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 R.C. 4928.143, 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

SECOND ENTRY ON REHEARING

Entered in the Journal on August 1, 2018

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I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing of the April 25, 2018 Opinion and Order filed by Ohio Power Company d/b/a AEP Ohio, Ohio Consumers' Counsel, Retail Energy Supply Association, and Interstate Gas Supply, Inc. The Commission also denies the application for rehearing of the June 20, 2018 Entry on Rehearing filed by the Ohio Consumers' Counsel.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission authorized AEP Ohio to establish a placeholder Power Purchase Agreement (PPA) Rider and required the Company to

justify any future request for cost recovery in a separate proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 5} In Case No. 14-1693-EL-RDR, et al., the Commission modified and approved a stipulation and recommendation pertaining to AEP Ohio's proposal to populate the placeholder PPA Rider approved in the *ESP 3 Case*. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*PPA Rider Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016), Fifth Entry on Rehearing (Apr. 5, 2017). In the stipulation and recommendation, AEP Ohio agreed to file a separate application with the Commission requesting that its ESP be extended through May 31, 2024. AEP Ohio also agreed to include a number of other provisions and features in the application. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 27-30.

{¶ 6} On May 13, 2016, in the *ESP 3 Case*, AEP Ohio filed an application and supporting testimony that would, among other things, extend the term of the ESP through May 31, 2024.

{¶ 7} By Entry dated September 7, 2016, the attorney examiner directed AEP Ohio to refile its application in the above-captioned cases by September 21, 2016. On September 19, 2016, and October 25, 2016, the attorney examiner granted AEP Ohio's requests for an extension of the filing deadline to October 28, 2016, and November 23, 2016, respectively.

{¶ 8} On November 23, 2016, in the above-captioned cases, AEP Ohio filed its amended application and supporting testimony that, if approved, would modify the current ESP and extend its term. The proposed ESP would commence on June 1, 2018, and continue through May 31, 2024.

{¶ 9} A technical conference regarding AEP Ohio's application was held on December 14, 2016.

{¶ 10} By Entry dated February 7, 2017, a procedural schedule was established, including deadlines for intervention, discovery, and testimony on behalf of intervenors and Staff. The Entry also scheduled a prehearing conference to occur on May 23, 2017, and an evidentiary hearing to commence on June 6, 2017.

{¶ 11} On March 7, 2017, the attorney examiner scheduled four local public hearings, which occurred throughout AEP Ohio's service territory on April 10, 13, 17, and 25, 2017.

{¶ 12} By Entry dated March 22, 2017, numerous parties were granted intervention in these proceedings, including the Ohio Consumers' Counsel (OCC), Retail Energy Supply Association (RESA), and Interstate Gas Supply, Inc. (IGS).

{¶ 13} The prehearing conference occurred, as scheduled, on May 23, 2017.

{¶ 14} On June 6, 2017, the evidentiary hearing was rescheduled to commence on August 8, 2017, in order to afford the parties sufficient time to fully explore the possibility of reaching a resolution of some or all of the issues raised in these proceedings.

{¶ 15} On August 3, 2017, the attorney examiner granted Staff's motion for continuance, such that the evidentiary hearing was continued to a date to be determined in the future. A status conference was also scheduled for August 16, 2017.

{¶ 16} The status conference was held, as scheduled, on August 16, 2017. During the status conference, AEP Ohio indicated that the process of finalizing a settlement agreement remained ongoing.

{¶ 17} On August 25, 2017, AEP Ohio, Staff, and numerous intervenors filed a joint stipulation and recommendation (Stipulation) for the Commission's consideration, which, if approved, would resolve all of the issues raised in these proceedings.

{¶ 18} A prehearing conference was scheduled on August 28, 2017, and occurred on August 31, 2017.

{¶ 19} In order to assist the Commission in its review of the Stipulation, the attorney examiner established a procedural schedule on September 5, 2017, including an evidentiary hearing to commence on November 1, 2017, as well as deadlines for testimony supporting and opposing the Stipulation.

{¶ 20} The evidentiary hearing commenced on November 1, 2017, and concluded on November 6, 2017.

{¶ 21} Initial briefs were filed on November 29 and 30, 2017. Reply briefs were filed on December 21, 2017.

{¶ 22} On March 2, 2018, OCC filed a motion to reopen these proceedings, in light of recent federal tax changes resulting from the Tax Cuts and Jobs Act of 2017 (TCJA), as well as the issuance of the Ohio Supreme Court's decision in *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229. On March 13, 2018, AEP Ohio filed a memorandum contra OCC's motion. OCC filed a reply in support of its motion on March 20, 2018.

{¶ 23} By Opinion and Order dated April 25, 2018, the Commission approved the Stipulation, with modifications. The Commission also denied OCC's motion to reopen the proceedings.

{¶ 24} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 25} On May 25, 2018, AEP Ohio, OCC, RESA, and IGS filed applications for rehearing of the April 25, 2018 Opinion and Order. Memoranda contra the various applications for rehearing were filed by AEP Ohio, OCC, and RESA/IGS on June 4, 2018.

{¶ 26} By Entry on Rehearing dated June 20, 2018, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing filed by AEP Ohio, OCC, RESA, and IGS.

{¶ 27} On July 20, 2018, OCC filed an application for rehearing of the Entry on Rehearing issued on June 20, 2018. AEP Ohio filed a memorandum contra on July 30, 2018.

{¶ 28} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Applications for Rehearing

1. AEP OHIO

{¶ 29} In the Opinion and Order, the Commission found it necessary to clarify, in light of a recent proposal by the Ohio Valley Electric Corporation (OVEC) to integrate into PJM Interconnection, LLC (PJM), that AEP Ohio's recovery of its costs associated with the OVEC PPA through the PPA Rider should not include any costs associated with transmission system additions, improvements, or other projects under the Regional Transmission Expansion Plan (RTEP) or supplemental transmission projects for the PJM region. Opinion and Order at ¶¶ 250-252. In its application for rehearing, AEP Ohio raises three grounds for rehearing with respect to this issue.

{¶ 30} In its first ground for rehearing, AEP Ohio argues that the Commission's clarification violates R.C. 4903.09, which requires the Commission, in contested cases, to issue findings of fact and written opinions setting forth the reasons prompting its decisions, based upon the findings of fact. Noting that there is no evidence regarding OVEC's actual or expected transmission costs, AEP Ohio contends that the Commission's decision to exclude costs associated with OVEC's potential future status as a transmission owner within PJM was not based on any evidence developed in the record for these proceedings. AEP Ohio adds that the Commission did not sufficiently explain why the proposal to integrate OVEC into PJM supports the Commission's directive regarding transmission costs.

{¶ 31} Next, AEP Ohio argues that, to the extent that the Opinion and Order categorically precludes potential recovery of project costs approved by the Federal Energy Regulatory Commission (FERC) and incurred under the FERC-approved Inter-Company Power Agreement (ICPA), it is unlawful and should be reversed. AEP Ohio adds that, if the Commission intended to permit recovery through another rate mechanism or based on conditions determined by the Commission, the Opinion and Order should be clarified. In support of its argument, AEP Ohio notes that its recovery of OVEC costs through retail rates is subject to annual prudency reviews by the Commission, consistent with the Commission's authority under the Federal Power Act to evaluate the prudence of wholesale purchases for the purpose of retail ratemaking, as recognized under the *Pike County* doctrine. *Pike County Light and Power Co. v. Pennsylvania Pub. Util. Comm.*, 77 Pa. Commw. 268, 465 A.2d 735 (1983). Although AEP Ohio acknowledges that the Commission should ensure that the Company has prudently exercised its contractual rights under the ICPA, the Company claims that flatly precluding potential recovery of transmission costs that may be incurred by OVEC would exceed the type of prudence review that the Commission has historically and permissibly conducted under the *Pike County* doctrine, as well as depart from the netting of OVEC

costs and revenues approved by the Commission. AEP Ohio requests that the Commission confirm that it will review future OVEC costs incurred by the Company based on the Company's prudence in implementing the terms of the FERC-approved ICPA.

{¶ 32} Finally, AEP Ohio contends that, at a minimum, the Opinion and Order should be modified or clarified to provide that the Commission will entertain recovery of RTEP and supplemental projects associated with integration into PJM, if the incremental savings associated with PJM integration outweigh the incremental costs. Noting the OVEC's request to integrate into PJM is presently on hold, AEP Ohio asserts that, if OVEC elects to move forward with the integration, it can be fairly presumed that OVEC expects to achieve a net cost savings. AEP Ohio adds that it is also possible that OVEC will withdraw its application to integrate into PJM, which would render the entire issue moot. AEP Ohio, therefore, asserts that the Commission should clarify on rehearing that the Company will have an opportunity to recover incremental transmission costs associated with PJM integration, if it can demonstrate through a one-time upfront review that the expected savings of integration outweigh the expected costs. AEP Ohio also notes that it would be unfair to deny recovery of transmission costs, while allowing any net savings associated with the OVEC integration into PJM to be passed through the PPA Rider.

