

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY FOR  
ADMINISTRATION OF THE  
SIGNIFICANTLY EXCESSIVE EARNINGS  
TEST PURSUANT TO R.C. 4928.143(F)  
AND OHIO ADM.CODE 4901:1-35-10.

CASE No. 17-1230-EL-UNC

## OPINION AND ORDER

Entered in the Journal on February 27, 2019

### I. SUMMARY

{¶ 1} The Commission adopts the Stipulation and Recommendation filed by Ohio Power Company and Staff, which concludes that Ohio Power Company did not have significantly excessive earnings for the year 2016, pursuant to R.C. 4928.143(F).

### II. DISCUSSION

#### A. *Applicable Law*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric distribution utility (EDU), 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 EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services 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 in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143. Further, R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

**B. Background and Procedural History**

{¶ 4} In Case No. 09-786-EL-UNC, the Commission established specific policies, filing directives, and procedures for conducting a significantly excessive earnings test (SEET) for the electric utilities under the Commission's jurisdiction. *In re Significantly Excessive Earnings Test*, Case No. 09-786-EL-UNC (*Generic SEET Case*), Finding and Order (June 30, 2010).

{¶ 5} In Case No. 11-346-EL-SSO, et al., the Commission modified and approved, pursuant to R.C. 4928.143, AEP Ohio's application for an ESP, to be effective with the first billing cycle of September 2012 through May 31, 2015. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012), Entry on Rehearing (Jan. 30, 2013).

{¶ 6} 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., 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).

{¶ 7} On May 15, 2017, in the above-captioned case, AEP Ohio filed an application for the administration of the SEET for the year 2016, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10, along with the testimony of three witnesses in support of the application.

{¶ 8} On June 23, 2017, Ohio Consumers' Counsel (OCC) filed a motion to intervene. No memorandum contra OCC's motion was filed.

{¶ 9} By Entry issued December 7, 2017, a procedural schedule was established for the consideration of the SEET application such that motions to intervene were due December 19, 2017, the testimony of Staff and intervenors was due January 12, 2018, and the

hearing was scheduled to commence on February 6, 2018. Consistent with the procedural schedule established, on January 12, 2018, OCC filed the direct testimony of Daniel J. Duann.

{¶ 10} On January 16, 2018, Staff filed a motion to accept testimony instanter and attached the testimony of Staff witness Joseph P. Buckley.

{¶ 11} On January 26, 2018, AEP Ohio, Staff, and OCC filed a joint motion to suspend the procedural schedule to allow the parties additional time to engage in settlement negotiations in an attempt to resolve some or all of the issues in dispute.

{¶ 12} By Entry issued January 29, 2018, the parties' motion to suspend the procedural schedule and OCC's motion to intervene were granted.

{¶ 13} On February 13, 2018, AEP Ohio and Staff filed a Stipulation and Recommendation (Stipulation), which purportedly resolves all the issues raised in this case.

{¶ 14} By Entry issued February 22, 2018, to assist the Commission in its consideration of the Stipulation, a procedural schedule was established. In accordance with the procedural schedule, testimony in support of the Stipulation was due by March 9, 2018, testimony in opposition to the Stipulation was due by March 23, 2018, and a hearing was scheduled to commence on April 10, 2018. The February 22, 2018 Entry also granted Staff's motion to accept its testimony one business day late.

{¶ 15} Consistent with the procedural schedule, AEP Ohio filed the testimony of William A. Allen, in support of the Stipulation, and OCC filed the testimony of Daniel J. Duann, in opposition to the Stipulation.

{¶ 16} The hearing was held, as scheduled, on April 10, 2018. At the hearing, admitted into the record of evidence was the Stipulation (Joint Ex. 1), the direct testimony of Andrea E. Moore (Co. Ex. 2), the direct testimony of Tyler H. Ross (Co. Ex. 3), the direct and supplemental testimony of William A. Allen (Co. Ex. 4 and Co. Ex. 5, respectively), the

testimony of Joseph P. Buckley (Staff Ex. 1), and the supplemental testimony of Daniel J. Duann (OCC Ex. 3).<sup>1</sup>

{¶ 17} Initial and reply briefs were filed by AEP Ohio, OCC, and Staff on May 1, 2018, and May 22, 2018, respectively.

**C. Summary of the Application**

{¶ 18} In its application for administration of the SEET for its 2016 earnings, consistent with the guidelines established in the *Generic SEET Case*, AEP Ohio asserts that, based on its calculations and the supporting testimony, the Company did not have significantly excessive earnings. Based on AEP Ohio's method and analysis, the Company proposes a SEET threshold of 17.69 percent based on a 10.69 percent mean earned return on equity for the comparable group plus an adder of 7.0 percent based on 1.64 standard deviations. In support of the application, the Company filed the testimony of Andrea E. Moore, Tyler H. Ross, and William A. Allen.

