

IN THE SUPREME COURT OF OHIO

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

**MERIT BRIEF OF APPELLANT,
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**MERIT BRIEF OF APPELLANT,
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I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) sent a clear message to businesses across the country on July 9, 2025: Certain types of businesses are not welcome in the state of Ohio and that the State’s economic development is less important than a monopoly utility’s bottom line. Which type of business is next on the utility’s chopping block? This Court should overturn the PUCO’s deliberate and unjustified discrimination against certain businesses and send its own message: The state of Ohio is open to all businesses, and the PUCO is required to follow the law.

Against the manifest weight of the evidence, the PUCO unjustly, unreasonably, and unlawfully approved the Ohio Power Company’s (“AEP”) unduly discriminatory data center tariff (“Schedule DCT”), discriminating against one type of customer based solely on its business function and use of electricity. Significantly, this approval was *not* supported by a demonstration of some actual and measurable differences in the furnishing of services to the customers being discriminated against or the cost to serve those customers. As such, the PUCO’s decision was contrary to the manifest weight of the evidence presented in this case and inconsistent with the mandates set forth in numerous statutes, including R.C. 4905.22, R.C. 4905.32, R.C. 4905.33, R.C. 4905.35, R.C. 4933.83, R.C. 4909.18, R.C. 4909.19, and R.C. 4903.09. Moreover, in addition to

being unduly discriminatory and unreasonable on its face, Schedule DCT threatens to impede Ohio’s future economic development by sending a clear message to the business community—that the utility makes up the rules of the game, choosing who to provide electric service to and what cost. Allowing AEP to implement such a discriminatory tariff sets a risky precedent of permitting electric distribution utilities (“EDUs”) to propose tariffs directed at certain kinds of customers based on their industry type and energy usage rather than their electric load characteristics or the costs that they cause on the system. Therefore, the PUCO’s July 9, 2025 Opinion and Order (hereinafter, “Order”) and September 3, 2025 Entry on Rehearing issued in Case No. 24-508-EL-ATA (collectively, “PUCO Orders”) should be reversed as both PUCO Orders are unlawful, unreasonable, inconsistent with Ohio law, and unsupported by the record evidence presented in this case.

From the inception of this case, AEP claimed that Central Ohio has a transmission capacity constraint *right now*. And yet, AEP admitted on the record of the case that it relied on speculative and duplicative load forecasts to justify its request to implement the discriminatory tariff for a particular type and group of customers based solely on their business function and use of electricity. *See* Tr. Vol. I at 187–88, 269 (Appx. 345–46, 368); Tr. Vol. II at 351, 364–72 (Appx. 371, 384–92). Whether or not a new, large extra-high voltage (“EHV”) line into the Central Ohio region will even be necessary remains uncertain, and even if it is, AEP stated that significant infrastructure enhancements would not be necessary unless the demand in Central Ohio reaches 1,500 MW over 10,000 MW at some future date. Tr. Vol. I at 227 (Appx. 359); Tr. Vol. II at 372 (Appx. 392). Similarly, AEP not only conceded that it has “no way to separate committed data center customers from speculative ones,” but that “[t]his proceeding is, in part, to clarify the level of interest and commitment to being served.” OMAEG Ex. 36 at 19 (Seryak October Testimony,

quoting McKenzie Direct at 10) (Appx. 586); Sidecat Ex. 18 (Response to OMAEG-RFP-01-006) (Appx. 799). Despite all of this, AEP saw fit to include these speculative customers and their loads in its forecasts, thereby inflating its load projections. However, mere speculation and conjecture is not evidence, nor should such speculation and conjecture have been relied upon by the PUCO to reach its conclusions in this case.

The record evidence presented in this case overwhelmingly demonstrated that the Stipulation and Recommendation filed on October 10, 2024 (“Customer Coalition Stipulation”) by the majority of the parties in this case (collectively, “Customer Coalition Stipulation Signatories”), as a package, represented a just and reasonable resolution of the issues related to AEP’s application (“Application”)—in contrast to the Stipulation and Recommendation filed on October 23, 2024 (“AEP Stipulation”) by AEP and a small group of other parties (collectively, “AEP Stipulation Signatories”). Joint Ex. 2 (“Customer Coalition Stipulation”) (Appx. 439); Joint Ex. 1 (“AEP Stipulation”) (Appx. 408). The Customer Coalition Stipulation Signatories further demonstrated that Schedule DCT constitutes “textbook discrimination,” for which AEP offered neither proper justification nor evidence to defend its proposal. Such unjustified and arbitrary discrimination against a certain industry based solely on the customer’s business function and use of electricity violates the Equal Protection Clause, which prohibits discrimination that “intentionally treats one differently than others similarly situated without any rational basis for the difference,” as well as the plain meaning of multiple Ohio statutes, including R.C. 4905.32, 4905.33, 4905.35, and 4933.83. Additionally, arguments presented by various customers demonstrated the critical procedural defects of this case that should have prevented the hearing from even commencing.