{¶ 33} In its memorandum contra, OCC argues that the Commission set forth its reasons for its decision to exclude transmission costs from the PPA Rider. OCC asserts that the Commission has no evidentiary burden to create a record to limit the scope of the PPA Rider. OCC further asserts that, because there is no evidence regarding OVEC-related transmission projects, it was appropriate for the Commission to clarify that such costs should not be included in the PPA Rider. OCC contends that, in the *PPA Rider Case*, the Commission determined that there was sufficient record support to include only the

costs associated with the OVEC generating units in the PPA Rider and, therefore, the Commission was well within its authority to preclude AEP Ohio's recovery of transmission costs through the rider. Finally, OCC maintains that AEP Ohio's request for clarification is unnecessary and exceeds the scope of these proceedings. OCC adds that the *Pike County* doctrine does not require the Commission to authorize recovery or dictate that a particular rider be used to charge customers for transmission projects.

{¶ 34} In the Opinion and Order, the Commission determined that it was necessary to modify or clarify certain provisions of the Stipulation, in order to ensure that the Stipulation does not violate any important regulatory principle or practice and, thus, fully satisfies the third-part of the Commission's test for assessing its reasonableness. With respect to the Stipulation's OVEC recovery provision, the Commission found it necessary, in light of the recent development of OVEC's planned integration into PJM, to clarify that costs associated with transmission system additions, improvements, or other projects under PJM's RTEP or supplemental transmission projects should not be included in AEP Ohio's calculation of the cost portion of the PPA Rider. Opinion and Order at ¶¶ 250-252.

{¶ 35} Initially, we find no merit in AEP Ohio's claim that the Commission, contrary to R.C. 4903.09, failed to explain why the planned integration supports the Commission's directive regarding transmission costs. Although AEP Ohio may disagree with the Commission's supporting rationale, we nonetheless provided one. The Commission specifically noted that, following the evidentiary hearing in these cases, OVEC filed, in FERC Docket Nos. ER18-459-000, et al., a proposal to integrate into PJM, which includes an implementation plan for the transfer of functional control of the OVEC transmission facilities to PJM, the integration of the OVEC control area into the PJM energy and other markets, and the addition of OVEC as a transmission owner. We further noted that FERC accepted the tariff filing of OVEC and PJM on February 13, 2018,

with FERC clearly indicating that, following OVEC's integration, the costs of transmission projects deemed necessary in the OVEC zone will be allocated pursuant to PJM's FERC-approved cost allocation methods. Opinion and Order at ¶ 251, citing *PJM Interconnection, L.L.C. and Ohio Valley Electric Corp.*, 162 FERC ¶ 61,098 (2018). We, therefore, explained that FERC's recent approval of OVEC's planned integration necessitated our clarification that any resulting RTEP or supplemental transmission project costs should not be included in the PPA Rider. As we stated, the clarification was necessary, in accordance with R.C. 4928.02(A), to ensure that AEP Ohio's customers receive the intended benefit of the PPA Rider as a financial hedge for the pricing of retail electric generation service, as well as to effectuate the Commission's intention in approving the inclusion of the OVEC generating units in the PPA Rider. Opinion and Order at ¶ 252. Quite simply, in approving the PPA Rider, initially as a placeholder rider in the *ESP 3 Case*, and subsequently with the inclusion of the OVEC units in the *PPA Rider Case*, the Commission has not, at any point, authorized AEP Ohio to incorporate RTEP or supplemental transmission project costs in the rider. In light of OVEC's changed circumstances, the Commission found it necessary and appropriate, at this time, to provide clarification to AEP Ohio and explicitly direct that such costs should not flow through the PPA Rider.

{¶ 36} AEP Ohio also argues that the Commission's decision to exclude costs associated with OVEC's future status as a transmission owner within PJM was not based on the evidentiary record. The fact that there is no evidence regarding RTEP or supplemental transmission project costs in the record is not surprising, given that neither AEP Ohio's application nor the Stipulation addresses the costs that may be incurred by the Company as a result of OVEC's integration into PJM. Neither were such costs addressed in the *PPA Rider Case*. However, as we noted in the Opinion and Order, the Stipulation is clear that AEP Ohio "will retain the status quo recovery of OVEC costs through the non-bypassable PPA Rider" for the duration of the ESP term, including all

requirements in the Commission's orders in the *PPA Rider Case*, absent legislation that provides an alternative recovery opportunity. Opinion and Order at ¶ 250, citing Joint Ex. 1 at 9. As OVEC's planned integration into PJM is a recent development, AEP Ohio's "status quo recovery" of OVEC costs through the PPA Rider cannot possibly be intended or interpreted to include recovery of any RTEP or supplemental transmission project costs that may be assessed to the Company as a result of the integration. The basis for our clarification on this issue was FERC's order accepting the OVEC integration proposal, while AEP Ohio witness Allen offered testimony in support of the "status quo recovery" provision (Co. Ex. 1 at 7), providing the evidentiary foundation for our approval of the Stipulation. Given the "status quo recovery" provision in the Stipulation, neither AEP Ohio nor any other party provided evidence addressing costs that have not been previously authorized for recovery through the PPA Rider. Because AEP Ohio did not provide any evidence supporting inclusion of RTEP and supplemental transmission project costs in the PPA Rider, the Commission's clarification that such costs should not be included in the rider was fully consistent with the record in these proceedings. AEP Ohio has the burden of proof, not the Commission.

{¶ 37} We also find no merit in AEP Ohio's claim that the Commission has unlawfully precluded potential recovery of FERC-approved project costs incurred under the FERC-approved ICPA. In the *PPA Rider Case*, we emphasized that our approval of the PPA Rider was based on our retail ratemaking authority under state law, which does not conflict with FERC's responsibility to regulate electricity at wholesale. With regard to AEP Ohio's OVEC entitlement, we specifically noted that our approval of the PPA Rider was limited to an authorization of the reasonable amount to pay at retail. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 82, citing *Penn. Power Co. v. Penn. Pub. Util. Comm.*, 127 Pa. Commw. 97, 561 A.2d 43 (1989); *Pike County Light and Power Co. v. Penn. Pub. Util. Comm.*, 77 Pa. Commw. 268, 465 A.2d 735 (1983). We also noted that an annual prudency review of the PPA Rider would be conducted, consistent with our retail

ratemaking authority and the terms of the stipulation submitted by AEP Ohio and the other signatory parties in the *PPA Rider Case*. *PPA Rider Case* at 87-88.

{¶ 38} AEP Ohio admits in its application for rehearing that the Commission, under the Federal Power Act, has authority to determine whether or to what extent the Company may pass on the net costs or credits of a wholesale power purchase to retail ratepayers. AEP Ohio also acknowledges the Commission's authority to review the PPA Rider to ensure that costs have been prudently incurred. AEP Ohio finds fault, however, with the Commission's alleged departure from a netting approach, while asserting that the Commission has categorically disallowed costs associated with transmission system additions or improvements for OVEC, outside of the context of the Commission's usual and permissible prudency review. However, in the *PPA Rider Case*, the Commission found it necessary, at the outset of the PPA Rider, to provide AEP Ohio with clarity regarding retail cost recovery. We excluded from the PPA Rider, in advance of any prudency review, costs associated with Capacity Performance penalties, certain forced outages, and conversion or retirement of PPA generating units. *PPA Rider Case* at 87-88, 89, 90-91. As in the prior case, the Commission again finds that our approval of the PPA Rider, as a financial hedging mechanism, is grounded in our retail ratemaking authority under state law and that it is appropriate to set forth clear expectations, at the beginning of the ESP term, regarding the OVEC cost recovery provision in the Stipulation and the authorized retail charges flowing through the rider.

{¶ 39} Finally, AEP Ohio requests, at a minimum, that it be provided an opportunity to demonstrate through a one-time, upfront review that the savings associated with OVEC's integration into PJM are expected to outweigh the costs. We find that this request is contrary to the Stipulation's "status quo recovery" provision and should, therefore, be rejected. For these reasons, the Commission finds that AEP Ohio's application for rehearing should be denied in its entirety.

