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IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers.	)))))))	CASE NO. 2025-1458 Appeal From the Public Utilities Commission of Ohio PUCO Case No. 24-508-EL-ATA

MERIT BRIEF OF INTERVENING APPELLEE OHIO POWER COMPANY

SUPPORTED BY OHIO ENERGY GROUP

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INTRODUCTION

This case presents a straightforward question: whether the Public Utilities Commission of Ohio (the "Commission") acted reasonably and lawfully when it approved a new tariff framework—Schedule DCT—to manage an unprecedented surge in data center demand that threatened to overwhelm the electric transmission infrastructure serving 1.5 million customers in Central Ohio. The Commission concluded that the new tariff was an appropriate response to this unprecedented growth, and the record amply supports that conclusion.

The facts are not seriously in dispute. Beginning in 2023, AEP Ohio was inundated with requests from data center customers seeking to connect loads so massive that they would *more than double* the existing peak demand in Central Ohio within just a few years. Engineering studies confirmed what common sense suggests: the existing transmission system cannot absorb demand of such magnitudes without billions of dollars in new infrastructure that will take years to build. Without firm and financially-backed contractual commitments from the customers driving this demand, there was a material risk that those investments could go underutilized—leaving AEP Ohio's other customers to bear the cost.

Schedule DCT was designed to address this problem. It requires large data center customers to make firm commitments regarding their anticipated load before investments to serve that load are made, ensuring that AEP Ohio can accurately forecast demand and that the massive infrastructure investments that would have been needed to serve these load requests are right-sized from the outset. The Commission approved Schedule DCT after a thirteen-day evidentiary hearing, extensive post-hearing briefing, and careful consideration of two competing stipulations—finding that the settlement presented by Ohio Power Company ("AEP Ohio" or the "Company"), Commission Staff, and several other parties, struck the best balance to accommodate data center growth while protecting existing customers and grid reliability.

AEP Ohio's Schedule DCT proposal and the resulting settlement supporting it was opposed by data center and cryptocurrency business interests, including Amazon Data Services, Inc., Google LLC, Microsoft Corporation, the Data Center Coalition, The Ohio Blockchain Council, Sidecat LLC (an affiliate of Meta), and Enchanted Rock, LLC. The Ohio Manufacturers Association Energy Group ("OMAEG") is the only party to challenge the Commission decision before this Court, despite the acquiescence of the above-listed parties that directly represent data center interests. OMAEG takes a "shotgun" approach before this Court and challenges the Commission's Order on six separate grounds, none of which has merit. OMAEG first contends that Schedule DCT is unduly discriminatory, but the record demonstrates that large data centers are materially different from other customers in ways that directly affect the cost and risk of providing service—and Ohio law has long permitted rate distinctions grounded in such differences. OMAEG also claims that the Company's temporary moratorium on new data center service requests violates Ohio law. This assertion disregards that the moratorium was a reasonable, temporary measure to protect system reliability—exactly the kind of prudent grid management the governing statutes contemplate. Third, OMAEG asserts there is no evidence of a transmission constraint justifying Schedule DCT. Yet again, as noted by the Commission, the engineering evidence in the record establishes otherwise. And, finally, OMAEG leaves no aspect of its displeasure with the Commission decision unchallenged and raises a series of procedural objections that are clearly within the Commission's discretion over its proceedings—regarding the classification of the application, notice of the hearing, and the Administrative Law Judges' ("ALJs") management of cross-examination—that are either legally incorrect, harmless, or both.

At bottom, OMAEG asks this Court to second-guess the Commission's expert judgment

on complex factual questions involving technical aspects of regulatory matters—precisely the type of determination to which this Court has consistently deferred. As further demonstrated below, the Commission's Order was reasonable, lawful, and supported by substantial evidence. As such, AEP Ohio, with the support of Ohio Energy Group ("OEG"),[1] respectfully requests that this Court affirm the Commission's decision approving Schedule DCT and dismiss OMAEG's appeal in its entirety.

STATEMENT OF FACTS

AEP Ohio is an electric distribution utility that serves approximately 1.5 million customers across a large portion of Ohio. This case arises from AEP Ohio's efforts to address an unprecedented surge in demand for electric service driven by the data center industry—a surge so large that it threatened to overwhelm the transmission infrastructure that delivers electricity to homes, businesses, and industries throughout Central Ohio.

I. Unprecedented data center demand threatens Central Ohio's transmission system for all customers

Beginning in 2023, AEP Ohio experienced tremendous growth in customer demand for electric service, driven by data center customers seeking to locate in Central Ohio. To appreciate the magnitude of this growth—and the challenge it presents—it is helpful to understand how the transmission system that serves Central Ohio operates.

Electricity is delivered through a network of high-voltage transmission lines that carry

[1] OEG is an organization of large energy-intensive utility customers in Ohio, comprised of the following members: Air Products and Chemicals, Inc.; Amsted Rail Company, Inc.; ArcelorMittal Tubular Products Shelby; Cargill, Incorporated; Charter Steel; Cleveland-Cliffs Inc.; Ford Motor Company; GE Aviation; General Motors LLC; Howmet Aerospace, Inc.; Intel Corporation; JSW Steel USA Ohio, Inc.; Linde Inc.; Martin Marietta Magnesia Specialties, LLC; Materion Corporation; Messer, LLC; Metallus, Inc.; Molson Coors Beverage Company; Nature Fresh Farms USA Inc.; North Star BlueScope Steel LLC; One MWHub; POET – Bioprocessing; PTC Alliance Holding Corp.; Stellantis; The Worthington Steel Company; and Three Rivers Energy LLC.

power from generating sources to local distribution networks. Central Ohio has no large-scale generation resources of its own, meaning that all electricity consumed in the region must be imported through this extra-high-voltage transmission network. (ICN 2, AEP Ohio Ex. 2 at 7-8, Supp. at 8-9.) Because the transmission system is highly integrated and changes in one area can affect reliability across the region, decisions about what facilities to build, where, and by whom are governed by the FERC-jurisdictional transmission planning process overseen by PJM Interconnection LLC ("PJM"), the regional transmission organization that coordinates the electric grid across much of the eastern United States. (*See id.* at 3-5, Supp. at 4-6; *see also* Tr. at 60-61, 65-66, Supp. at 207-210.) As part of that process, AEP Ohio updates the PJM load forecast with new loads that have signed agreements for transmission service. (*Id.*; *see also* Sidecat Ex. 10, Supp. at 202.)

Against this backdrop, the scale of data center demand seeking service in Central Ohio is extraordinary. As of 2024, Central Ohio's peak electric demand was approximately 4,000 MW—of which only about 600 MW was attributable to existing data center usage. (ICN 142, AEP Ohio Ex. 3 at 3-4, Supp. at 19-20; AEP Ohio Ex. 2 at 4, Supp. at 5.) Between 2023 and 2024 when the moratorium started and this case was filed, AEP Ohio entered into agreements to serve approximately 5,000 MW of new customer load expected to connect by 2030, all but approximately 400 MW of which was data center load. (*See* AEP Ohio Ex. 3 at 3-4, Supp. at 19-20; ICN 177, Staff Ex. 1, Attachment CMH-1, Supp. at 197.) In other words, contracted data center demand alone was poised to more than double the existing peak load in Central Ohio between 2024 and 2030.

Beyond that contracted load, over 50 prospective customers at more than 90 project sites had expressed interest in adding load in Central Ohio that could exceed *30,000 MW—more than*

seven times the 2024 peak Central Ohio load. (AEP Ohio Ex. 3 at 4, Supp. at 20; Tr. at 789, Supp. at 297.) This unsigned load is inherently speculative because not every customer who expresses interest will ultimately proceed to contract. For this unsigned load, AEP Ohio provided PJM with a preliminary estimate of approximately 6,700 MW for use in long-term directional forecasting. (Tr. at 875-876, 924, Supp. at 298-299, 302.) It is essential that AEP Ohio be able to accurately forecast load growth within its service territory, because accurate forecasting promotes right-sizing of transmission infrastructure from the outset and avoids costly over-investment.

AEP Ohio's engineering analyses demonstrated that the existing Central Ohio transmission system can support a total peak load of approximately 10,000 MW—a threshold the Company was rapidly approaching. (AEP Ohio Ex. 2 at 6, Supp. at 7.) Beyond that point, significant infrastructure enhancements will be required. (*Id.* at 8, Supp. at 9; Sidecat Ex. 10; Tr. at 117, Supp. at 222.) Even an additional 1,500 MW above the 10,000 MW threshold would result in numerous overload and voltage violations throughout the Central Ohio region, risking brownouts, blackouts, and equipment failures. (Sidecat Ex. 10; Tr. at 227-229, Supp. at 278-280.) At higher levels of additional load, AEP Ohio's studies indicate that the construction of large extra-high-voltage transmission lines into Central Ohio will likely be necessary—potentially including up to three 765 kV lines at 4,500 MW above the 10,000 MW threshold. (AEP Ohio Ex. 2 at 8-10, Supp. at 9-11; Sidecat Ex. 10; Tr. at 394-395, Supp. at 289-290.) These infrastructure investments will not only be extraordinarily costly but will also require significant time to design, permit, and build. (AEP Ohio Ex. 2 at 8, Supp. at 9.)

Based on this evidence, the Commission rejected OMAEG’s “claim that the Company has not provided sufficient record evidence to demonstrate the transmission constraints AEP

Ohio faces" and made a factual finding that AEP Ohio "has proved that its transmission network will not be able to reliably serve any amount of load beyond the 4,400 MW load comprised of data center and non-data center customers that signed ESAs before the moratorium." (ICN 231, Order at ¶¶ 122, 129.)

II. AEP Ohio's response: the temporary moratorium and the Schedule DCT solution

Faced with this unprecedented volume of demand, AEP Ohio took two steps. First, in March 2023, the Company temporarily paused accepting new service requests from data center customers and executing agreements to serve that load, in order to give its transmission planning group time to study the impacts of the additional requests and ensure that the grid could continue to reliably serve both new and existing customers. (AEP Ohio Ex. 2 at 6-7, Supp. at 7-8.) After the load study was completed and indicated that the data center load requests could not be served by the existing transmission network, the moratorium was continued until the Commission made a determination regarding Schedule DCT. During the moratorium period, prospective customers were placed in a first-come, first-served queue, and the moratorium was intended to remain in place only until the Commission decided the tariff case that AEP Ohio subsequently filed. (*Id.*) Second, AEP Ohio initiated this proceeding to establish a new tariff framework—Schedule DCT—designed to create a balanced solution for the core problem underlying the moratorium. (*Id.*)

Data centers differ from other large-load customers in ways that directly affect the cost, risk, and complexity of providing electric service. The industry is experiencing exponential growth with no parallel among other industries, individual campuses can require extraordinary volumes of electricity at a single location, and data center operations can be scaled up or down—or relocated entirely—far more readily than traditional industrial operations. (*Id.* at 8, Supp. at 9; AEP Ohio Ex. 3 at 6, Supp. at 22.) These characteristics make it uniquely important—and

uniquely difficult—for AEP Ohio to forecast how much data center load will actually materialize and plan the corresponding infrastructure investments accordingly.

