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
	)	On Appeal from the Public Utilities Commission of Ohio
	)	Pub. Util. Comm. Case No. 24-508-EL-ATA

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TABLE OF CONTENTS

TABLE OF CONTENTS - cont'd

TABLE OF AUTHORITIES

CASES: PAGE

ENTRIES AND ORDERS OF THE PUBLIC UTILITIES COMMISSION OF OHIO:

STATUTES:

RULES:

CONSTITUTIONAL PROVISIONS

I. INTRODUCTION

The demand for energy from Ohio Power Company ("AEP Ohio") is skyrocketing due to the energy needs of power-hungry data centers and crypto-currency miners moving into central Ohio. (R. Trans. (Jan. 13, 2025), at 117). This case is about who should pay for and bear the risk of the enormous investment necessary to serve these large load customers. Should it be the residential utility consumers who are already saddled with non-stop rate increases for essential utility service? Or should the trillion-dollar companies building the data centers (*e.g.*, Microsoft, Meta, Amazon, and Google) take primary responsibility for paying for grid infrastructure needed to service their power needs?.

OCC, the PUCO Staff, AEP Ohio, and others (R. 231) resoundingly agreed – it should be those trillion-dollar companies – the cost causers – that bear the cost of distribution and transmission investment being driven by their energy needs. Not other consumers, including residential consumers. A settlement, creating "skin in the game" for data centers, was reached to accomplish this agreed upon objective. The PUCO agreed and approved that settlement ("Consumer Settlement"). The Consumer Settlement is protective of consumers, fair to data centers, and consistent with the well-established regulatory principle of cost causation.

The Ohio Manufacturers' Association Energy Group ("Appellant") appealed the PUCO's order approving the Consumer Settlement. Appellant has presented no grounds for reversing the PUCO's decision. For consumer protection, and consistent with the prevailing laws of Ohio, the Court should affirm the PUCO's order approving the Consumer Settlement.

II. STANDARD OF REVIEW

The Court's review of final orders by the PUCO is governed by R.C. 4903.13. (Appellant Appx. 308). It provides that a PUCO order shall be reversed, vacated, or modified by this Court *only* when, upon consideration of the record, the Court finds the order to be unlawful or unreasonable. *Id*. The Court will not reverse or modify a PUCO decision as to questions of fact when the record contains sufficient probative evidence to show that the PUCO's decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Monongahela Power Co. v Pub. Util. Comm.*, 2004-Ohio-6896, ¶ 29. This Court has consistently refused to substitute its judgment for that of the PUCO on evidentiary matters when the record supports either of two opposing positions. *AK Steel Corp. v. PUC of Ohio*, 95 Ohio St.3d 81, 84 (2002).

The Appellant bears the burden of demonstrating that the PUCO's decision is against the manifest weight of the evidence or is clearly unsupported by the record. *Id*. This burden is difficult to sustain because the Court has consistently found it proper to defer to the PUCO's judgment in matters that require the PUCO to apply its specialized expertise and discretion with regard to factual matters. *Monongahela Power Co. v. PUC*, 2004-Ohio-6896, ¶ 29. Furthermore, this Court will not reverse a PUCO order absent a showing by the Appellant that it has been or will be harmed or prejudiced by the order. *Myers v. Pub. Util. Comm.*, 64 Ohio St.3d 299, 302 (1992).

Although the Court has "complete and independent power of review as to all questions of law" in appeals from the PUCO, *Ohio Edison Co. v. Pub. Util. Comm.*, 78 Ohio St.3d 466, 469 (1997), the Court may rely on the expertise of a state agency in interpreting a law where "highly specialized issues" are involved and "where agency expertise would, therefore, be of assistance in discerning the presumed intent of our General Assembly." *Consumers' Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110 (1979).

With mixed questions of law and fact, the Court must review the evidence to determine whether the findings of fact are reasonable and whether the legal principles have been properly applied. *Motor Freight Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6 (1929).

Appellant's Propositions of Law raise mixed questions of law and fact. Appellant's First Proposition of Law raises the question of whether the PUCO's order approving AEP Ohio's Schedule DCT was contrary to the manifest weight of the evidence, and violated R.C. 4905.32, 4905.33, 4905.35, due process, and the Equal Protection Clause. The answer is no. The Court will have to apply the law (R.C. 4905.32 (Appellant Appx. 310), R.C. 4905.33 (Appellant Appx. 311), R.C. 4905.35 (Appellant Appx. 312)) to the facts to determine whether the PUCO's decision is supported by the record.

Appellant's Second Proposition of Law asks whether the PUCO erred when it found that AEP Ohio's moratorium did not violate the Ohio's Certified Territories Act (R.C. 4933.83) and R.C. 4905.22. Again, the answer is no. The Court will have to apply the law (R.C. 4933.83 (Appellant Appx. 324) and R.C. 4905.22 (Appellant Appx. 309)) to the facts to determine whether AEP Ohio's moratorium violated Ohio's Certified Territories Act.

Appellant's Third Proposition of Law asks whether the PUCO sufficiently explained the rationale for its decision that AEP Ohio's load forecasts were accurate and that AEP Ohio demonstrated an actual transmission constraint or need. Here, the answer is yes. The Court will have to apply the law (R.C. 4903.09 (Appellant Appx. 304)) to the facts to determine whether the PUCO's decision is supported by the record.