2. OCC – FIRST APPLICATION FOR REHEARING

a. ESP/MRO Analysis

{¶ 40} In its first request for rehearing, OCC argues that the Opinion and Order is unreasonable and unlawful to the extent that it found that the ESP, as modified and approved, met the requirements of R.C. 4928.143(C)(1). OCC declares that the Commission must consider all terms and conditions of the ESP, including the costs of riders like the Renewable Generation Rider (RGR), PowerFoward Rider (PFR), Retail Reconciliation Rider (RRR), and SSO Credit Rider (SSOCR), where the charges will be established as part of a future proceeding.[1] Without quantification of all components of the ESP, OCC declares the ESP/MRO analysis is incomplete. OCC specifically notes that, because the RGR and PFR were established as placeholder riders set at zero, the Commission admittedly did not attempt to speculate as to the quantitative impact of the riders in the ESP/MRO analysis. Opinion and Order at ¶ 267. OCC argues that, since the Commission did not know, and could not have known, the cost of all of the components of the ESP, the Commission could not determine whether the ESP is more favorable, in the aggregate, to customers than the expected results under an MRO. OCC avers that, without such consideration, the Commission could not comply with its statutory obligation under R.C. 4928.143(C)(1).

{¶ 41} RESA and IGS submit that OCC's argument in regard to the RRR is based on the premise that the Commission cannot perform the ESP/MRO analysis where costs are unknown. However, IGS and RESA contend that the RRR is revenue neutral as the rider does not in itself authorize the recovery of costs but relates to SSO costs currently recovered in distribution rates. IGS and RESA aver the RRR relates to the reallocation of

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1 The Commission notes that the Stipulation and the Opinion and Order included reference to a Competition Incentive Rider (CIR). In the Opinion and Order, the Commission elected to change the name of the rider to the RRR. Opinion and Order at ¶ 216. While OCC's application for rehearing continues to refer to the rider as the CIR, the Commission will use the new name.

costs to better reflect fairness and cost causation principles. IGS and RESA conclude that the RRR would be the same under either an ESP or an MRO. Therefore, IGS and RESA contend that the RRR is irrelevant for purposes of performing the ESP/MRO analysis and the request for rehearing should be denied.

{¶ 42} AEP Ohio notes that the Commission's application of the ESP/MRO analysis was consistent with Commission and Ohio Supreme Court precedent. Further, AEP Ohio interprets R.C. 4928.143(C)(1) not to require the Commission to quantify the price impact of a placeholder rider initially set at the rate of zero. AEP Ohio states that it would be speculative for the Commission to attempt to do so, as the Commission recognized in the Opinion and Order. Opinion and Order at ¶ 267. Accordingly, AEP Ohio posits that it was appropriate for the Commission to forego the price impact of the RRR, SSOCR, RGR, and PFR as part of the ESP/MRO analysis at this time, when the details of the RRR, SSOCR, RGR, and PFR will be thoroughly analyzed as part of future filings. AEP Ohio specifically notes, as reflected in the Opinion and Order, that the Court has recognized that the Commission may exercise broad discretion in conducting the ESP/MRO test and that the test "does not bind the [C]ommission to a strict price comparison. On the contrary, in evaluating the favorability of a plan, the statute instructs the [C]ommission to consider 'pricing *and all other terms and conditions.*'" *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 *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 25. For these reasons, AEP Ohio submits that OCC's application for rehearing should be denied.

{¶ 43} Consistent with precedent, the Commission determined that, where a rider established in the ESP has been set at zero, it is not necessary for the Commission to

speculate to quantify the impact of the rider as part of the ESP/MRO analysis. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 94. Therefore, in the present cases, the Commission did not, in its ESP/MRO analysis, assign any quantitative impact for zero-rate riders like the RGR, PFR, RRR, or SSOCR. If and when AEP Ohio requests recovery of expenses through one of the riders initially set at zero, the Commission will determine whether it is necessary to reconsider the ESP/MRO analysis and the quantitative and qualitative impact, if any, on the ESP/MRO analysis, in the same manner as we did in the *PPA Rider Case*. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 105. Accordingly, the Commission denies OCC's request for rehearing on the zero-rate riders' impact on the ESP/MRO test.

b. Smart City Rider

{¶ 44} In the Opinion and Order, the Commission approved the establishment of the new Smart City Rider (SCR) to recover the costs associated with two technology demonstration projects, electric vehicle (EV) charging stations and microgrids, with the rider to be capped at a total of $21.1 million over four years. The Commission determined that the two demonstration projects were a permissible provision of an ESP pursuant to R.C. 4928.143(B)(2)(h) as an incentive ratemaking provision or distribution infrastructure and modernization incentive provision. The Commission also emphasized that it is important to evaluate the impact that the increase in EVs and the installation of EV charging stations will have on electric demand, the electric grid, electric distribution, and distribution infrastructure and the effect, if any, on other AEP Ohio customers, as well as to evaluate the feasibility of expanding the use of microgrid technology. Opinion and Order at ¶¶ 173-179.

{¶ 45} In its second request for rehearing, OCC argues that the Opinion and Order is unreasonable and unlawful to the extent that the Commission approved the adoption of the SCR to recover the costs for the EV charging station and microgrid demonstration

programs. OCC contends that such programs are unrelated to providing AEP Ohio's customers essential electric service or to the Company's distribution service. OCC states that an ESP may include only those items listed in R.C. 4928.143(B)(2). *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655. R.C. 4928.143(B)(2), according to OCC, does not include a provision for Ohio's electric utilities to foster a market, facilitate the use of a certain type of vehicle, or gather data for a certain industry. For that reason, OCC concludes that the SCR is unlawful. OCC avers that the SCR is not in the interest of AEP Ohio's ratepayers and the public interest and is outside of the Commission's authority regarding distribution service. Accordingly, OCC submits that the SCR is unreasonable and unlawful and requests that the Commission grant rehearing.

{¶ 46} AEP Ohio replies that OCC's claim that the Smart City demonstration programs are not related to distribution service is flawed in multiple respects. OCC, according to AEP Ohio, overlooks that the Commission found the EV charging stations and microgrid demonstration programs to be within the parameters of R.C. 4928.143(B)(2)(h). AEP Ohio notes that the Commission also recognized that the demonstration projects would allow the Company, the Commission, and other interested stakeholders to analyze the data from the projects regarding load growth at peak and off-peak hours, rates, and rate design criteria and to determine potential concerns and benefits. Opinion and Order at ¶ 176. Further, AEP Ohio points out that the Company is providing rebates for EV charging stations and will not own the charging stations. AEP Ohio notes that vendors of EV charging stations will drive the market development, not the Company, and customers will purchase the EV charging stations directly from the vendors. AEP Ohio states that the process undercuts OCC's claim that the Company is attempting to occupy space behind the customer's meter. Furthermore, according to AEP Ohio, the Commission has, under its traditional ratemaking authority, consistent with R.C. 4909.15 and 4905.13, approved appliance rebate programs for deferral and recovery

of demand-side management expenses for customer-owned heat pumps and other customer-owned load management devices.[2] AEP Ohio reasons that, if rebates are permissible under the traditional ratemaking regime of R.C. Chapter 4909, then surely rebates are permissible under the more flexible and progressive alternative ratemaking ESP statutes, R.C. 4928.141 and 4928.143(B)(2)(h). Further, AEP Ohio asserts that OCC's arguments are based on a false dichotomy between the customer's side of the meter and the Company's side of the meter that is not relevant for determining whether the demonstration projects relate to distribution service or are a permissible provision of an ESP under R.C. 4928.143(B)(2)(h). AEP Ohio submits that the Smart City demonstration projects and the SCR are just and reasonable, authorized under the applicable statute, and in the public interest and, therefore, the demonstration projects and the rider should be upheld by the Commission on rehearing.

{¶ 47} The Commission reiterates, as stated in the Opinion and Order, that we find the Smart City demonstration projects to meet the requirements of R.C. 4928.143(B)(2)(h) as both an incentive ratemaking provision and a distribution infrastructure and modernization incentive. The Commission notes that OCC's request for rehearing overlooks the fact that the city of Columbus, through its Smart City Plan, has a region-wide goal to increase the number of EVs to approximately two percent by 2020. It is imperative that AEP Ohio and this Commission understand the impact EVs and EV charging stations have on electric service and service reliability. It is also essential that we understand the potential impact of microgrid technology on electric service. Microgrids, particularly the expanded implementation of microgrid technology, offer the

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2 *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 policies that permit the deferral and recovery of cost-effective appliance rebate program costs); *In re Columbus Southern Power Co.*, Case No. 94-1812-EL-AAM, Entry (Apr. 13, 1995) (allowing deferral of demand-side management program costs, including heat pump rebates, to be deferred for recovery in base rates); *In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) (allowing demand-side management costs to be deferred and reflected in base rates).

ability to reduce the number of outages experienced and the impact of extended outages on the affected communities. The Commission finds that both are important service considerations for AEP Ohio's customers. Accordingly, the Commission denies OCC's request for rehearing on this matter.

c. Renewable Generation Rider

{¶ 48} In its third assignment of error, OCC submits that the RGR will require customers to subsidize costs associated with renewable generation facilities in violation of R.C. 4928.143(B)(2)(c), which only permits the approval of a non-bypassable surcharge for new generation when the utility has demonstrated a need for the facility based on resource planning projections as part of the ESP case. OCC declares that AEP Ohio did not make any such projections in these proceedings. Since there was not a determination that there is a need for the facility, OCC reasons that the RGR is unlawful and the Commission lacked the authority to approve the charge. *See, e.g., Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51 (stating that the Commission, having been created by statute, has no authority except that conferred upon it by the General Assembly); *City of Columbus v. Pub. Util. Comm.*, 103 Ohio St. 79, 133 N.E. 800 (1921).