**III. STIPULATION OF THE PARTIES**

**A. Summary of the Stipulation**

{¶ 19} As noted previously, on February 13, 2018, AEP Ohio and Staff (Signatory Parties) filed a Stipulation that purports to resolve all the issues in this case. Below is a summary of the Stipulation:<sup>2</sup>

- (a) The Signatory Parties agree that the Stipulation violates no regulatory principle or precedent and is the product of serious arm's length bargaining among knowledgeable and capable parties, in an open and cooperative process in which

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<sup>1</sup> Attached to the supplemental testimony of OCC witness Duann is Mr. Duann's direct testimony filed on January 12, 2018, as Att. DJD-1 at 1-30.

<sup>2</sup> This is a summary of the Stipulation and does not supersede or replace the Stipulation.

all Signatory Parties were represented by able counsel and technical experts (Joint Ex. 1 at 2, 4).

- (b) The Signatory Parties agree that the Stipulation represents a fair and reasonable solution to all of the issues raised in this proceeding (Joint Ex. 1 at 3).
- (c) The Signatory Parties agree the Stipulation, as a package, benefits consumers and the public interest and the terms and conditions of the Stipulation satisfy the policies of the state of Ohio, as set forth in R.C. 4928.02, and do not violate any important regulatory policies or principles (Joint Ex. 1 at 4).
- (d) The Signatory Parties stipulate, agree, and recommend that the Commission should issue its Opinion and Order in this proceeding, accepting and adopting this Stipulation and relying upon its provisions as the basis for resolving all issues raised by this proceeding (Joint Ex. 1 at 4.)
- (e) The Signatory Parties recommend that the Commission find:
  - 1. The testimony filed by AEP Ohio on May 15, 2017, and by Staff on January 16, 2018, should be admitted as evidence, subject to cross-examination, at an evidentiary hearing (Joint Ex. 1 at 4).
  - 2. Based upon the Company's testimony, AEP Ohio's 2016 adjusted SEET return on equity (ROE) was 14.97 percent, as supported in the testimony of AEP Ohio witness Tyler H. Ross (Joint Ex. 1 at 4).

3. AEP Ohio witness Allen's testimony supports a finding that the comparable risk group's mean earned ROE is 10.69 percent. Under the established method for calculating a SEET threshold, an adder is calculated based on 1.64 standard deviations. In this case, the adder would be 7.00 percent, resulting in a SEET threshold of 17.69 percent using the Company's calculations. (Joint Ex. 1 at 4.)
  4. Staff witness Buckley's testimony supports a finding that the comparable risk group's mean earned ROE is 8.67 percent. Using an adder calculated based on 1.64 standard deviations, Staff calculated a SEET threshold of 16.08 percent. (Joint Ex. 1 at 5.)
- (f) The Signatory Parties agree that the analysis in AEP Ohio's and Staff's testimony is consistent with the methodology used by the Commission in prior AEP Ohio SEET cases and supports a conclusion that AEP Ohio's 2016 earned ROE does not constitute significantly excessive earnings under R.C. 4928.143(F) (Joint Ex. 1 at 5).
- (g) The Signatory Parties agree that AEP Ohio's 2016 earned ROE does not constitute significantly excessive earnings under R.C. 4928.143(F) (Joint Ex. 1 at 5).

**B. Consideration of the Stipulation**

{¶ 20} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio

St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This is especially true where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 21} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989). The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

{¶ 22} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

**1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?**

{¶ 23} Signatory Parties submit that the Stipulation is the product of serious bargaining among capable and knowledgeable parties. AEP Ohio witness Allen states that Staff and OCC were invited to discuss settlement and, in settlement discussions, various options were considered to resolve the issues presented. Further, Mr. Allen testified that all of the parties regularly and actively participate in Commission proceedings and are capable and knowledgeable parties. Staff explains that, based on their respective independent analyses and methods, AEP Ohio and Staff separately concluded that AEP Ohio did not have significantly excessive earnings for 2016. Staff declares that all the parties did engage in discussion in an attempt to reach a settlement, although the parties did not physically meet. Staff submits that physically meeting is not required. (Co. Ex. 5 at 4; Joint Ex. 1 at 2, 4; Staff Br. at 6-7; Tr. at 93-94.)

