

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2016 Review of the)
Distribution Investment Rider Contained) Case No. 17-0038-EL-RDR
in the Tariff of Ohio Power Company.)

In the Matter of the 2017 Review of the)
Distribution Investment Rider Contained) Case No. 18-0230-EL-RDR
in the Tariff of Ohio Power Company.)

**INITIAL BRIEF
BY
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I. INTRODUCTION

One of the ways that Ohio's 2008 energy law has favored electric utilities over their customers is in the proliferation of charges known as "riders" that have been layered on top of consumers' electric bills. Various riders have been cash cows for AEP Ohio at consumer expense. A prime example is AEP's so-called Distribution Investment Rider ("DIR" or "the Charge"). Under it, AEP has charged consumers more than a billion dollars, purportedly to increase its distribution system's reliability. While the Charge has worked for AEP's collection of revenues, the significant infusion of customers' cash hasn't worked as intended for consumers – AEP's service reliability has gotten progressively worse.

Nonetheless, AEP has found a new way to spend consumers' payments of the Charge. AEP uses the Charge, in part, to spend money on trimming trees. That use of consumers' money circumvents the spending caps placed on another of its riders, the so-

called Enhanced Service Stability Rider (“tree-trimming rider”). The Charge has devolved into yet another expensive, ineffective, and duplicative tree-trimming program.

On top of that, AEP wants its 1.5 million consumers to pay “incentives” for its employees. It is contrary to the public interest and regulatory principles and practice to make consumers pay to incent the service reliability that Ohio law, rule or order requires of monopoly utilities.

AEP also wants to charge consumers for its spare parts program. That program is inefficient. That is also contrary to the public interest and regulatory principles and practice.

It is therefore unfortunate that the Staff of the Public Utilities Commission of Ohio (“PUCO”) has signed a Settlement that allows AEP to continue business as usual. But the Settlement is just a recommendation. It is not binding on the PUCO. It should not be adopted by the PUCO. To protect AEP’s nearly 1.3 million residential consumers, the Office of the Ohio Consumers' Counsel (“OCC”) recommends that the PUCO reject the Settlement and adopt OCC’s recommendations for consumer protection.

II. BACKGROUND

The Charge is just one of AEP’s 31 “riders.” When the PUCO approved the Charge, it found that the Charge and the replacement of aging infrastructure under the DIR would “facilitate improved service reliability.”¹ Customers have paid the Charge since 2012. AEP has collected well over a billion dollars in distribution infrastructure

¹ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) at 47.

money from customers.² The PUCO has also found that the Charge should be providing quantifiable reliability benefits for customers.³

Despite the money that customers have paid to AEP through the Charge, customers are not receiving improved service reliability from AEP. In fact, the average time AEP customers are out of service is becoming longer.⁴ This notwithstanding that the PUCO directed that AEP's spending under the Charge be focused on programs that will improve customers' service reliability.⁵

This case involves the independent audit of distribution investment costs charged to AEP customers during 2016 and 2017. Collections from customers through this charge were capped at \$146.2 million for 2016 and \$170 million for 2017.⁶

On February 8, 2017, the PUCO issued an Entry in Case No. 17-38-EL-RDR ordering the PUCO Staff to begin the process for choosing an auditor to review the 2016 costs collected from customers through the Charge. A similar Entry was issued in Case No. 18-230-EL-RDR on February 21, 2018 for the audit of 2017 costs collected from

² *In the Matter of the Commission's Review of the Ohio Power Company's Distribution Investment Rider Work Plan for 2017*, Case No. 18-0109-EL-UNC, DIR Work Plan (January 17, 2018) at 4.

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) at 47.

⁴ While the System Average Interruption Frequency Index ("SAIFI") performance has remained about the same, the Customer Average Interruption Duration Index ("CAIDI") performance has declined. The SAIFI reliability standard is a measure of the total number of interruptions an average customer will experience in a year. The CAIDI reliability standard is a measure of the average duration of an outage. The PUCO has reliability performance standards for the SAIFI and CAIDI for each of the Ohio electric utilities. *See* Ohio Adm. Code 4901:1-10-10.

⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) at 46.

⁶ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015) at 47.

customers through the Charge. Blue Ridge Consulting Services (“Blue Ridge”) was chosen for both audits.⁷

III. STANDARD OF REVIEW

It is well-established that the PUCO will adopt a settlement only if it meets all three criteria delineated below. The PUCO must evaluate the Settlement and decide the following:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?⁸
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?⁹

The PUCO should reject the Settlement that PUCO Staff and AEP reached in this case because (as explained in detail herein) it fails to meet the PUCO’s adopted criteria. The Settlement does not benefit customers and the public interest and violates regulatory principles and practices.

⁷ Case No. 17-38-EL-RDR, Entry (March 22, 2017); Case No. 18-230-EL-RDR, Entry (March 28, 2018).

⁸ The PUCO takes into account the “diversity of interests” as part of the first part of the stipulation assessment. *See: In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer, Case No. 10-388-EL-SSO*, Opinion and Order at 48 (August 25, 2010).

⁹ *Consumers’ Counsel v. Pub. Util. Comm’n.* (1992), 64 Ohio St.3d 123, 126.