{¶ 49} AEP Ohio notes that OCC raised the same claim regarding R.C. 4928.143(B)(2)(c) and the zero-rate RGR in its brief, which the Commission rejected. AEP Ohio emphasizes that no renewable generation facility was proposed and no cost recovery was proposed to be collected via the RGR as a part of these ESP proceedings. AEP Ohio points out that the Commission emphasized in the Opinion and Order that the Company will be required to demonstrate need in each proceeding proposing a specific renewable project, as well as compliance with each of the criteria set forth in R.C. 4928.143(B)(2)(c), and that OCC and other intervenors will be afforded a full and fair opportunity in each proceeding to address their concerns regarding need and the

proposed project. Opinion and Order at ¶ 227. On that basis, AEP Ohio asserts that the Commission should reject OCC's request for rehearing for the same reasons that the Commission rejected OCC's arguments in the Opinion and Order.

{¶ 50} The Commission has thoroughly considered OCC's statutory arguments regarding the RGR. OCC fails to raise any new argument that the Commission has not already evaluated and rejected on this issue. Consistent with Commission precedent, AEP Ohio will be required to demonstrate, in each EL-RDR proceeding proposing a specific project, need for the proposed project and to satisfy all other requirements of R.C. 4928.143(B)(2)(c). *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., 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. The Commission reiterates that, with the approval of the RGR at the rate of zero, we have not approved a charge to be collected from customers at this time. Opinion and Order at ¶ 227. Accordingly, the Commission denies OCC's request for rehearing of this issue.

d. Placeholder Riders

{¶ 51} In addition to the RGR, as noted above, the Commission also approved the establishment of three additional zero-rate placeholder riders, the PFR, RRR, and SSOCR. The RRR and SSOCR are set at a rate of zero, until a thorough analysis of AEP Ohio's distribution costs can be conducted by the Commission in the Company's next base rate case. Similarly, the PFR rate will be adjusted, if necessary, to implement findings or directives as a result of the Commission's PowerForward initiative. Opinion and Order at ¶¶ 177, 203, 212-216.

{¶ 52} In its fourth request for rehearing, OCC notes its opposition to the RRR and the SSOCR. Further, OCC challenges the Commission's approval of the RGR, PFR, RRR, and SSOCR subject to additional review in a future proceeding. OCC submits that the

establishment of the zero-rate riders is unnecessary and can only serve to harm consumers and, therefore, the riders are against the public interest and violate important regulatory principles and practices. OCC argues that there is no reason to charge Ohioans more for the SSO through any type of rider charge, as the SSO is a competitive rate option. OCC contends that riders that allow for future charges violate the ESP/MRO test as discussed in its first request for rehearing. OCC requests that the Commission reconsider the approval of these zero-rate riders and eliminate the riders from the ESP.

{¶ 53} AEP Ohio notes that zero-rate placeholder riders are a commonly implemented ratemaking tool used by the Commission in numerous ESP cases. *See, e.g., ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17. According to AEP Ohio, through its continued use of 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. Therefore, AEP Ohio reasons that it is necessary and appropriate for the Commission to include placeholder riders as part of an ESP decision, in order to exercise its authority under R.C. 4928.143 when establishing the riders. Thus, AEP Ohio contends that 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.

{¶ 54} Specifically as to the RRR, IGS and RESA argue that the record demonstrates that the SSO is a subsidized product and it would leave the subsidy in place if the RRR is eliminated. RESA and IGS explain that a portion of the cost associated with providing AEP Ohio's SSO is recovered from all customers irrespective of the entity that

provides the customer's electric service. RESA and IGS assert that the extra cost is harmful to Ohio's shopping customers. Further, RESA and IGS state that the RRR was negotiated as part of the Stipulation package, with the recognition that, while there was a disagreement as to the appropriate value of the rider, the rider would serve as a bridge until AEP Ohio's next distribution rate case where a more detailed analysis can be performed. Moreover, RESA and IGS argue that, not only should the Commission reject OCC's application for rehearing as to the RRR, the Commission should reconsider and authorize the RRR as proposed in the Stipulation.

{¶ 55} The RRR is a bypassable rider to collect costs associated with providing retail electric service that are not reflected in SSO rates, while the non-bypassable SSOCR would refund to all distribution customers the amount collected through the RRR. In conjunction, the two rates would operate to reallocate SSO generation costs. The Commission approved the zero-rate placeholder riders, including the RRR/SSOCR, after considering the arguments of the parties. The rate to be recovered or refunded through the RGR, PFR, RRR, and SSOCR will be determined in a future proceeding where interested stakeholders are afforded the opportunity to participate and the record will be evaluated by the Commission. Nothing in the ESP statute precludes the Commission's approval of a rider as a placeholder, with cost recovery to be determined at a future date in a separate proceeding. The Commission has previously approved zero-rate placeholder riders in numerous ESP proceedings. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 24-25; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15. Consistent with Commission precedent, we deny OCC's request for rehearing of the zero-rate placeholder riders

approved in these proceedings. The Commission affirms its decision as reflected in the Opinion and Order.

e. Distribution Investment Rider Rate Caps

{¶ 56} In its fifth request for rehearing, OCC submits that the Opinion and Order unreasonably and unlawfully denied OCC's motion to reopen these proceedings to take evidence regarding the impact to the caps established for the Distribution Investment Rider (DIR) as a result of the reduction in the corporate income tax rate with the passage of the TCJA. OCC argues that, by failing to reduce the DIR caps to account for the reduction in the corporate tax rate, AEP Ohio will be able to spend more under the caps instead of reducing the caps and customer rates, consistent with the Commission's stated intention. *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*Tax COI Case*), Second Entry on Rehearing (Apr. 25, 2018) at ¶ 1. OCC notes that the Ohio Supreme Court has held that, when the Commission approves a tax rate different than one it knew would be assessed, its order is arbitrary and unreasonable. *East Ohio Gas Co. v. Pub. Util. Comm.*, 133 Ohio St. 212, 12 N.E.2d 765 (1938). Additionally, OCC argues that, because the DIR rate caps do not reflect the reduced corporate income tax rate, this aspect of the Opinion and Order is contrary to the interest of ratepayers, the public interest, and important regulatory principles and practices.

{¶ 57} In its memorandum contra, AEP Ohio states that its tariffs have 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 addition, AEP Ohio states that the Commission made it clear in the Opinion and Order 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*. Opinion and

Order at ¶ 35. Accordingly, AEP Ohio reasons that OCC's various claims asserting that Commission-approved rates must reflect the federal income tax rate that the Company actually paid are irrelevant. AEP Ohio contends that the case cited by OCC, along with two others cited by the Company, do not relate to the calculation of rate caps but to the rider rate charged to customers.[3] Further, AEP Ohio notes that the Commission recently denied OCC's application for rehearing in a proceeding involving Columbia Gas of Ohio, Inc. (Columbia), where OCC similarly argued that the Commission failed to revise the rate caps on Columbia's Infrastructure Replacement Program (IRP) Rider to reflect the reduced federal corporate income tax rate. AEP Ohio notes that, in Columbia's IRP case, the Commission denied OCC's application for rehearing as moot on the basis that the tariff included language to address the reconciliation or adjustment of the Rider IRP rate to reflect the Commission's ultimate decision in the *Tax COI Case*, as well as the fact that the Commission reviews and reconciles Columbia's IRP rates annually and sets the Rider IRP rates in separate rider adjustment proceedings that will account for the reduced tax rate. AEP Ohio notes that the Commission specifically found that it was "not necessary that the caps * * * be adjusted to reflect the reduced corporate tax rate." *In re Columbia Gas of Ohio, Inc.*, Case No. 16-2422-GA-ALT, Second Entry on Rehearing (May 9, 2018) at ¶ 13. For the same reasons that the Commission concluded it was not necessary to adjust Columbia's IRP caps, AEP Ohio concludes that it is not necessary for the Commission to reopen these proceedings to adjust the DIR caps.

{¶ 58} The Commission affirms the ruling in the Opinion and Order not to reopen these proceedings. The Commission initiated the *Tax COI Case*, among other things, to determine the appropriate course of action to pass the benefits of the TCJA to ratepayers. To that end, the Commission directed jurisdictional rate-regulated utilities, including

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3 *East Ohio Gas Co. v. Pub. Util. Comm.*, 133 Ohio St. 212, 226, 12 N.E.2d 765 (1938); *General Tel. Co. v. Pub. Util. Comm.*, 174 Ohio St. 575, 191 N.E.2d 341 (1963); *In re The Cleveland Elec. Illuminating Co.*, Case No. 86-2025-EL-AIR, Opinion and Order (Dec. 16, 1987).

