

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.))	Case No. 20-585-EL-AIR
))	
In the Matter of the Application of Ohio Power Company for Tariff Approval.))	Case No. 20-586-EL-ATA
))	
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.))	Case No. 20-587-EL-AAM
))	

**INITIAL BRIEF
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Joint Stipulation and Recommendation (“Settlement”)¹ negotiated and signed by the Office of the Ohio Consumers’ Counsel (“OCC”), Ohio Power Company (“AEP Ohio”), Staff of the Public Utilities Commission of Ohio (“PUCO Staff”) and many other diverse parties satisfies the PUCO’s three-prong test for evaluating settlements. The PUCO should approve the Settlement without modification.

The Settlement is in the public interest. Under the Settlement, residential consumers will receive a rate decrease for electric distribution services as contrasted with AEP Ohio’s originally proposed rate increase.²

The Settlement is a comprehensive resolution of all issues in AEP Ohio’s base rate case and is just and reasonable.³ The Settlement is the product of serious bargaining

¹ Joint Ex. 1 (Settlement).

² AEP Ohio Ex. 4 (Roush Settlement Testimony), DMR-S2.

³ Joint Ex. 1 (Settlement) at 1-2.

among capable, knowledgeable, and diverse parties.⁴ The Settlement's signatory parties include, but are not limited to, Ohio's statutory advocate (OCC) for AEP Ohio's 1.3 million residential consumers, the utility (AEP Ohio), the PUCO Staff, organizations representing nonresidential customers, and companies in the electric vehicle charging and renewable energy industries.⁵

The Settlement benefits consumers and the public interest. Among other things, the Settlement reduces the overall annual base distribution revenue customers will pay by \$111 million from AEP Ohio's initial proposal of \$1.066 billion and reduces the overall rate of return customers will pay from 7.9% to 7.28%.⁶ Under the Settlement, residential customers will also pay a smaller percentage of the revenue requirement – 56.77% rather than AEP Ohio's initially proposed 58.86% -- which will save residential customers approximately \$30 million per year.⁷

In addition to providing benefits to consumers, the Settlement is consistent with regulatory principles and practices. For example, reductions to AEP Ohio's revenue requirement and spending under the Distribution Investment Rider and Enhanced Service Reliability Rider promote the regulatory principle set forth in Ohio law that rates charged to consumers be just and reasonable.⁸ And as further explained below, the Settlement incentivizes AEP Ohio to meet more stringent reliability standards, which will contribute to the provision of safe, reliable electric distribution service to Ohio consumers.⁹

⁴ *Id.*

⁵ *Id.* at 22.

⁶ *See* OCC Ex. 1 (Willis Direct) at 6.

⁷ *Id.*

⁸ R.C. 4909.15.

⁹ AEP Ohio Ex. 6 (Moore Direct) at 17, 19.

The evidence plainly demonstrates that the Settlement as a package passes the PUCO's three-prong test for evaluating settlements. For AEP Ohio's consumers, the PUCO should approve the Settlement in its entirety without modification.

I. STANDARD OF REVIEW

In PUCO proceedings, the applicant bears the burden of proof.¹⁰ In the context of a settlement, the signatory parties “bear the burden to support the stipulation” and must “demonstrate that the stipulation is reasonable and satisfies the [PUCO's] three-part test.”¹¹ A settlement is a recommendation to the PUCO on behalf of the settling parties.¹² It is not binding on the PUCO,¹³ and ultimately, the PUCO must “determine what is just and reasonable from the evidence presented at the hearing.”¹⁴

To answer this question, the PUCO has adopted the following three-prong test:¹⁵

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

¹⁰ *In re Application of the Ottoville Mut. Tel. Co.*, Case No. 73-356-Y, 1973 Ohio PUC LEXIS 3, at *4 (“the applicant must shoulder the burden of proof in every application proceeding before the Commission”); *In re Application of the Ohio Bell Tel. Co.*, No. 84-1435-TP-AIR, 1985 Ohio PUC LEXIS 7, at *79 (Dec. 10, 1985) (“The applicant has the burden of establishing the reasonableness of its proposals.”).