IV. RECOMMENDATIONS

A. The Settlement does not benefit customers, is not in the public interest and should be rejected to protect consumers.

1. To consumers' detriment, the DIR has not improved service reliability even though AEP has charged consumers over a billion dollars.

The Charge was approved for funding, at consumer expense, part of a massive AEP distribution infrastructure modernization program intended to improve customers' distribution reliability. But AEP's reliability has actually declined to the point where its customers are receiving substandard reliability in 2018.¹⁰ "Substandard reliability" refers to the fact that AEP failed to meet both of the minimum reliability performance standards established by the PUCO.¹¹

The minimum reliability performance standards used by the PUCO are the System Average Interruption Frequency Index ("SAIFI") and the Customer Average Interruption Duration Index ("CAIDI"). Higher numbers for SAIFI and CAIDI ("reliability standards") means worse reliability of the electric system. AEP's reliability for consumers, as measured by these indices, has declined consistently since the Charge was initiated and approved in 2012.¹² As just mentioned, AEP's distribution reliability has declined so far that it failed to meet either of the reliability standards in 2018.¹³

¹⁰ See Direct Testimony of James D. Williams in Opposition to the Joint Stipulation and Recommendation ("Williams Testimony") filed August 20, 2019 (OCC Ex. 2) at 5.

¹¹ See *id.* at 5-6.

¹² See *id.* at 6.

¹³ See *id.*

But more importantly, AEP's failure to meet the minimum PUCO reliability standards means that customers are at risk of receiving unsafe and unreliable service.¹⁴ As pointed out by OCC Witness Williams, this unfortunate situation is exacerbated by the fact that customers are paying substantial, extra charges on their monthly electric bill for the Charge, *which was intended to improve reliability*, over the last seven years.¹⁵ AEP's customers are also paying extra charges on their bills for AEP's tree-trimming charges (the "ESRR rider") and for charges under AEP's smart grid program ("gridSMART rider"). Like the Charge these other two rider charges are also supposed to be contributing to improved reliability (but are not).¹⁶

Before 2013, reliability performance standards were measured separately for each of the two AEP distribution utilities, Columbus Southern Power and Ohio Power Company.¹⁷ Beginning in 2013, the reliability performance standards were consolidated as a single distribution utility under Ohio Power Company.¹⁸ To demonstrate the lack of effectiveness of the Charge, Table 1 in OCC witness William's testimony compares AEP's pre-Charge reliability performance for 2009 through 2012 with the reliability performance under the Charge from 2013 through 2018. This table demonstrates that the Charge has not helped improve customer reliability and, in fact, reliability as measured

¹⁴ Contrary to state law. *See* R.C. 4928.02(A).

¹⁵ Williams Testimony at 6.

¹⁶ *See id.*

¹⁷ *See id.* at 12.

¹⁸ *See id.*

under the PUCO’s reliability standards has declined. Outage frequency and outage duration numbers are trending in an *increasing* direction, which is bad for consumers.¹⁹

Table 1: AEP Ohio Reliability Performance Pre-DIR/ Post DIR (2009 – 2018)²⁰

Year	SAIFI	CAIDI
<i>PRE-DIR PERFORMANCE²¹</i>		
2009	1.09	129.67
2010	1.10	138.83
2011	1.19	142.9
2012	0.98	144.2
<i>PERFORMANCE UNDER THE DIR</i>		
2013	1.03	140.97
2014	1.13	146.61
2015	1.13	139.03
2016	1.08	143.45
2017	1.15	146.02
2018	1.30	150.32

Using AEP’s average SAIFI performance level for 2009 through 2012 of 1.09, the performance has been worse each year since the Charge was initiated in 2012 (with the exception of 2013, the first year under the Charge).²² Using AEP’s average CAIDI reliability reading of of 138.9 minutes for 2009 through 2012, performance has been

¹⁹ *See id.*

²⁰ *See id.* at 13.

²¹ *In the Matter of the Establishment of 4901: 1-10-10(B) Minimum Reliability Performance Standards for Ohio Power Company.*, Case No. 12-1945-EL-ESS, Application (June 29, 2012).

²² *See Williams Testimony* at 13.

declining in each of the last six years.²³ These reliability standards show declining reliability because the frequency and duration of outages for customers are increasing.²⁴

AEP's reliability performance in 2018 highlights that charging customers huge dollars for the Charge are not translating into better reliability. According to AEP's 2018 reliability performance report, AEP was required to maintain minimum performance standards for SAIFI of 1.19 and for CAIDI of 149.00 minutes.²⁵ AEP's actual performance for 2018 was a SAIFI of 1.30 and a CAIDI of 150.32 minutes.²⁶

This demonstrates that AEP failed to maintain minimum reliability performance for 2018.²⁷ This means that customers experienced more outages and for much longer periods of time than permitted by the PUCO minimum distribution reliability performance standards.²⁸ As OCC Witness Williams put it: "Failure to meet the minimum reliability performance standards demonstrates that in 2018, despite customer funding for the DIR (and many other single issue riders), AEP's customers were at risk of receiving unsafe and unreliable service."²⁹

²³ *See id.*

²⁴ *See id.*

²⁵ *See id.* at 14.