AEP Ohio's prior tariff framework compounded this issue, providing insufficient incentives for data center customers to accurately predict their load needs and follow through with their service plans. (AEP Ohio Ex. 3 at 6-7, Supp. at 22-23.) This uncertainty posed a direct threat to all of AEP Ohio's customers. Without firm commitments from data centers, there was a material risk that billions of dollars in transmission infrastructure investments—built to serve data center demand—could go underutilized if that demand failed to materialize. Underutilized infrastructure would result in significantly higher rates for all other customers. (*Id.*; AEP Ohio Ex. 2 at 8, Supp. at 9.) In response to AEP Ohio's proposed solution, the Commission agreed "that right-sizing buildout and encouraging accurate forecasting are critical goals for preventing wastefulness and stranded investment costs, and thus unfairly imposing these costs onto non-data center customers." (ICN 231, Order at ¶ 123.)

AEP Ohio filed this case to establish firm commitments from data center customers to ensure they are accurately estimating their power needs and will follow through with their plans. These commitments, in turn, enable AEP Ohio to provide accurate load estimates to PJM for use in its FERC-jurisdictional transmission planning process—ensuring that the right amount of infrastructure is built in the right places at the right time. (*Id.*; Tr. at 917-918, Supp. at 300-301.)

III. Procedural history

AEP Ohio filed its application and initial testimony on May 13, 2024, after which all parties filed comments on the Company's proposal and engaged in settlement negotiations. (AEP Ohio Ex. 3 at 7, Supp. at 23.) While the all-party settlement negotiations were pending, a subset of parties (including OMAEG) predominately representing data center interests filed their own stipulation (the "10/10 Stipulation"). (*Id.*) All-party negotiations continued, ultimately

producing a competing stipulation that AEP Ohio submitted with the support of Staff and other customer interest groups (the "10/23 Stipulation"). (*Id.*)

Following a thirteen-day evidentiary hearing and extensive post-hearing briefing, the Commission ultimately found that the 10/23 Stipulation represented a better balance between preserving flexibility for data center customers while also ensuring adequate protection for other customers and the reliability of the grid. As a result, the Commission approved the 10/23 Stipulation subject to certain modifications. (ICN 231, Order at ¶ 121; ICN 242, Entry on Rehearing at ¶ 36.)

STANDARD OF REVIEW

Under R.C. 4903.13, a Commission order may be reversed, vacated, or modified only when, upon consideration of the record, this Court finds the order to be unlawful or unreasonable. The scope of the Court's review depends on whether the issue appealed presents a question of law or one of fact. *Office of Consumers' Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110 (1979).

On questions of fact, the Court will not disturb a Commission decision where the record contains sufficient probative evidence to show that the Commission's determination is not manifestly against the weight of the evidence and is not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Id*. Consistent with this principle, the Court has repeatedly declined to substitute its judgment for that of the Commission on evidentiary matters, and has recognized that the burden falls on the appellant to demonstrate that the Commission's decision is against the manifest weight of the evidence or is clearly unsupported by the record—a heavy burden that is difficult to satisfy. *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 84-86 (2002). This deference is particularly appropriate where the factual questions at issue require the Commission's specialized expertise and discretion.

Monongahela Power Co. v. Pub. Util. Comm., 2004-Ohio-6896, ¶ 29; *see also TWISM Ents., LLC v. State Bd. of Registration for Professional Engineers & Surveyors*, 2022-Ohio-4677, ¶ 42; *In re Application of Firelands Wind, LLC*, 2023-Ohio-2555, ¶ 17.

This Court reviews questions of law *de novo*. *See, e.g., TWISM* at ¶ 50. In doing so, however, the Court should "keep in mind the respective competencies of the agency and the judiciary," particularly "in a specialized matter that involves technical meaning uniquely within the competency of the agency" where "the agency's expertise might prove helpful to a court in its interpretive task." *See id.* at ¶¶ 45, 47.

The heightened deference owed to the Commission's factual determinations is of particular importance here. The majority of OMAEG's challenges do not rest on textual statutory interpretation questions but second-guess the Commission's resolution of technical factual questions pertaining to the management of the Ohio distribution grid and its interaction with the transmission system—issues that are complex, that carry direct implications for the safety and reliability of electric service in Central Ohio, and that fall squarely within the Commission's specialized expertise. As demonstrated throughout this brief, OMAEG has failed to meet that burden in its Propositions of Law 1, 2, 3, and 6.

OMAEG's Propositions of Law 4 and 5, while framed as legal challenges, likewise implicate the Commission's specialized regulatory expertise. These Propositions of Law both require the Court to interpret statutory provisions governing how public utility rate filings are classified, processed, and noticed. Although this Court reviews such questions of law *de novo*, that does not mean it cannot consider the Commission's legal determinations persuasive, particularly where the statutory provisions at issue carry technical meaning uniquely within the Commission's expertise. The classification of a tariff application under R.C. 4909.18 is a

determination the Commission has made hundreds of times across decades of regulatory practice, and one that requires an understanding of how tariff structures operate within the broader framework of utility ratemaking. As set forth in greater detail below, the Commission's longstanding and consistent interpretation of these provisions, as applied to AEP Ohio's proposal, is correct and entitled to respectful consideration by this Court.

ARGUMENT

I. Response to Proposition of Law 1: The Commission reasonably and lawfully approved Schedule DCT as part of the 10/23 Stipulation

A. Schedule DCT is not unduly discriminatory but is based on specific, material differences in the cost of serving large data centers

OMAEG first contends that Schedule DCT is unduly discriminatory under R.C. 4905.32, 4905.33, and 4905.35 because, in OMAEG's view, it treats similarly situated customers differently, and that disparate treatment is not justified by the record evidence. (OMAEG Merit Br. at 10.) That argument is incorrect at every level. Whether large data centers are "similarly situated" to other large-load customers—and whether the differences between them justify a distinct tariff classification—is fundamentally a factual question, and one the Commission resolved after weighing extensive evidence about the cost, risk, and complexity of serving these customers. Ohio law does not prohibit all rate distinctions among customer classes—it prohibits only unreasonable discrimination that lacks a legitimate basis. The Commission found that the distinctions drawn by Schedule DCT rest on specific, material differences supported by substantial, reliable, and probative evidence. OMAEG merely disagrees with the Commission and has not come anywhere close to showing those findings are manifestly against the weight of the record.

1. Ohio law supports reasonable distinctions based on material differences in providing service

Ohio's statutory framework governing public utility rates does not prohibit all distinctions among customer classes. Rather, it prohibits only *unreasonable* discrimination that is unjustified by the record. The relevant statutes make this clear. R.C. 4905.32 requires that the terms specified in a utility's tariffs be "regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service." R.C. 4905.33(A) similarly prohibits a utility from charging different compensation for "doing a like and contemporaneous service under substantially the same circumstances and conditions." And R.C. 4905.35(A) forbids a utility from making or giving "any undue or unreasonable preference or advantage to any person, firm, corporation, or locality." Read together, these provisions establish a consistent principle: rate differentiation is permissible so long as it is grounded in legitimate, material differences in the service being provided or the circumstances under which it is provided. Critically, this Court has long interpreted these statutes to mandate only that customers receiving like service under like conditions be treated alike—not to mandate uniform pricing across all customers regardless of circumstance.

This Court has held that, under R.C. 4905.35(A), "discrimination is not prohibited per se but is prohibited only if without a reasonable basis." *Allnet Communications Servs., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 207 (1994). Similarly, R.C. 4905.33 prohibits discriminatory pricing only for "like and contemporaneous service" rendered "under substantially the same circumstances and conditions," and does not prohibit differences in prices charged or collected where the services rendered are different or where they are rendered under different circumstances or conditions. *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 16 (2000). Thus, "[d]ifferences reasonably affecting the expense or difficulty of performing the same or similar service in different areas or circumstances may be reflected in differences in cost recovery rates,

and . . . such differences are neither unlawful nor discriminatory." *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 459 (2004) (citing *Buckeye Lake Chamber of Commerce v. Pub. Util. Comm.*, 161 Ohio St. 306, 312 (1954). Consistent with these long-standing principles, the Court has regularly found that a utility's residential and general service classifications—and their corresponding rates—are based upon actual and measurable differences in the furnishing of services to customers and are therefore not unduly discriminatory. *See, e.g., Meyers v. Pub. Util. Comm.*, 64 Ohio St.3d 299, 302 (1992).

In line with this well-established authority, AEP Ohio has long recognized different classes of customers subject to different tariff schedules, where those classifications are based on tangible, reasonable, and justifiable distinctions. (ICN 146, AEP Ohio Ex. 4, at 35-36, Supp. at 108-109.) AEP Ohio's existing tariff schedules, for example, draw distinctions among residential customers, county and independent fairs, lighting customers, schools, churches, power plants, customers utilizing behind-the-meter generation, customers with electric vehicles, automakers, and electric heating customers, among others. (*Id.*) These schedules lawfully differentiate among customer classes based not only on how much power the customer uses and at what voltage level service is delivered, but also on who the customers are and what they use electric service for.

Schedule DCT operates on the same principle: it establishes a new tariff classification for large data centers based on the specific, material differences in the cost of serving those customers. Indeed, even OMAEG itself appears to acknowledge that differences in the cost of service can serve as the basis for different criteria or classifications. (*See* OMAEG Merit Br. at 13.) That concession effectively undermines the foundation of OMAEG's undue discrimination argument, because the record in this proceeding amply demonstrates that the cost of serving

large data centers differs materially from the cost of serving other large-load customers.