{¶ 24} OCC avers there was not a dispute between AEP Ohio and Staff regarding the SEET threshold and, therefore, by definition, there cannot be a settlement on that issue. OCC compares the Stipulation to an agreement among plaintiffs in a class action lawsuit where the plaintiffs agree as to the defendant's liability. OCC relies on the definition of the terms "settlement" and "stipulation" to argue that the Stipulation is not the product of serious bargaining, as, according to OCC, there was not a dispute between AEP Ohio and the Staff.<sup>3</sup> OCC notes the Stipulation includes AEP Ohio's initial position that advocates for a SEET ROE threshold of 17.69 percent and Staff's SEET ROE threshold of 16.08 percent, but fails to adopt either threshold calculation. Therefore, OCC reasons, because the Signatory Parties do not agree on the 2016 SEET ROE threshold, there is no settlement of the issue, merely a restatement of their respective positions. OCC declares that the Stipulation does not represent a reasonable compromise of competing positions among the parties. (OCC Br. at 4-6; OCC Ex. 3 at 7-8; Co. Ex. 4 at 5; Staff Ex. 1 at 2; Joint Ex. 1 at 4-5.)

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<sup>3</sup> Black's Law Dictionary 1404-1405, 1455 (8th ed. 2007).



{¶ 25} Further, OCC notes that AEP Ohio cites a single piece of evidence of serious bargaining and Staff provides very little evidence to demonstrate serious bargaining. OCC avers that, under the Signatory Parties' interpretation of the first criterion of the three-part test, as long as a single telephone call regarding the settlement occurred, the first prong is met. OCC declares that the record demonstrates that there was very little bargaining in this case, if any at all, and the minimal bargaining that took place cannot be considered serious. Therefore, OCC argues that the Stipulation fails to meet the first prong of the three-part test. (OCC Reply Br. at 2-4.)

{¶ 26} In its reply, AEP Ohio submits that the first part of the test requires serious bargaining, a different concept than the terms "settlement" and "stipulation," on which OCC relies to assert the Stipulation does not meet the first part of the test. Serious bargaining, AEP Ohio reasons, describes actions leading up to an agreement. Further, AEP Ohio offers that the terms "settlement" and "stipulation" are not informative as to whether bargaining occurred. AEP Ohio and Staff admit that they do not agree on all facts and issues in this case, in particular the method for determining whether the Company had significantly excessive earnings for 2016 (Staff Ex. 1 and Co. Ex. 4). AEP Ohio avers that the only evidence in the record regarding serious bargaining was offered by AEP Ohio witness Allen (Tr. at 43). In addition, AEP Ohio argues the three-part test does not require the parties to a stipulation to have different litigation positions. In this instance, the Stipulation represents an agreement between AEP Ohio and Staff not to pursue the disagreement as to the SEET method. AEP Ohio argues that the Supreme Court of Ohio has determined that "the issues resolved in the stipulation may not be significant to [Appellant], but they were important issues to the parties that signed the stipulation. The fact that the stipulation did not resolve all of the [Appellant's] opposition arguments does not mean that the Commission's approval of the stipulation was unlawful." *In re Application to Modify, in Accordance with R.C. 4929.08, the Exemption Granted to E. Ohio Gas Co.*, 144 Ohio St.3d 265, 2015-Ohio-3627, 42 N.E.3d 707, ¶32. Further, the Signatory Parties note that the Commission has previously adopted stipulations supported by Staff and AEP Ohio in prior SEET cases.

See *In re Ohio Power Co.*, Case No. 14-875-EL-UNC, Opinion and Order (Dec. 3, 2014); *In re Ohio Power Co.*, Case No. 13-2251-EL-UNC, Opinion and Order (May 28, 2014). (Staff Ex. 1 at 4-5, JPB Att. 1 and 1A; Co. Ex. 4; Staff Reply Br. at 2.)

{¶ 27} It is undisputed that each of the parties is represented by knowledgeable and capable technical experts familiar with the issues in this matter and represented by counsel experienced in proceedings before the Commission. All parties regularly and actively participate in SEET cases and other Commission proceedings, including the associated settlement negotiations. (Co. Ex. 5 at 4.) OCC witness Duann admits that settlement discussions between each of the parties occurred and that offers for settlement were exchanged amongst the parties (Tr. at 93-94). However, on brief, OCC avers, because the Signatory Parties did not conclusively agree as to the appropriate method to determine the SEET ROE threshold or as to the specific SEET ROE threshold, the Stipulation does not meet the first part of the test used to evaluate stipulations. The Commission disagrees. The primary focus of this provision of the three-part test is whether each party was afforded the opportunity to participate in settlement discussions and whether any class of customers was intentionally excluded from settlement discussions. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). The manner by which the parties engaged in settlement negotiations or exchanged information, whether in person, by email, or by conference call, is irrelevant. AEP Ohio and Staff, through their own independent analyses and different methods, can reach the same conclusion regarding whether AEP Ohio had significantly excessive earnings for 2016. As reflected in the Stipulation, AEP Ohio and Staff were able to reach an agreement on the conclusion. It is not necessary that the Signatory Parties agree on the specific SEET ROE threshold, where, as in this case, a range of results are possible that lead to the same conclusion. The fact that the Signatory Parties reached the same conclusion, albeit by different methods, is not indicative of a lack of serious bargaining. The Commission finds the record sufficient to meet the first criterion of the three-part test for evaluating stipulations. (Joint Ex. 1 at 2; Co. Ex. 5 at 4; Tr. at 93-94).