¹¹ *In re Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agmt. for Inclusion in the Power Purchase Agmt. Rider*, Case No. 14-1693-EL-SSO, Opinion & Order at 18 (Mar. 31, 2016).

¹² *Duff v. PUCO*, 56 Ohio St. 2d 367, 379 (1978).

¹³ *Id.* See also Ohio Adm. Code 4901-1-30(E).

¹⁴ *Duff*, 56 Ohio St. 2d at 379.

¹⁵ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 126 (1992).

In considering the first prong, the PUCO may also evaluate the diversity of the signatory parties, though no threshold level of diversity is mandatory for approval.¹⁶

II. THE SETTLEMENT SATISFIES THE PUCO’S THREE-PRONG TEST AND IT SHOULD BE APPROVED WITHOUT MODIFICATION.

A. The Settlement is the product of serious bargaining among capable, knowledgeable parties with diverse interests.

The evidence demonstrates that the Settlement satisfies the first prong of the PUCO’s test for evaluating settlements, which considers whether the Settlement is the product of serious bargaining among capable, knowledgeable parties. As stated above, the PUCO may also consider the diversity of interests represented by the signatory parties.

OCC witness Willis testified that parties spent significant time over the course of nearly three months negotiating the Settlement.¹⁷ Mr. Willis testified that the signatory parties have a history of active participation in proceedings before the PUCO and were represented by experienced and competent counsel.¹⁸

¹⁶ See *In re Application of the Dayton Power & Light Co. to Establish a Standard Serv. Offer*, Case No. 16-395-EL-SSO, Opinion & Order ¶ 21 (Oct. 20, 2017) (“Although diversity of interests among signatory parties is not *necessary* for any stipulation to meet the first prong, it is *helpful* if the signatory parties do represent a variety of interests.”) (emphasis in original); *In re Application of [FirstEnergy] for Approval of [its] Energy Efficiency & Peak Demand Reduction Program Portfolio Plans for 2017 through 2019*, Case No. 16-743-EL-POR, Opinion & Order ¶ 61 (Nov. 21, 2017) (“While the diversity of the signatory parties may be a consideration in determining whether a settlement is a product of serious bargaining among capable, knowledgeable parties under the first prong of the Commission’s test, there is no diversity requirement that the residential customers’ statutory representative be a signatory party for agreements which may result in increased costs for the residential class.”); *In re Application of Ohio Power Co. to Initiate Phase 2 of its gridsmart Project*, Case No. 13-1939-EL-RDR, Opinion & Order ¶ 50 (Feb. 1, 2017) (“In determining whether a settlement is the product of serious bargaining among capable, knowledgeable parties, we consider the extent of negotiations and the diversity of the negotiating parties, but there is no requirement that any particular party be a signatory to satisfy this first prong.”).

¹⁷ OCC Ex. 1 (Willis Direct) at 5.

¹⁸ *Id.*

The signatory parties to the Settlement also represent diverse interests. The signatory parties include: OCC; AEP Ohio; the PUCO Staff; Ohio Energy Group; Industrial Energy Users – Ohio; Ohio Manufacturers’ Association Energy Group; the Ohio Hospital Association; Walmart Stores East, L.P. and Sam’s East, Inc.; The Kroger Company; One Energy; Clean Fuels Ohio; Charge Point; EVgo; and Ohio Cable Telecommunications Association.¹⁹ Together, these parties represent the interests of the utility, AEP Ohio’s residential and nonresidential consumers, hospitals, large supermarket chains, cable telecommunications providers, and companies in the renewable energy and electric vehicle charging industries. In addition, Greenlots, a party to this proceeding and provider of electric vehicle charging software, filed a letter with the PUCO stating that it does not oppose the Settlement.²⁰

AEP Ohio witness Moore and PUCO Staff witness Liphtratt further testified that the Settlement meets the first prong of the PUCO’s settlement test.²¹ Ms. Moore testified that there were numerous settlement negotiation meetings and that “[a]ll parties were invited to these meetings and no party was left out of the opportunity to negotiate.”²²

Notably, no party opposing the Settlement presented witness testimony to refute the testimony of OCC witness Willis, AEP Ohio witness Moore, and PUCO Staff witness Liphtratt that the Settlement is the product of serious negotiations among knowledgeable, capable parties. Thus, the PUCO should find that the Settlement meets the first prong of the PUCO’s test.