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See id.*

- a. To consumers' detriment, the reliability of AEP's distribution system has declined due to equipment failures even though AEP has charged consumers hundreds of millions of dollars to modernize its distribution infrastructure.**

Based on the 2018 reliability performance, the very expensive Charge that was intended to proactively modernize distribution infrastructure and reduce outages has proven to be ineffective.³⁰ And it is even worse than that for consumers. In addition to the millions of dollars they pay through the Charge, AEP's customers pay approximately \$26 million annually through the tree-trimming charge for maintaining a four-year, cycle-based, tree-trimming program that the PUCO has concluded would improve reliability.³¹ On top of that, the PUCO has approved a \$560 million smart grid program, which includes the deployment of equipment to help improve reliability of service for customers – smart meters, Volt-Var Optimization, and Distribution Automation Circuit Reconfiguration (“DACR”).³² The benefits AEP touted from the smart grid program were largely attributed to cost savings through avoided outages. Yet as was shown in Table 2, AEP's actual reliability performance has declined.³³

³⁰ *See id.*

³¹ *See id.* at 14-15.

³² *See id.* at 15.

³³ *See id.*

Table 2: Equipment Failures (2009 – 2018)³⁴

Equipment Failure, excluding Major Events and Transmission Outages				
Year	Outage Events	Customer Interruptions	Customer Interruption Minutes	Average Interruption Duration (Min)
<i>PRE-DIR PERFORMANCE</i>				
2009	8,884	487,792	56,311,814	115
2010	9,479	506,251	65,533,898	129
2011	10,048	528,224	70,689,041	134
2012	8,557	409,944	56,659,404	138
4-Year Average	9,242	483,053	62,298,539	129
<i>PERFORMANCE UNDER THE DIR</i>				
2013	8,466	458,533	61,732,503	135
2014	9,230	535,319	74,014,048	138
2015	9,642	556,400	75,850,668	136
2016	8,338	507,202	68,462,876	135
2017	8,038	518,029	74,033,978	143
2018	9,573	558,385	75,964,835	136
6-Year Average	8,881	522,311	71,676,485	137
Average Increase	-361	39,259	9,377,945	8
Average % Increase	-3.90%	8.13%	15.05%	6.41%

³⁴ See *id.* at 16.

Table 2 compares the number of outage events caused by equipment failure on distribution circuits and in distribution substations, and their impact on customers' electric service reliability in the years before the Charge implementation, i.e., 2009 through 2012, with their impacts on reliability since the Charge implementation.³⁵ Table 2 excludes any outages occurring during major events or service outages caused by events on the transmission system.³⁶

Table 2 shows that, while the number of outage events caused by equipment failure on distribution facilities has decreased by about four percent since the Charge implementation, the effects of these outage events on electric customers, i.e., the number of customer interruptions and the number of customer interruption minutes, have both increased during the time customers were paying the Charge.³⁷ During the time customers paid the Charge, there is an annual average of more than 39,000 additional customer interruptions than before the Charge representing an annual average increase of 8.13%. Under the Charge, there are an annual average of more than 9.3 million additional customer interruption minutes than prior to the Charge representing an annual average increase of more than 15%.³⁸ The increase in customer interruptions results in less reliable service for customers. an.³⁹

Table 2 also reflects how the average interruption duration in minutes of each customer interruption increases from an average of 129 minutes prior to the Charge to an

³⁵ *See id.* at 16-17.

³⁶ *See id.* at 17.

³⁷ *See id.*

³⁸ *See id.*

³⁹ *See id.*

average of 137 minutes under the Charge, an increase of 6.41%.⁴⁰ The net results from the time customers are paying the Charge are increased annual customer interruptions and increased annual customer interruption minutes due to equipment failures.⁴¹ OCC Witness Williams therefore concludes that “the proposed Settlement between Staff and AEP Ohio does nothing to mitigate outages caused by equipment failures (which is the supposed purpose of the Charge).”⁴²

b. To consumers’ detriment, the reliability of AEP’s distribution system has declined because AEP has failed to comply with its own vegetation management plan.

Because it failed to meet its 2018 reliability standards, AEP submitted an Action Plan to the PUCO Staff.⁴³ It shows substantial increases in outages caused by trees and by distribution equipment failures. Interestingly, AEP has control over preventing outages due to trees and distribution equipment failures. It can keep up with its tree-trimming plan and prevent equipment failures by using money from the Charge for its intended purpose.⁴⁴ But AEP does not follow its own tree-trimming plan.

AEP’s tree-trimming plan requires the trees across the entire distribution system to be examined for potential hazards to power lines on a four-year cycle.⁴⁵ The plan requires removal or pruning of trees inside and outside of the right-of-way if they pose a threat to power lines. Trees that are not an immediate threat to power lines, but that

⁴⁰ *See id.*

⁴¹ *See id.*

⁴² *See id.* at 18.

⁴³ *See id.* at 15.

⁴⁴ *See id.*

⁴⁵ *See id.* at 18.

could be within the ensuing four years, are to be pruned.⁴⁶ In addition, the tree-trimming plan requires monitoring the ash trees outside the cleared right-of-way and trimming or removing them to proactively reduce outages.⁴⁷

AEP has not properly followed its tree-trimming plan. It has not removed trees inside and outside of the right-of-way during the four-year cycle-based tree trimming program. This has led to a large number of outages in 2018 caused by trees outside the cleared right-of-way.