AEP Ohio, to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the TCJA and to continue this treatment, until otherwise ordered by the Commission. *Tax COI Case*, Entry (Jan. 10, 2018), Second Entry on Rehearing (Apr. 25, 2018). Further, since the Opinion and Order was issued, AEP Ohio initiated a new case, Case No. 18-1007-EL-UNC (*AEP Ohio Tax Case*) to proceed concurrently with the *Tax COI Case*, and, as represented by the Company, to facilitate the efficient and expeditious resolution of AEP Ohio-specific TCJA issues beyond the scope of the *Tax COI Case*. AEP Ohio advocates that opening a new docket will provide the best opportunity to settle or otherwise address the tax issues consistent with the Commission's stated public interest goal of transparently conveying TCJA benefits to retail customers. By Entry issued June 12, 2018, in the *AEP Ohio Tax Case*, a procedural schedule was established. In light of the two proceedings available for the Commission and interested stakeholders to address the TCJA, TCJA-related issues, and the impact on AEP Ohio's riders and customers, the Commission finds it unnecessary to reopen these proceedings, as OCC requested, and affirms the decision in the Opinion and Order. Accordingly, OCC's application for rehearing of this matter is denied.

*f. **Use of Three-Part Test***

{¶ 59} In its sixth request for rehearing, OCC avers that it was unreasonable and unlawful for the Commission to apply its traditional three-part test used to evaluate stipulations in these ESP proceedings. OCC states that, by using the three-part test, the Commission fails to recognize and account for the superior bargaining position of AEP Ohio, which can reject the Commission's order pursuant to R.C. 4928.143(C)(2)(a). *See In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) (Commissioner Cheryl L. Roberto, concurring, in part, and dissenting, in part; Commissioners Paul A. Centolella and Valerie A. Lemmie, concurring). Further, OCC argues that the Commission ignored and failed to address that the Stipulation resulted largely from AEP Ohio's funding of

financial inducements to get parties to sign the agreement. For these reasons, OCC requests that the Commission grant its request for rehearing.

{¶ 60} AEP Ohio submits that OCC's contentions regarding the three-part test for evaluating stipulations in ESP cases is without merit and should be rejected by the Commission. Further, AEP Ohio states that OCC's position is inconsistent with R.C. 4903.10, which requires a showing that the Commission's order was unreasonable or unlawful. In AEP Ohio's view, the Commission did not act unreasonably or unlawfully in its adherence to the well-established test that the Commission has applied to evaluate settlements in Commission proceedings, including ESP cases, for more than 25 years. Further, AEP Ohio contends that the record demonstrates that the Stipulation satisfies the standard. AEP Ohio declares that the fact that the electric utility has a statutory right to withdraw from an ESP, under certain circumstances, does not alter the reasonableness of the Stipulation. Accordingly, AEP Ohio requests that the Commission deny OCC's request for rehearing.

{¶ 61} The Commission disagrees with OCC that R.C. 4928.143(C)(2)(a) affords the electric utility superior bargaining power in settlement negotiations, as a result of the electric utility's ability to withdraw an ESP modified and approved by the Commission, to the extent that the Commission should not apply the three-part test used to evaluate stipulations. The Commission finds no error in utilizing the three-part test. The three-part test, as endorsed by the Supreme Court of Ohio, enables the Commission to conduct a careful review of all of the terms and conditions set forth in the proposed stipulation, in order to determine whether it is in the public interest and should otherwise be approved. Further, the Commission's acceptance of OCC's argument would eliminate the parties' ability to resolve an ESP by stipulation. The General Assembly did not include any such prohibition in the ESP statute and, therefore, the Commission will not impose any such limitation in ESP proceedings. Accordingly, consistent with our

previous decisions on this exact claim, we deny OCC's application for rehearing on such grounds. *PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 42, Fifth Entry on Rehearing (Apr. 5, 2017) at ¶ 27; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 20-21, Third Entry on Rehearing (Feb. 9, 2011) at 9-10; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 41.

{¶ 62} Further, OCC is incorrect that the Commission failed to acknowledge and address its argument that certain signatory parties executed the Stipulation in exchange for financial inducements or "handouts." OCC made the assertion regarding financial inducements, in its application for rehearing, in association with the second-part of the three-part test.[4] OCC also made a similar assertion, without further elaboration, in the introduction of its initial brief in reference to the *PPA Rider Case*.[5] In the *PPA Rider Case*, several parties challenged whether the stipulation in the *PPA Rider Case* met the first part of the three-part test, asserting that financial incentives were made to induce certain signatory parties to sign the stipulation. *PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 46.

{¶ 63} The Commission specifically acknowledged OCC's claim of alleged financial inducements in the Opinion and Order and evaluated each of the provisions of the Stipulation opposed by OCC. Opinion and Order at ¶ 135. After considering the record in these cases, including OCC's claim of financial incentives/programs that are incentives to signatory parties, the Commission concluded that the Stipulation, as a package, benefits ratepayers and the public interest. Opinion and Order at ¶¶ 140, 145-147, 153, 157, 172-180, 189-191, 196, 204. As the Commission specifically recognized in

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4 OCC Br. at 4; OCC Ex. 8 at 4-5.

5 OCC Br. at 2.

the Opinion and Order, OCC, the only party opposing the Stipulation, did not explicitly challenge the first part of the three-part test, which considers whether the settlement is the product of serious bargaining among capable, knowledgeable parties, and may encompass arguments regarding whether there were financial inducements to sign the stipulation. Opinion and Order at ¶ 128. The Commission must base its decision on the record in the case before it. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999). Furthermore, in the *PPA Rider Case*, the Commission determined that "[f]inancial incentives may be a part of negotiation and compromise to reach a settlement in Commission proceedings and it is up to each party to determine the point where opposition meets neutrality and where neutrality meets support in light of the party's interest. The Commission expects that each party will support its respective interest and bargain in support of that interest, which may or may not result in the party's support of the stipulation." *PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 46. The same is true in these ESP cases. Accordingly, the Commission denies OCC's application for rehearing on this issue.

g. Second Part of Three-Part Test

{¶ 64} In its seventh request for rehearing, OCC submits that the Commission erred in its finding that the Stipulation, as a package, benefits ratepayers and the public interest. In this request for rehearing, OCC restates claims made in its other grounds for rehearing. OCC argues that the Commission did not consider, due to a lack of evidence, the riders approved at a rate of zero, the RGR, PFR, RRR, and SSOCR. OCC submits that approving riders without knowing their costs is not a benefit but harms ratepayers and the public interest. The SCR, according to OCC, is unrelated to AEP Ohio's distribution service or the provision of electric service, as the demonstration projects approved are on the customer's side of the meter and beyond the Commission's authority regarding distribution service. OCC argues that the Commission's approval of the RGR, despite AEP Ohio's failure to demonstrate need for any renewable generation facility, and the

Commission's refusal to reduce the DIR rate caps as a result of the TCJA, are not in the interests of ratepayers or the public. For these reasons, OCC requests that the Commission grant its request for rehearing.

{¶ 65} AEP Ohio notes that OCC previously raised the same claims that the RGR does not benefit consumers and is against the public interest in its brief - claims that were rejected by the Commission. Similarly, AEP Ohio notes that the Commission rejected OCC's claims as to the zero-rate placeholder riders. AEP Ohio reasons that zero-rate placeholder riders are a necessary and appropriate component of the Commission's ratemaking toolbox, in light of the term of years of an ESP and the complex rate components that require multiple dockets to implement. AEP Ohio states that the Commission's approval of the RRR, SSOCR, RGR, and PFR was reasonable, lawful, and in the interests of ratepayers and the public. AEP Ohio contends that OCC's claims regarding the SCR overlook, as noted in the Opinion and Order, that a significant increase in the number of EVs will have an impact on electric demand and the need for the Company to be aware of and prepare for the potential impact on the electric market, electric grid, electric distribution, and distribution infrastructure. In addition to the arguments offered by AEP Ohio in regard to the SCR and the associated demonstration projects above, the Company notes, as the Commission recognized in the Opinion and Order, that the EV charging station demonstration project directly relates to the rate design of the Plug-In Electric Vehicle tariff and other future tariff filings to encourage load management to enhance reliability benefits on the distribution system, while the microgrid demonstration project supports service reliability and the restoration of service for public service entities such as hospitals, fire stations, and police stations. Opinion and Order at ¶ 174, 179. AEP Ohio declares that load management and service reliability are core distribution concepts.