Despite all of this, the PUCO approved the AEP Stipulation and its discriminatory tariff based primarily on five unreasonable and incorrect assumptions: (1) that AEP could refuse to serve a certain type of customer based on the customer's end use of electricity that was attempting to locate within AEP's certified territory; (2) that AEP's Application was not for an increase in rates to certain customers; (3) that AEP demonstrated an actual transmission capacity constraint that required a solution (i.e., there was need for the tariff); (4) that AEP's load forecasts were accurate; and (5) that AEP's new tariff that targets only one particular type of customer is not unduly discriminatory nor unlawful. Order at ¶¶ 25, 122, 128 (Appx. 148, 215–16, 219). These assumptions are both contrary to the manifest weight of the evidence and ignore the clear and unambiguous language/requirements set forth in applicable Ohio statutes. Together, they resulted in the PUCO's unjust, unreasonable, and unlawful decision to authorize AEP's unduly discriminatory tariff. Therefore, OMAEG sought rehearing of that decision on the following six grounds, which are also the grounds for this appeal:

First, approving AEP's discriminatory Schedule DCT was unjust, unreasonable, and unlawful because said approval violated R.C. 4905.32, 4905.33, and 4905.35, due process, and the Equal Protection Clause. *See* OMAEG's Application for Rehearing at 4-8 (Appx. 279–83).

Second, the PUCO's failure to find that AEP's self-imposed moratorium was unlawful in violation of the Certified Territories Act ("CTA") (R.C. 4933.83) and R.C. 4905.22, and the PUCO's failure for not imposing penalties on AEP for its illegal actions was unjust, unreasonable, and unlawful. *See* OMAEG's Application for Rehearing at 8-11 (Appx. 283–86).

Third, the PUCO's finding that AEP demonstrated an actual transmission constraint that requires a solution without any record evidence in support of the purported constraint or

speculative load forecasts was unjust, unreasonable, and unlawful because it violated R.C. 4903.09. *See* OMAEG’s Application for Rehearing at 8-11 (Appx. 283–86).

Fourth, the PUCO’s finding that AEP’s Application was not an application for an increase in rates was unjust, unreasonable, and unlawful because it ignored the plain language of R.C. 4909.18 and 4909.19. *See* OMAEG’s Application for Rehearing at 14-16 (Appx. 289–91).

Fifth, the PUCO’s failure to address and rule on the Administrative Law Judges’ (“ALJs”) unlawful decision to ignore statutory notice requirements and to commence the evidentiary hearing in violation of the plain language of R.C. 4909.18 was unjust, unreasonable, and unlawful. *See* OMAEG’s Application for Rehearing at 16-21 (Appx. 391–96).

Sixth, upholding the ALJs’ rulings that prevented OMAEG from questioning AEP witnesses about matters directly relevant and material to this case was unjust, unreasonable, and unlawful because it violated R.C. 4903.09 and due process rights.

For the reasons more fully articulated below, the PUCO Orders are unjust unreasonable, and unlawful. As such, Appellant the Ohio Manufacturers’ Association Energy Group respectfully requests that the Court reverse the PUCO’s Orders (July 9, 2025 Order and September 3, 2025 Entry on Rehearing) as set forth herein in accordance with and in adherence to the plain language of applicable statutes.

II. STATEMENT OF THE FACTS AND CASE

Even before the inception of the underlying case from which this appeal arises, AEP was actively engaging in improper gamesmanship that flies in the face of Ohio law and accepted regulatory practices, including Ohio’s CTA. Beginning in March 2023 (over a year before the filing of the Application in this case), AEP unilaterally decided to impose a discriminatory, unnecessary, unjustified, and unlawful moratorium of service, refusing to connect and provide service to a particular type and group of customers based solely on their business function and use

of electricity, in violation of Ohio law. Tr. Vol. II at 358–59 (Appx. 378–79). Notably, AEP’s moratorium remained in place throughout settlement negotiations in the underlying case, giving the monopoly distribution utility, AEP, undue bargaining power. Tr. Vol. VII at 1522 (Appx. 401).