¹⁹ Joint Ex. 1 (Settlement) at 22.

²⁰ PUCO Staff Ex. 6 (Liphtratt Settlement Testimony) at 4.

²¹ AEP Ohio Ex. 6 (Moore Direct) at 16; PUCO Staff Ex. 6 (Liphtratt Settlement Testimony) at 3.

²² AEP Ohio Ex. 6 (Moore Direct) at 16. *See also* PUCO Staff Ex. 6 (Liphtratt Settlement Testimony) at 3.

B. The Settlement as a package benefits consumers and the public interest.

There is ample evidence to satisfy the second prong of the PUCO's test for evaluating settlements, which considers whether the Settlement benefits consumers and the public interest. The evidence reflects numerous benefits to consumers under the Settlement:

- Residential consumers will receive a rate decrease for electric distribution services as contrasted with AEP Ohio's originally proposed rate increase.²³
- The overall annual base distribution revenue that customers will pay is reduced by approximately \$111 million from AEP Ohio's proposed \$1.066 billion to \$955 million.²⁴
- The overall rate of return that customers will pay is reduced from AEP Ohio's proposed 7.90% to 7.28%. This results in a reduction to the annual base distribution revenue that customers will pay of approximately \$24.4 million.²⁵

²³ AEP Ohio Ex. 4 (Roush Settlement Testimony), DMR-S2.

²⁴ OCC Ex. 1 (Willis Direct) at 6. *See also* PUCO Staff Ex. 6 (Lipthrott Settlement Testimony) at 5.

²⁵ *Id.*

- Residential consumers will pay 56.77% of AEP Ohio’s revenue requirement rather than 58.86% as initially proposed by AEP Ohio. As a result, residential consumers will save approximately \$20 million per year in avoided base distribution charges and approximately \$10 million in additional avoided Enhanced Service Reliability Rider and Distribution Investment Rider charges per year.²⁶
- AEP Ohio’s spending under the Distribution Investment Rider is capped beginning 2021 through May 2024, which will control how much customers will pay for this charge. The annual spending caps can only be increased by limited amounts if AEP Ohio meets more stringent reliability standards.²⁷ The caps are significantly lower than AEP Ohio’s initial proposal, saving customers over \$100 million.²⁸
- AEP Ohio’s Enhanced Service Reliability Rider will be capped at \$153.75 million for the period January 2021 through May 2024. In addition, the funding cap will be set at \$45 million annually (prorated for 2024) for planning purposes and charging consumers for the program. AEP Ohio will defer any spending above the \$45 million annual amount for later collection from customers with no financing charges.²⁹

²⁶ OCC Ex. 1 (Willis Direct) at 6.

²⁷ AEP Ohio Ex. 6 (Moore Direct) at 17.

²⁸ OCC Ex. 1 (Willis Direct) at 7; AEP Ohio Ex. 6 (Moore Direct) at 17.

²⁹ OCC Ex. 1 (Willis Direct) at 7.

- The residential fixed Customer Charge will be set at \$10 per month rather than AEP Ohio’s initial proposal of \$14.00 per month.³⁰ The lower Customer Charge will enable customers to better control their monthly electric bills through reductions in usage.³¹
- AEP Ohio’s Pilot Throughput Balancing Adjustment Rider (“PTBAR”), which is AEP Ohio’s decoupling charge, will be phased out under the Settlement.³² For the past ten years, residential customers have paid around \$20 million per year under the PTBAR. For 2021, charges to customers under the PTBAR for the period February 2021 until the date of effective rates in this case will be limited to \$12 million.³³
- To provide more transparency in what residential customers pay for electricity, AEP Ohio will perform “shadow billing” for residential customers and provide the information to OCC and the PUCO Staff.³⁴ Shadow billing will compare in the aggregate what customers paid for electricity to marketers with what they could have paid had they instead purchased their generation from AEP Ohio’s competitively bid standard service offer.³⁵

³⁰ OCC Ex. 1 (Willis Direct) at 8; PUCO Staff Ex. 6 (Lipthrott Settlement Testimony) at 5.

