certain expenditures as repairs. In
4 September 2009, the IRS issued Revenue Procedure 2009-39, clarifying the
5 procedures for taxpayers to obtain consent for changes in the method of accounting
6 for which expenditures are currently deductible under Internal Revenue Code
7 Section 162 and which expenditures must be capitalized under Internal Revenue
8 Code Section 263. Revenue Procedure 2009-39 clarified that consent to
9 implement such changes in accounting would be automatic. IRS Revenue
10 Procedure 2011-43 provided “safe harbor” guidance with regard to the deduction
11 of expenditures as repairs.

12
13 In September 2013, the IRS adopted final regulations providing guidance
14 regarding the deduction and capitalization of expenditures related to tangible
15 property. The effect the final regulations issued in 2013 was to formalize the
16 expansion of the treatment of certain expenditures, which are capitalized on
17 taxpayers’ books of account, as current deductions for income tax purposes.

18
19 ***Q11. ARE THE INCOME TAX BENEFITS AVAILABLE FROM THE INCREASED***
20 ***CURRENT DEDUCTIONS FOR REPAIR ALLOWANCES MATERIAL?***

21 ***A11.*** Yes. There are actually two components to this tax accounting change. First, the
22 current deduction for the repair allowance is increased on a going forward basis
23 (i.e., in the year that the change is implemented and subsequent years). Second, a

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1 “catch-up” deduction is also allowed for the cumulative effect of expenditures that
2 had been capitalized in prior years but would be currently deductible under the
3 new accounting method. This “catch up” deduction is also referred to as a Section
4 481(a) adjustment, based on the Internal Revenue Code section that authorizes
5 such catch-up adjustments for accounting changes.

6
7 ***Q12. HAS AEP OHIO IMPLEMENTED THE TAX ACCOUNTING CHANGES***
8 ***THAT WOULD ALLOW IT TO TAKE ADVANTAGE OF THE CAPITAL***
9 ***REPAIRS INCOME TAX DEDUCTIONS?***

10 ***A12.*** No. Although the change in tax accounting would decrease its income taxes
11 currently payable and provide significant cash flow benefits that would be
12 reflected as reductions to the DIR rate base and accordingly reduce the DIR
13 revenue requirement, AEP Ohio has not been availing itself of the capital repairs
14 income tax deductions.

15
16 ***Q13. TO YOUR KNOWLEDGE, HAVE OTHER UTILITY COMPANIES MADE***
17 ***THE RELEVANT TAX ACCOUNTING CHANGES TO TAKE ADVANTAGE***
18 ***OF THE CAPITAL REPAIRS DEDUCTIONS ?***

19 ***A13.*** Yes. In recent years, I have participated in rate cases and other utility matters in
20 Illinois, Maryland, Massachusetts, Pennsylvania, and Rhode Island. Electric
21 utilities in each of those jurisdictions have implemented changes in accounting for
22 the repair allowance and been availing themselves of the capital repairs income tax
23 deductions. Many of those utilities implemented the changes in 2011 or earlier.

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1 ***Q14. WHAT ABOUT THE OTHER ELECTRIC UTILITIES IN OHIO?***

2 ***A14.*** The FirstEnergy Companies (Ohio Edison Company, The Cleveland Electric
3 Illuminating Company, and the Toledo Edison Company) commenced recording
4 repairs deductions in 2009 (Attachment DJE-1). The Dayton Power and Light
5 Company first claimed a repairs deduction in 2008 (Attachment DJE-2). Based on
6 my review its FERC Form 1 filings, Duke Energy Ohio, Inc. has also been taking
7 the capital repairs deductions in recent years.

8

9 ***Q15. CAN YOU PROVIDE US WITH AN IDEA OF WHAT THE VALUE OF THE***
10 ***CAPITAL REPAIRS DEDUCTIONS MIGHT BE TO AEP OHIO?***

11 ***A15.*** Yes. In Case No. 16-0021-EL-RDR, the Utility stated it is going to make the
12 relevant accounting method change with the 2017 tax return (Attachment DJE-3).
13 The Utility also stated that the estimated Section 481 “catch up” adjustment for
14 2017 is approximately \$120 million, and the estimated 2017 current year deduction
15 is approximately \$20 million (Attachment DJE-4). After allocation to distribution,
16 the Section 481 deduction is approximately \$104.5 million and the 2017 current
17 year deduction is approximately \$18.6 million. The effect of these tax deductions
18 together will be to increase the balance of ADIT by approximately \$43 million.
19 This reduction to the DIR rate base will reduce the DIR revenue requirement by
20 approximately \$4.5 million. However, it is important to note that the Section 481
21 deduction was only calculated for the years 2014, 2015, and 2016. Adding the
22 years prior to 2014 would increase the actual total Section 481 adjustment,
23 possibly by a material amount.