AEP must file an Annual System Improvement Plan Report showing whether it has complied with the particular inspection, maintenance, repair, and replacement programs required by Ohio Administrative Code 4901:1-10-27.⁴⁸ These reports are required to be filed by March 31st of each year based on the program implementation from the previous year.⁴⁹ Table 3 provides a summary between 2013 (after the Charge was approved) and 2018 showing the years that AEP complied with the four-year cycle-based vegetation management program and the years it did not.

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ Ohio Adm.Code 4901:1-10-26.

⁴⁹ *Id.*

Table 3: Four-year Cycle-based Tree-Trimming Program (2013-2018)

Year	Compliance with ESRR Requirements ⁵⁰
2013	Yes
2014	Yes
2015	No
2016	No
2017	No
2018	No

During 2013 and 2014, AEP complied with its proactive four-year cycle-based tree-trimming program. But since 2015 it has not.⁵¹ Trimming trees in accordance with the PUCO-approved plan (that is being paid for by customers) was supposed to result in improvements in AEP’s reliability performance.⁵² But as OCC Witness Williams explained, “This table indicates that the reason why customers are having more tree-caused outages is because AEP is not performing the vegetation management that it is supposed to perform to prevent outages.”⁵³

Based on OCC Witness Williams’s assessment of AEP’s annual reliability reports, trees can be one of the leading causes of outages that impact AEP customers.⁵⁴ Customers pay for AEP tree trimming through base rates, the tree-trimming rider, and the Charge Yet, despite the millions of dollars in customer money that AEP supposedly

⁵⁰ System Improvement Plan Reports filed pursuant to Ohio Adm. Code 4901:1-10-26 in Case Nos. 10-996-EL-ESS, 11-996-EL-ESS, 12-996-EL-ESS, 13-996-EL-ESS, 14-996-EL-ESS, 15-996-EL-ESS, 16-996-EL-ESS, 17-996-EL-ESS, 18-996-EL-ESS, and 19-996-EL-ESS.

⁵¹ See Williams Testimony at 19.

⁵² See *id.*

⁵³ See *id.* at 20.

⁵⁴ See *id.*

spends on vegetation management, tree-caused outages continue to increase.⁵⁵ Table 4 provides a comparison of the number of tree-caused outages since the Charge was initiated.

Table 4: Tree-Caused Outages (2013 – 2018)⁵⁶

Year	Interruptions	Customers Interrupted	Customer Interruption Minutes	Average Interruption Duration (Minutes)
2013	4,844	213,615	46,441,700	217
2014	4,568	201,806	46,548,810	231
2015	4,851	222,811	45,067,131	202
2016	5,083	257,540	51,219,163	199
2017	6,449	313,173	68,222,667	218
2018	7,387	411,100	97,681,526	238

As shown in Table 4, there has been a significant increase in the number of outage events caused by trees since 2013. Additionally, between 2013 and 2017, there were almost 100,000 more customers interrupted in 2017 due to tree-caused outages. There were almost 200,000 more customers interrupted in 2018 compared to 2013. The number of customer interrupted minutes increased by over 46% between 2013 and 2017 and by over 110% between 2013 and 2018.⁵⁷

According to OCC Witness Williams, it is reasonable to conclude that AEP's failure to implement its tree-trimming program consistent with the PUCO-approved plan

⁵⁵ See *id.*

⁵⁶ See *id.* at 21.

⁵⁷ See *id.*

contributed to AEP's failure to meet its minimum reliability performance standards.⁵⁸

Given that AEP has been required to be on a four-year cycle-based tree-trimming program since 2009, AEP should have already performed the necessary tree trimming and removal of danger trees both inside and outside the right-of-way.⁵⁹

The "Danger Tree Mitigation Program" as addressed in the proposed Settlement is merely another expensive way to charge customers for the work that AEP should have already accomplished and has been paid for through base rates and various charges to customers.⁶⁰ According to AEP, it plans to remove 135,000 danger trees in 2019 and another 61,000 in both 2020 and 2021 at a cost of \$95 million to consumers through the Charge.⁶¹ But many of these trees should have already been removed if AEP had been adhering to its tree-trimming plan funded by customers over the past decade..⁶²

c. AEP's focus on the "resiliency" of its distribution system is misplaced and wrong, thereby harming consumers.

Admitting that its reliability performance has suffered, AEP focuses on the purported "resiliency" improvements of its distribution system resulting from the Charge. But as OCC Witness Williams explained, "the reliability performance standards are not just numbers on a piece of paper."⁶³ The standards are a direct measure of the reliability of service being provided to consumers.⁶⁴ Further, although AEP alleges that resiliency is

⁵⁸ *See id.* at 22.

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ *See id.*

⁶² *See id.*

⁶³ *See id.*

⁶⁴ *See id.*

improving, there are too many equipment-caused failures for this allegation to be proven.is.⁶⁵ Equipment-caused outages would be reduced if resiliency of the distribution system had actually improved.