**2. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?**

{¶ 28} Company witness Allen testified that the Stipulation benefits customers and the public interest by resolving this case in a timely manner, which supports administrative efficiency, consistent with past Commission SEET decisions. AEP Ohio advocates that the SEET thresholds calculated by Staff and AEP Ohio, 16.08 percent and 17.69 percent, respectively, are in line with SEET thresholds underlying previous Commission orders and are adequately supported by the record. (Co. Ex. 5 at 4-5; Joint Ex. 1 at 4; Co. Br. at 7-9.)

{¶ 29} OCC witness Duann declares that AEP Ohio's generic and unsubstantiated statement regarding the Stipulation is not a benefit to customers, because the proposed settlement will have no effect on the timeliness and the efficiency of the adjudication of this case. According to OCC, the timely resolution of this case only benefits the utility. Furthermore, OCC contends that the Stipulation did not resolve a dispute between AEP Ohio and Staff and delayed the hearing in this matter. OCC also argues expediency, the sole benefit of resolving this case offered by Signatory Parties, is nonexistent and no other benefit to consumers or the public interest is identified in the record. On that basis, OCC asserts the Stipulation harms consumers and fails the second part of the three-part test, and should be rejected by the Commission. (OCC Br. at 10-11.)

{¶ 30} OCC also challenges the Stipulation's benefit to ratepayers specifically in regard to: (a) the composition of the comparable group of companies; (b) AEP Ohio's adjustment to 2016 earnings to reverse the 2014 SEET reserve; and (c) AEP Ohio's adjustment to 2016 earnings as to the phase-in recovery rider (PIRR) equity carrying charges. OCC contends that the adjustments are unreasonable.

**a. *Composition of Comparable Group of Companies and Calculation of the Threshold***

{¶ 31} Staff endorses the use of the SPDR Select Sector Fund-Utility (SPDR index), as the group of comparable companies for the purpose of conducting the SEET, on the basis

that the SPDR index is a publicly available comparable group that affords interested stakeholders and this Commission the benefit of transparency. Staff reasons that using the SPDR index reduces the public's perception of the risk of investing in an EDU, thereby reducing the cost of credit for ratepayers. After initially performing the SEET analysis on the 28 companies that make up the SPDR index, Staff, as part of its analysis, notes that four of the 28 companies in the SPDR index have experienced large negative returns on equity for 2016: FirstEnergy Corp. (FirstEnergy) at (66.2) percent, AES Corp. (AES) at (72.8) percent, NRG Corp. (NRG) at (17.3) percent, and Entergy Corp. (Entergy) at (6.73) percent. Staff contends that, while it is conceivable that a regulated utility company in Ohio may have a minor negative return in a given year, similar to that experienced by Entergy, the other three aforementioned companies deviate from the average of the SPDR index for 2016 by more than 400 percent. Staff reasons the returns for the three companies are not comparable and should be removed from the comparable group of companies for purposes of the SEET analysis. With the revised comparable group, Staff performed the SEET analysis again. Noting that OCC would also eliminate Entergy from the comparable group, Staff submits this dispute regarding the companies to be included in the comparable group is the type of discussion that Staff sought to avoid with the use of the SPDR index. Further, Staff reasons that revising the comparable group of companies, as recommended by Staff, avoids the appearance that AEP Ohio is riskier due to no fault of its own. (Staff Ex. 1 at 2, 4-5, JPB Att. 1 and 1A; Staff Br. at 5-6; Staff Reply Br. at 2-3; OCC Ex. 3 at 20.)

{¶ 32} OCC contends that FirstEnergy, Entergy, AES, and NRG exhibited unusual fluctuations in earnings and shareholders' equity and, therefore, posted unusually large accounting losses or significant decreases or increases in shareholders' equity. For that reason, OCC avers the data associated with all four entities should be excluded from the SEET analysis, as including the results for the four entities causes an unreasonably high return on common equity standard deviation of 4.27 percent, which inflates AEP Ohio's calculation of the SEET threshold. OCC avers that, by including Entergy in the analysis, Staff unlawfully includes a company that did not face comparable business and financial

risk to AEP Ohio in 2016. Accordingly, OCC recommends the removal of the four companies to align the group of comparable companies utilized with the business and financial risk of AEP Ohio per R.C. 4928.143(F). (OCC Ex. 3 at 18-20, Att. DJD-1 at 16-18; OCC Br. at 7-8.)