AEP’s moratorium, which the Company claimed was necessary due to the existence of an alleged transmission capacity constraint brought about by these speculative new customers and AEP’s inflated load forecast, was not ordered or approved by the PUCO or any other regulatory body, nor was it even necessary given the regional grid operator’s (PJM Interconnection LLC) existing processes to identify infrastructure needs and to approve implementation and cost recovery of necessary transmission infrastructure projects. Moreover, the veracity of AEP’s speculative load forecasts was called into question by several parties in the underlying case.

Over a year after first imposing its unlawful and unapproved moratorium, AEP filed an application requesting that the PUCO approve its proposal to establish two new customer classifications and to implement two new tariffs targeting a particular type and group of customers based solely on their business function and use of electricity (data centers and cryptocurrency or bitcoin mining customers (a.k.a., mobile data centers)) that would increase these customers’ rates if approved. *See* AEP Ex. 1 (Application) (May 13, 2024) (Appx. 329). More specifically, AEP’s proposed tariffs would have required, among other things, that the new classifications of customers do the following: (1) enter into electric service agreements for a term of 10 years; (2) participate in the PJM Emergency Demand Response program or AEP-declared emergency event and be subject to disconnection; (3) pay all base rates and rider rates that other General Service customers pay; (4) be subjected to a minimum demand charge (90% of their contract capacity for data centers; 95% of their contract capacity for mobile data centers); (5) be subjected to an exit fee equal to

three years of minimum charges; and (6) provide a guarantee or collateral equal to 50% of the total minimum charges for the full term of the contract. *See* AEP Ex. 3 (McKenzie October Testimony) (Appx. 800). Even though AEP's request was for an increase in rates to these customers, AEP did not file an application for a base distribution rate case and did not perform a cost-of-service study to determine what the cost would in fact be to serve these two new types of customers.

OMAEG and numerous other customers and groups intervened in response to AEP's flagrant and unlawful effort to discriminate against certain customers based on their end-use of energy rather than the cost to serve them. Following multiple meetings and negotiations, the Customer Coalition Stipulation was filed with the PUCO on October 10, 2024 by the majority of the parties in the case, and the AEP Stipulation Signatories filed a counter-stipulation on October 23, 2024. Unlike the Customer Coalition Stipulation, the AEP Stipulation that the PUCO ultimately approved proposed a discriminatory tariff that targets one kind of customer for disparate and unreasonable financial burdens and treatment.

At the start of the hearing in the underlying case, OMAEG and other Customer Coalition Stipulation Signatories argued that the hearing should not proceed on the appointed date given the plain language of R.C. 4909.18. However, the ALJs' decided to proceed with the hearing, and during the hearing itself, the ALJs improperly narrowed the scope of the hearing by prohibiting questioning on certain issues and limiting OMAEG's cross-examination. This cross-examination was directly related to the issues in the case and whether the Customer Coalition Stipulation, as a package, represented a just and reasonable resolution of the issues related to AEP' Application, unlike the AEP Stipulation. Significantly, and contrary to the Order's conclusion, AEP failed to demonstrate (1) that a transmission capacity constraint actually exists, thereby justifying need for AEP's discriminatory tariff, and (2) that its tariff is not unlawfully discriminatory.

Contrary to the record evidence, the PUCO approved and adopted the AEP Stipulation and authorized AEP to file tariffs for Schedule DCT on July 9, 2025. *See* Order at ¶ 1 (Appx. 142). Specifically, the PUCO unjustly, unreasonably, and unlawfully determined that: (1) AEP had demonstrated a real transmission constraint that required a solution (i.e., need for AEP’s discriminatory tariff); and (2) the AEP Stipulation is not unduly discriminatory nor unlawful. Order at ¶¶ 122, 128 (Appx. 215–16, 219). Additionally, the PUCO unjustly, unreasonably, and unlawfully upheld the ALJs’ improper rulings that: (1) allowed the hearing to go forward in violation of R.C. 4909.18; and (2) limited cross-examination of AEP witnesses Ali and McKenzie in violation of due process and R.C. 4909.09. Order at ¶¶ 25, 31 (Appx. 148, 151). As a consequence of these findings, the PUCO unjustly, unreasonably, and unlawfully approved the AEP Stipulation. Order at ¶¶ 168–69 (Appx. 179–80).

AEP bore the burden of demonstrating that the AEP Stipulation (1) was the product of serious bargaining between capable, knowledgeable parties; (2) as a package, is reasonable, serves the public interest, benefits customers; and (3) does not violate any important regulatory principles or practices. However, the record evidence did not demonstrate that the AEP Stipulation satisfied the PUCO’s three-part test. To the contrary, the record evidence demonstrated that the AEP Stipulation did not satisfy all prongs of the three-part test given that AEP failed to demonstrate the existence of a transmission capacity constraint and need for the tariff and that Schedule DCT’s discriminatory nature violates important regulatory principles and practices. As such, the PUCO’s approval of the AEP Stipulation and authorization of Schedule DCT were in error because they were against the manifest weight of the evidence.