2. Large data centers subject to Schedule DCT are not similarly situated to other large load customers

OMAEG asserts that it is "undisputed" that Schedule DCT treats similarly situated large-load customers disparately and contends that the Commission's Order was not based upon sufficient findings supported by the record, in violation of R.C. 4903.09. (*Id.* at 11). Both contentions are wrong. R.C. 4903.09 requires the Commission to file "findings of fact and written opinions setting forth the reasons prompting the decisions arrived at." Although strict compliance with this requirement is not demanded, a Commission order "must contain sufficient detail for [the] Court to determine the factual basis and reasoning relied on by the Commission." *In re Compl. of Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc.*, 2020-Ohio-5221, ¶ 19. The Commission's Order and Entry on Rehearing in this proceeding readily satisfy that standard—and the record evidence they rely upon overwhelmingly supports the conclusion that large data centers are not similarly situated to other large-load customers.

The Order fully discussed the evidence and arguments presented by each party—including OMAEG—and, based on that evidence, found that Schedule DCT was not unduly discriminatory. (ICN 231, Order at ¶¶ 106-109.) In doing so, the Commission acknowledged that the 10/23 Stipulation is specifically tailored to data center load but found that AEP Ohio provided a "reasonable basis for its tailored proposal" that justifies the distinction. (*Id.* at ¶ 128.) Drawing on the extensive evidentiary record developed over a thirteen-day hearing, the Commission identified a detailed array of material differences between large data centers and other large-load customers—differences that directly affect the cost, complexity, and risk of providing electric service. (*Id.* at ¶ 129.)

First, the data center industry is experiencing a unique and unprecedented level of

hypergrowth that has no parallel among other types of large-load customers. This explosive growth is driving the creation of material transmission capacity constraints that will require costly infrastructure investments to resolve—investments that would not be necessary but for the extraordinary pace and scale of data center demand. (AEP Ohio Ex. 4 at 37-39, Supp. at 110-112.) Second, the sheer amount and geographic concentration of electric demand that a single large data center imposes on the system far exceeds what is typical of other large-load customers. (*Id.*) Indeed, a single data center campus may require upwards of 1,000 MW of capacity, compared to the 100 to 150 MW that might be required by even the largest traditional industrial customers. (*Id.*) Serving loads of that magnitude at a single point of delivery requires significant, dedicated infrastructure that is qualitatively different from the infrastructure needed to serve other large customers.

Third, large data centers present systematic, industry-wide risks that are not present for other types of customers. (*Id.*) As discussed above, existing Central Ohio peak load was 4,000 MW before the data center related increase of an additional 5,000 MW under contract to be delivered by 2030. On top of that, there was 30,000 MW of load which had expressed interest, more than 7 times the prior peak load in Central Ohio. There is a material risk that this demand could diminish for a variety of reasons—including shifts in technology, changes in market conditions, or the relocation of computing operations. (*Id.*) Because data center load is concentrated in a single industry with a uniform type of usage profile, the risks associated with that load cannot be mitigated by the natural diversification that occurs when a utility serves customers across a broad range of industries, where downturns in one sector are often offset by growth in others. (*Id.*) Fourth, data center customers are not only unique in the volume and highly intensive pattern of their electric usage, but also in the fact that they operate at near-

continuous capacity—running at or near full load every hour of every day. (ICN 144, OEG Ex. 1 at 7, Supp. at 122.) Unlike many other large-load customers, data centers cannot meaningfully shift their usage to off-peak times, further distinguishing their impact on the system from that of other large customers. (*Id*.)

The Commission expressly found each of these distinctions in its Order, relying on a combination of AEP Ohio, OEG, and Staff witness testimony as well as Sidecat Ex. 10. (ICN 231, Order at ¶ 129.) The Entry on Rehearing affirmed these findings on those same factual bases. (ICN 242, Entry on Rehearing at ¶¶ 40-45.) Taken together, this evidence demonstrates precisely the kind of "actual and measurable differences in the furnishing of services" that this Court has recognized as a legitimate basis for rate classification. *See Meyers*, 64 Ohio St.3d at 302. Without the financial commitments required under Schedule DCT, there is a material risk that billions of dollars in infrastructure investments—made solely to serve data center demand—could go underutilized if that demand fails to materialize or subsequently declines, resulting in significantly higher rates for all of AEP Ohio's other customers. Schedule DCT is designed to mitigate that risk and to ensure that the customers driving the need for these extraordinary investments bear a fair share of the costs and consequences.

3. OMAEG's attempts to discredit the record evidence are unavailing

Rather than engage with the detailed record demonstrating the material differences between large data centers and other large-load customers, OMAEG offers only broad, unsupported assertions that data centers should be treated exactly the same as all other large-load customers—and attempts to dismiss the evidence the Commission relied upon through a series of arguments that are each without merit.

OMAEG first characterizes the evidence as "mere representations," but this characterization ignores the nature and quality of the record. AEP Ohio's witness testimony was

based on the Company's actual, firsthand experience serving—and receiving requests to serve—data center customers. Those witnesses were subject to cross-examination at hearing, an opportunity that all opposing parties, including OMAEG, took full advantage of—as demonstrated by the extensive hearing transcript developed in this case. Moreover, OMAEG's characterization disregards the fact that the Commission's findings were also supported by the testimony of other witnesses, each of which were consistent with AEP Ohio's evidence. (*See* ICN 231, Order at ¶ 129 (citing OEG Ex. 1 at 7, Supp. at 122; Staff Ex. 1 at 17, Supp. at 151.) In sum, OMAEG merely disagrees with the Commission and improperly asks this Court to second-guess the Commission's factual findings.

OMAEG next argues that the Commission could not have found material differences in the cost of serving large data centers absent a formal cost-of-service study. (*See* OMAEG Merit Br. at 13.) This argument fails for multiple reasons. AEP Ohio presented substantial and unrebutted evidence of the material cost differences associated with serving large data centers—evidence that OMAEG never meaningfully challenged. OMAEG's insistence on a cost-of-service study also disregards the practical reality that the detailed cost information necessary to conduct such a study is simply not available at this time. The unsigned load requests from data centers remain speculative. As such, without accurate information regarding the actual load seeking to connect and the specific locations of that load, specific transmission solutions cannot be developed. At bottom, AEP Ohio filed its application to *proactively* address the risk of stranded investments needed to support future data center load growth within Ohio—not to recover costs. Under these circumstances, demanding a formal cost-of-service study as a prerequisite to any tariff differentiation would effectively prevent a utility from taking reasonable, forward-looking steps to protect its existing customers from foreseeable harm.

Finally, the cases cited by OMAEG in support of its sufficiency-of-evidence argument are not relevant to this proceeding. In *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87 (1999), the Court did not address a claim of discriminatory rates at all. Rather, the Court considered whether the Commission had adequately supported its decision approving a merger, consistent with the requirements of R.C. 4903.09. The Court found the Commission had not met this burden, emphasizing that the Commission had failed to reference *any* record support for its findings—which adopted findings from Staff that were based on facts not in the record. In support of that determination, the Court specifically noted that "no hearing was held and no written testimony was filed on behalf of the companies or any other interested party" and that "[t]he Commission's staff filed no comments, testimony, or report." *Id.* at 90. That situation bears no resemblance to this proceeding, where numerous parties filed testimony and comments, a thirteen-day hearing was held, and the Commission's Order included explicit references to the evidentiary record in support of its findings.

Similarly, in *Canton v. Pub. Util. Comm.*, 72 Ohio St.3d 1 (1995), the Court found that the Commission had erred in granting twenty-two CPCN applications based on insufficient evidence. The Court noted, among other things, that many applicants had failed to support their applications with the testimony of more than one witness as required by law and several applicants had not presented any witnesses at all. Moreover, the Commission had failed to cite any facts supporting its finding that the applicants could not be adequately served through contract authority. Ultimately, due to these evidentiary gaps in the underlying proceeding, the Court held that the Commission had improperly lowered the burden of proof for eighteen of the twenty-two applications. *Id.* at 7-10. Once again, this case is clearly distinguishable. AEP Ohio presented two witnesses of its own in support of the Application and the subsequent 10/23

Stipulation, and three other signatories—including Staff—also presented witnesses, each of whom was made available for cross-examination.

The evidentiary record before the Commission was robust, the Commission's findings were detailed and well-supported, and OMAEG's attempt to analogize this proceeding to cases involving wholesale evidentiary failures is simply unavailing. OMAEG's position ignores the record, disregards the testimony of multiple witnesses, and is contrary to the well-established legal principle—which OMAEG itself has conceded—that differences in the cost of service can justify different rate classifications.

B. Schedule DCT does not violate the Equal Protection Clause or due process

Also as part of its first proposition of law, OMAEG contends that Schedule DCT is discriminatory in violation of the Equal Protection Clause and that the Commission's Order violates due process because the Commission purportedly failed to respect the rights afforded to data center customers and ensure their fair treatment by AEP Ohio. (OMAEG Merit Br. at 10, 12). These constitutional claims are meritless. They fail at the outset for lack of the specificity required by R.C. 4903.10, they are foreclosed by this Court's longstanding recognition that ratepayer rights in the ratemaking process are statutory rather than constitutional, and they fail on the merits in any event because Schedule DCT easily satisfies rational basis review.

1. OMAEG’s constitutional claims fail for lack of specificity under R.C. 4903.10

As a threshold matter, OMAEG's constitutional arguments should be rejected because they lack the specificity required by R.C. 4903.10. That statute requires an appellant challenging a Commission order to set forth specifically the grounds on which it considers the order to be unreasonable or unlawful. R.C. 4903.10. This Court has consistently enforced that requirement, holding that a party's failure to specifically allege in what respect an order is unreasonable or

unlawful is fatal to its claim. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360 (2007); *Marion v. Pub. Util. Comm.*, 161 Ohio St. 276, 278–279 (1954); *Cincinnati v. Pub. Util. Comm.*, 151 Ohio St. 353, 378 (1949); *Conneaut Tel. Co. v. Pub. Util. Comm.*, 10 Ohio St.2d 269, 270 (1967). This specificity requirement is strictly construed. *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 248 (1994).

OMAEG's equal protection and due process claims fail to satisfy this standard. These arguments lack any discrete support or basis separate from its statutory discrimination argument—they are, in substance, nothing more than a cursory repackaging of the same undue-discrimination claim already addressed above, now dressed in constitutional language. OMAEG does not identify any specific constitutional provision that the Commission's Order allegedly violates in a manner distinct from its statutory claims, nor does it explain with any particularity how the Order is unreasonable or unlawful on constitutional grounds as opposed to the regulatory grounds it has already asserted. This kind of generalized, undifferentiated constitutional challenge fails R.C. 4903.10's specificity requirement and this Court should decline to reach it on that basis alone.