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1 **Q16. HAS THE UTILITY EXPLAINED WHY IT HAS NOT YET IMPLEMENTED**
2 **THE CAPITAL REPAIRS DEDUCTIONS?**

3 **A16.** Yes. In its Reply Comments in Case No. 16-0021-EL-RDR, AEP Ohio stated that
4 “The Company’s accounting systems at the time the Revenue Procedure [2011-43]
5 was issued did not support the level of detail needed to perform the computations
6 required by the Revenue Procedure for an ongoing implementation of the change
7 in tax accounting method.”² The Utility went on to explain that it completed an
8 update of its plant accounting software in 2015, and in 2015 and 2016 the feeder
9 systems to capture the information necessary to make the required computations
10 were also upgraded. And with those upgrades it was now in a position to
11 implement the capital repairs deductions under the safe harbor guidance under
12 Revenue Procedure 2011-43.³

13
14 **Q17. DID THE UTILITY ALSO ATTEMPT TO JUSTIFY THE DELAY IN**
15 **IMPLEMENTATION OF THE CAPITAL REPAIRS TAX DEDUCTIONS IN**
16 **ITS REPLY COMMENTS IN CASE NO. 16-0021-EL-RDR?**

17 **A17.** Yes. AEP Ohio stated that “The availability of bonus depreciation at either 50% or
18 100% acts as an offset to the benefit of claiming the tax repairs under Revenue
19 Procedure 2011-43 and lessens the favorable impact of the repair deduction. The

² Case No. 16-0021-EL-RDR, Reply Comments of Ohio Power Company, at 9 (June 5, 2017).

³ *Id.*

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1 Auditor did not find nor is there any basis for finding any actions in this area are
2 imprudent.”⁴

3
4 ***Q18. IS THIS A VALID JUSTIFICATION FOR FAILING TO TAKE ADVANTAGE***
5 ***OF THE AVAILABLE TAX REPAIRS DEDUCTIONS?***

6 ***A18.*** No. The Utility is correct that the availability of bonus depreciation lessens the
7 favorable impact of the repair deduction. However, the availability of 50% bonus
8 depreciation does not eliminate the favorable impact of the repair deduction.⁵ For
9 example, the additions to distribution plant in service in 2016 were approximately
10 \$230 million. Assuming that the available tax repairs deduction were equal to
11 30% of plant additions (which would not be unusual in my experience), then
12 absent any bonus depreciation, the repairs deduction would be \$69 million. With
13 50% bonus depreciation, the value of the repair deduction would be reduced to
14 \$34.5 million, which would in turn increase the balance of ADIT by approximately
15 \$12.1 million. Clearly, even with 50% bonus depreciation, the value of the repairs
16 deduction is not immaterial.

⁴ *Id.*, at 10.

⁵ Bonus depreciation of 100% does negate the value of the repairs deduction, but 100% bonus depreciation was only temporarily available for approximately 16 months.

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1 I find the Utility's statement denying any imprudence to be a bit curious, as, to my
2 knowledge, no party had explicitly asserted in its comments in Case No. 16-0021-
3 EL-RDR that there had been any imprudence in this particular area.⁶

4
5 ***Q19. IS THERE ANOTHER POSSIBLE UNDERLYING REASON WHY THE***
6 ***UTILITY HAS NOT YET TAKEN ADVANTAGE OF THE CAPITAL REPAIRS***
7 ***DEDUCTIONS?***

8 ***A19.*** Yes. The existence of the DIR diminished the Utility's incentive to do so.

9
10 ***Q20. PLEASE EXPLAIN.***

11 ***A20.*** Under the DIR, the Utility collects the revenue requirement effect of increases to
12 distribution plant in service since August 31, 2010. One of the components of the
13 DIR revenue requirement is the return on the increase in distribution plant net of
14 the depreciation reserve and ADIT. The capital repairs deductions would serve to
15 increase the balance of ADIT and reduce the DIR rate base and the return
16 component of the DIR revenue requirement accordingly. Under the workings of
17 the DIR, any benefits of the capital repairs deductions would be automatically
18 passed on to customers by reducing the DIR revenue requirement. Thus, with the
19 DIR in effect, there was no real incentive to implement the capital repairs
20 deductions, as doing so would provide little benefit to investors.

⁶ The OCC did, however, question the prudence of certain of the Company's DIR investments in its comments.

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1 In my Direct Testimony, I described potential problems with riders that allow
2 regulated utilities to recover designated costs from customers outside of the
3 context of traditional base rate cases.⁷ One of the potential problems that I cited was
4 that such “mechanisms tend to either reduce or eliminate incentives to control costs,
5 or can potentially result in incentives that have the perverse effect of encouraging
6 uneconomic choices by the utilities.”⁸ The Utility’s failure to take advantage of the
7 available capital repairs deductions is an example of just such a problem.