Pursuant to R.C. 4903.10 (Appx. 305) and Ohio Adm.Code 4901-1-35 (Appx. 327), OMAEG timely filed an Application for Rehearing on August 8, 2025, which the PUCO

subsequently denied through its September 3, 2025 Entry on Rehearing. *See* Entry on Rehearing at ¶ 1 (Appx. 241). OMAEG then timely filed its Notice of Appeal with this Court on November 3, 2025. *See* OMAEG’s Notice of Appeal (November 3, 2025) (Appx. 1).

III. STANDARD OF REVIEW

Ohio law is clear: A PUCO order must be reversed, modified, or vacated if this Court finds it unlawful or unreasonable. R.C. 4903.13 provides that “a [PUCO] order shall be reversed, vacated, or modified by this court . . . when, upon consideration of the record, the court finds the order to be unlawful or unreasonable.” *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶ 50; *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110, 388 N.E.2d 1370 (1979); *see* R.C. 4903.13 (Appx. 308). This Court “has ‘complete and independent power of review as to all questions of law in appeals from the [PUCO].’” *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 13, *quoting Ohio Edison Co. v. Pub. Util. Comm.*, 78 Ohio St.3d 466, 469, 678 N.E.2d 922 (1997).

As to questions of fact, this Court has held that it will not reverse or modify a PUCO decision 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. *In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 10. Where there is a mixed question of law and fact, the Court must judicially review the evidence to determine whether the findings of fact are reasonable and lawful and whether the legal principles have been properly applied. *Motor Freight, Inc. v. Pub. Util. Comm.*, 120 Ohio St. 1, 6, 165 N.E. 355 (1929).

Here, OMAEG’s Propositions of Law center upon questions of law and fact that are subject to this Court’s power of review. The record contains insufficient probative evidence to

demonstrate that the PUCO's decisions were lawful, reasonable, and supported by the manifest weight of the record evidence. Therefore, this Court should reverse the PUCO's decisions as set forth herein.

IV. ARGUMENT

PROPOSITION OF LAW NO. 1: The PUCO Erred by Unjustly, Unreasonably, and Unlawfully approving AEP's discriminatory Schedule DCT 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 PUCO erred by unjustly, unreasonably, and unlawfully approving AEP's discriminatory tariff in violation of R.C. 4905.32, 4905.33, 4905.35, due process, and the Equal Protection Clause. On its face, Schedule DCT is unduly discriminatory because it treats similarly situated customers differently, and that disparate treatment was not justified by the record evidence. As a matter of law, the PUCO is required to protect *all* customers from undue discrimination, but the PUCO Orders do just the opposite by authorizing AEP to target a particular type and group of customers based solely on their business function and use of electricity.

R.C. 4905.32, 4905.33, and 4905.35 all prohibit Ohio utilities from engaging in unreasonable and undue discrimination or offering preferential utility services and rates. R.C. 4905.32 requires utilities to "regularly and uniformly" extend their tariff schedule and charge "all persons, firms, and corporations under like circumstances for like, or substantially similar, service." R.C. 4905.33(A) prohibits utilities from directly or indirectly overcharging or undercharging customers "for doing a like and contemporaneous service under substantially the same circumstances and conditions." And R.C. 4905.35(A) states that utilities shall not "give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage."

In other words, similar customers *must* be treated similarly and charged like rates for utility services.

This Court has further explained that while “R.C. 4905.33 does not prohibit rate discrimination per se,” it does “prohibit[] charging different rates when the utility is performing . . . a like and contemporaneous service under substantially the same circumstances and conditions.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 109 Ohio St. 3d 328, 2006-Ohio-2110, ¶ 23 (internal quotes omitted). This means that while Ohio law does not require *uniform* utility rates, differential or unequal rates *must* be “based upon some actual and measurable differences in the furnishing of services to the consumer.” *Mahoning Cty. Twps. v. Pub. Util. Comm.*, 58 Ohio St. 2d 40, 43–44 (1979). Despite the Order recognizing and acknowledging these restrictions on disparate treatment, the PUCO still unjustly, unreasonably, and unlawfully concluded that the AEP Stipulation and Schedule DCT were not unduly discriminatory nor unlawful. Order at ¶ 128 (Appx. 219).

This finding is against the manifest weight of the evidence presented during the hearing and not based upon sufficient findings supported by the record, in violation of R.C. 4903.09 and precedent established by this Court.