2. The comprehensive statutory framework for utility ratemaking controls

Even setting aside the specificity deficiency, OMAEG's constitutional claims fail on the merits because Ohio's comprehensive statutory framework for utility ratemaking displaces the general constitutional principles that OMAEG invokes. At common law, a utility had the same right as any other business to set the rate for its services. *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244 (1994). The General Assembly, however, chose to supplant that common-law regime with a detailed statutory process governing how utility rates are established, modified, and reviewed. That statutory framework—not the general guarantees of due process

or equal protection—defines the rights and obligations of utilities, ratepayers, and the Commission in the ratemaking context.

This Court has squarely addressed this issue, holding that customers have no substantive constitutional right to a fixed rate, and therefore possess no independent due process or procedural rights in the ratemaking process apart from those conferred by statute. *Consumers' Counsel*, 70 Ohio St.3d at 248. It has "repeatedly held that the right to participate in a ratemaking proceeding is statutory, not constitutional, and that absent express statutory provision, a ratepayer has no right to notice and hearing under the Due Process Clauses of the Ohio and United States Constitutions." *Id*. at 249.

This principle is controlling and directly fatal to OMAEG's constitutional claims. Because the rights of ratepayers in the ratemaking process are creatures of statute rather than constitutional guarantees, OMAEG cannot bootstrap a statutory discrimination argument into a constitutional one simply by invoking the Equal Protection Clause or the Due Process Clause. The proper framework for evaluating whether Schedule DCT impermissibly discriminates among customer classes is the one the General Assembly established, not the general constitutional provisions that OMAEG cites without meaningful differentiation from its statutory claims. As demonstrated above, Schedule DCT satisfies all applicable statutory requirements, and OMAEG's attempt to recast that same challenge in constitutional terms does not change the analysis or the result.

3. Even if the Equal Protection Clause is applied, Schedule DCT easily satisfies rational basis review

Even if this Court were to look past the specificity deficiency and the controlling statutory framework and evaluate OMAEG's equal protection claim on the merits, Schedule DCT easily withstands scrutiny. The Equal Protection Clause, like the statutory anti-discrimination

provisions discussed above, prohibits discrimination only between "similarly situated" parties "without any rational basis for the difference." *TriHealth, Inc. v. Bd. of Commrs. Hamilton Co.*, 430 F.3d 783 (6th Cir. 2005). Under rational basis review, a classification need only be rationally related to a legitimate governmental interest or purpose to survive constitutional challenge. *Id.*

As demonstrated at length above, the record in this proceeding establishes that large data centers subject to Schedule DCT are not similarly situated to other large-load customers. The unprecedented scale and concentration of data center demand, the massive infrastructure investments required to serve that demand, the systematic industry-wide risks that cannot be naturally hedged, and the near-continuous capacity usage patterns that distinguish data centers from all other large-load customers collectively provide far more than a rational basis for the classification embodied in Schedule DCT. The Commission found that this new customer classification was not only appropriate but was necessary to protect other customers from being harmed by the costs associated with meeting data center load requirements without proper safeguards. OMAEG's equal protection claim therefore fails on the merits, just as it fails on procedural and structural grounds.

II. Response to Proposition of Law 2: The Commission's determination that the temporary moratorium did not violate either the Certified Territory Act or R.C. 4905.22 was reasonable, lawful, and supported by the record

In its second proposition of law, OMAEG argues that AEP Ohio's temporary moratorium on processing new data center service requests violated the Certified Territory Act ("CTA"), R.C. 4933.83, and the duty to furnish adequate service under R.C. 4905.22, and that the Commission erred in declining to penalize the Company for this alleged violation. (OMAEG Merit Br. at 14-17.) This argument fundamentally misconstrues both Ohio law and the facts of this case. The governing statutes require utilities to furnish adequate and reliable service, and

AEP Ohio's own studies demonstrated that accepting additional unsigned data center load without substantial grid reinforcement would have jeopardized the reliability of service to existing customers. Far from warranting a penalty, AEP Ohio's conduct reflected exactly the kind of responsible, forward-looking grid management that Ohio law demands. The Commission's findings on this issue—rooted in its record-based evaluation of complex questions of grid reliability and transmission planning—fall squarely within its specialized expertise and are entitled to this Court's deference.

A. AEP Ohio initiated the temporary moratorium to comply with—not violate—the Certified Territory Act and R.C. 4905.22

OMAEG's argument rests on a fundamentally flawed reading of Ohio law—one that treats a utility's obligation to serve as absolute and unlimited, with no regard for the practical constraints on a utility's ability to provide reliable service. That is not what the law requires.

AEP Ohio acknowledges that it has a general obligation to serve customers within its certified territory. But the governing statutes frame that obligation in terms of reasonableness and adequacy—not as an unqualified mandate to accept any and all load regardless of consequences. R.C. 4933.83(B) requires electric suppliers to "furnish adequate facilities to meet the reasonable needs of the consumers and inhabitants" in their certified territories. The statute further defines "adequate facilities" as distribution lines or facilities having "sufficient capacity to meet the maximum estimated electric service requirements of its existing customers and of any new customer occurring during the year following the commencement of permanent electric service, and to assure all such customers of reasonable continuity and quality of service." R.C. 4933.81(B). Similarly, R.C. 4905.22 requires every public utility to "furnish necessary and adequate service and facilities" that are "in all respects just and reasonable." And R.C. 4928.02(A) establishes it as the policy of the State of Ohio to "[e]nsure the availability to

consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service." Contrary to OMAEG's theory, each of these provisions conditions the duty to serve on reasonableness, adequacy, and reliability—not on blind acceptance of unlimited demand or the immediate provision of service for such challenging requests.

The Commission has previously recognized that "physically adequate service" means more than simply providing reliable service without outages—it requires supplying a sufficient quantity of electricity to meet customer load. *In re Ohio Power Co.*, PUCO No. 96-999-EL-AEC, *et al*., 2006 WL 1637303, 11 (June 14, 2006). In *Ohio Power*, the Commission found that where an electric utility could not serve a customer's full load without posing an unreasonable risk to its other customers, the utility was not providing physically adequate service. *Id.* That is precisely the situation AEP Ohio confronted here. Studies conducted by the Company demonstrated that it could not serve the additional, unsigned data center load without substantial reinforcement of the transmission grid, and that attempting to serve that load immediately would have led to brownouts or blackouts, jeopardizing service to its existing customers. (Sidecat Ex. 10; Tr. at 149-151, 265, 581, Supp. at 227-229, 287, 296.) By the same token, AEP Ohio would not have been providing adequate service if it had committed to serve only a portion of the incoming data center load while lacking the infrastructure to do so reliably.

Consistent with the objectives of the CTA and R.C. 4905.22, AEP Ohio instituted the temporary moratorium and proactively filed its application to establish a solution that would enable it to provide physically adequate service to both new data center customers and its existing customer base. AEP Ohio was fully transparent about the moratorium throughout this process. Importantly, the Company had already agreed to serve 5,000 MW of new data center load before the moratorium was implemented, and it has never indicated any intent to

permanently refuse service to the remaining 30,000 MW of requested data center load. The moratorium was a temporary, good-faith measure designed to preserve system reliability while the Company worked with the Commission and stakeholders to develop an appropriate framework for accommodating this extraordinary volume of new demand.

Beyond the absence of any legal violation, imposing penalties under these circumstances also would have produced deeply counterproductive consequences. Penalizing a utility for exercising reasonable caution when confronted with conditions that threaten the safety and reliability of the electric grid would send precisely the wrong signal to Ohio's regulated utilities, discouraging them from taking the very precautionary steps that responsible grid management demands. The result would be a regulatory framework that punishes prudence and rewards recklessness—an outcome that serves no one, least of all the ratepayers whom OMAEG purports to represent.

B. Precedent prohibits the Commission from ordering an extension of facilities if the utility is not receiving adequate compensation for the services it is already providing

OMAEG's position—that AEP Ohio should have simply begun extending its facilities and providing service to the tremendous volume of incoming data center load without any safeguards in place—is also foreclosed by well-established precedent recognizing that a utility cannot be compelled to extend its facilities when it is not receiving adequate compensation for the services it is already providing. The United States Supreme Court recognized this principle over a century ago in *People of State of New York ex rel. Woodhaven Gaslight Co. v. Pub. Serv. Comm.*, 269 U.S. 244 (1925), holding that a commission may not order a utility to extend service under conditions that would be financially confiscatory. This Court has embraced the same principle, affirming that the Commission may not order an extension of facilities where the utility is not receiving adequate compensation for the services it already renders. *Forest Hills*

Util. Co. v. Pub. Util. Comm., 31 Ohio St.2d 46, 56–57 (1972) (quoting *Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441 (1958)).

This precedent applies directly here. It is reasonable—indeed, it is expected—that a utility will receive just compensation for an extension of facilities required to serve new customers. The data center load seeking service on AEP Ohio's system is not merely large; it is unprecedented in scale, requiring billions of dollars in transmission infrastructure investments. Requiring AEP Ohio to simply begin building out its system and providing service to this extraordinary volume of load—without the necessary precautions to ensure that the load will actually materialize and that the Company will be adequately compensated for the investments required to serve it—would run directly afoul of the principles established in *Woodhaven*, *Elyria Telephone*, and *Forest Hills*. The temporary moratorium and the proposed tariff at issue in this proceeding were precisely the kind of reasonable, protective measures that this precedent contemplates. They ensured that AEP Ohio would not be forced to make massive capital commitments without any assurance that the customers driving those investments would follow through on their service requests or bear an appropriate share of the associated costs.

C. The Commission's findings regarding the temporary moratorium were sufficiently supported by the record

OMAEG contends that the Commission failed to provide a sufficient rationale for its decision regarding the temporary moratorium, in violation of R.C. 4903.09. This argument is unpersuasive. The Commission clearly explained its decision and the factual bases supporting it, as required by R.C. 4903.09. The Order set forth the positions of the parties on the moratorium issue and, based on the evidence presented, found that the moratorium was reasonable, incorporating explicit references to the testimony presented by AEP Ohio regarding the reasons for the moratorium. (ICN 231, Order at ¶¶ 110-114, 130.)