8
9 ***Q21. HOW SHOULD THIS BE WEIGHED IN EVALUATION OF THE***
10 ***SETTLEMENT?***

11 ***A21.*** The Settlement includes a provision continuing the Distribution Investment Rider
12 through the extension of the ESP term (i.e., May 31, 2024). During the time that
13 the DIR has been in effect, AEP Ohio failed to mitigate the DIR revenue
14 requirement by taking advantage of the capital repairs deductions. Based on this
15 experience, continuation of the DIR will not benefit customers and the public
16 interest. Further, the existence of the DIR has diminished incentives for the Utility
17 to provide utility service at the lowest reasonable cost, an important regulatory
18 principle.

19
20 ***Q22. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?***

21 ***A22.*** Yes.

⁷ Effron Direct Testimony, at 4.

⁸ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Supplemental Testimony of David J. Effron on Behalf of the Office of the Ohio Consumers' Counsel* was served via electronic transmission to the persons listed below on this 11th day of October 2017.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

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OCC Set 3

Case No. 15-1739-EL-RDR
Annual Compliance Audit of Delivery Capital Recovery Rider (DCR) of
Ohio Edison Company, The Cleveland Electric Illuminating Company,
and the Toledo Edison Company

RESPONSES TO REQUEST

**OCC Set 3
– INT-8** Referring to the December 31, 2015 DCR Filing, Revenue Requirement Calculation, Page 11, do the ADIT balances as of 11/30/2015 include the effect of repairs deductions pursuant to §Treas. Reg. 1.263(a)-3 and related safe harbor guidance under Revenue Procedure 2011-43? If the response is affirmative, please explain when the Companies commenced recording such repairs deductions, and provide the deferred taxes recorded in each year since the Companies began recording the relevant repairs deductions.

Response: Yes. The Companies commenced recording repairs deductions in 2009 pursuant to Treas. Reg 1.263(a)-3 and related safe harbor guidance under Revenue Procedure 2011-43. The requested analysis does not exist.

INT-293. Referring to Exhibit RJA-1, does the balance of Accumulated Deferred Income Taxes on Distribution Plant as of September 30, 2015 include the effect of repairs deductions pursuant to §Treas. Reg. 1.263(a)-3 and related safe harbor guidance under Revenue Procedure 2011-43? If the response is affirmative, please explain when the Company commenced recording such repairs deductions, and provide the deferred taxes recorded in each year since the Company began recording the relevant repairs deductions.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 6 (calls for narrative answer), 9 (vague and undefined), 11 (calls for a legal conclusion), 12 (seeks information that DP&L does not know at this time), 13 (mischaracterization). DP&L further objects that to the extent OCC is seeking deferring income taxes associated with "repairs" since 2008, the company does not track that information in the ordinary course of business and would be unduly burdensome to provide. Subject to all general objections, DP&L states that the Accumulated Deferred Income Taxes on Distribution Plant as of September 30, 2015 include the effect of repairs deductions pursuant to §Treas. Reg. 1.263(a)-3 and related safe harbor guidance under Revenue Procedure 2011-43. The Company first claimed a repairs deduction in 2008. The Company does not separately track deferred taxes associated solely with the annual repairs deduction amounts in the ordinary course of business.

Witness Responsible: Robert Adams

**OHIO POWER COMPANY'S RESPONSE TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
DISCOVERY REQUEST
PUCO CASE 16-0021-EL-RDR
SECOND SET**

INTERROGATORY

INT-2-007 Referring to the Reply Comments of Ohio Power Company, Case No. 16-0021-EL-RDR, June 5, 2017, Page 9, if the Company is now in a position to implement the "safe harbor" method described in Revenue Procedure 2011-43, will the Company change its tax accounting method to adopt the "safe harbor" election on the 2016 tax return? If not, why not?

RESPONSE

The Company is going to make the accounting method change with the 2017 tax return. In order to meet the "Safe Harbor" requirements under Revenue Procedure 2011-43 the company had to make sure it could meet those requirements on an ongoing basis. With the changes in the plant accounting software and the modifications to the "feeder systems" the company can, going forward, meet the requirements imposed by the Revenue Procedure. With all the required software and procedural changes in place by early 2017 the Company is now in a position to change its method of tax accounting for T&D repairs.

**OHIO POWER COMPANY'S RESPONSE TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
DISCOVERY REQUEST
PUCO CASE 16-0021-EL-RDR
SECOND SET**

INTERROGATORY

INT-2-010 Referring to the Reply Comments of Ohio Power Company, Case No. 16-0021-EL-RDR, June 5, 2017, Page 10, does the Company have an estimate of the value of implementing a change in tax accounting method to adopt the "safe harbor" election on the 2017 tax return? If the response is affirmative, please provide that estimate, with supporting calculations.

RESPONSE

The estimated value of the 2017 current year deduction is \$19,954,375. The estimated value of the section 481 adjustment in 2017 is \$111,960,000. Please see OCC 2-10 Attachment 1 for the computations.

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in

Case No(s). 16-1852-EL-SSO, 16-1853-EL-AAM

Summary: Testimony Supplemental Testimony of David J Efron on behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.