{¶ 33} In prior AEP Ohio SEET proceedings, the Commission has approved Stipulations that incorporated the use of the SPDR index as a proxy for the comparable group of companies in the SEET analysis. *In re Columbus Southern Power Co.*, Case No. 13-2250-EL-UNC, Opinion and Order (Mar. 26, 2014); *In re Ohio Power Co.*, Case No. 13-2251-EL-UNC, Opinion and Order (May 28, 2014); *In re Ohio Power Co.*, Case No. 14-875-EL-UNC, Opinion and Order (Dec. 3, 2014). We note that the SPDR index is selected by an independent third party. The primary value of utilizing the index is the transparency it offers to the SEET analysis as opposed to the various methods proposed by the parties to the SEET proceeding to determine the comparable group of companies. It is vitally important to preserve the integrity of the SPDR index as the proxy for the comparable group that the index be revised as little as possible. To that end, the Commission will delete only those companies from the index, FirstEnergy, AES, and NRG, that deviate from the average by such a significant amount as to not be comparable to AEP Ohio. FirstEnergy, AES, and NRG deviate from the average of the SPDR index companies for 2016 by more than 400 percent. Accordingly, the Commission finds it appropriate to adjust the SPDR index for purposes of the SEET analysis. We note that this is consistent with the method, as offered by Staff and adopted by the Commission, to determine the comparable group of companies, and calculate the SEET threshold in the SEET proceedings of other Ohio electric distribution utilities. *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and the Toledo Edison Co.*, Case No. 17-993-EL-UNC, Opinion and Order (Mar. 8, 2018).

**b. 2014 SEET Reserve Adjustment**

{¶ 34} In 2014, in anticipation of a SEET refund to customers, AEP Ohio states the Company recorded a \$21.4 million SEET reserve based on the Commission's Order in the *ESP 2 Case*, which established a SEET threshold of 12 percent. *ESP 2 Case*, Opinion and

Order (Aug. 8, 2012) at 37, Entry on Rehearing (Jan. 30, 2013) at 41-42. AEP Ohio appealed the Commission's decision to the Ohio Supreme Court. The Court determined that the Commission failed to explain its decision to set the SEET threshold at 12 percent to be applied during the term of ESP 2 and remanded this aspect of the decision to the Commission on April 21, 2016. *In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶66. Based on the Court's ruling, AEP Ohio management concluded that the 2014 SEET refund was no longer probable and reversed its \$21.4 million reserve. AEP Ohio contends the adjustment should be reversed, for 2016 SEET purposes, since the reserve provision originally accrued in 2014 and was reflected in the Company's 2014 SEET application and testimony. *See In re Ohio Power Co.*, Case No. 15-1022-EL-UNC (2014 SEET Case), Direct Testimony of Thomas E. Mitchell (June 1, 2015). (Co. Ex. 2 at 8.)

{¶ 35} OCC witness Duann emphasizes, as AEP Ohio admits, AEP Ohio's SEET proceedings before the Commission for the years 2012 through 2015 are closed. Further, the witness argues that there is no factual basis to support AEP Ohio's claim that the \$21.4 million SEET reserve recorded in 2016 was added back to either the 2014 per-book earnings or the 2014 SEET adjusted earnings. Mr. Duann states the effect of the 2014 SEET reserve should increase the per-book earnings reported by AEP Ohio; however, OCC declares that the 2014 SEET reserve is not reflected in the per-book earnings reported in AEP Ohio's 2014 financial statements nor 2016 financial statements. OCC witness Duann submits that the Commission did not make any determination regarding AEP Ohio's 2014 application, SEET adjusted earnings amount, SEET adjusted ROE, or the SEET threshold in the 2014 SEET Case, but acknowledges that AEP Ohio's 2014 SEET Case was resolved as part of the Global Settlement Stipulation in Case 09-872-EL-FAC, et al. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 09-872-EL-FAC, et al. (Global Settlement Case), Order on Global Settlement Stipulation (Feb. 23, 2017) at 27-28, 51. (OCC Ex. 3 at 14-15, Att. DJD-1 at 11.)

{¶ 36} AEP Ohio argues that OCC's claim that the adjustment for the 2014 SEET reserve shifts earnings for SEET purposes from 2016 to 2014 is incorrect. AEP Ohio explains that the pre-tax \$21.4 million accounting entry relates to 2014 and, therefore, should have

no effect on 2016 income for SEET purposes. AEP Ohio declares the earnings were included in the 2014 SEET calculations and it would be improper to include the same \$21.4 million in pre-tax earnings in AEP Ohio's 2016 SEET earnings, as the same dollars cannot be included in the SEET earnings for two years. (Co. Ex. 5 at 5.)