OMAEG's attempts to undermine the sufficiency of the Commission's reasoning are unavailing. First, OMAEG points to AEP Ohio's Long-Term Forecast Report ("LTFR") filings, claiming that they do not reflect the unprecedented growth discussed in this case and instead show negligible load growth over the next ten years. (OMAEG Merit Br. at 15-16.) But this argument fundamentally misrepresents the purpose of the respective filings. AEP Ohio has consistently reported critical load growth information relevant to the transmission system as part of the PJM planning process and in its LTFR reports to the Commission. That reporting methodology appropriately avoids including overly speculative load projections that could lead to overinvestment in the transmission system (a policy an organization purporting to represent manufacturing customers would appreciate). The LTFR filings, in other words, are designed to reflect reasonably foreseeable demand—not the full universe of speculative service requests that a utility may have received. By contrast, this proceeding was specifically designed to develop a solution for processing and filtering out speculative projects from the more than 30,000 MW of potential data center load growth that AEP Ohio currently faces. The fact that AEP Ohio's LTFR reporting in an entirely separate case with a separate purpose is conservative in no way undermines the record evidence demonstrating that data center demand presents an unprecedented challenge to the Company's system.

Second, OMAEG attempts to take the Commission's findings out of context, pointing to the Commission's statement that it was "unconcerned" that no formal study was conducted during the moratorium period because "it seems obvious" why the moratorium was put in place. (*See* ICN 231, Order at ¶ 130; *see also* ICN 242, Entry on Rehearing at ¶ 151.) This statement is misleading, omitting the Commission's full reasoning. The Commission explained that the evidence "obviously" demonstrated that "the moratorium was implemented to mitigate the

Company's load from escalating too quickly, which indicates that either the Company studied or was aware of triggers for load constraint problems." (ICN 231, Order at ¶ 130; ICN 242, Entry on Rehearing at ¶ 151.) That is not an absence of reasoning—it is a straightforward finding that the record evidence made the justification for the moratorium self-evident. In fact, Sidecat Ex. 10—which was subject to cross-examination at hearing—demonstrates that AEP Ohio conducted studies before implementing the moratorium that justified the decision to pause new service requests.

More broadly, OMAEG once again dismisses the evidence presented as insufficient without supporting that contention with any rebutting evidence of its own. OMAEG offers no contrary evidence establishing that the moratorium was unjustified or that the Company's concerns about system reliability were unfounded. And even if there were any remaining question about the sufficiency of the Commission's reasoning, any alleged error would be harmless: the Commission ordered AEP Ohio to cease the moratorium and process the queue of customer service requests, and AEP Ohio has done so. (ICN 231, Order at ¶ 130.) The moratorium has ended, the queue is being processed, and OMAEG has not demonstrated any actual harm or prejudice resulting from the temporary pause. In the absence of any demonstrated injury—and in light of the ample record support for the Commission's findings—OMAEG's challenge to the sufficiency of the Commission's rationale is without merit.

III. Response to Proposition of Law 3: The record evidence demonstrates the existence of a transmission constraint justifying the need for Schedule DCT

OMAEG’s third proposition of law argues that the Commission erred in finding that AEP Ohio demonstrated a transmission constraint warranting a remedy, that the Commission's Order failed to satisfy the requirements of R.C. 4903.09, and that AEP Ohio as an electric distribution utility is not the appropriate entity to address a transmission issue. (OMAEG Merit Br. at 18-

22.) These arguments rest on a persistent mischaracterization of the record evidence and a fundamental misunderstanding of how transmission planning and construction are governed in Ohio—and they ask this Court to override the Commission's judgment on quintessentially technical engineering questions at the very core of its specialized expertise. The record before the Commission contained substantial engineering evidence establishing that the unprecedented volume of data center load seeking service in Central Ohio will exceed the capacity of the existing transmission system, and OMAEG offered no contrary evidence to rebut those findings.

A. OMAEG misrepresents the evidence presented and relied on by the Commission

The Commission's Order clearly set forth the factual bases for its finding that a transmission constraint exists, and that Schedule DCT is a reasonable response to it. (ICN 231, Order at ¶ 122.) The record evidence on this point was substantial and unrefuted. Once again, OMAEG just disagrees with the Company's decisions and seeks to second-guess the Commission's record-based findings in support.

As detailed above, contracted data center demand from 2023 and 2024 alone was poised to more than double Central Ohio's then-existing load by 2030. Beyond that contracted load, over 30,000 megawatts of unsigned data center load requests were seeking to connect to the transmission system in the greater Columbus area. Engineering Studies conducted by the AEP Transmission Planning organization confirmed that even a fraction of that additional load would result in numerous overload and voltage violations throughout central Ohio, risking brownouts, blackouts, and equipment failures. (Sidecat Ex. 10; Tr. at 227-228, Supp. at 278-279.)

Despite this substantial evidence, OMAEG claims that AEP Ohio made "contrary admissions regarding the existence of [a] constraint." (OMAEG Merit Br. at 19.) OMAEG's approach in making this argument is to cherry-pick isolated statements by AEP Ohio or its

witnesses—principally acknowledging that the Company had not yet identified the specific transmission projects, costs, or responsible entities involved in the required buildout, or quantified the current reserve capacity for additional load growth in Central Ohio—and present them as though they disprove the existence of a constraint. But each of these purported "admissions" reflects the inherent nature of transmission planning, not the absence of a genuine problem, and OMAEG ignores the context that makes this clear.

The reason why AEP Ohio has not yet identified specific projects and costs is based in how the transmission infrastructure is planned and built. Unlike many utility investments, transmission planning does not occur in isolation. Decisions about what transmission facilities to construct, where to build them, and which entity is responsible for constructing them are governed by FERC-jurisdictional PJM planning—a federally regulated process that assigns construction responsibilities based on a range of factors, including the capacity of the infrastructure being built, the reason for the project, and its location. (OMAEG Ex. 22, OMAEG Appx. 457-458.) That process cannot even begin until the utility knows how much load it will actually need to serve and where that load will be located. As AEP Ohio witness McKenzie explained at hearing, the Company cannot identify specific projects until this proceeding is resolved, the 30,000 MW queue of service requests is processed, and it becomes clear which data center customers will actually commit to service and how much load they will need. (Tr. at 1504-1505, Supp. at 303-304.) Only then can a definitive load figure be run through the PJM planning process to produce specific transmission project proposals. (*Id.*) Nevertheless, Mr. McKenzie testified that even without knowing the specific projects, the Company can "estimate the magnitude of what will be needed if we have very much more, if at all, data center load in central Ohio." (*Id.*) He further clarified that transmission capacity inherently cannot be assessed

in the abstract for a large geographic area—it is "a case-by-case analysis" that depends on the specific load and where on the system it must connect. (*Id.* at 1508, Supp. at 305.) In short, the absence of a specific project list does not mean there is no constraint—it means the constraint has not yet been translated into specific construction plans because the necessary preconditions for doing so have not been met.

OMAEG's reliance on testimony about reserve capacity is equally misleading. OMAEG points to Mr. Ali's testimony that "AEP Ohio has not quantified the current amount of reserve capacity that's available for load growth in central Ohio." (*Id.* at 262, Supp. at 286.) But OMAEG omits the immediately preceding question and answer establishing that OMAEG's counsel was asking about reserve capacity for *generation* (*i.e.,* whether there are enough power plants to produce the electricity), not transmission (*i.e.*, whether the power lines can carry it to where it is needed). In response to that line of questioning, Mr. Ali explained that AEP Ohio has no role in planning market generation supply and therefore had not conducted that particular analysis. (*Id.* at 261, Supp. at 285.) OMAEG also references the Company's discovery response stating that it has not quantified the current amount of reserve capacity for additional load growth in Central Ohio (OMAEG Ex. 23, OMAEG Appx. 459), but that same discovery response affirmatively states that "AEP Ohio's distribution planning team currently estimates that known and expected Central Ohio load growth from customers other than data center customers between 2024 and 2030 is approximately 400 megawatts." (Tr. at 2038-2039, Supp. at 329-330.) Far from undermining AEP Ohio's position, this evidence confirms the extraordinary scale of data center demand relative to all other sources of load growth—the 5,000 MW of contracted data center load dwarfs the 400 MW of non-data-center growth by a factor of ten.

OMAEG also emphasizes statements by Mr. Ali suggesting that AEP Ohio currently has

available capacity and would likely not need additional transmission investment until 2030. (OMAEG Merit Br. at 20-21.) This argument misses the point entirely. AEP Ohio has already acknowledged that the existing grid can handle a total peak load of approximately 10,000 MW. The transmission capacity constraints that the Company initiated this proceeding to address will emerge only once that threshold is exceeded—which, given the contracted and unsigned data center load in the pipeline, is a near certainty absent proactive measures. The purpose of Schedule DCT is to prepare for that eventuality before it arrives, not to react after the system has already failed. OMAEG's suggestion that AEP Ohio should have waited until brownouts or blackouts actually occurred before seeking a solution is fundamentally at odds with sound utility planning and the statutory obligation to ensure adequate and reliable service.

OMAEG's attacks on Sidecat Ex. 10 are similarly unwarranted and misleading. (*See* OMAEG Merit Br. at 20.) While OMAEG may question the format in which the evidence was presented, the format of the exhibit itself has no bearing on the merits of the studies it summarizes. Sidecat Ex. 10 is factual evidence based on actual engineering studies conducted by AEP Ohio's transmission planning organization. The fact that the exhibit presents a summary of those studies does not mean the studies did not take place and does not render their conclusions suspect. OMAEG offers no evidence that the studies were unreliable or that their methodology was flawed—only baseless speculation. Moreover, Mr. Ali testified extensively about the highly technical studies that AEP Transmission conducted on behalf of AEP Ohio, and the parties—including OMAEG—had ample opportunity to cross-examine Mr. Ali regarding the methodology, content, and results of those studies. (*See, e.g.*, Tr. at 106-121, 153-179, 206-233, 393-395, 468-472, Supp. at 211-284, 288-295.)

Finally, OMAEG incorrectly claims that the Order and Entry on Rehearing did not

explain the Commission's rejection of the 10/10 Signatory Parties' counterarguments on this issue. (OMAEG Merit Br. at 21.) To the contrary, the Order discusses all party arguments and evidence presented regarding the existence of a transmission capacity constraint. (ICN 231, Order at ¶¶ 104-105.) After walking through the affirmative evidence supporting its conclusions, the Commission found that it was "not persuaded by 10/10 Stipulation signatories that claim the Company has not provided sufficient record evidence to demonstrate the transmission constraints AEP Ohio faces." (*Id.*) OMAEG cannot quote this statement in isolation as though the Commission offered no reasoning—the statement is the conclusion of a detailed analysis that considered and weighed the competing arguments and evidence. Accordingly, the Commission's findings on this issue were thorough, well-reasoned, and supported by substantial, reliable, and probative evidence in the record.