Appellant's Fourth Proposition of Law asks whether PUCO erred when it concluded that AEP Ohio's Application was not an application for an increase in rates. Again, the answer is no.

The Court will have to apply the law (R.C. 4909.18 (Appellant Appx. 314)) to the facts to determine whether AEP Ohio's Application was not an application for an increase in rates.

Appellant's Fifth Proposition of Law asks whether the PUCO erred by failing to reverse the ALJs' decision to commence the evidentiary hearing in violation of statutory due process and R.C. 4909.18. Again, the answer is no. The Court will have to apply the law (R.C. 4909.18 (Appellant Appx. 314)) to the facts to determine whether the PUCO violated Appellant's due process rights.

Appellant's Sixth Proposition of Law asks whether the PUCO erred by upholding the ALJs' rulings precluding Appellant from questioning AEP Ohio's witnesses about matters it claims were directly relevant and material to this case in violation of its due process rights and R.C. 4903.09. Again, the answer is no. The Court will have to apply the law (R.C. 4903.09 (Appellant Appx. 304)) to the facts to determine whether the PUCO violated Appellant's due process rights.

It is with these standards in mind that the Court should resolve the issues in favor of Ohio consumers, upholding the PUCO's pro-consumer data center order.

III. STATEMENT OF FACTS

Appellant is a non-profit entity whose members are customers of AEP Ohio and consumers of energy in AEP Ohio's service territory. (R. 14, at 4). Appellee Public Utilities Commission of Ohio ("PUCO") is a state agency with authority to regulate investor-owned utilities under R.C. Ch. 4901. (OCC Appx. 3). Intervening Appellee AEP Ohio is a public utility subject to the jurisdiction of the PUCO under R.C. 4905.02. (OCC Appx. 1). Intervening Appellee Office of the Ohio Consumers' Counsel ("OCC") is the statutory representative of Ohio's residential utility consumers including the 1.3 million residential utility consumers of

AEP Ohio under R.C. Ch. 4911. (OCC Appx. 31). Intervening Appellee Ohio Energy Group ("OEG") is a non-profit entity organized to represent the interests of large industrial and commercial customers in electric and gas regulatory proceedings before the PUCO. (R. 6, at 2).

A. AEP Ohio is facing unprecedented load growth from data centers.

AEP Ohio has operated in Ohio since the early 1900s. (R. 142, at 3, AEP Ohio Ex. 3, McKenzie Supp. Test.). Since 1994 and until recently, AEP Ohio experienced minimal load growth with a compound annual growth rate of 0.2%. *Id.* But demand in AEP Ohio's central Ohio service territory has begun to climb due to data centers and is primed to skyrocket. Data centers are centralized facilities housing computer systems, servers, networking equipment, and related components necessary for the efficient operation of IT infrastructure used for the management, storage, processing, and dissemination of data and information. (R. 5, at 2).

In 2018, the central Ohio portion of AEP Ohio's service territory had 4,000 MW in peak demand. *Id.* at 4. That amount is projected to more than double by 2030 based on new data center customers alone. *Id.* New or expanding data center customers have signed binding electric service agreements ("ESAs") with AEP Ohio for approximately 5,000 MW of load by 2030. *Id.* AEP Ohio has also received more than 50 preliminary requests for new or expanded data center service at over 90 sites in central Ohio representing more than 30,000 MW of load. *Id.*

The load expected from the ESAs and preliminary requests is almost nine times the peak demand AEP Ohio took more than 100 years to reach – driven entirely by the rapid proliferation of data centers. Meeting such a dramatic increase in demand will require time and significant transmission investment. *Id.* at 5.

B. The need for transmission grid investment to serve the coming data center load demand.

Because no regional transmission organization ("RTO") controlled generation is located in Ohio, AEP Ohio must import energy through an EHV transmission network to meet customer demand. (R. 2, at 8, AEP Ohio Ex. 2, Ali Dir. Test.). AEP Ohio believes its transmission grid can support the 5,000 MW of load for data centers who have signed ESAs. *Id*. But AEP Ohio does not have enough EHV transmission infrastructure to support the 30,000 MW of load identified from the preliminary requests for new or expanded data center service in its central Ohio service area. *Id*.

In March of 2023, AEP Ohio implemented a moratorium on taking new service requests from data centers. *Id.* at 6. AEP Ohio initiated the pause to allow its transmission planning group to analyze the impacts data center load requests will have on the electrical delivery system in central Ohio. *Id.* at 6-7. AEP Ohio's analysis included an assessment of whether its EHV infrastructure can safely and reliably serve the requested new *and* existing load. *Id.*

AEP Ohio's analysis also considered the reliability requirements of the National Energy Regulatory Commission ("NERC"). *Id*. at 8. Under these requirements, AEP Ohio must plan for two simultaneous outages on the system to study how its transmission system would react. *Id*. When AEP Ohio input loads that exceeded the current load from customers that have executed ESAs, there were certain outage combinations that could cause transmission line overloads and voltage problems in the central Ohio region. *Id.*

Overall, AEP Ohio's analysis demonstrated that major investments in additional EHV lines would be needed if demand exceeded approximately 10,000 MW in Central Ohio. *Id.* at 6. And construction of new EHV lines will likely take seven to ten years given the distance, siting process, and material sourcing. *Id.* at 9. Investment in additional EHV lines would create new opportunities for out-of-state generation to reach the central Ohio area to serve the new data center load. *Id*.