{¶ 66} The Commission thoroughly reviewed and considered each of the provisions of Stipulation. In particular, the Commission evaluated each of the provisions of the Stipulation challenged by OCC, as the only party opposing the Stipulation, and explained, based on the record, the benefits of and the rationale for approving each such provision of the Stipulation. Opinion and Order at ¶¶ 140, 145-147, 153, 157, 172-180, 189-191, 196, 204. As the second part of the three-part test used to evaluate stipulations clearly states, the benefits of a stipulation are evaluated as a package. The Commission reiterates, as emphasized in the Opinion and Order, that the benefits of a stipulation are not accorded equally to all ratepayers. Opinion and Order at ¶ 204. OCC's arguments that certain provisions of the Stipulation do not benefit ratepayers or the public interest, or may be harmful to residential ratepayers or the public, do not persuade the Commission that the Stipulation, as a package, fails to comply with the second part of the three-part test. Accordingly, OCC's application for rehearing on such grounds is denied.

h. Third Part of Three-Part Test

{¶ 67} In its eighth request for rehearing, OCC again repeats earlier claims and argues that the Commission did not consider, as a result of a lack of evidence, the zero-rate riders. According to OCC, approving placeholder riders without knowing the cost does not lead to just and reasonable rates pursuant to R.C. 4905.22. Further, OCC asserts that the SCR demonstration programs are on the customer's side of the meter and, therefore, serve as a subsidy, in violation of R.C. 4905.22 and 4928.141. OCC submits that the Opinion and Order approved the RGR, requiring all AEP Ohio customers to subsidize renewable generation facilities without the Company demonstrating need as required by R.C. 4928.143(B)(2)(c). OCC also asserts that the Commission's refusal to lower the DIR rate caps, based on the reduction in the federal corporate tax rate, is contrary to the Commission's ruling and expressed intentions in the *Tax COI Case* to return to customers the impacts of the TCJA. For these reasons, OCC argues that the Commission erred in its conclusion that the Stipulation does not violate important regulatory practices or

principles. OCC does not cite any cases in support of its arguments on rehearing of the third part of the three-part test.

{¶ 68} AEP Ohio reasons that the Commission's approval of the RRR, SSOCR, RGR, and PFR, as zero-rate placeholder riders, was reasonable, lawful, and consistent with established regulatory practice. AEP Ohio reasons, as previously noted, that zero-rate placeholder riders are a commonly used tool in the Commission's ratemaking toolbox, as adopted in numerous prior ESP cases involving AEP Ohio and other electric utilities, which continue to incorporate zero-rate placeholder riders in their ESP applications. *See, e.g., ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17. AEP Ohio notes that, 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, according to AEP Ohio, 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, AEP Ohio concludes that the Commission's approval of the RRR, SSOCR, RGR, and PFR as zero-rate placeholder riders was consistent with established regulatory practice. Further, in addition to the rationale offered in regard to OCC's second request for rehearing, AEP Ohio attests that the Opinion and Order correctly determined that the Smart City demonstration projects further the state policies related to safe and reliable service, competition, innovation, and access to information as set forth in R.C. 4928.02(A), (C), (D), (E), (F), and (N), among other provisions.

{¶ 69} In regard to the RRR, RESA and IGS maintain that the RRR is a reallocation of previously approved costs; therefore, the rider is not a placeholder rider in the usual sense, as the underlying costs have already been authorized in other prior proceedings, consistent with R.C. 4905.22. Further, RESA and IGS reason that the RRR, which serves to reallocate SSO-related costs in accordance with cost causation principles, is just and reasonable, as the rider accounts for a more accurate allocation of the costs associated with providing retail electric service not reflected in existing SSO rates. Accordingly, RESA and IGS argue that OCC's request for rehearing, on the basis that adoption of the RRR violates important regulatory principles and practices, should be rejected.

{¶ 70} R.C. 4928.141 directs that an electric distribution utility, such as AEP Ohio, provide consumers within its certified territory an SSO of all CRES necessary to maintain essential electric services, by means of an MRO, pursuant to R.C. 4928.142, or an ESP, pursuant to R.C. 4928.143. AEP Ohio filed the amended ESP application in accordance with R.C. 4928.143. Opinion and Order at ¶¶ 3, 8. The record supports the establishment of the RGR, PFR, RRR, and SSOCR in accordance with the requirements of R.C. 4928.143(B)(2). Opinion and Order at ¶ 51, 57, 177, 227. The RRR and SSOCR, while newly created riders, are intended to facilitate the reallocation of previously approved expenses, if the Commission determines such to be appropriate in AEP Ohio's next base rate case. Opinion and Order at ¶¶ 203, 212-216.

{¶ 71} R.C. 4905.22 provides, in part, that all public utility charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the Commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the Commission. R.C. 4905.22, however, does not strictly apply in the context of an ESP. An ESP may include provisions authorized under R.C. 4928.143(B)(2), notwithstanding any other provision of R.C. Title

49 to the contrary, with exceptions that do not apply to these proceedings. Furthermore, R.C. 4928.143(B)(2)(h) states that an ESP may include provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of R.C. Title 49 to the contrary, provisions regarding single issue ratemaking. The Commission has previously determined that, with this language, the General Assembly intentionally affords the Commission the flexibility to approve provisions related to distribution service contained in ESPs and that the strict requirements of R.C. Chapters 4905 and 4909 do not necessarily apply to such provisions. Further, the Commission specifically recognized that single issue ratemaking and incentive ratemaking are not authorized by R.C. Chapter 4909; however, R.C. 4928.143(B)(2)(h) explicitly authorizes single issue ratemaking and incentive ratemaking. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶ 290, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 130. Accordingly, the Commission concludes that the RRR, SSOCR, PFR, RGR, and SCR, which were all authorized under R.C. 4928.143(B)(2), cannot be construed to violate R.C. 4905.22 and, on that basis, the application for rehearing is denied.

{¶ 72} Further, even if R.C. 4905.22 is considered apart from R.C. 4928.143, the riders opposed by OCC would not be unreasonable under R.C. 4905.22. The Commission adopted the RRR, SSOCR, RGR, and PFR, as repeatedly emphasized in the Opinion and Order, subject to a subsequent application, other filing, or Commission directive, to initiate cost recovery via the specified riders. One of the primary purposes for establishing the riders in this manner is to ensure that AEP Ohio's rates are just and reasonable for all customers. The Commission finds OCC's request for rehearing on the basis that adopting these zero-rate riders violates R.C. 4905.22 to be premature and, therefore, it is denied for this reason as well.

{¶ 73} With respect to the SCR, as explained above, the SCR demonstration projects will provide beneficial information regarding the impact of EVs, EV charging stations, and microgrid technology on the electric distribution system and reliability and, consequently, any associated impact and benefits on the electric service to be provided to AEP Ohio customers. Accordingly, the adoption of the SCR is not in violation of R.C. 4928.141 or 4905.22. The arguments presented by OCC do not convince the Commission otherwise. In addition, as we previously found, the SCR furthers the state policy provisions set forth in R.C. 4928.02(A), (C), (D), (E), (F), and (N), among others. Opinion and Order at ¶ 238.

{¶ 74} The Commission reiterates, as noted in the Opinion and Order in regard to the RGR, that AEP Ohio will be required to demonstrate in a future filing that all the requirements of R.C. 4928.143(B)(2)(c) have been satisfied, including a demonstration of need. As a part of these proceedings, we are not approving any charges to be recovered from customers through the RGR. For that reason, we deny OCC's application for rehearing on the basis that the approval of the RGR is not in accordance with R.C. 4928.143(B)(2)(c).

{¶ 75} The Commission also denies OCC's request for rehearing regarding the DIR rate caps. The adoption of the Stipulation with the DIR rate caps reflected therein is not contrary to the Commission's stated intent to return the impact of the reduction in the corporate tax rate to customers. Further, as noted above, there are two Commission proceedings available to further pursue AEP Ohio's TCJA-related issues. For all of the above reasons, the Commission finds that OCC's request for rehearing on the basis that the Stipulation violates important regulatory principles and practices is denied.

3. RESA/IGS

{¶ 76} In the Opinion and Order, the Commission authorized AEP Ohio to establish, as placeholder riders set at zero, the SSOCR and the CIR, which the

Commission renamed the RRR. The Commission noted that a thorough analysis of AEP Ohio's costs would occur in its next distribution rate case and that the Commission would, at that time, determine whether it is necessary to reallocate costs between shopping and non-shopping customers. The Commission, therefore, did not adopt the Stipulation's recommended charge of $1.05/megawatt hour (MWh) for the RRR or the residential customer credit of $0.48/MWh for the SSOCR. Opinion and Order at ¶¶ 213-216.