There is no evidence that the Charge has resulted in fewer outage events being excluded from the reliability calculations.⁶⁶ According to AEP, Major Event Days (“MEDs”) have declined such that major weather events that would have previously been excluded from the reliability calculations are now included.⁶⁷ But as OCC Witness Williams declared: “For the 1,919,407 customers who experienced power interruptions in 2018 that exceeded a total of 288,522,500 minutes, AEP’s reliability has not gotten better.”⁶⁸

According to the PUCO’s rules, MEDs are any calendar day when the reliability of service (as measured by SAIDI) exceeds the major event day threshold using the methodology outlined in section 3.5 of the Institute of Electrical and Electronics Engineers standard 1366-2012.⁶⁹ “The threshold is calculated by determining the SAIDI associated with adding 2.5 standard deviations to the average of the natural logarithms of the electric utility’s daily SAIDI performance during the most recent five-year period.”⁷⁰ AEP claims that it has fewer MEDs in the past five years than it did before the start of the

⁶⁵ *See id.* at 23.

⁶⁶ *See id.*

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *See id.*

Charge. But it is more likely that any reduction in MEDs has more to do with the number of major storms and the severity of those storms, which can change year over year.⁷¹

d. AEP's DIR programs are not focused on reliability, which harms consumers.

AEP admits that many of the DIR programs impact one of reliability standards (SAIFI) but have little impact on the other (CAIDI).⁷² But the PUCO's approval of the Charge called for improvements in both reliability standards.⁷³ Based upon a review of the 2016 and 2017 Work Plan, one distribution program (line reclosers maintenance) is actually targeted to reducing outage durations.⁷⁴ The other DIR programs are not. OCC Witness Williams explained that "a large number of the DIR programs have nothing to do with improving reliability."⁷⁵

2. The proposed Settlement does not benefit customers and the public interest because it results in customers paying for tree-trimming costs that should not be charged through the DIR.

OCC Witness Williams said that the Settlement does not benefit customers or the public interest because customers pay for tree-trimming costs through the Charge.⁷⁶ The potential for double or triple collection of the very same costs from consumers is high because tree-trimming costs are collected through base rates and other riders.⁷⁷ There is no built in method to check for double collection of these costs from customers.

⁷¹ *See id.*

⁷² *See id.* at 24.

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *See id.* at 10.

⁷⁷ *See id.*

In addition, the proposed Settlement provides AEP practically carte blanche approval to charge customers through the Charge for tree-trimming costs that are typically the responsibility of property owners.⁷⁸ OCC Witness Williams pointed out that the proposed Settlement does not require AEP to provide documentation to substantiate the reasons why affected trees are categorized as “danger trees.” Thus, there is no objective criteria for determining what is a “danger tree.” Such requirements should include quantification of the risk to the distribution system if a tree is not removed, methods to demonstrate that the costs were prudently incurred, and supporting reasoning why the tree was not previously trimmed or removed consistent with the PUCO-approved tree-trimming plan.⁷⁹

3. The proposed settlement does not benefit customers and the public interest because it does not contain the appropriate accountability or regulatory oversight.

Under the proposed Settlement, the capitalization of certain tree-trimming costs (which should be expensed under accounting rules) may also be used to circumvent the annual operation and maintenance cap on the tree-trimming rider and transfer the collection of these costs to the Charge or future base distribution rates.⁸⁰ AEP’s expanded use of the Charge to create yet another tree-trimming revenue source has now resulted in more distribution equipment-caused outages.⁸¹ Ironically, the purpose of the Charge was to proactively replace aging distribution equipment and infrastructure.⁸² Despite the

⁷⁸ *See id.*

⁷⁹ *See id.*

⁸⁰ *See id.* at 10-11.

⁸¹ *See id.* at 11.

⁸² *See id.*

significant infusion of customer money into AEP's pocket, customers are now experiencing more tree-caused outages and more outages caused by equipment failure. The failures noted by Mr. Williams in his testimony are not limited to AEP's equipment, but the DIR program is also arguably a failure.⁸³

As OCC Witness Williams explained, "Consumers deserve more accountability and regulatory oversight of AEP's spending so that they can be assured that their hard-earned money will actually be used to improve service quality and reliability."⁸⁴ The Settlement contains no such accountability or regulatory oversight. The Settlement fails to protect consumers and the public interest and should be rejected.⁸⁵

4. To protect consumers, the Settlement should be rejected and the DIR ended.

As explained in detail above, the Charge is not serving its purpose and has resulted in substantial spending that harms customers and is not in the public interest. It should not be allowed to continue under the Settlement. OCC's recommendations should be adopted and the Settlement should be rejected.

First, as OCC Witness Williams recommends, the PUCO should direct that any future DIR spending must be focused on programs that "demonstratively improve the SAIFI and CAIDI reliability performance for consumers."⁸⁶ And approval for any charges on consumers for DIR spending should be "conditioned on AEP demonstrating

⁸³ *See id.*

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *See id.* at 7.

continual annual improvement in its SAIFI and CAIDI reliability performance for consumers starting in 2019.”⁸⁷

Second, OCC Witness Williams recommends that the PUCO require AEP to spend shareholder dollars (as necessary) to augment the vast amount of customer-funded tree-trimming efforts to reduce the supposed number of tree-caused service outages. AEP is “required to provide safe and reliable service to its customers regardless of all the additional revenue sources it has created through riders for collecting charges from customers.”⁸⁸ “Now is the time for the PUCO to order AEP to spend its own money to incentivize a more concerted effort to improve its service reliability.”⁸⁹

And third, OCC Witness Williams recommends that the PUCO enforce its current minimum reliability performance standards already in place. “If (and when) AEP fails to meet either the CAIDI or SAIFI standard in 2019,” OCC Witness Williams explains, “the PUCO [should] protect consumers by enforcing the rules as provided in Ohio Adm. Code 4901:1-10-30. Ohio Adm. Code 4901:1-10-30 authorizes the PUCO to impose forfeitures of up to ten thousand dollars per day against AEP for failure to comply with minimum service standards.”⁹⁰

⁸⁷ *See id.*

⁸⁸ *See id.* at 8.