C. AEP Ohio's current tariffs were not designed to address the challenges posed by new data centers.

The recent, unprecedented load growth in AEP Ohio's central Ohio service territory has been driven by data centers, not other large loads. (R. 142, at 5, AEP Ohio Ex. 3, McKenzie Supp. Test.). Data centers are unique customers because of the potential size of the load at one location. *Id*. Data centers are also easily scalable in a way that large industrial facilities are not. *Id*. As a result, data center loads could grow even larger in the future. *Id*. Conversely, data center efficiency is constantly improving, so the large loads data centers are currently projecting may be diminished in the future by efficiency gains. *Id.* at 5-6.

AEP Ohio's current tariffs were not designed to address the challenges posed by new data centers. AEP Ohio's general service tariffs allow for one-year electric service contracts, with an option for AEP Ohio to mandate a longer initial term. *Id.* at 6. These tariffs also require contracts to specify a "contract capacity," which is the maximum power AEP Ohio will supply, and impose minimum demand charges set at 60% of that capacity. *Id.* If these tariff provisions remain unchanged, future data center customers could significantly overestimate their power needs without facing serious financial consequences. *Id.* Moreover, there would be minimal guaranteed revenue from the data centers if they underutilize their projected power usage. *Id.* This would shift the costs of new EHV transmission investment caused by the data centers to other retail customers. *Id*.

D. AEP Ohio's Application for Approval of New Tariffs and the proceedings below.

On May 13, 2024, AEP Ohio filed its Application for Approval of New Tariffs ("Application") with the PUCO. (R. 5, at 2, Appellant Appx. 329, AEP Ohio Ex. 1, Application).

AEP Ohio also filed witness testimony in support of the Application. (R. 2, 3, 4). AEP Ohio's Application proposed new tariffs for data center load. *Id*. at 8. AEP Ohio initiated the Application proceedings to strengthen tariff requirements and ensure data centers have a greater financial commitment to the EHV transmission assets that will need to be built to serve them. (R. 142, at 6, AEP Ohio Ex. 3, McKenzie Supp. Test.).

The need for more transmission infrastructure to serve the oncoming data center load, coupled with the expense in both time and money to build such transmission infrastructure, was the impetus for AEP Ohio to file the Application. *Id*. AEP Ohio sought to reduce the risk of building infrastructure for data center projects that may be canceled or underutilized, which would shift costs to AEP Ohio's retail consumers, including residential consumers, from the cost causing data centers. *Id*. at 7. AEP Ohio's Application furthers this goal by requiring long-term financial commitments from data centers to support new transmission investment in Ohio. *Id*. AEP Ohio also sought to keep its service territory open for broader economic development, ensuring there is sufficient transmission capacity to support both data center growth and traditional job-creating economic activities. *Id*.

On May 31, 2024, OCC filed a motion to intervene and memorandum in support. (R. 17). On June 25, 2024, in accordance with the PUCO's modified procedural schedule, OCC filed comments (R. 44) and reply comments (R. 63) on AEP Ohio's Application. On August 29, 2024, OCC filed the direct testimony of James Wilson. (R. 97). On September 23, 2024, the PUCO granted OCC's and other intervenors' motions to intervene (R. 107).

After intervenors filed comments and reply comments on AEP Ohio's Application, all parties engaged in settlement negotiations. (R. 207, at 1-2). While the all-party settlement negotiations were pending, the Data Center Coalition ("DCC"), individual data center parties, Appellant, Ohio Energy Leadership Council ("OELC"), and certain competitive suppliers conducted separate negotiations resulting in a stipulation filed with the PUCO on October 10, 2024 ("the Data Center Settlement"). (R. 117, Appellant Appx. 439, R. 142, at 7, AEP Ohio Ex. 3, McKenzie Supp. Test.). At the conclusion of the all-party settlement negotiations AEP Ohio, PUCO Staff, OCC, OEG, Ohio Partners for Affordable Energy ("OPAE"), and Walmart, Inc. ("Walmart"), filed the Consumer Settlement with the PUCO on October 23, 2024. (R. 135). (Appellant Appx. 408).

The PUCO heard in-person testimony and received numerous pre-filed testimonies on the Data Center Settlement and the Consumer Settlement over 13 days of hearings. The evidentiary record in this case is extensive, due to the participation of no less than 26 parties and their counsel. The parties consisted of AEP Ohio, representatives from the data center and bitcoin technology industries, energy marketers, various trade group organizations, manufacturing and retail organizations, and groups representing consumer interests such as OCC.

On July 9, 2025, the PUCO issued its Opinion and Order ("Order") approving the Consumer Settlement, including AEP Ohio's data center tariff. ("Schedule DCT").[1] (R. 231). Rejecting the Data Center Settlement, the PUCO found that the Consumer Settlement "benefits ratepayers and the public interest, striking the better balance of various interests between the two stipulations presented in this proceeding." *Id*. at ¶ 121.