It is undisputed that Schedule DCT treats a particular type of customer differently from other large load customers similarly situated in Central Ohio, which is textbook discrimination. Such unjustified and arbitrary discrimination against a certain industry violates the Equal Protection Clause, which prohibits discrimination that “intentionally treats one differently than others similarly situated without any rational basis for the difference.” *TriHealth, Inc. v. Bd. of Comm’rs, Hamilton County, Ohio*, 430 F.3d 783, 788 (6th Cir. 2005). This Court has previously determined that a government body’s discriminatory classification—such as what the PUCO

approved in this case—will “be found to violate equal protection if it treats similarly situated people in a different manner based upon an illogical and arbitrary basis.” *Adamsky v. Buckeye Local Sch. Dist.*, 73 Ohio St. 3d 360, 362, 65 N.E.2d 212 (1995). The Court’s decision resulted in several prior PUCO cases being remanded wherein rates or classifications lacked evidentiary support. *See, e.g., Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999); *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1 (1995). As demonstrated in these cases, the PUCO orders allowing for the disparate treatment of certain kinds of customers *must* be grounded in an evidentiary record and cannot stand on conclusory reasoning. However, as discussed further below, the record is void of any evidence to sufficiently justify that a “rational basis for the difference” in treatment does in fact exist. As such, the decision also violated due process because the PUCO failed to respect the rights afforded these customers and ensure their fair treatment by AEP. Rather than protecting these customers, the PUCO sanctioned AEP’s arbitrary and discriminatory actions.

Both PUCO Orders rely entirely on representations made by AEP itself regarding a particular type of customer posing purported “unique, systemic risks” and the existence of an alleged transmission capacity constraint. Order at ¶¶ 108, 129 (Appx. 206–07, 220–21); Entry on Rehearing at ¶ 45 (Appx. 256). However, mere representations are not facts or evidence. AEP can represent a matter however it likes, but that does not make it true. AEP was required to *demonstrate* through evidence that there was a reasonable basis for its deliberate discrimination. Yet the only evidence provided by AEP for the PUCO Orders to cite to were testimony by AEP’s only employee, AEP witness Ali, (testimony unsupported by studies entered into evidence) and a single page document (double-sided) *summarizing* studies that AEP ostensibly performed. Order at ¶ 129 (Appx. 220–21); Sidecat Ex. 10 (Response to Staff DR 2-2 Attachment 1) (Appx. 797).

The unsupported testimony of AEP’s own witness and a mere summary of studies performed in 2023 (two years before the underlying case was even initiated) are not tantamount by any means to presenting actual studies and the study results themselves, nor are they sufficient to “prove” that there is a reasonable basis for AEP ’s decision to discriminate against a particular type of customer. Much more evidence is required before allowing regulated utility to not only implement a discriminatory tariff, but also to set a dangerous precedent that would allow other monopoly utilities to target specific industries for disparate treatment. This Court has long held that a “reasonable differential or inequality of rates may occur where such differential is based upon *some actual and measurable differences* in the furnishing of services to the consumer.” *Mahoning Cty. Twps.*, 58 Ohio St. 2d at 43–44. Moreover, this Court has stated that while “different criteria or classifications may be utilized in the establishment of reasonable utility rate structures, *the basic underlying consideration is that of cost of service rendered.*” *Mahoning Cty. Twps.*, 58 Ohio St. 2d at 43 (emphasis added).

“Cost of service rendered” is typically determined through a cost of service study (“COSS”), but no COSS was performed before or after the initiation of this case. Thus, the actual cost to serve these customers was not properly considered in this case. Similarly, since the only piece of evidence AEP offered into the record was a summary of a few 2023 ostensibly studies performed by one of its affiliates, which was rebutted during cross-examination, AEP failed to provide sufficient supporting evidence demonstrating some “actual and measurable differences in the furnishing of services” to a particular type of customer versus other large load customers. While the PUCO Orders echo AEP’s unfounded representations that a particular type of customer poses a greater risk compared to other large load customers in order to make the finding that there is some measurable difference between the different types of large load customers, AEP did not

quantify any of those risks in the record, or provide evidence demonstrating or supporting the existence of such risks. Order at ¶ 108 (Appx. 206–07); Entry on Rehearing at ¶ 45 (Appx. 256).