{¶ 77} In its application for rehearing, IGS generally argues that the Opinion and Order is unlawful, unjust, and unreasonable, because it materially modified the Stipulation and authorized an ESP that does not include a charge in the bypassable RRR and the associated credit for the non-bypassable SSOCR. Similarly, RESA contends that the Opinion and Order unjustly, arbitrarily, and unreasonably established the RRR as a placeholder rider and not at the agreed upon rate of $1.05/MWh.

{¶ 78} More specifically, IGS contends that the Opinion and Order is unlawful, unjust, and unreasonable, because it undermined the benefit of the mutually agreed upon Stipulation to the detriment of shopping customers. IGS argues that the Commission's modification of the Stipulation in the present proceedings will erode faith in the settlement process and, by delaying the matter for resolution in AEP Ohio's next rate case, cause shopping customers to incur approximately $300 million in overcharges based on RESA witness White's analysis. IGS notes that, as part of the settlement package, it only agreed to certain provisions, such as the removal of the OCC and Commission assessments from AEP Ohio's Generation Energy Rider (GENE), Generation Capacity Rider (GENC), and Auction Cost Reconciliation Rider (ACRR), because the RRR and SSOCR were intended to mitigate the effect of these provisions. IGS adds that, by requiring that choice program costs embedded in distribution rates be analyzed in the rate case, the Commission also modified the standard that it adopted in the *PPA Rider*

Case, which, according to IGS, further undermines the settlement process and decreases the likelihood of future compromise.

{¶ 79} Like IGS, RESA argues that the Commission's decision to fundamentally modify a key component of a negotiated settlement agreement undermines the parties' positions and stifles the ability of parties to engage in honest and open negotiations. RESA contends that the Commission has devalued the Stipulation, as well as the stipulation in the *PPA Rider Case*, which both resulted from the parties' lengthy negotiations involving compromise on certain issues under the reasonable belief that the package, as a whole, would serve the public interest and the interests of the parties. Although RESA acknowledges that the Commission has the authority to modify stipulations, RESA argues that the parties to a stipulation should nevertheless be able to trust that compromises made in the spirit of negotiation and cooperation will be honored.

{¶ 80} Further, RESA asserts that the Commission violated its own prior ruling from the *PPA Rider Case*, in which, according to RESA, the Commission established the RRR as a pilot program and ordered that the charge take effect upon a final order in the present proceedings. RESA notes that the RRR pilot was created to acknowledge the costs associated with the provision of retail electric service that are not reflected in SSO rates and to provide a bridge between these proceedings and the next rate case. RESA argues that the Opinion and Order provides no justification for overturning the stipulation in the *PPA Rider Case*, which was signed and approved by the Commission more than two years ago.

{¶ 81} In its application for rehearing, IGS also claims that the Opinion and Order is unlawful and unreasonable, because the Commission's failure to allocate a charge to the RRR is contrary to the manifest weight of the evidence. IGS notes that, despite Mr. White's identification of costs above and beyond the amount proposed for inclusion in the RRR, the Commission nevertheless found that there was a lack of evidence

supporting the proposed charge. IGS argues that Mr. White and AEP Ohio witness Allen provided evidence identifying a real and tangible subsidy to the SSO that the Commission failed to rectify and that the Commission, instead, inappropriately shifted the burden to IGS to disprove the existence of choice program costs in AEP Ohio's next rate case. IGS adds that it is inappropriate to consider choice program costs in distribution rates, because AEP Ohio's tariffs assess costs to CRES providers and their customers, and because shopping customers must pay the billing, collections, and call center costs of their CRES providers, which incur such costs to provide a competitive product in the market. According to IGS, the Commission has also created a requirement that is counter to R.C. 4928.143(B)(2)(g), which permits an ESP to provide for SSO-related cost recovery, because the statute does not require that costs related to the provision of the SSO be offset by choice program costs.

{¶ 82} Next, IGS argues that the Opinion and Order is unlawful and unreasonable, because it violated R.C. 4903.09 by failing to state findings of fact and reasons prompting the Commission's decision. IGS claims that the Commission failed to appropriately consider or address IGS' position and RESA witness White's testimony, which together identified SSO-related costs embedded in AEP Ohio's existing distribution rates that should be included in the RRR. According to IGS, the Commission failed to sufficiently address Mr. White's testimony, which was based on costs included in AEP Ohio's current distribution rates and identified more than four times the amount of SSO-related costs recommended for inclusion in the RRR. IGS concludes that the Commission ignored the costs identified by Mr. White in favor of its own approach and failed to explain how it reached its determination.

{¶ 83} Finally, IGS maintains that the Opinion and Order is unlawful and unreasonable, because, in the absence of a charge included in the RRR, the Commission authorized an SSO that does not comport with the state policy set forth in R.C. 4928.02.

Specifically, IGS claims that the Commission failed to authorize a non-discriminatory, unbundled, and comparable SSO rate, as required under R.C. 4928.02(A) and (B). IGS argues that, instead, the Commission authorized AEP Ohio to subsidize the cost of providing SSO service through its distribution rates, in violation of R.C. 4928.02(H). Further, IGS contends that the Commission unlawfully and unreasonably re-bundled the OCC and Commission assessments in AEP Ohio's distribution rates by eliminating the Company's recovery of its assessments through the GENE and GENC Riders and the ACRR.

{¶ 84} RESA also argues that, by disallowing the RRR as anything more than a placeholder, the Opinion and Order violates the policy of the state to ensure non-discriminatory retail electric service, ensure the availability of unbundled and comparable retail electric service, and prohibit anticompetitive subsidies, as set forth in R.C. 4928.02(A), (B), and (H), respectively. According to RESA, the Commission's decision ignores the fact that, if the RRR is left at zero until AEP Ohio's next rate case, shopping customers will continue to be penalized, for more than two years, by paying twice for certain services simply because they have chosen to shop. Like IGS, RESA also maintains that, by eliminating the proposed RRR charge, the Commission has essentially rebundled the OCC and Commission assessments, which were removed from the GENE and GENC Riders and the ACRR.

{¶ 85} In response to the arguments of IGS and RESA, OCC argues that the Commission has the authority to modify stipulations, as recognized in Ohio Adm.Code 4901-1-30(E), and that IGS and RESA were undoubtedly aware of that fact when they joined the Stipulation, particularly in light of the fact that the Stipulation explicitly identifies the signatory parties' rights and obligations under circumstances where the Commission elects to reject or materially modify the Stipulation. Noting that the Commission analyzed all of the evidence, including OCC's testimony in opposition to

the RRR, OCC also disputes IGS' claim that the Commission's decision is against the manifest weight of the evidence. Further, OCC argues that, consistent with R.C. 4903.09, the Commission specifically identified findings of fact and the reasons behind its decision not to authorize a charge under the RRR. OCC also counters IGS' and RESA's claims that the Commission's decision results in unjust and unreasonable rates and is contrary to state policy. According to OCC, the decision has prevented an unreasonable charge to consumers that was insufficiently supported by the evidence. Finally, citing R.C. 4928.143(C)(1) and Ohio Adm.Code 4901-1-30(E), OCC contends that the stipulation in the *PPA Rider Case* does not obligate the Commission to approve the recommended charge for the RRR in these proceedings, because the Commission has the authority to reject or modify the request. OCC adds that the stipulation in the *PPA Rider Case* includes a provision outlining the parties' rights in the event that the Commission denies certain proposals, including the RRR, in the present cases.

{¶ 86} The Commission finds that the applications for rehearing filed by IGS and RESA should be denied. As IGS and RESA are aware, the Commission is tasked with evaluating the reasonableness of any stipulation presented by its signatory parties and applies a three-part test to that end. In applying the test, the Commission has, on prior occasions, found it necessary to modify the terms of a stipulation offered by AEP Ohio and other signatory parties. *See, e.g., PPA Rider Case*, Opinion and Order (Mar. 31, 2016); *In re Ohio Power Co.*, Case No. 10-501-EL-FOR, et al., Opinion and Order (Jan. 9, 2013); *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011); *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-351-EL-AIR, et al., Opinion and Order (Dec. 14, 2011). Both the Commission's rules and longstanding precedent of the Ohio Supreme Court make clear

that the Commission is not bound by a stipulation and may modify its terms.[6] Ohio Adm.Code 4901-1-30(E); *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125-126, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). It is well-established that a "stipulation entered into by the parties * * * is merely a recommendation made to the [C]ommission and is in no sense legally binding upon the [C]ommission. The [C]ommission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing." *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978).