The PUCO thoroughly reviewed the entire record and found that a capacity constraint driven by data center load exists in AEP Ohio's Central Ohio's service territory, and that the Consumer Settlement, as a package, presented the best framework to address that constraint. The

[1] Schedule DCT contains the terms and provisions of the Consumer Settlement's data center tariff approved by the PUCO in the Order.

reasons for approving the Consumer Settlement rather than the Data Center Settlement were fully and carefully explained in the PUCO's Order. (R. 231, at ¶ 121). The PUCO articulated the basis for determining that the Consumer Settlement, and not the Data Center Settlement, furthers state policies and comports with regulatory principles. (R. 231 at ¶¶ 123, 151-152).

On August 8, 2025, five Data Center Settlement parties[2] filed applications for rehearing of the PUCO's Order. (R. 234-238). AEP Ohio and OCC filed memoranda contra those applications for rehearing. (R. 239, 240). On September 3, 2025, the PUCO denied the applications for rehearing. (R. 242). Thereafter, Appellant filed its notice of appeal to this Court on November 3, 2025. (R. 244). OCC filed a motion to intervene as an appellee on December 4, 2025. The Court granted OCC's motion on December 18, 2025.

IV. ARGUMENT

Proposition of Law No. 1: Differences 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.*, 2004-Ohio-3924 at ¶ 31. (Response to Appellant's Proposition of Law No. 1, at 10-14).

A. The Consumer Settlement's data center tariff is not unduly discriminatory to data centers merely because it treats data centers differently. A reasonable basis exists for the differing treatment approved by the PUCO.

Appellant challenges the PUCO's Order approving the Consumer Settlement's Schedule DCT (R. 329), arguing that it unlawfully and unreasonably discriminates against data center consumers. Appellant brief, at 10. In support of its argument, Appellant cites three closely related utility statutes.

[2] These parties are: ADS, One Power, DCC, Appellant, and OBC.

R.C. 4905.32 prohibits utilities from providing service "except as uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service." (Appellant Appx. 310). R.C. 4905.33 prohibits utilities from charging different rates for customers who receive "like and contemporaneous service under substantially the same circumstances and conditions." (Appellant Appx. 310). R.C. 4905.35 prohibits utilities from providing service in a manner that would create "any undue or unreasonable prejudice or disadvantage." (Appellant Appx. 312).

While these statutes prohibit *unreasonable and undue* discrimination in utility service and rates, they do not prohibit all discrimination. The Ohio Supreme Court has held that customers can be treated differently if there is a reasonable basis for the differing treatment. *See Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 207 (1994) (under R.C. 4905.35(A), "discrimination is not prohibited per se but is prohibited only if without a reasonable basis."). *See also, Weiss v. Pub. Util. Comm.*, 2000-Ohio-5, 16-17 (holding that R.C. 4905.33 prohibits discriminatory pricing for "like and contemporaneous service" rendered "under substantially the same circumstances and conditions," but does not prohibit differences in prices charged or collected where the utility services rendered are different or if they are rendered under different circumstances or conditions); *see also Myers v. Pub. Util. Comm.*, 64 Ohio St.3d 299, 302 (1992) (emphasizing 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 therefore, are not unduly discriminatory). 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.*, 2004-Ohio-3924 at ¶ 31 (*Migden-Ostrander*).

The PUCO correctly observed that data centers are, in fact and effect, unique, emerging customers. (R. 231, at ¶ 25) The PUCO supported its finding citing ample record evidence. *Id*. at ¶¶ 124-129. The PUCO was persuaded that data center customers presented differences that "impact AEP Ohio's difficulty of delivering service to data center customers compared to other large energy-intensive customers." (R. 231, at ¶ 129) The PUCO cited AEP Ohio's expert testimony that AEP Ohio had received service requests of 30,000 MW of data center loads, which justified the temporary pause in customer enrollment so that it could adequately plan for such a load growth. *Id.* Based on AEP Transmission Planning organization studies, the PUCO agreed that taking on even a fraction of the anticipated 30,000 MW load would result in numerous overload and voltage violations throughout central Ohio. *Id.* The PUCO found that in order to serve data center customers' unique concentrated load, AEP Ohio must construct significant infrastructure, making data centers more risky customers. *Id.* Unlike other high intensive energy customers, like large manufacturers, the PUCO found that data centers can run at near capacity all day and every day and as such, they cannot shift their usage to off-peak times to ease the strain on the grid during peak usage times. *Id.* The PUCO also found that the unique transient features of mobile data center facilities – where some data centers can move from location to another – necessitate a more tailored solution to prevent non-cost causing customers from paying to overbuild the AEP Ohio's transmission system. *Id.* And, unlike non-data center load, which comprises a diverse group of customer end uses, data center load cannot be naturally hedged by other industries in AEP Ohio's service territory. *Id*.

The PUCO was also persuaded that data centers bring with them systematic, data center industry-wide risks that are not present with other types of customers. *Id*. The PUCO recognized that technology breakthroughs in efficiency, market changes, and capacity underestimation are among other factors that differentiate the risk of serving a data center-only customer load from other high capacity customers. *Id.*

In *Migden-Ostrander*, the Court ruled that "[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." 2004-Ohio-3924 at ¶ 31. Utility regulators routinely establish different classes of customers and subject them to different tariff schedules based on tangible, reasonable, and justifiable distinctions.