{¶ 37} The Commission notes that the Order on Global Settlement Stipulation adopted, in its entirety, the Global Settlement Stipulation filed by the parties to several AEP Ohio proceedings, including the *2014 SEET Case* and *In re Ohio Power Co.*, Case No. 16-1105-EL-UNC (*2015 SEET Case*). *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017). The Global Settlement Stipulation specifically provided that, as a unified package, it was intended to resolve the *2014 SEET Case* and the *2015 SEET Case*, as well as the Supreme Court's remand of the *ESP 2 Case* in regard to the SEET threshold. *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017) at 27. By the time AEP Ohio filed the pending SEET application on May 15, 2017, the Order on Global Settlement Stipulation was a final non-appealable decision. The Commission recognizes that, while the Order on Global Settlement Stipulation did not specifically make a determination on the 2014 earnings of AEP Ohio or the applicable SEET threshold, it was not necessary to do so as a part of the evaluation of the Global Settlement Stipulation. Further, the Commission notes that none of the parties to the Global Settlement Stipulation, which included AEP Ohio, Staff, and OCC, nor any other party to the proceedings, requested that the Commission make such findings. Nonetheless, the Commission acknowledges that the June 1, 2015 testimony of Thomas E. Mitchell admitted into the record of the *2014 SEET Case* clearly disclosed a reserve account for the refund of AEP Ohio's earnings over the SEET threshold of 12 percent as established in the *ESP 2 Case*. *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017) at 6. On that basis, under the circumstances of this case, the Commission finds the adjustment of AEP Ohio's 2016 earnings for the reversal of the 2014 SEET reserve to be reasonable as a component of the Stipulation.

*c. PIRR Carrying Charge Adjustment*

{¶ 38} As background, the Commission notes that, in the Company's first ESP case, the Commission directed AEP Ohio, pursuant to R.C. 4928.144, to phase in a portion of the authorized rate increase that exceeded an established percentage for each year of the ESP. The Commission authorized AEP Ohio to establish a regulatory asset to record and defer fuel expenses with carrying costs at the WACC, with recovery of the deferred expense through a nonbypassable surcharge to commence in 2012 and continue through 2018. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al., Opinion and Order (Mar. 18, 2009) at 20-23, Entry on Rehearing (July 23, 2009) at 6-10. On August 1, 2012, the Commission approved AEP Ohio's application to establish a nonbypassable mechanism, the PIRR, to recover its deferred fuel costs including carrying costs. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-4920-EL-RDR, et al. (*PIRR Cases*), Finding and Order (Aug. 1, 2012) at 3, 17-19, Fifth Entry on Rehearing (Oct. 3, 2012). In the *PIRR Cases*, the Commission authorized AEP Ohio to accrue carrying costs at the WACC rate of 11.15 percent. Once collection of the deferrals commenced, the Commission directed that the carrying charges be reduced to AEP Ohio's long-term debt rate of 5.34 percent. AEP Ohio appealed the *PIRR Cases* to the Supreme Court of Ohio. By decision issued June 2, 2015, the Supreme Court of Ohio reversed the Commission's order in the *PIRR Cases* and reinstated the weighted average cost of capital (WACC) rate of return for deferred fuel expenses effective as of September 2012. *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060.

{¶ 39} In this proceeding, AEP Ohio made an adjustment to reduce the Company's 2016 SEET earnings by \$22.8 million for incremental PIRR carrying charges applicable to 2012 through 2015, as a result of the Court's decision. AEP Ohio states the Company began to collect the incremental PIRR carrying charges, the difference between the long-term debt rate of return and the WACC, over the remaining deferral period, July 2015 through



December 2018.<sup>4</sup> AEP Ohio contends the PIRR carrying charges relate to prior periods and should not be included in the Company's 2016 SEET earnings. Further, AEP Ohio submits that, even if the PIRR carrying charges had been recorded in the applicable year, based on the Commission-adjudicated SEET thresholds, AEP Ohio's SEET earnings would not have exceeded the SEET thresholds determined by the Company or the Staff in any of the SEET proceedings from 2012 through 2015 (Co. Ex. 3 at 11-12, Exhibit THR-2). AEP Ohio states that the Company considers the SEET proceedings prior to 2016 to be approved by the Commission and no longer subject to further review or appeal based on the agreement of all parties to the Global Settlement Stipulation. Further, AEP Ohio considers the PIRR adjustment to be a non-recurring, special, and extraordinary item consistent with the Commission's Order in the *Generic SEET Case*. *Generic SEET Case*, Finding and Order (June 30, 2010) at 18. (Co. Ex. 3 at 12; Co. Ex. 5 at 6-7.)