B. OMAEG's corporate separation claims were correctly rejected by the Commission

As part of its third proposition of law, OMAEG also argues that the Commission failed to address its arguments regarding the threat of corporate separation violations, contending that AEP Ohio, as an electric distribution utility, is not the appropriate entity to address a purported transmission issue—and that this failure provides yet another basis for finding the Order deficient under R.C. 4903.09. (OMAEG Merit Br. at 21-22.) This argument lacks merit.

As an initial matter, OMAEG's corporate separation and cross-subsidization arguments should not be considered by this Court because OMAEG failed to raise them in its Application for Rehearing, as required by R.C. 4903.10. Indeed, OMAEG's Application for Rehearing made no mention of corporate separation or cross-subsidization concerns. R.C. 4903.10 provides that an application for rehearing must "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful," and further mandates that "[n]o

party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in the application." This Court has strictly construed this specificity requirement, holding that it demands a "rifle" rather than a "shotgun" approach—a party must identify its specific objections with precision, not simply raise generalized complaints and hope that one finds its mark. *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 247-248 (1994); *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790, ¶ 15. Because OMAEG did not preserve the argument for appellate review, the Court lacks jurisdiction to consider it.

Regardless, the Commission explicitly addressed and rejected OMAEG's corporate separation arguments on the merits. After discussing OMAEG's position and the counterarguments presented by the other parties, the Commission found "OMAEG's assertions over improper cross-subsidization . . . to be premature and without merit." (ICN 231, Order at ¶¶ 139-140, 156.) In doing so, the Commission acknowledged Mr. McKenzie's testimony that it could not yet be determined which entity—AEP Ohio or AEP Transco—would construct any particular component of the transmission buildout necessary to accommodate data center customers. But the Commission concluded that this uncertainty did not give rise to a cross-subsidization concern, because the regulatory framework governing both entities already contains multiple layers of protection designed to prevent precisely that outcome.

Both AEP Ohio and AEP Transco are transmission providers in Ohio with Open Access Transmission Tariffs ("OATTs") in PJM. When the Commission established AEP Ohio Transco in 2010, it did so "within strict regulatory confines to prevent any such improper cross-subsidization between the two entities." (*Id.* at ¶ 156.) The application in that proceeding included Project Selection Guidelines to determine which facilities would be developed by AEP

Ohio and which by AEP Ohio Transco, with the process coordinated by AEP Transmission personnel who provide technical support for both entities. *See In re Application of AEP Ohio Transm. Co., Inc.*, PUCO No. 10-245-EL-UNC, *et. al.*, 2010 WL 5525171 (Dec. 29, 2010). AEP Ohio Transco's facility investments are recovered through FERC-approved OATT rates via the PJM billing process for Load Serving Entities, including AEP Ohio, along with allocated costs from outside the AEP Zone. All OATT charges paid by AEP Ohio are then passed through to retail customers through AEP Ohio's Base Transmission Cost Recovery ("BTCR") rider, which is trued up annually to ensure no over- or under-collection. As the Commission observed, should OMAEG wish to challenge any perceived cross-subsidization issues, it has the opportunity to do so in those annual true-up proceedings. (ICN 231, Order at ¶ 156.) This layered regulatory structure—encompassing FERC oversight, PJM billing processes, Commission-approved Project Selection Guidelines, and annual true-up proceedings—provides precisely the kind of comprehensive safeguards against cross-subsidization that OMAEG claims are absent.

The Commission further noted that the 10/23 Stipulation itself includes additional protections, requiring AEP Ohio to create a regulatory liability for exit fee and customer collateral revenue and, within six months of receiving such revenue, advance a proposal for Commission approval to flow those funds back to customers. (*Id.*) This provision mirrors a similar commitment in the 10/10 Stipulation that OMAEG itself supported. Notably, OMAEG itself appears to acknowledge that the 10/23 Stipulation's regulatory liability provision will help offset any purported risk of cross-subsidization, taking issue only with the proposed timeline for implementation. (*See* ICN 195, OMAEG Init. Br. at 46-47, Supp. at 204-205.) That concession further undermines OMAEG's claim that the Commission's Order is deficient on this ground.

The Commission considered OMAEG's corporate separation arguments, rejected them

based on the existing regulatory safeguards and the protections built into the 10/23 Stipulation, and explained its reasoning. Nothing more is required under R.C. 4903.09.

IV. Response to Proposition of Law 4: The Commission correctly found that AEP Ohio's application was not for an increase in rates

OMAEG contends that the Commission erred in finding that AEP Ohio's application was not for an increase in rates, arguing that Schedule DCT's provisions will impose new charges that would result in some customers paying rates higher than those currently authorized under AEP Ohio's existing tariffs. (OMAEG Merit Br. at 23–24.) This argument reflects a fundamental misunderstanding of the governing legal standard. R.C. 4909.18 distinguishes between applications to establish a new rate or classification for the first time and applications to increase an existing rate—and the critical question is whether the proposal would raise rates for existing customers currently being served under the utility's tariffs. The Schedule DCT adopted by the Commission does not do so—it applies exclusively to new customer load and expressly exempts existing load from its requirements. As such, Schedule DCT is a classic "first filing" that establishes an entirely new tariff classification for a new type of customer, without altering the rates paid by any existing customer. The Commission correctly recognized this, both this Court's precedent and decades of consistent Commission practice support that determination, and the cases OMAEG cites in opposition are readily distinguishable.

A. AEP Ohio's application qualifies as a "first filing," and therefore was "not for an increase" in rates

R.C. 4909.18 authorizes a public utility to file either of two types of rate applications. The first is an application "to establish any rate, . . . classification, charge, or rental, . . . or any regulation or practice affecting the same." The second is an application "to modify, amend, change, increase, or reduce any existing rate, . . . classification, charge, or rental, or any regulation or practice affecting the same." The key procedural distinction between these two

categories is whether the application involves a proposed increase to rates charged to existing customers. If approval of the application would raise rates for existing customers currently being served under a utility's tariffs, it could constitute a rate increase proposal under the second prong of R.C. 4909.18, triggering the notice and filing requirements of R.C. 4909.19 and the Commission's Standard Filing Requirements. *See* Ohio Admin. Code 4901-7-01. If, on the other hand, the application will not increase rates of existing customers, it is not for an increase in rates.

One well-established category of applications that fall within the "not for an increase" classification are "first filings"—applications to establish a new rate, tariff, or service classification for the first time. *City of Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 448 (citing *Cookson Pottery v. Pub. Util. Comm.*, 161 Ohio St. 498, 504–505 (1954)). The Commission has consistently applied this principle across a wide range of contexts, approving new tariff classifications as "not for an increase" filings whenever the proposed tariff establishes a new service offering without altering the rates paid by existing customers. For example, the Commission has treated as first filings, among others, new metering and billing procedures for generation facilities; a new optional controlled service rider for customers agreeing to install metering and control devices for certain energy systems; a voluntary experimental real-time pricing option for residential customers; tariff revisions establishing rates for the first time for services previously provided under the gas choice program; and new residential three-phase service to address unique circumstances of certain multi-unit residential complexes. *In re Application of Ohio Power Co.*, PUCO No. 18-1313-EL-ATA, 2019 WL 1116703 (Mar. 6, 2019); *In re Application of Ohio Edison Co.*, PUCO No. 85-792-EL-ATA, 1985 WL 1171277 (Aug. 20, 1985); *In re Application of Columbus Southern Power Co.*, PUCO No. 11-1355-EL-

ATA, 2011 WL 2644117 (June 29, 2011); *In re Columbia Gas of Ohio, Inc.*, PUCO No. 02-2903-GA-ATA, 2004 WL 1803543 (Apr. 29, 2004); *In re Duke Energy Ohio*, PUCO No. 07-626-EL-ATA, 2007 WL 2141947 (July 25, 2007). Particularly instructive is *In re Application of The Cincinnati Gas & Elec. Co.*, PUCO No. 82-622-EL-ATA, 1982 WL 973411 (May 12, 1982), where the Commission found that a new high-pressure sodium lighting service was "not an increase" application under R.C. 4909.18 even though the new service carried higher rates than the existing lighting tariff—because the application grandfathered existing streetlighting customers, ensuring that no customer currently being served would experience a rate increase.

The principle that emerges from this body of authority is straightforward: when a utility proposes to establish a new tariff classification for a new type of service without altering the rates paid by its existing customers, that application is "not for an increase" in rates under R.C. 4909.18, regardless of the specific terms or conditions that the new tariff may impose on customers who prospectively take service under it.

AEP Ohio's application fits comfortably within this framework. Schedule DCT establishes an entirely new tariff classification for a new and distinct type of customer—large data centers—that did not previously exist as a separate customer class under AEP Ohio's tariff schedules. The Commission recognized as much, finding that "this proceeding does not involve a request to increase rates for existing customers because the proposed tariff involves the emergence of a prominent, new type of customer," and that the proposal would "not impact customer rates, but rather require heightened commitments prior to interconnection and service." (ICN 231, Order at ¶ 25.) Critically, Schedule DCT does not alter rates or service terms for any existing customer. The tariff expressly "grandfathers" all loads above 25 MW that contracted for service before the tariff's effective date—meaning Schedule DCT simply does not apply to

them—unless the customer subsequently seeks to add 25 MW or more to the same site through a separate application. (ICN 135, Joint Ex. 1, at 4, OMAEG Appx. at 412.) In other words, all previously contracted load—including that which would otherwise qualify as data center load under the new tariff—is exempt from its requirements. This provision ensures that no customer currently served by AEP Ohio will experience any change in rates or service terms as a result of Schedule DCT.

OMAEG's argument to the contrary conflates the establishment of new service conditions with a rate increase. To be clear, nothing in this case changes any existing rate paid by any existing or future data center customer. The provisions OMAEG points to—minimum billing demand, initial contract terms, exit fees, and collateral requirements—are not increases to any existing rate. They are conditions of service applicable to a new tariff classification, designed to protect AEP Ohio's existing customers from the risk that the extraordinary infrastructure investments required to serve data center load will become stranded. Indeed, the Commission confirmed that data center customers who accurately forecast and utilize their load as estimated "should pay the same rates as they would under Schedule GS." (ICN 231, Order at ¶ 125.) The underlying commodity rates are not being increased—the new tariff simply establishes additional commitments appropriate to the unprecedented scale of service being requested. The Commission's finding that AEP Ohio's application was "not for an increase" in rates was therefore consistent with the governing statute, supported by decades of Commission precedent, and should be affirmed.