The facts presented on the record indicate reasonable concerns and distinctions in the costs and risks to serve data center customers compared to other customers. (R. 231, at ¶¶ 124-129). These facts underpinned the PUCO's finding that the creation of Schedule DCT was consistent with the Ohio Supreme Court's *reasonable discrimination* ruling in *Migden-Ostrander*. (R. 231, at 130). The Court should find that the Consumer Settlement's Schedule DCT makes reasonable, and therefore permissible, distinctions between data centers and other high-capacity customers.

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.,* 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

B. Appellant's equal protection claim was waived due to its failure to raise the issue prior to its application for rehearing. *City of Parma v. Pub. Util. Comm.*, 86 Ohio St.3d 144, 148 (1999)). If decided on the merits, the equal protection claim fails because there is a rational basis for treating data centers differently than other consumers.

Appellant claims that the data center tariff violates its rights under the Equal Protection Clause of the United States Constitution (OCC Appx. 58). Appellant brief, at 10-13. Although Appellant argued that the data center tariff was discriminatory in its initial (R. 195, at 32) and reply (R. 214) post-hearing briefs at the PUCO, it did not assert an equal protection claim in its pre-decision briefs. Appellant raised this constitutional claim for the first time in its application for rehearing at the PUCO. (R. 236). (Appellant Appx. 276).

The PUCO's Entry on Rehearing confirmed this when it noted, ". . . Appellant raised issues pursuant to the Equal Protection Clause which will not be addressed in this Entry on Rehearing. We note that no such arguments were brought to the Commission's attention during the evidentiary hearing or briefed arguments. As such, the Commission will not comment on these arguments as they were raised for the first time at the rehearing stage of this proceeding. *In re the Complaint of Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc.*, Case No. 17-2168-GA-CSS, Second Entry on Rehearing (Oct. 23, 2019) at ¶ 23; *In re the Application of the Power Purchase Agreement Rider of Ohio Power Co.*, Case No. 18-1003-EL-RDR, Second Entry on Rehearing (Aug. 21, 2024) at ¶ 22." (R. 242, at p. 12, footnote 7).

This Court and the PUCO do not permit parties to assert new arguments for the first time in applications for rehearing. *See*, *e.g.*, *In re Buckeye Wind*, *LLC*, 2016-Ohio-5664, ¶ 14 (citing *City of Parma v. Pub. Util. Comm.*, 86 Ohio St.3d 144, 148 (1999)) ("By failing to raise an objection until the filing of an application for rehearing, Parma deprived the [Commission] of an opportunity to redress any injury or prejudice that may have occurred."). The Court should find that Appellant has waived its equal protection argument for failure to argue this specific issue at the PUCO evidentiary hearing or in post-hearing briefing.

Even if the Court decides to address Appellant's equal protection claim, it still fails because all that is required is that the governmental action have a rational basis for unequal treatment. *TriHealth, Inc. v. Bd. of Commr's Hamilton Co.*, 430 F.3d 783 (6th Cir. 2005). In *TriHealth*, both the trial court and the appellate court fully rejected the equal protection claim because the plaintiff was *not similarly situated* to the other party that allegedly benefitted from the alleged discriminatory treatment and because the involved parties differed in material respects. *TriHealth*, 430 F.3d at 790-791. The data center tariff is not unduly discriminatory because the PUCO's Order contains numerous rational bases to support and justify the data center tariff's provisions applicable to data center customers. (R. 231, at ¶¶ 124-129).

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

Proposition of Law No. 2: An order of the Public Utilities Commission will not be overturned when it is supported by reliable, probative, and substantial evidence and is in accordance with law. *Motor Freight Inc. v. Pub. Util. Comm.,* 120 Ohio St. 1, 6 (1929). (Response to Appellant's Proposition of Law No. 2 at 14-18).

Appellant argues that AEP Ohio's moratorium on data center service violated R.C. 4905.22 (Appellant Appx. 309) and R.C. 4933.83 (Appellant Appx. 324). The Court should reject that argument. R.C. 4905.22 requires AEP Ohio to furnish "necessary and adequate service and facilities" and "furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable." (Appellant Appx. 309). R.C. 4933.83 requires AEP Ohio to furnish "furnish adequate facilities to meet the reasonable needs of the consumers and inhabitants in the certified territories that they are authorized and required to serve." (Appellant Appx. 324).

Appellant flatly states that "[t]he plain language of these statutes is clear – AEP Ohio does not have the discretion to simply refuse to serve a type of customer on a whim." Appellant brief, at 15. The evidence before the PUCO demonstrated that AEP Ohio did not institute the moratorium on a whim.

At the time the moratorium was put into place, AEP Ohio could not reliably and adequately take on all new data center load within its service territory. As noted by the PUCO, "[b]ased on a series of studies run by the AEP Ohio Transmission Planning organization, even a fraction of the anticipated 30,000 MW load would result in numerous overload and voltage violations throughout central Ohio." (R. 231 at ¶ 122).