³¹ OCC Ex. 1 (Willis Direct) at 8.

³² OCC Ex. 1 (Willis Direct) at 8; PUCO Staff Ex. 6 (Lipthrott Settlement Testimony) at 5.

³³ OCC Ex. 1 (Willis Direct) at 8.

³⁴ Joint Ex. 1, at 11; AEP Ohio Ex. 6 (Moore Direct) at 18.

³⁵ OCC Ex. 1 (Willis Direct) at 8.

- To provide additional information to consumers, AEP Ohio will amend its application in its bill format case (Case No. 20-1408-EL-UNC) to provide information on residential consumers' bills regarding potential savings or losses from electricity marketers compared to AEP Ohio's standard service offer.³⁶
- For residential customers, AEP Ohio will not implement its delayed payment charge sooner than 12 months after the date the Settlement is executed. Further, AEP Ohio will not bill customers for the delayed payment charge until the 22nd day after the issuance date on a customer's bill.³⁷
- Customers will not be charged by AEP Ohio under the Retail Reconciliation Rider ("RRR") and Standard Service Offer Credit Rider ("SSO CR"). This will protect customers who receive service under AEP Ohio's competitively bid standard service offer from unnecessary increases in charges.³⁸ The standard service offer is default service available to both shopping and non-shopping customers³⁹ and proposals by marketers to increase charges for the standard service offer should be rejected.

³⁶ OCC Ex. 1 (Willis Direct) at 9.

³⁷ *Id.* at 9; AEP Ohio Ex. 6 (Moore Direct) at 17-18.

³⁸ OCC Ex. 1 (Willis Direct) at 9-10.

³⁹ Staff Ex. 1 (Staff Report) at 31.

These features of the Settlement benefit consumers and the public interest. The overwhelming evidence establishes that the Settlement as a package satisfies the second prong of the PUCO's test.

C. The Settlement does not violate any regulatory principles or practices.

The Settlement satisfies the third prong of the PUCO's test for evaluating settlements because it is consistent with Ohio's regulatory principles and practices.⁴⁰ For example, R.C 4909.15 requires that rates charged to consumers be just and reasonable. As noted above, the Settlement made adjustments to significantly reduce the revenue requirement initially proposed in AEP Ohio's application, which benefits all consumers who pay for electric distribution service. OCC witness Willis testified that these adjustments to the revenue requirement schedules and other benefits under the Settlement are the result of traditional rate setting policies, practices, and procedures.⁴¹ AEP Ohio witness Moore further testified that the Settlement does not violate regulatory principles and practices.⁴²

In addition to reducing the revenue requirement, the Settlement protects residential consumers by delaying the implementation of the delayed payment charge to mitigate the impacts of the pandemic on consumers' finances.⁴³ The Settlement's provisions regarding the Distribution Investment Rider also promote service reliability by

⁴⁰ OCC Ex. 1 (Willis Direct) at 10; AEP Ohio Ex. 6 (Moore Direct) at 19. PUCO Staff Ex. 6 (Lipthrott Settlement Testimony) at 5.

⁴¹ OCC Ex. 1 (Willis Direct) at 10.

⁴² AEP Ohio Ex. 6 (Moore Direct) at 18-19.

⁴³ AEP Ohio Ex. 6 (Moore Direct) at 19.

imposing additional reliability standards and reporting requirements on AEP Ohio.⁴⁴

Thus, the Settlement satisfies the third prong of the PUCO's test to evaluate settlements.

III. CONCLUSION

The Settlement satisfies the PUCO's three-prong test for evaluating settlements. The Settlement is the product of serious bargaining among capable, knowledgeable parties with diverse interests. As a package, the Settlement provides significant benefits to AEP Ohio's consumers and does not violate regulatory principles or practices. The Settlement is just and reasonable and the PUCO should approve it without modification.

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⁴⁴ AEP Ohio Ex. 6 (Moore Direct) at 19.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Brief was served on the persons stated below via electronic transmission, this 14th day of June 2021.

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