B. The cases relied on by OMAEG are clearly distinguishable from AEP Ohio's application in this case

The two cases OMAEG relies on in support of its claims are readily distinguishable and, upon closer examination, actually reinforce the correctness of the Commission's determination

here.

OMAEG first cites *In re Cincinnati Gas & Elec. Co.*, PUCO No. 03-93-EL-ATA, 2005 WL 293629 (Jan. 19, 2005), but in doing so, overstates its holding. That case did not establish a broad rule about when new tariff provisions constitute a rate increase. Rather, the Commission's analysis in that proceeding was narrowly focused on whether certain market-based rate components qualified as charges on "distribution or transmission and . . . ancillary services"—a distinction rooted in the Commission's interpretation of R.C. 4928.15, which requires that noncompetitive retail electric distribution, transmission, or ancillary services be provided pursuant to a schedule filed under R.C. 4909.18, and R.C. 4928.14, which provides that competitive retail electric services shall be provided at market-based rates rather than through the traditional rate-based approach. *See In re Cincinnati Gas & Elec. Co*., PUCO No. 03-93-EL-ATA, 2004 WL 2781939, ¶ 19 (Nov. 23, 2004). The Commission found that the market-based rate components at issue did not require full rate case review because they were competitive services falling outside the scope of those statutes. That narrow holding—concerning the boundary between competitive and noncompetitive services—has no bearing on whether AEP Ohio's application to establish a new tariff classification for a new type of customer constitutes a first filing under R.C. 4909.18.

OMAEG also relies heavily on *In re Application of Columbia Gas of Ohio, Inc*., PUCO No. 80-370-GA-ATA, 1980 WL 624968 (May 14, 1980), in which the Commission found that Columbia Gas of Ohio's ("Columbia") proposal to impose a delayed payment penalty on overdue accounts could not be filed as an application "not for an increase in rates." But that case is distinguishable on its facts in a manner that underscores exactly why AEP Ohio's application was properly classified. Columbia's proposal was to revise its tariff rules and regulations to

impose a two percent per month charge on overdue customer accounts exceeding $2,000. (*Id.*) That charge was generally applicable to all of Columbia's existing customers—meaning that customers already being served under the utility's existing tariffs could, for the first time, be subjected to a new monetary penalty simply by paying their bills late. (*Id.*) The Commission found that this proposal would result in some existing customers paying rates higher than those currently authorized and therefore could not proceed as a "not for an increase" filing. (*Id.*) AEP Ohio's proposal presents the opposite situation. Schedule DCT does not impose any new charge on customers currently being served under AEP Ohio's existing tariffs, including current customers that would otherwise be classified as data center customers (since they are grandfathered). Rather, it establishes an entirely new tariff classification applicable only to a new class of customers—large data centers—that did not previously exist as a distinct customer class. No existing customer rates are affected. The Columbia Gas decision thus confirms the very principle that supports the Commission's finding here: the determinative question is whether the proposal would increase rates for existing customers, and Schedule DCT plainly does not.

V. Response to Proposition of Law 5: Notice of the hearing was not required under R.C. 4909.18 and, even if it was, any insufficiency in the notice provided was harmless error

OMAEG's fifth proposition of law contends that the Commission erred in failing to address and rule on the ALJs' decision to commence the evidentiary hearing without the notice that OMAEG claims was required under R.C. 4909.18. (OMAEG Merit Br. at 26.) OMAEG's argument fails for multiple reasons: OMAEG cannot demonstrate any prejudice from the manner in which the hearing was noticed; the hearing was set pursuant to the Commission's broad discretionary authority rather than because the Commission found the application may be unjust or unreasonable; and, in any event, the supplemental notice and public hearing the Commission ordered were more than sufficient to satisfy the purposes of R.C. 4909.18.

A. OMAEG cannot demonstrate any prejudice caused by the manner in which the Commission noticed the hearing

Regardless of which notice requirements OMAEG believes should have applied to this proceeding, its argument fails at the threshold because OMAEG cannot demonstrate any prejudice resulting from the notice the Commission actually provided. This Court has long held that it will not reverse a Commission order unless the party seeking reversal demonstrates that it was harmed or prejudiced by the order. *In re Ohio Power Co.*, 2018-Ohio-4697, ¶ 9. Moreover, a party seeking reversal cannot meet its burden of establishing prejudicial error without furnishing an argument or citing evidence showing that it has suffered a particularized harm—generalized claims of harm are insufficient. *In re Application of Ohio Power Co*., 2025-Ohio-3034, ¶¶ 16-18.

OMAEG makes no attempt to satisfy this standard. It does not identify a single instance in which its ability to prepare for or participate in this proceeding was restricted by the manner in which the Commission noticed the hearing, let alone explain how a different form of notice would have changed the outcome. Nor could it. As the Commission repeatedly observed, the high-profile nature of this proceeding ensured that any interested entity had ample notice well before the hearing took place. The Commission noted in its Order that this proceeding was one of first impression for the state of Ohio, that all procedural steps were taken publicly, and that the case received extensive coverage from multiple media outlets. (ICN 231, Order at ¶ 25.) The Commission reiterated this finding in its September 2, 2025 Entry, observing that public interest in the case had been robust, as evidenced by the number of public comments filed and parties that intervened. (ICN 241, Entry (Sept. 2, 2025) at ¶ 10, Appx. at 10-12.) The Commission addressed this issue yet again on rehearing, affirming that no party was prejudiced by the notice, filings, or hearing dates and emphasizing that generalized claims of harm do not suffice. (ICN

242, Entry on Rehearing at ¶ 58.)

B. The hearing in this proceeding was set pursuant to the Commission's discretion—not because the Commission found the Company's application "may be unjust or unreasonable"

OMAEG's notice argument also rests on a misreading of the plain language of R.C. 4909.18. That statute provides that when the Commission determines an application is "not for an increase" in rates, it may permit the filing of the proposed schedule and fix the time when such schedule shall take effect. If, however, it appears to the Commission that the proposals in the application may be unjust or unreasonable, the Commission shall set the matter for hearing and give notice of such hearing by sending written notice to the public utility and publishing notice one time in a newspaper of general circulation in each county in the affected service area. OMAEG reads the statute to mean that the Commission's decision to schedule a hearing in this proceeding necessarily reflected a determination that AEP Ohio's application may be unjust or unreasonable, thereby triggering the publication requirement. That reading is incorrect.

This Court has recognized that the Commission has broad discretion to regulate its proceedings. *See, e.g., Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 19 (2000). The Commission may choose to hold a hearing on an application not for an increase in rates for any number of reasons—including the novel nature of the proposal, the level of public interest, or a request by signatory parties to a stipulation—without thereby concluding that the application may be unjust or unreasonable. Both the ALJ and the Commission confirmed this interpretation in this proceeding. The ALJ explained on the record at the outset of the evidentiary hearing that the hearing was set at the Commission's discretion. (Tr. at 37, Supp. at 206.) The Commission affirmed this reasoning in its September 2, 2025 Entry, observing that this was not the first proceeding in which the Commission exercised its discretion to hold a hearing for an application not for an increase in rates without prior publication, and that doing so has been, and continues to

be, consistent with the requirements of R.C. 4909.18. (ICN 241, Entry (Sept. 2, 2025) at ¶ 10.) The Commission reiterated on rehearing that the evidentiary hearing was held at the Commission's discretion for this novel proposed tariff, not because the application was deemed unjust or unreasonable. (ICN 242, Entry on Rehearing at ¶ 58.)

This finding is consistent with well-established Commission practice. As indicated above, the Commission has on multiple occasions exercised its discretion to set a matter for hearing on an application not for an increase in rates without making a determination that the application may be unjust or unreasonable—and without requiring legal notice publication. For example, in *In re Application of Duke Energy Ohio for Tariff Approval*, PUCO No. 08-1251-GA-ATA, *et al.*, 2009 WL 1174788, 7-8 (Apr. 29, 2009), and *In re Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP*, PUCO No. 09-06-GA-UNC, 2009 WL 1917789, 7 (June 24, 2009), the Commission held that no legal notice publication was required where the associated hearing was ordered for reasons outside of any conclusion by the Commission as to the justness or reasonableness of the application, such as a request for hearing by signatory parties to a stipulation. *See also In re Application of Duke Energy Ohio, Inc. for the Approval of a Tariff for a New Service*, PUCO No. 12-2402-EL-ATA, *et. al.*, 2012 WL 4803493 (Oct. 3, 2012); *In re Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., & The Toledo Edison Co. for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, PUCO No. 08-124-EL-ATA, *et al*., 2008 WL 596092 (Feb. 29, 2008). These prior cases confirm that the Commission's decision to schedule a hearing on an application not for an increase in rates does not, standing alone, trigger the notice-by-publication requirement of R.C. 4909.18. OMAEG's contrary reading of the statute finds no support in the text, in Commission practice, or in this Court's precedent.

C. Even if notice was required as asserted by OMAEG, the supplemental notice and public hearing ordered by the Commission was sufficient to satisfy R.C. 4909.18

Even assuming, for the sake of argument, that the notice provisions of R.C. 4909.18 applied to this proceeding (they did not), any alleged deficiency in the initial notice was cured by the supplemental notice and public hearing the Commission ordered during the course of this proceeding. During an extended continuance of the evidentiary hearing, the Commission scheduled a local public hearing, which was held on January 3, 2025, at which members of the public were invited to provide comments on the then-pending proposals. (ICN 187, Entry (Dec. 11, 2024) at ¶ 15, Appx. at 3-4.) The Commission directed AEP Ohio to publish notice of the local hearing and the date upon which the evidentiary hearing would reconvene. (*Id.*) This supplemental notice and public hearing provided precisely the kind of public participation opportunity that R.C. 4909.18 is designed to ensure.

The Commission has regularly cured alleged notice defects in this same manner. *See, e.g. In re Regulation of the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Columbia Gas of Ohio, Inc.*, PUCO No. 93-22-GA-GCR, 1993 WL 13742118 (Dec. 23, 1993) (directing publication of supplemental notice after initial notice was not published as required); *In re Compl. of Gary S. Bohn*, PUCO No. 85-127-GE-CSS, 1985 WL 1171359 (July 16, 1985) (explaining how the ALJ had scheduled and required published notice for an additional hearing to allow public witnesses the opportunity to present testimony); *In re Request by the Ohio Dept. of Transp.*, PUCO No. 22-324-RR-RCP, 2023 WL 396913 (Jan. 20, 2023) (same). The Commission's actions in this proceeding were entirely consistent with this established practice of curing any potential notice deficiency by ordering supplemental notice and an additional public hearing.