⁸⁹ *See id.*

⁹⁰ *See id.* at 8-9.

5. **The proposed Settlement harms customers and is not in the public interest because it would allow AEP to collect from consumers through the Charge incentive pay, capitalization of spare equipment, and capitalization of tree-trimming costs.**
 - a. **Charging consumers through the Charge for incentive pay is not in the public interest and harms consumers.**

There is no dispute that AEP is charging customers for incentive pay through the DIR. The PUCO Staff and AEP agree in the Settlement that the issue of including incentive compensation in the DIR should not be addressed in this case, but deferred to a future rate case.⁹¹ However, Blue Ridge concluded in this case that \$353,207 in inappropriate incentive-related costs were included in the Charge and paid by consumers in 2016.⁹² It calculated that \$1.7 million has been included and charged to consumers since the Charge was initiated through 2016.⁹³ But the Settlement permits AEP to retain the overcharges (as found by Blue Ridge) to customers for incentive compensation (\$1.7 million from inception of the rider until 2016) until the resolution of the rate case that AEP is expected to file in 2020.⁹⁴

There is no guarantee that AEP will actually file a rate case in 2020 or that the results would eliminate incentive compensation from the Charge.⁹⁵ Accordingly, the proposed Settlement does not resolve Blue Ridge's finding that AEP overcharged customers by approximately \$1.7 million for incentive compensation through 2016.⁹⁶

⁹¹ See Direct Testimony of Jeffrey P. Hecker in Opposition to the Joint Stipulation and Recommendation (OCC Ex. 1) filed August 20, 2019 (“Hecker Testimony”) at 4.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.*

Therefore, the Settlement does not benefit customers or the public interest and violates regulatory principle and practices.⁹⁷

Incentive pay, especially financial incentives, should not be charged to customers through the DIR because these financial incentives are paid to AEP employees when established profitability (or other) targets are met.⁹⁸ Perversely, the profitability targets can be met by charging customers *more* in rates or riders such as the DIR.⁹⁹ As OCC Witness Hecker explained, “The primary beneficiary of meeting the targets is AEP’s shareholders – *not* consumers.”¹⁰⁰ This is why OCC (and usually PUCO Staff) dispute charges – and disallow charges – to utility consumers that include utility incentive pay, especially if the incentives are based on financial performance of the utility.¹⁰¹ The Settlement violates regulatory principles and practices because it is not consistent with PUCO precedent because it allows AEP to charge consumers for incentive pay. The Settlement does not benefit customers or the public interest and violates regulatory principal and practices.¹⁰²

⁹⁷ *See id.*

⁹⁸ *See id.* at 5.

⁹⁹ *See id.*

¹⁰⁰ *See id.*

¹⁰¹ *See, e.g., In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case Nos. 16-664-EL-RDR and 17-781-EL-RDR, Finding and Order (May 15, 2019) at 3 and 4; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR et al, Opinion and Order (January 21, 2009) at 17 (“to the extent that financial incentives are awarded for achieving financial goals, the primary benefit of such financial incentives accrues to shareholders and that portion of incentive compensation should not be recovered from ratepayers.”).

¹⁰² *See Hecker Testimony* at 5.

Also, charging customers for incentive compensation in the DIR is especially problematic given that the DIR investments are not resulting in AEP achieving reliability benefits that were intended by the established standards, as explained by OCC Witness Williams.¹⁰³ Customers wind up being charged more through the DIR because AEP is profitable, not because its reliability has improved.

The PUCO should protect consumers and the public interest by rejecting the Settlement. The PUCO Staff or an independent auditor should calculate the actual amount of incentive compensation that AEP has charged to consumers through the DIR since its inception in 2012, including the \$353,207 in incentive compensation that Blue Ridge calculated for 2016 as being inappropriately included in the DIR.¹⁰⁴ This money should be refunded to customers. Such a refund of the incentive compensation is permitted by the tariff language.¹⁰⁵ OCC Witness Hecker recommended that “AEP should be instructed to refund that amount to customers with interest through adjustments to the DIR’s quarterly revenue requirements until customers are made whole, consistent with AEP’s tariff.”¹⁰⁶

b. Unreasonably charging consumers through the DIR for spare equipment is not in the public interest and harms consumers.

The Settlement does not address Blue Ridge’s conclusion that AEP could have procured almost \$1.9 million in spare equipment in a more cost-effective manner.¹⁰⁷ Blue

¹⁰³ See *id.*; see also Williams Testimony.