{¶ 40} OCC witness Duann argues that the incremental PIRR carrying charges were never recorded in AEP Ohio's per-book earnings or the SEET adjusted earnings for any year 2012 through 2015. Further, OCC states the SEET proceedings for the years 2012 through 2015 are closed and, thus, the result of the SEET proceedings, if the PIRR carrying charge income had been included and recorded from 2012 to 2015, is irrelevant. Therefore, OCC declares that the Stipulation, which incorporates AEP Ohio's adjustment for the incremental PIRR carrying charges, shifts earnings from the current SEET review to other periods, 2012 through 2015, that are no longer subject to review and unnecessarily and unfairly reduces the Company's 2016 earnings for SEET purposes. (OCC Ex. 3 at 16-17, Att. DJD-1 at 11.)

{¶ 41} OCC contends it is illogical for AEP Ohio to assert the PIRR adjustment and the SEET reserve adjustment should be considered non-recurring, special, and extraordinary items for 2016 and be excluded for the 2016 SEET, but are not considered as non-recurring, special, and extraordinary items in the years 2012 to 2015 and included in the

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<sup>4</sup> AEP Ohio states the adjustment in the PIRR rates does not reflect the change in rates in accordance with the Commission's approval of the Global Settlement Stipulation. *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017) at 27-28, 51.

SEET. By OCC's interpretation, these two items reflect earnings recorded in 2016 and that are the direct result of regular, continuing, and recurring rider rates and terms approved in an ESP and, therefore, earnings resulting from the ESP that must be part of the 2016 earnings for SEET purposes. OCC witness Duann submits that, by adopting the Stipulation that implicitly includes the adoption of the PIRR adjustment and the SEET reserve adjustment, the Commission would encourage AEP Ohio to shift earnings from one period subject to SEET review to another that is no longer subject to review, frustrating the General Assembly's intent to protect customers from paying significantly excessive earnings. (OCC Ex. 3 at 17-18.)

{¶ 42} As the Signatory Parties recognize, in June 2015, the Court reversed the Commission's decision in the *PIRR Cases* and reinstated the WACC rate of return for deferred fuel expenses effective as of September 2012. *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060. Accordingly, given the Court's ruling on this matter, the Commission finds reasonable AEP Ohio's adjustment to reduce the revenue earned in 2016 to match the carrying charges to the appropriate year when they should have been recovered. (Co. Ex. 3 at 12; Co. Ex. 5 at 6-7).

{¶ 43} Further, the Commission finds the Stipulation meets the second criterion of the three-part test. As a package, the Stipulation advances the public interest by resolving all the issues raised in this proceeding consistent with R.C. 4928.143(F) and consistent with the methodology utilized by the Commission in prior SEET proceedings. *In re Columbus Southern Power Co.*, Case No. 13-2250-EL-UNC, Opinion and Order (Mar. 26, 2014); *In re Ohio Power Co.*, Case No. 13-2251-EL-UNC, Opinion and Order (May 28, 2014); *In re Ohio Power Co.*, Case No. 14-875-EL-UNC, Opinion and Order (Dec. 3, 2014); *Generic SEET Case*, Finding and Order (June 30, 2010). The Stipulation is not inconsistent with the *Global Settlement Case*. *Global Settlement Case*, Order on Global Settlement Stipulation (Feb. 23, 2017). Accordingly the Commission finds that the record supports a finding that the Stipulation meets the second criterion of the three-part test for evaluating stipulations. (Co. Ex. 3 at 11-12, Exhibit THR-2; Co. Ex. 5 at 4-7; Staff Ex. 1 at 2, 4-5, JPB Att. 1 and 1A.)

**3. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?**

{¶ 44} AEP Ohio and Staff submit that the Stipulation does not violate regulatory policy. More specifically, AEP Ohio witness Allen testified that the Stipulation does not violate any important regulatory principle or practice, as the earned ROE for AEP Ohio, the mean earned ROE of the comparable risk groups, and the SEET threshold were calculated consistent with the manner accepted by the Commission in the Company's previous SEET cases. The Stipulation, Staff asserts, provides for a result consistent with the statute in a clear and transparent fashion where the conclusion is supported by the record evidence. On that basis, Staff argues that the Stipulation recommends the correct legal result to the only issue in the case. Accordingly, the Signatory Parties argue that the third criterion has been met. (Co. Ex. 5 at 5; Joint Ex. 1 at 4; Co. Br. at 10; Staff Br. at 7.)

{¶ 45} OCC argues that the Stipulation violates Ohio law and important regulatory principles on the basis that the Stipulation would allow AEP Ohio to overcharge consumers, in violation of R.C. 4905.22. Further, OCC contends the Stipulation violates the policies of the state of Ohio to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, to protect at-risk populations, and to facilitate the state's effectiveness in the global economy. R.C. 4928.02(A), (L), and (N). OCC notes that AEP Ohio has the burden of proof to demonstrate that it did not have significantly excessive earnings and to demonstrate that the Company's calculations and methodologies comply with generally accepted accounting principles. According to OCC, AEP Ohio failed to demonstrate that the adjustments made to their 2016 earnings generally comply with the basic principles of accounting and should be rejected by the Commission as part of the Stipulation. (OCC Br. at 11-13, OCC Ex. 3 10-12.)