Moreover, OMAEG disregards the doctrine of substantial compliance, which is codified

in R.C. 4905.09. That statute provides that substantial compliance by the Commission with the requirements of Chapter 4909 of the Revised Code is sufficient to give effect to all of its rules and orders, and that those rules and orders shall not be declared inoperative, illegal, or void for an omission of a technical nature. R.C. 4905.09. This Court has consistently applied this principle, holding that it will not reverse the Commission for error when there has been substantial compliance with statutory notice requirements and the complaining party has not shown that it was prejudiced by the lack of strict compliance. *Parma v. Pub. Util. Comm.*, 86 Ohio St.3d 144, 149 (1999) (citing *Ohio Bus Line, Inc. v. Pub. Util. Comm.*, 29 Ohio St.2d 222 (1972), and *Valley Greyhound Lines, Inc. v. Pub. Util. Comm.*, 148 Ohio St. 603 (1947)). Here, the Commission's actions—including the publication of notice, the scheduling of a local public hearing, and the extensive public participation that occurred throughout this proceeding—more than satisfy the substantial compliance standard. And as demonstrated above, OMAEG has failed to show any prejudice from the manner in which notice was provided. Under these circumstances, OMAEG's notice challenge provides no basis for reversal of the Commission's Order.

VI. Response to Proposition of Law 6: The Commission properly affirmed the ALJs' rulings limiting irrelevant and duplicate lines of questioning from OMAEG counsel at hearing

In its final proposition of law, OMAEG contends that the Commission erred in upholding the ALJs' rulings limiting the scope of cross-examination of AEP Ohio witnesses Ali and McKenzie. (OMAEG Merit Br. at 29.) According to OMAEG, these rulings prevented it from exploring whether AEP Ohio had considered alternative solutions to the identified transmission constraint, whether the Company was acting in good faith in initiating this proceeding, and various other topics relating to the moratorium, modeling assumptions, and witness credibility. (*Id*. at 30-31.) OMAEG's characterization of the ALJs' rulings bears little resemblance to what

actually occurred at hearing. The transcript reveals that the ALJs exercised their well-established discretionary authority to curtail only narrow, repetitive, and foundationally deficient lines of questioning—while affording OMAEG extensive latitude to cross-examine both witnesses on the very subjects it now claims were foreclosed.

A. OMAEG misrepresents the true extent of the ALJs' ruling limiting certain lines of questioning by OMAEG counsel

ALJs have broad discretion to govern the course of hearings, prevent cumulative or irrelevant evidence, and ensure an orderly and efficient proceeding. Ohio Admin. Code 4901-1-27(B); *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 19 (2000). Commission precedent consistently affirms that ALJs may limit lines of questioning that are duplicative, lack proper foundation, or bear questionable relevance to the underlying proceeding, and that mere disagreement with such rulings is not grounds for reversal. *See, e.g., In re Review of the Power Purchase Agreement Rider of Ohio Power Co.*, PUCO No. 18-1004-EL-RDR, *et al.*, 2024 WL 4039778, ¶¶ 45-46 (Aug. 21, 2024); *In re Long-Term Forecast Report of Ohio Power Co.*, PUCO No. 10-501-EL-FOR, *et al.*, 2013 WL 175238, 6 (Jan. 9, 2013). The Commission has also regularly upheld ALJ rulings excluding evidence where the proponent fails to establish a proper foundation. *See, e.g., Id*. More broadly, the trier of fact is routinely accorded deference regarding its decisions on the admission or exclusion of evidence, and such determinations should not be disturbed absent an abuse of discretion. *See, e.g., State v. Sage*, 31 Ohio St.3d 173, 180 (1987); *State v. Proffitt*, 2017-Ohio-1236, ¶ 41 (12th Dist.); *State v. Thompson*, 2014-Ohio-4751, ¶ 114; *Schaffter v. Ward*, 17 Ohio St.3d 79, 80 (1985); *Firelands*, 2023-Ohio-2555, ¶ 17.

Measured against this deferential standard, the ALJs' rulings in this proceeding were well within their discretion—and OMAEG's portrayal of those rulings is fundamentally misleading. With respect to Mr. Ali, the ALJs limited only repetitive, project-specific questions about

prospective generation resources in Central Ohio—questions that had already been addressed in Mr. Ali's testimony. The ALJs did not foreclose OMAEG from probing the assumptions underlying Mr. Ali's modeling, the treatment of potential generation resources, the feasibility of alternative technologies, or possible solutions other than the proposed tariff. To the contrary, the transcript demonstrates that OMAEG was permitted to question Mr. Ali on precisely those topics, including whether he had studied or modeled any generation resources not already included in the PJM queue, whether certain types of generation resources could be used to address constraint issues identified by AEP Ohio, and whether the Company had considered alternatives to Schedule DCT. (*See* Tr. at 209-212, 221, Supp. at 260-263, 272.)

With respect to Mr. McKenzie, the limitation was even narrower. The ALJs curtailed questions relating to a single document—OMAEG Ex. 26—for which OMAEG failed to establish any foundation whatsoever. Mr. McKenzie repeatedly testified that he was entirely unfamiliar with the document and was seeing it for the first time. (*See id.* at 1622, 1630, 1631, 1633, 1634, 1635, Supp. at 306-312.) Despite the witness' complete lack of personal knowledge regarding the document's content, OMAEG's counsel persisted in questioning him about it, essentially reading key excerpts into the record rather than eliciting testimony from a witness who could speak to the document's substance. It was this clearly inappropriate line of questioning that the ALJs ultimately and properly curtailed. OMAEG's failure to properly authenticate documents in accordance with basic evidentiary standards is entirely OMAEG's own responsibility, and it does not give rise to a cognizable claim of error by the Commission.

The relevance of OMAEG Ex. 26 was also questionable at best. The document relied on data and information predating 2019, yet the circumstances giving rise to AEP Ohio's application in this proceeding did not arise until 2023. Thus, even if OMAEG had laid an appropriate

foundation for the document, its bearing on the current proceeding was extremely limited given the intervening years and the dramatically changed circumstances that prompted the Company to file its application. This is yet another basis supporting the Commission's decision.

Even more critical to OMAEG's claims is the fact that, even after the ALJs curtailed questions based on OMAEG Ex. 26, OMAEG was permitted to—and in fact did—question Mr. McKenzie extensively on related topics, including economic development, transmission capacity, and the data center industry's impact on the transmission system. (*See* Tr. at 1631-1639, 1649-1660, Supp. at 308-328.) The record thus demonstrates that the ALJs' rulings were surgically narrow—targeted at specific, foundationally deficient or repetitive lines of questioning—while leaving OMAEG with broad latitude to examine both witnesses on the substantive issues it now claims were placed off-limits.

B. The record demonstrates that OMAEG was afforded all seven opportunities for due process to which it claims it was entitled

OMAEG's due process argument is further undermined by the very authority it cites in support. In *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 2006-Ohio-1386, ¶ 53, this Court discussed several considerations supporting its determination that a party was afforded full due process in the underlying Commission proceeding. Applying those same considerations here, the record demonstrates that OMAEG received every procedural protection it claims it was entitled to.

First, OMAEG received ample notice of this proceeding. OMAEG intervened shortly after AEP Ohio filed its application, and—as discussed above—the high-profile nature of this case ensured that all interested parties were well aware of the proceeding and its significance. Second, OMAEG was permitted to present evidence through the calling of its own witnesses, and it did so. Third, OMAEG had the ability to cross-examine other parties' witnesses, and it

exercised that right fully. Fourth, OMAEG was permitted to introduce exhibits at hearing, and it introduced numerous exhibits throughout the proceeding. Fifth, OMAEG argued its position through the filing of post-hearing briefing, as evidenced by its filed initial and reply briefs, through which OMAEG raised all of the same issues it now presents to this Court. Sixth, OMAEG was permitted to challenge the Commission's findings through an Application for Rehearing, which it filed, and through this appeal. Seventh, OMAEG presented its own settlement and supporting evidence. Based on the foregoing, OMAEG's due process claim amounts to nothing more than dissatisfaction with the ALJs' exercise of their well-established discretion to manage the hearing—and dissatisfaction with an evidentiary ruling, without more, does not constitute a denial of due process.

C. The Commission's decision was explained in sufficient detail pursuant to R.C. 4903.09

Contrary to OMAEG's claims, the Commission's Order and Entry on Rehearing explained the bases for affirming the ALJs' evidentiary rulings in sufficient detail to satisfy R.C. 4903.09. With respect to Mr. Ali, the Commission found that "OMAEG's current request for the Commission to reverse the ALJ's ruling has no bearing on the points that OMAEG purports it was trying to make during the cross-examination of Mr. Ali," and that "in the interest of administrative efficiency and clarity for the record, the ALJ properly stopped OMAEG's counsel from continuing to ask AEP Ohio witness Ali whether or not he was aware of an extensive list of generation projects in AEP Ohio's service territory." (ICN 231, Order at ¶ 28.) With respect to Mr. McKenzie, the Commission found that the ALJ had "placed reasonable parameters on OMAEG's counsel which would allow counsel to ask about the document's substance while balancing the concern that Mr. McKenzie was not familiar with the document," and concluded that "the ALJ's decision on this issue [was] reasonable," emphasizing "that OMAEG was given

significant leeway to ask questions about the substance contained in the document with the specific instruction to not read the document into the record." (*Id.* at ¶ 31.) On rehearing, the Commission affirmed its decision on the same basis and further concluded that OMAEG had demonstrated no prejudice, "especially when considering the ample latitude afforded to it during its extensive cross-examination of both witnesses." (ICN 242, Entry on Rehearing at ¶ 61.)

OMAEG may disagree with these conclusions, but disagreement with a Commission ruling does not render it insufficiently explained. The Commission identified the specific rulings at issue, articulated the reasons supporting them, and concluded that OMAEG suffered no prejudice—that is all R.C. 4903.09 requires.

CONCLUSION

For the foregoing reasons, AEP Ohio, with the support of OEG, respectfully requests that this Court affirm the Commission's decision and deny OMAEG's appeal in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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