Since AEP utterly failed to provide sufficient evidence demonstrating a reasonable basis for its discrimination and/or that some actual and measurable difference exists in furnishing of services to the different types of large load customers, the PUCO lacked sufficient record evidence upon which to base its finding that Schedule DCT is not unduly discriminatory. Consequently, the PUCO Orders unjustly, unreasonably, and unlawfully violate R.C. 4905.32, 4905.33, 4905.35, due process, and the Equal Protection Clause by approving AEP’s discriminatory Schedule DCT. As such, OMAEG respectfully requests that the Court reverse the PUCO Orders as unduly discriminatory.

PROPOSITION OF LAW NO. 2: The PUCO Erred by Unjustly, Unreasonably, and Unlawfully finding that AEP’s moratorium did not violate the CTA (R.C. 4933.83) and R.C. 4905.22, and by failing to impose penalties on AEP for its illegal actions.

The PUCO erred by unjustly, unreasonably, and unlawfully sanctioning AEP’s unprecedented, self-imposed, and unilaterally enforced moratorium on connecting a particular type of customer based solely on its business function and its end-use of electricity, which is a plain violation of the CTA (R.C. 4933.83) and R.C. 4905.22. Moreover, sufficient rationale was not provided for this decision, in violation of R.C. 4903.09.

Pursuant to R.C. 4905.22, R.C. 4933.83, and R.C. 4928.02(A), AEP has a statutory obligation to serve the customers in its service territory. Specifically, R.C. 4933.83(B) provides AEP with the exclusive right to provide electric service to all electric load centers located within its certified territory, and along with that right to serve, comes the obligation that AEP “shall 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.” R.C. 4905.22 further states that

AEP “shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.” And R.C. 4928.02(A) sets forth the state policy to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.”

The plain language of these statutes is clear—AEP does not have the discretion to simply refuse to serve a type of customer on a whim. Yet that is precisely what AEP chose to do in 2023. AEP’s unauthorized moratorium and unilateral decision to cease connecting a particular type of customer cannot logically be interpreted as providing adequate service in a reasonably timely manner, or as deploying adequate facilities to handle new load. Therefore, AEP’s moratorium was unlawful and should have been treated as such by the PUCO.

But it was not.

When asked in discovery to produce the studies that underpinned or justified its unprecedented decision to refuse to connect a certain type of customer, AEP produced only a *two-page summary* of three load scenarios that AEP’s transmission planning group performed in early 2023. See Sidecat Ex. 9 (Response to Staff-DR 2-2) (Appx. 796); Sidecat Ex. 10 (Response to Staff DR 2-2 Attachment 1) (Appx. 797). And during the evidentiary hearing, no additional evidence was submitted indicating or describing any subsequent analyses performed that would justify its moratorium. Consequently, there is no evidence in the record that demonstrates that AEP conducted any studies before or during the moratorium to justify its unprecedented maneuver. Rather, all AEP offered by way of justification was its continued insistence that there is a transmission capacity constraint in Ohio. Yet this claim is also dubious since AEP’s own long-term forecast reports (“LTFR”) do not reflect the unprecedented growth that AEP claims is nigh.

AEP's 2023 LTFR showed negligible load growth over the next ten years, and AEP's 2024 LTFR—which was filed one month before this case was initiated—included nothing close to the amount of customer load that AEP now claims will come on line. RESA Ex. 2 (2023 LTFR) (Appx. 857); OMAEG Ex. 35 at 15 (Seryak August Testimony) (Appx. 475).

Astonishingly, the PUCO showed little concern for AEP's flagrant flouting of the law. In response to OMAEG and other parties' concerns about AEP's failure to perform any sort of quantitative analysis to justify the moratorium, the PUCO stated that it was "unconcerned that AEP Ohio did not conduct a study during its moratorium period," because "it seems obvious" why the moratorium was put in place. Order at ¶ 130 (Appx. 221–22). *See also* Entry on Rehearing at ¶ 51 (stating the PUCO "is indifferent to the fact that AEP Ohio did not conduct a study during its moratorium period") (Appx. 260). However, AEP's motive for implementing the moratorium is only "obvious" if one accepts AEP's own, self-serving representations at face value, since there is no record evidence justifying the moratorium. Under R.C. 4903.09, "[i]n all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including . . . opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." R.C. 4903.09 (Appx. 304). *See also In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, ¶ 53; *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St. 3d 306, 312, 513 N.E.2d 337 (1987); *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30. However, since there was no record evidence provided to support the implementation or continuation of AEP's moratorium, the PUCO could not have made findings of fact in accordance with the requirements of R.C. 4903.09. For that reason alone, the PUCO's decision to accept AEP's moratorium is unlawful and should be reversed.