{¶ 46} OCC advocates that based on its analysis, the Stipulation permits AEP Ohio to retain significantly excessive earnings that should be returned to customers (OCC Br. at 12). As discussed above, under the circumstances of this case, the Commission finds the adjustments made to the 2016 earnings reasonable. To that end, the Commission also rejects

OCC's arguments that the adjustments to AEP Ohio's 2016 earnings results in unjust and unreasonable rates and, therefore, the Stipulation violates R.C. 4905.22 and should be rejected. The record does not support and OCC fails to state any generally accepted accounting principle that the Stipulation violates. In light of the Commission's determinations regarding the SEET analysis, as reflected in the Stipulation and discussed above, we also reject OCC's arguments that the Stipulation violates R.C. 4905.22 and 4928.02, to the extent that the Stipulation does not find significantly excessive earnings. The Commission concludes that the Stipulation does not violate any important regulatory principles or practices and, therefore, complies with the third criterion of the three part test. (OCC Ex. 3 at 10-12; Tr. at 114-117; Co. Ex. 5 at 5; Joint Ex. 1 at 4; Co. Br. at 10; Staff Br. at 7.)

{¶ 47} As a final matter, the Commission notes that AEP Ohio advocates that, if the Commission ultimately determines that AEP Ohio's 2016 earnings exceed the SEET threshold, the Commission should take into account the shared savings component of the Company's Energy Efficiency/Peak Demand Reduction program. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012). (Co. Ex. 4 at 6-7.) The Commission finds that, given its conclusion that AEP Ohio did not have significantly excessive earnings, in accordance with the Stipulation, the Commission need not address AEP Ohio's alternative requests or OCC's arguments to the contrary. Accordingly, the Commission concludes that the Stipulation filed by the Signatory Parties meets the criteria used to evaluate stipulations, is reasonable and should be adopted.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 48} AEP Ohio is a public utility, as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 49} R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

{¶ 50} On May 15, 2017, AEP Ohio filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10.

{¶ 51} The evidentiary hearing was held in this matter on April 11, 2018. Among the exhibits admitted into evidence at the hearing was the Stipulation executed by AEP Ohio and Staff to resolve all issues in this case. OCC opposed the Stipulation.

{¶ 52} The Stipulation provides that AEP Ohio's 2016 earned ROE does not constitute significantly excessive earnings under R.C. 4928.143(F).

{¶ 53} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

#### V. ORDER

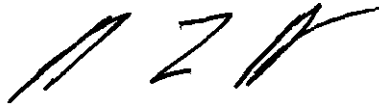
{¶ 54} It is, therefore,

{¶ 55} ORDERED, That the Stipulation be approved and adopted. It is, further,

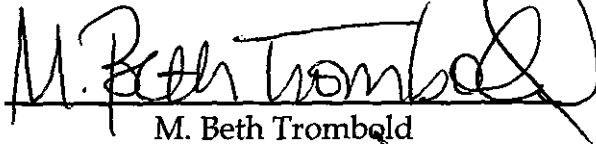
{¶ 56} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 57} ORDERED, That a copy of this Opinion and Order be served upon all interested persons of record.

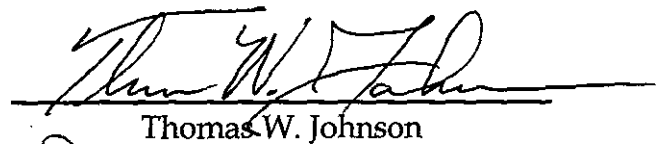
THE PUBLIC UTILITIES COMMISSION OF OHIO



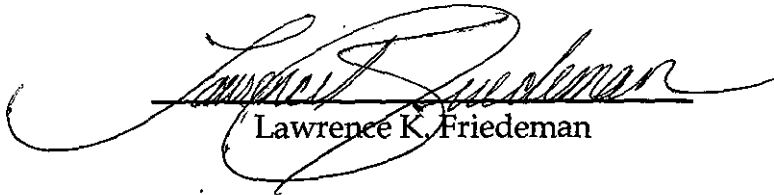
Asim Z. Haque, Chairman



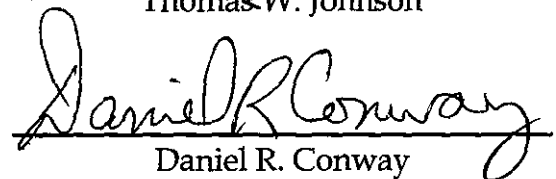
M. Beth Trombeld



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

GNS/hac

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FEB 27 2019



Tanowa M. Troupe  
Secretary