AEP Ohio's statutory obligation to serve is expressly limited to *reasonable service*. R.C. 4905.22 requires service to be "in all respects just and reasonable," while R.C. 4933.83 contemplates AEP Ohio deploying facilities to meet "the reasonable needs of the consumers and inhabitants in the certified territory." R.C. 4933.83 also requires AEP Ohio to provide "physically adequate service." Thus, Ohio law does not require a utility to serve in a manner that is unreasonable or that exposes the utility and its other customers to inadequate and unreliable service.

In 2023, if AEP Ohio had committed to serving the full extent of additional data center load seeking to locate within its service territory, then it would have jeopardized its ability to provide reliable and sufficient service to the rest of its customers, including residential consumers. (R. 240 at 33). Similarly, had AEP Ohio instead only committed to serving a portion of the requested data center load, then it would not have been providing physically adequate service to those customers. *Id.*

Instead, AEP Ohio proactively initiated the tariff proceeding to craft a solution that allows it to provide physically adequate service to both new data center customers and existing customers. *Id.* Appellant's arguments disregard the extraordinary and unprecedented scale of data center growth that forced AEP Ohio into this situation. Due to this transmission constraint, the PUCO reasonably found based on the record evidence that AEP Ohio's self-imposed moratorium was reasonable and within the public interest. (R. 231 at ¶ 130).

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.,* 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

Proposition of Law No. 3: An order of the Public Utilities Commission will not be overturned so long as its findings and conclusions permit the Court to review the factual basis and reasoning for its decision and is otherwise in accordance with law. *In re Application of Ohio Power Co. for an Increase in Elec. Distrib. Rates*, 2024-Ohio-2890. (Response to Appellant's Proposition of Law No. 3, at 18-23).

Appellant asserts that the PUCO did not provide adequate support for its findings regarding AEP Ohio's real transmission constraint concerns, violating R.C. 4903.09 (Appellant Appx. 304). Appellant Brief, at 18. That is simply incorrect. The PUCO's order thoroughly details the evidence, the parties' arguments, and the reasons why the PUCO ruled the way it did. The Court should reject Appellant's arguments and affirm the PUCO's order.

R.C. 4903.09 (Appellant Appx. 304) provides that in contested cases, "a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." Contrary to Appellant's claims, the PUCO order does not violate this statute.

The Court recently addressed the PUCO's duty under R.C. 4903.09 and how it can be met in *In re Application of Ohio Power Co. for an Increase in Elec. Distrib. Rates*, 2024-Ohio-2890 (*Ohio Power*). *Ohio Power* concerned an appeal by Interstate Gas Supply, L.L.C. ("IGS") of the PUCO's order in AEP Ohio's most recent electric distribution rate case. *Ohio Power*, at ¶ 1. IGS argued that the PUCO should have required AEP Ohio to remove $4.7 million in costs from AEP Ohio's distribution rates (through a rider) that were purportedly incurred to provide the standard service offer.[3] *Ohio Power*, at ¶ 6. IGS argued that those costs should then be reallocated to non-shopping customers (*i.e.*, consumers who receive the standard service offer) through the "retail reconciliation rider." *Id.* at ¶ 18. The PUCO rejected IGS's arguments, and approved a settlement among AEP Ohio, the PUCO Staff, OCC, and others that kept the riders set at zero. *Id.* at ¶ 13. IGS appealed, arguing that there was no evidence to support the PUCO's decision and thus, the PUCO's order violated R.C. 4903.09. *Id.* at ¶ 29.

The Court rejected IGS's argument. *Ohio Power*, at ¶¶ 29-33. According to the Court, IGS misunderstood the test for PUCO compliance under R.C. 4903.09. *Id.* at ¶ 32.

> The question under R.C. 4903.09 is not whether the record contained sufficient evidence to support a particular finding by the commission. * * * Rather, R.C. 4903.09 requires the commission to provide this court with an adequate record so that we may determine how the commission reached its decision. * * * The commission's orders must contain sufficient detail for us to determine the factual basis and reasoning relied on by the commission. (Citations omitted.) *Id.*

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[3] The "standard service offer" (or "SSO") is the generation charge to electric utility consumers who do not "shop" for electricity supply service from a competitive retail electric service provider like IGS. *Ohio Power* at ¶ 6.

The Court determined that the PUCO's order approving the rate case settlement had "ample record citations for this court to determine the factual basis for the commission's findings." *Id*.

The PUCO's Order approving the Consumer Settlement's data center tariff also details the evidence and discusses the parties' arguments. R. 231 at ¶¶ 94, 104-105, 111-112. The PUCO explained its findings and why it rejected Appellant's and the other Data Center Settlement parties' positions on the capacity constraint issue. R. 231, at ¶¶ 121-122. The PUCO plainly satisfied the requirement in R.C. 4903.09 to set forth the reasons for its finding based on the evidentiary record.

In this case, the PUCO fully "explain[s] its rationale, respond[s] to contrary positions, and support[s] its decision with appropriate evidence." *In re Application of Columbus S. Power Co.*, 2011-Ohio-1788, ¶ 30. The Order in this case provides a sufficient record for the Court "to determine whether the decision is lawful and reasonable." *Migden-Ostrander v. Pub. Util. Comm.*, 2004-Ohio-3924, ¶ 17.

In sum, the PUCO satisfied its obligations under R.C. 4903.09 to provide a rationale and supporting evidence for its findings regarding AEP Ohio's real transmission constraint concerns. There is no basis for Appellant's claims to the contrary.