¹⁰⁴ See Hecker Testimony at 6-7.

¹⁰⁵ See Ohio Power Company Tariff Sheet No. 489-1.

¹⁰⁶ See Hecker Testimony at 7.

¹⁰⁷ See *id.*

Ridge recommended and the Settlement provides that “a further review by the next DIR auditor of the capital spares activity will be conducted in a future DIR audit.”¹⁰⁸ That recommendation protects AEP by failing to resolve this issue in this proceeding, and instead requires future audits to resolve this issue favorably for consumers.

But AEP’s efforts to charge consumers for spare parts *in this case* needs to be addressed.¹⁰⁹ According to OCC Witness Hecker, “Blue Ridge’s recommendation does not go far enough.”¹¹⁰ To charge customers the full amount (\$1.9 million) of equipment currently in stock and already capitalized is unreasonable and against the public interest.¹¹¹ Transformers and other capital equipment have been capitalized by AEP upon purchase. That has created an incentive for AEP to purchase large quantities of spare transformers, meters, and other potentially expensive capital equipment on which it can earn a return of and on investment – and as a result, charge customers through the DIR.¹¹²

But the statutory purpose of the Charge is to support distribution infrastructure modernization.¹¹³ Allowing AEP to charge consumers in this case through the DIR for large quantities of expensive spare equipment is fundamentally unfair to them and unlawful because the equipment is not used and useful for providing customers service, and it is not necessarily for infrastructure modernization.¹¹⁴ Therefore, the Settlement

¹⁰⁸ *In the Matter of the Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Co., Case 17-38-EL-RDR et al*, Joint Stipulation and Recommendation, July 2, 2019 at 5.

¹⁰⁹ See Hecker Testimony at 7.

¹¹⁰ See *id.*

¹¹¹ See *id.* at 7-8.

¹¹² See *id.* at 8.

¹¹³ R.C. 4928.143(B)(2)(h).

¹¹⁴ See Hecker Testimony at 8.

does not benefit customers and the public interest and violates regulatory principles and practices.¹¹⁵ These types of charges should be ineligible for collection from Ohio customers through the DIR.¹¹⁶

OCC Witness Hecker maintains that the PUCO should adopt Blue Ridge's recommendation and require an analysis to be performed of AEP's capital spares policy on a going-forward basis. "This analysis should be performed by Blue Ridge (or another independent auditor) and involve a comprehensive examination of AEP's policy during the next compliance audit to ensure that only spare parts that are procured in a cost-effective manner are included in the DIR."¹¹⁷ But in this case, the PUCO should go further. It should disallow charges to the DIR based on excessive spend by AEP on spare parts.¹¹⁸

c. Allowing AEP to capitalize tree-trimming costs and charge them to consumers through the DIR is not in the public interest and harms consumers.

The proposed Settlement does not provide a reasonable resolution of Blue Ridge's findings regarding the potential that AEP is charging customers multiple times for certain vegetation management costs in violation of the order approving the DIR.¹¹⁹ The Settlement permits AEP to continue capitalizing tree-trimming costs and charge consumers through the DIR.¹²⁰

¹¹⁵ *See id.*

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.* at 9.

¹²⁰ *See id.*

The PUCO approved AEP's DIR spending conditioned upon several factors. The PUCO's factors included an annual prudence review and the assurance of no double charges to customers of amounts included in base rates and amounts charged to customers through other riders.¹²¹ Because the Settlement does not provide a reasonable resolution of Blue Ridge's findings regarding the potential that AEP is charging customers multiple times for certain tree-trimming costs, the Settlement does not benefit customers and is not in the public interest. The Settlement also violates important regulatory principles and practices, as explained by OCC Witness Hecker.¹²²

Further, AEP's policy of capitalizing certain tree-trimming costs, in and of itself, is not just and reasonable and is against the public interest.¹²³ AEP's capital policy states that costs for the initial clearing inside the right-of-way are eligible for capitalization.¹²⁴ After the initial clearing, removal of trees can be capitalized based on the diameter of the tree being removed. If the diameter is greater than 18 inches, the assumption is that the tree was not removed when the initial clearing was performed and should have been capitalized at that time.¹²⁵

OCC Witness Hecker explained that this policy is not just and reasonable.¹²⁶ The policy also harms consumers because it creates an incentive for AEP to remove trees of greater than 18 inches in diameter – regardless of whether they need to be removed or not

¹²¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO (August 8, 2012) at 47.

¹²² See Hecker Testimony at 9-10.

¹²³ See *id.* at 10.

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See *id.*

– so it can earn a return on and of investment on associated expenditures.¹²⁷ Further, this policy makes it is very difficult, if not impossible, for an auditor to verify that AEP’s tree-trimming costs are accurately recorded in the DIR as required by the PUCO.¹²⁸ “Because the tree purportedly with a diameter of greater than 18 inches is gone, there is no objective evidence to confirm that the tree was properly recorded in the DIR.”¹²⁹

Also, OCC Witness Hecker emphasized that Blue Ridge was not able to confirm that AEP was properly separating tree-trimming costs between capital and expense.¹³⁰ He noted that Blue Ridge stated in its comments that it is “impossible for Blue Ridge to determine whether some costs are in the DIR that the Company designated as capital but which, according to Blue Ridge’s interpretation of the Federal Energy Regulatory Commission (FERC) definition, should be expense.”¹³¹

Therefore, as OCC Witness Hecker found, it is possible that the same tree-trimming costs could be collected from customers by AEP multiple times through different rider charges.¹³² The PUCO should not allow AEP all of the following: 1) to earn a return on and of vegetation management costs in the DIR, 2) to collect over \$50 million annually in vegetation management costs in base rates and the tree-trimming rider, and 3) to collect tree trimming costs that exceed the cap through the ESRR rider.¹³³

¹²⁷ *See id.*

¹²⁸ *See id.*

¹²⁹ *See id.*

¹³⁰ *See id.* at 11.