Moreover, the PUCO's explicit lack of concern over AEP not conducting any transmission studies before or during the moratorium is itself highly concerning. As a matter of law and for the sake of precedent, the PUCO should not be condoning a monopoly utility making a unilateral, illegal, and factually unsupported decision to simply refuse to serve certain kinds of customers. As a result of erroneously accepting the imposition of an illegal moratorium, the PUCO Orders fail to impose any kind of penalty on AEP, further signaling to both AEP and other utilities that breaking the law, discriminating against customers, and simply choosing not to serve certain customers can and will go unpunished.

Prior to initiating its moratorium, AEP should have gone to the PUCO to request permission to not serve certain customers and/or request to treat those customers differently by demonstrating that those customers required a different service or caused the system to incur different or more costs than other customers. But it did not. And the PUCO failed to require AEP to follow the law and the PUCO's own rules.

As a creature of statute, the PUCO *must* give full effect to the statutory language of R.C. 4905.22, R.C. 4933.83, and R.C. 4928.02(A). *Penn Central Transportation Co. v. Pub. Util. Comm.*, 35 Ohio St.2d 97, 298 N.E.2d 97 (1973). Additionally, the PUCO is prohibited from adding or removing words, meanings, or requirements from statutes. *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 45; *Wachendorf v. Shaver*, 149 Ohio St. 231, 237, 78 N.E.2d 370 (1948); *see also Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88, 706 N.E.2d 1255 (1999). This Court has also held that “[n]o part of the statute should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *State ex rel. Carna v. Teays*

Valley Local School Dist. Bd. of Edn., 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 19.

Allowing AEP to unilaterally impose a moratorium that has prevented (and is still preventing) a particular type of customer from interconnecting since March 2023 without consequence is directly adverse to the requirements and statutory obligations set forth in R.C. 4905.22, R.C. 4933.83, and R.C. 4928.02(A). As such, the PUCO had an obligation to impose penalties on AEP for its illegal actions, and the PUCO's failure to do so was unjust, unreasonable, and unlawful.

For these reasons set forth above, the PUCO's Orders unjustly, unreasonably, and unlawfully failed to find that the moratorium was unlawful and failed to impose sanctions and forfeitures on AEP accordingly. As such, the PUCO Orders should be reversed.

PROPOSITION OF LAW NO. 3: The PUCO Erred by Unjustly, Unreasonably, and Unlawfully finding that AEP's load forecasts were accurate and that AEP demonstrated an actual transmission constraint or need that was not supported by sufficient evidence in the record in violation R.C. 4903.09.

The PUCO erred by unjustly, unreasonably, and unlawfully finding that AEP demonstrated an actual transmission constraint that required a remedy without any record evidence in support of the purported constraint or speculative load forecasts in violation of R.C. 4903.09.

Similar to the above, the PUCO's finding that AEP demonstrated the existence of an actual transmission capacity constraint was supported only by AEP's own assertions and a single page document summarizing studies that AEP ostensibly performed two years prior. Order at ¶ 121–22 (Appx. 215–16); Sidecat Ex. 10 (Response to Staff DR 2-2 Attachment 1) (Appx. 797). The PUCO's decision to simply accept AEP's representation that a transmission capacity constraint exists and that there is unprecedented future load growth expected at some time in the future solely

originating from one particular type of customer was not supported by sufficient findings of fact as required by R.C. 4903.09.

The PUCO's decision to accept AEP's own speculative assertions regarding the existence of a hypothetical transmission capacity constraint completely ignored AEP's own contrary admissions regarding the existence of said constraint. Specifically, AEP admitted on several occasions that it lacked a rigorous quantitative analysis regarding key matters in this case, such as its purported need to force a certain type of customer into an industry-specific tariff, the specific projects or costs that would be involved in this transmission buildout, the potential transmission investment to be built in the future and who would build it, and the current amount of reserve capacity for additional load growth in Central Ohio. *See* OMAEG Ex. 22 (Response to OMAEG-INT-01-041) (Appx. 457); DCC Ex. 5 (OEG-INT-1-2) (Appx. 867); OMAEG Ex. 23 (Response to DCC-INT-02-001) (Appx. 459); Tr. Vol. I at 262 (Appx. 361); Tr. Vol. VII at 1504 (Appx. 395). For example, AEP conceded that it does not have a way of knowing if there is actually a transmission capacity constraint, responding in a discovery request that "AEP Ohio cannot speculate about what specific projects or costs would be involved in this transmission buildout." OMAEG Ex. 22 (OMAEG-INT-01-041) (Appx. 457). When asked during the hearing about the current amount of transmission capacity available on AEP's transmission system for additional load to be added, AEP witness McKenzie admitted that "you can't really say X amount of transmission capacity in a large geographic area. It's a case-by-case analysis." Tr. Vol. VII at 1508 (Appx. 399). AEP further admitted that it had not conducted any specific analysis of potential transmission investment to be built in the future, nor had AEP quantified the amount of reserve capacity for additional load growth in Central Ohio. DCC Ex. 5 (OEG-INT-1-2) (Appx. 867); OMAEG Ex. 23 (Response to DCC-INT-02-001) (Appx. 459); Tr. Vol. I at 262 (Appx. 361).