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

Proposition of Law No. 4: An order of the Public Utilities Commission will not be overturned when its determination that AEP Ohio's Application was not an application for an increase in rates under R.C. 4909.18 (Appellant Appx. 314) is supported by reliable, probative, and substantial evidence and is in accordance with law. *In re Application of Ohio Power Co. for an Increase in Elec. Distrib. Rates*, 2024-Ohio-2890. (Response to Appellant's Proposition of Law No. 4, at 23-26).

Appellant argues that AEP Ohio's Application was for an increase in rates. Appellant brief, at 23. Appellant incorrectly reasons that the data center tariff imposes new financial charges and rates on data center customers resulting in those customers paying higher rates than those authorized under current tariffs. *Id*., at 25. Therefore, according to Appellant, AEP Ohio's Application was subject to the R.C. 4909.18 provisions applicable to applications for an increase in rates. *Id*. Appellant further argues that the PUCO should have rejected AEP Ohio's Application because it did not satisfy the requirements set forth in R.C. 4909.18 for applications for an increase in rates. *Id*.

At the outset, it must be noted that Appellant has not demonstrated that it was harmed or prejudiced in any way by the PUCO's determination that AEP Ohio's Application was not for an increase in rates. It is well settled that this Court will not reverse an order of the PUCO absent a showing of prejudice by the party seeking reversal. *Myers v. Pub. Util. Comm*., 64 Ohio St.3d 299, 302 (1992) (*Myers*) citing *Cincinnati v. Pub. Util. Comm.*, 151 Ohio St. 353 (1949), ¶ 6 of the syllabus; *Ohio Edison Co. v. Pub. Util. Comm.*, 173 Ohio St. 478 (1962), ¶ 10 of the syllabus; *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 161 (1978), 484; *Holladay Corp. v. Pub. Util. Comm*., 61 Ohio St.2d 335 (1980), syllabus. The PUCO found that no party was prejudiced by the notice, filings, and hearing dates set during this proceeding. (R. 242 at ¶ 58). Appellant has not demonstrated otherwise and the Court should reject Appellant's argument on this basis alone.

AEP Ohio's Application and the Consumer Settlement do not increase existing data center customer rates. (R. 231, at ¶ 25). Under R.C. 4909.18, a public utility may file either of two types of rate applications (1) an application "to establish any rate, . . . classification, charge, or rental, . . . or any regulation or practice affecting the same" (as AEP Ohio did here); or (2) an application "to modify, amend, change, increase, or reduce any existing rate, . . . classification, charge, or rental, or any regulation or practice affecting the same . . ." (Appellant Appx. 314). The key difference between the two types of applications is whether the application involves a *rate increase* or is *not for an increase in rates*. If the approval of the application would raise rates for existing customers, it could be *for an increase in rates* under the latter scenario. Under this latter scenario, AEP Ohio would be required to file notice under R.C. 4909.19 (Appellant Appx. 317) and abide by other filing requirements, including the PUCO's Standard Filing Requirements under Adm.Code 4901-7-01. (OCC Appx. 57). Contrary to Appellant's misguided argument, the Application was not *for an increase in rates* and therefore not subject to the notice and filing requirements of R.C. 4909.19. (R. 231 at ¶ 25).

Appellant's reliance on individual provisions of the data center tariff – under which *new* data center customers could pay more than existing Schedule GS customers – conflates the analysis of whether AEP Ohio's Application is one for an "increase in rates." AEP Ohio is not seeking to "increase . . . any existing rate." (Appellant Appx. 314). While the data center tariff incorporates certain terms and provisions of Schedule GS, it applies only to a *new* class of customers and establishes *new* rates and terms for them on a prospective basis.

The PUCO found that this case established *new rates*, rather than increased existing rates. (R. 231 at ¶ 25). The PUCO stated that the data center tariff does not increase the rates of existing consumers, but rather is a new tariff that "involves the emergence of a prominent, new type of customer." *Id*. Further, the PUCO agreed there would likely be no impact on existing customer rates due to the Consumer Settlement's grandfathering provisions. *Id*. The Consumer Settlement's grandfather clause excepts existing data center customers from the data center tariff and provides a buffer for such customers to expand up to 25 MW, before having to transition to the new data center tariff customer class. (R. 231 at ¶ 124, R. 408 at 411). The PUCO also noted that rather than impacting customer rates, the data center tariff carries "heightened commitments prior to interconnection and service." *Id.* The PUCO properly concluded that these features of the Consumer Settlement and the data center tariff demonstrate that AEP Ohio's Application was not for an increase in rates under R.C. 4909.18.

Appellant again argues that the PUCO's decision on this issue lacked specificity and detail in violation of R.C. 4903.09. Appellant brief, at 39. This argument fails for the same reasons its Proposition of Law No. 3 fails. Here, Appellant's claims are contradicted by the express language of the PUCO's Order. (R. 231 at ¶¶ 21-25). The Order provides ample evidentiary record citations and reasoning to inform this Court of the basis for the PUCO's findings and conclusions, meeting the low bar of R.C. 4903.09. *Ohio Power* at ¶ 32.