¹³¹ *In the Matter of the Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Co.*, Case 18-230-EL-RDR et al, Compliance Audit of the 2017 Distribution Investment Rider (DIR) (August 23, 2018) at 12; *see also* Hecker Testimony at 11.

¹³² *See* Hecker Testimony at 11.

¹³³ *See id.*

“AEP has the money it needs to fund its vegetation management program and to provide customers with safe and reliable service without reliance on the DIR. If it determines in a future base rate proceeding that it spends more than it collects through base rates and the ESRR, then its base rates can be adjusted so it can collect the appropriate tree trimming costs.”¹³⁴

As OCC Witness Hecker explained, it also goes against the rules for capitalization in the FERC Uniform System of Accounts.¹³⁵ Account 365, Overhead Conductors and Devices, includes “tree trimming, initial cost including the cost of permits.” Account 360, Land and Land Rights, says “do not include cost ... to trim trees.” The determination of what are “danger trees” would typically not be in the initial cost of clearing. For these reasons the Settlement is not in the public interest and violates regulatory practices and principles.¹³⁶ This is particularly so where, as OCC Witness Hecker testified, AEP’s danger tree mitigation program is expected to cost consumers over \$113 million between 2018 and 2021.¹³⁷

OCC Witness Hecker recommends that the PUCO reject the proposed Settlement because it allows AEP to capitalize tree-trimming costs under the DIR.¹³⁸ The PUCO should order AEP to cease capitalizing tree-trimming costs after the initial tree clearing is completed for the construction of the distribution line under the DIR.¹³⁹ Additionally, the

¹³⁴ *See id.*

¹³⁵ *See id.*

¹³⁶ *See id.*

¹³⁷ *See id.* at 14.

¹³⁸ *See id.*

¹³⁹ *See id.*

PUCO should not allow AEP to charge customers for the \$14.1 million that AEP spent through the DIR for danger tree removal in 2017.¹⁴⁰ Also, the 2019 amount of \$23.4 million (and other additional amounts that might be charged to capital this year) should not be charged to customers through the DIR.¹⁴¹

Further, AEP has stated that it had capitalized about \$142.2 million for tree trimming from 2009 to 2019.¹⁴² The PUCO Staff or an independent auditor should determine how much of this was for a tree-trimming purpose other than initial tree clearing for the construction of the distribution line.¹⁴³ If any such other purpose is found, the PUCO should require AEP to make correcting journal entries to remove the amounts from the DIR.¹⁴⁴

B. The proposed Settlement violates important regulatory principles and practices because it would allow AEP to charge consumers unjust and unreasonable rates through the DIR. To protect consumers, the Settlement should be rejected.

OCC Witness Hecker explained that state regulatory policy says that customers should not pay any more than is just and reasonable for utilities to cover expenses and provide an opportunity to earn a reasonable profit.¹⁴⁵ But if the PUCO allows AEP to include all of the charges it proposes in the DIR, in spite of the recommendations by the auditor selected by the PUCO, customers would be paying more than just and reasonable

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² *See id.*

¹⁴³ *See id.*

¹⁴⁴ *See id.*

¹⁴⁵ *See id.* at 15; *see also* R.C. 4928.02(A); R.C. 4905.22.

rates for electric services.¹⁴⁶ This is because (as discussed in more detail above) the charges would include financial incentives, the costs of procuring large amounts of capital spares, and the capitalization of certain tree-trimming costs.¹⁴⁷ The Settlement harms consumers and violates important regulatory principles and practices. It should be rejected.

Also, capitalizing tree-trimming costs after initial clearing violates the capitalization guidelines in the FERC Uniform System of Accounts.¹⁴⁸ The Settlement allows AEP to capitalize tree-trimming costs after initial clearing. The Settlement therefore violates regulatory principles and practices and should be rejected.

V. CONCLUSION

AEP's bell-cow, the DIR, has been fed well. AEP has charged consumers hundreds of millions of dollars through the DIR for the purpose of increasing system reliability. It hasn't worked. The reliability of AEP's system has been in decline since the DIR has been in place. Add in AEP's efforts to charge consumers to pay its employees incentives and for an inefficient spare parts policy, and it is readily apparent that now is the time to limit feeding AEP's cash cow. The PUCO should take this opportunity to do so by protecting consumers and rejecting the Settlement.

¹⁴⁶ *See id.*

¹⁴⁷ *See id.*

¹⁴⁸ *See id.*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Brief of the Office of the Ohio Consumers' Counsel was served via electronic transmission to the persons listed below on this 4th day of October 2019.

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