{¶ 87} Although the Commission is always mindful of the compromise involved among the signatory parties, the Commission, without question, has authority to modify a stipulation as necessary to ensure that the stipulation satisfies the three-part standard of review. In these proceedings, the Commission appropriately applied the three-part test and determined, based on the record, that the RRR and SSOCR should be established as placeholder riders until a complete review of AEP Ohio's costs is conducted in its next distribution rate case. Opinion and Order at ¶¶ 213-216. Accordingly, we reject IGS' and RESA's claims that our modification of the Stipulation's RRR/SSOCR provisions unlawfully or unreasonably undermined the signatory parties' positions and the settlement process. The Commission likewise rejects the argument that the decision to authorize the RRR and SSOCR as placeholder riders is contrary to the Commission's approval of the stipulation in the *PPA Rider Case*. The stipulation in the *PPA Rider Case* merely provides that AEP Ohio would propose the RRR and SSOCR in its ESP extension application. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 27, 29. In approving the stipulation, the Commission was clear that, although AEP Ohio had agreed to file various proposals in future proceedings, such proposals would be subject to further

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6 The Stipulation itself recognizes this fact, in providing that, if any part of the Stipulation is rejected or materially modified by the Commission, any signatory party may withdraw from the Stipulation (Joint Ex. 1 at 40-41).

review by the Commission. The Commission also noted that, while there was a benefit in AEP Ohio's commitment to offer future proposals related to retail competition and other matters for the Commission's consideration, the Commission's recognition of that benefit should not be construed as a predetermination of the outcome of the future proceedings.[7] *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 84, Second Entry on Rehearing (Nov. 3, 2016) at ¶¶ 125, 152.

{¶ 88} Additionally, we find no merit in IGS' position that our decision is inconsistent with the evidentiary record and that we did not explain the basis for our findings and conclusions. In accordance with the requirements of R.C. 4903.09, the Commission's reasoning is fully set forth at Paragraphs 213 through 216 of the Opinion and Order. With respect to the evidence offered by the parties, IGS emphasizes that both RESA witness White and AEP Ohio witness Allen recommended that the RRR be established at an initial rate of $1.05/MWh, with an estimated residential customer credit of $0.48/MWh for the SSOCR. However, OCC witness Haugh also addressed the Stipulation's RRR/SSOCR provisions, recommending that the RRR be rejected outright or, alternatively, that the amount of the rider be determined through a base rate case in which costs can be fully examined and properly allocated, including examination of any costs attributable to shopping customers that are reflected in AEP Ohio's distribution rates. Mr. Haugh also refuted Mr. White's testimony, noting that the costs attributed by Mr. White to non-shopping customers may also be related to shopping customers. Mr. Haugh concluded that a complete analysis and cost allocation should be conducted in a base distribution rate case, in order to ensure that there is no disparity in treatment of SSO and choice customers. (OCC Ex. 8 at 14-18.) Consequently, the Commission's

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[7] In fact, in opposing the Commission's approval of the stipulation in the *PPA Rider Case*, RESA argued that there was no benefit in AEP Ohio's commitment to offer retail competition and other types of proposals, given that the proposals remained subject to approval by the Commission in future proceedings. *PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶¶ 123, 150.

decision to perform such an analysis in AEP Ohio's next rate case is based on the evidence of record.

{¶ 89} Finally, the Commission rejects IGS' and RESA's contention that the Opinion and Order is counter to the state policy in R.C. 4928.02. Rather, we opted for the more measured approach of adopting the RRR and SSOCR as placeholder riders until a comprehensive cost review can be conducted in AEP Ohio's next rate case, which is intended to confirm that the riders are fully in accordance with R.C. 4928.02(A), (B), and (H). In the Opinion and Order, we specifically noted that, following completion of the cost analysis in the forthcoming rate case, the Commission will determine whether it is necessary to reallocate costs between shopping and non-shopping customers, in order to ensure that AEP Ohio's rates are consistent with the state policy objectives set forth in the statute. Opinion and Order at ¶¶ 215-216. The rate case will afford IGS, RESA, and other interested stakeholders the opportunity to address the proper allocation of the Commission and OCC assessments, call center costs, and other types of costs. The Commission will, at that time, determine whether such costs should be reallocated to the SSO.

4. OCC – Second Application for Rehearing

{¶ 90} As noted above, on July 20, 2018, OCC filed an application for rehearing of the June 20, 2018 Entry on Rehearing. In its sole assignment of error, OCC asserts that the Commission erred by granting rehearing to allow itself more time to issue a final appealable order, without ordering that rates be collected from customers subject to refund. OCC claims that the Commission failed to fulfill its duty to hear pending matters without unreasonable delay and with due regard for litigants' rights and interests; delayed judicial review of its order adopting and approving the Stipulation; and precluded parties from exercising their appellate rights under R.C. 4903.10, 4903.11, and 4903.13. OCC notes that, under R.C. 4903.10, the General Assembly established a 30-day

process for the Commission to either grant or deny rehearing. OCC contends that the timely resolution of applications for rehearing within the 30-day period is important, because customers are being charged disputed rates without the likelihood of a refund and the parties cannot pursue an appeal until the Commission has issued a final order. Although OCC acknowledges that the Ohio Supreme Court has found that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider the applications, OCC asserts that the Commission has unreasonably extended the rehearing process in recent proceedings, in a manner that is counter to the Court's precedent. *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146, ¶ 19. OCC concludes that, because the Commission has not ordered a stay of AEP Ohio's rates, the Commission has unduly delayed any relief that customers can seek, thereby resulting in immediate and material harm to customers.

{¶ 91} AEP Ohio responds that the brief time that the Commission has taken thus far to consider multiple applications for rehearing cannot properly be characterized as unreasonable or unduly dilatory. AEP Ohio asserts that OCC merely disagrees with how the Commission has exercised its procedural discretion in deciding the rehearing issues. AEP Ohio adds that OCC's second application for rehearing will only serve to delay the Commission's efforts to issue a final order in these proceedings. According to AEP Ohio, OCC cites no legal authority for its position and acknowledges that the Ohio Supreme Court has determined that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider them. Finally, with respect to OCC's contention that rates should be made subject to refund, AEP Ohio replies that the argument was not raised in OCC's first application for rehearing and, therefore, it is untimely and cannot be pursued further on rehearing or appeal.

{¶ 92} Upon review of OCC's July 20, 2018 application for rehearing, the Commission finds no merit in OCC's arguments. In the June 20, 2018 Entry on Rehearing, the Commission found that sufficient reason had been set forth by AEP Ohio, OCC, RESA, and IGS to warrant further consideration of the matters specified in their May 25, 2018 applications for rehearing. Consequently, the Commission granted rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing. Entry on Rehearing at ¶ 7. As OCC acknowledges, the Ohio Supreme Court has already determined that the Commission is not precluded from granting rehearing for the limited purpose of further consideration of the matters specified in an application for rehearing. *Consumers' Counsel* at ¶ 19. OCC, however, continues to question the Commission's judgment in this regard. *See, e.g., In re The Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, et al., Second Entry on Rehearing (Jan. 31, 2018); *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Sixth Entry on Rehearing (Feb. 23, 2017); *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Fourth Entry on Rehearing (Feb. 8, 2017); *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Seventh Entry on Rehearing (Feb. 1, 2017); *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al., Seventh Entry on Rehearing (Dec. 14, 2016); *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al., Third Entry on Rehearing (Dec. 14, 2016). Although OCC has clearly indicated a preference for full resolution of the rehearing process within 30 days, neither the Commission nor the parties to these proceedings, including OCC, would benefit from the type of cursory review that would be required under that timeframe. As we have previously noted, OCC's recurring applications for rehearing on this issue require additional time and effort on the Commission's part and are counterproductive to OCC's stated objective of obtaining final appealable orders in an expeditious manner. *In re The Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, et al., Second Entry on Rehearing (Jan. 31, 2018) at ¶ 16.

{¶ 93} In any event, we reject OCC's assertion that we have not fulfilled our statutory duties in these complex proceedings. The Commission has reviewed thousands of pages of testimony, exhibits, briefs, and applications for rehearing and issued lengthy orders addressing a variety of arguments, and has done so expeditiously and with careful consideration of all of the parties' positions. We, therefore, find no basis for OCC's claim that the Commission has precluded the parties from exercising their appellate rights. Additionally, as discussed above, we find no merit in OCC's position that the Stipulation, which was entered into by numerous signatory parties, results in unlawful or unreasonable charges that should be stayed or made subject to refund. Finally, we find that OCC's July 20, 2018 application for rehearing is moot, in light of our above rulings on the May 25, 2018 applications for rehearing filed by AEP Ohio, OCC, RESA, and IGS. For these reasons, the Commission finds that the application for rehearing filed by OCC on July 20, 2018, should be denied.

III. ORDER

{¶ 94} It is, therefore,

{¶ 95} ORDERED, That the applications for rehearing filed by AEP Ohio, OCC, RESA, and IGS on May 25, 2018, be denied. It is, further,

{¶ 96} ORDERED, That OCC's second application for rehearing filed on July 20, 2018, be denied. It is, further,

{¶ 97} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

SJP/GNS/sc

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Barcy F. McNeal
Secretary