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

Proposition of Law No. 5: An order of the Public Utilities Commission determining that no hearing notice was required under R.C. 4909.18 (Appellant Appx. 314) because AEP Ohio's Application was not an application to increase rates, will not be overturned when it is supported by reliable, probative, and substantial evidence and is in accordance with law. *Ohio Consumers' Counsel v. PUC*, 2006-Ohio-5789, ¶ 18. (Response to Appellant's Proposition of Law No. 5, at 26-29).

Appellant argues that the PUCO erred because it did not publish notice of hearing under R.C. 4909.18. (Appellant brief, at 26). Here, again, Appellant has not shown how it was prejudiced by the lack of a hearing notice under R.C. 4909.18. The PUCO approved the ALJ's finding that Appellant failed to demonstrate any harm or prejudice due to the lack of a hearing notice. (R. 242 at ¶ 58). The PUCO noted that all procedural steps taken in the proceedings were made publicly, in addition to being covered by several media outlets, and that public interest in the case had been robust, exhibited by the number of filed public comments and intervening parties. (R. 231 at ¶ 25). The Court should reject Appellant's argument on the basis of its ruling in *Myers*, supra.

Moreover, as explained previously, the notice and procedural requirements of R.C. 4909.18 (Appellant Appx. 314) do not apply because AEP Ohio's Application (Appellant Appx. 29) was not for an increase in rates. "[T]hey apply only upon application for a rate increase pursuant to R.C. 4909.18." *Ohio Consumers' Counsel v. PUC*, 2006-Ohio-5789, ¶ 18.

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

Proposition of Law No. 6: The Public Utilities Commission has discretion to control its proceedings and mere disagreement with the administrative law judge's evidentiary rulings is not grounds for reversal. (Adm.Code 4901-1-27(B) (OCC Appx. 55)), *See Chesapeake & Ohio Ry. Co. v. Pub. Util. Comm.*, 163 Ohio St. 252, 263 (1955). (Response to Appellant's Proposition of Law No. 6, at 29-32).

Appellant argues that the PUCO unreasonably and unlawfully upheld the Administrative Law Judges'("ALJs") decisions regarding cross-examination and the presentation of evidence during the hearing. (Appellant brief, at 29). This assertion is incorrect.

It is not an abuse discretion for the presiding ALJs to make rulings regarding the admissibility of evidence or the probative value of direct and cross-examination. In fact, it is their duty to make those types of determinations. Adm.Code 4901-1-27(B) (OCC Appx. 55). The PUCO is not strictly bound by the rules of evidence. *See Chesapeake & Ohio Ry. Co. v. Pub. Util. Comm.*, 163 Ohio St. 252, 263 (1955); *In the Matter of the Complaint of Forest Hills Supermarket, Inc. d/b/a Konnis Family Foods v. The Cleveland Elec. Illum. Co.*, Pub. Util. Comm. No. 18-785-EL-CSS, Opinion and Order, 2020 Ohio PUC LEXIS 1288 (Apr. 8, 2020) at ¶ 33, citing *Elyria Telephone Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 444 (1953); *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan Pursuant to R.C. 4929.05 for an Accelerated Service Line Replacement Program*, Pub. Util. Comm. No. 14-1622-GA-ALT, Opinion and Order, 2016 Ohio PUC LEXIS 965 (Oct. 26, 2016) at ¶ 20.

Additionally, PUCO precedent consistently affirms that ALJs may limit lines of questioning that are duplicative, lack proper foundation, and bear questionable relevance to the underlying proceeding. Mere disagreement with such rulings is not grounds for reversal. *See e.g., In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Co.*, Pub. Util. Comm. No. 18-1004-EL-RDR, et al., Opinion and Order, 2024 Ohio PUC LEXIS 992 (Aug. 21, 2024) at ¶¶ 45-46; *see also, e.g., In the Matter of the Long-Term Forecast Report of*

Ohio Power Co., Pub. Util. Comm. No. 10-501-EL-FOR, et al., Opinion and Order, 2013 Ohio PUC LEXIS 3 (Jan. 9, 2013) at 6. As noted in the Order, the ALJs gave ample opportunity to cross-examine Mr. McKenzie and Mr. Ali. (R. 231 at, ¶¶ 11, 28, 31). Appellant provides no valid reasons for overturning the ALJs' evidentiary rulings. It simply disagrees with them.

The PUCO's findings of fact are reasonable and lawful. Moreover, the PUCO properly applied the legal principles. *Motor Freight Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6 (1929). The Court should affirm the PUCO's Order which is supported by reliable, probative, and substantial evidence and is in accordance with law.

V. CONCLUSION

AEP Ohio's residential consumers need protection from unfair and unjust utility rate increases. The Consumer Settlement and the data center tariff will ensure that consumers won't be left holding the bag when the bills come due for the cost causing billion-dollar data center industry's transmission infrastructure improvements. The Consumer Settlement is a fair and balanced accommodation of consumer and data center interests that addresses one of the most pressing issues in America today – the costs to serve the power-hungry data enter industry.

The PUCO's Order approving the Consumer Settlement and data center tariff is firmly rooted in the evidentiary record and is in accordance with law. Appellant has not shown otherwise. The Court should affirm the PUCO's order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of Intervening Appellee, Office of the Ohio Consumers' Counsel, was served upon all parties of record via electronic transmission this 24th day of March 2026.

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