As to the “series of studies run by the AEP Transmission Planning organization” that the Order cites as evidence supporting AEP’s claims regarding the existence of a capacity constraint, this is referring to Sidecat Ex. 10, which is both unreliable and entirely insufficient to support AEP’s claim about an existing transmission capacity constraint. First, as noted above, this series of studies was conducted by one of AEP’s own affiliates, and there is no indication that the results were ever verified by an independent, uninterested third party (PUCO Staff never conducted any of its own studies or analysis). Second, the actual studies themselves and their results are not introduced into the record evidence. While the Order cites Sidecat Ex. 10 when discussing this series of studies, Sidecat Ex. 10 is not actually a series of transmission studies. Rather, the exhibit is a narrative response written by AEP describing a series of transmission studies that the Company claims were conducted in 2023. Sidecat Ex. 10 (Response to Staff DR 2-2 Attachment 1) (Appx. 797). As explained above, this narrative summary was all that AEP provided in response to PUCO Staff’s request for “the results of any such study or studies [supporting AEP’s unlawful moratorium and discriminatory tariff], including all calculations with formulas intact.” Sidecat Ex. 9 (Response to Staff-DR 2-2) (Appx. 796). No additional evidence, support, or studies were submitted to PUCO Staff in response to its data request, and no other evidence, support, or studies were entered into the record at the hearing.

It should also be noted that AEP witness Ali admitted that AEP’s existing peak demand in the Central Ohio area makes up only 4,000 MW (only 600 MW of which is attributed to the particular type of customer that AEP refused to connect) of the Company’s 9,388 MW of 2023 peak load (including wholesale interconnections), which indicates that AEP still has available capacity. Order at ¶ 122 (Appx. 215–16). Similarly, Mr. Ali testified that AEP’s “system could support 10,000 megawatts of capacity in central Ohio before needing, . . . significant infrastructure

enhancements,” and that AEP currently projected that its system “would reach 10,000 megawatt by 2030.” Tr. Vol. I at 117 (Appx. 344); Tr. Vol. II at 372 (emphasis added) (Appx. 392).

Throughout this case, AEP refused to provide any actual transmission studies to support its claim that a transmission capacity constraint exists, meaning that the PUCO essentially chose to rely solely on AEP’s own representations regarding this integral matter, instead of actual evidence. AEP’s unsupported claims are not sufficient evidence upon which to base a decision. Moreover, the PUCO Order offered no explanation for why the PUCO rejected the Customer Coalition Stipulation Signatories’ counterarguments beyond the single sentence, “we are not persuaded by [Customer Coalition] Stipulation signatories that claim the Company has not provided sufficient record evidence to demonstrate the transmission constraints AEP Ohio faces.” Order at ¶ 122 (Appx. 215–16). The Entry on Rehearing was similarly sparse, simply repeating that the PUCO believed AEP had “provided a real, pending transmission constraint concern” and once again pointing to the same testimony and “evidence” cited in the Order. Entry on Rehearing at ¶ 39 (Appx. 252). These barebones and ultimately unsupported statements do not satisfy the requirements of R.C. 4903.09, which requires the PUCO to provide “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.”

It should also be noted that the PUCO failed to address OMAEG’s salient arguments regarding the significant threat of corporate separation violations posed by the implementation of this tariff, as well as the fact that AEP (the electric distribution utility) is not the appropriate entity to address a purported transmission issue. Even if one accepts AEP’s unsupported claim that a transmission capacity constraint exists, at no point during this case did AEP provide sufficient justification for why AEP—an electric *distribution* utility—has assumed responsibility for

resolving a purported *transmission* problem. AEP has a transmission affiliate—AEP Transmission Company (“AEP TransCo”). This transmission affiliate was created back in 2010 for the explicit “purpose of planning, constructing, owning, and operating transmission assets in Ohio.” *In the Matter of the Joint Application of AEP Ohio Transmission Company, Inc. and Columbus Southern Power Company and Ohio Power Company for Approval of Proposed Transfers*, PUCO Case No. 10-246-EL-UNC, Application at ¶ 1 (May 2, 2010) (hereinafter, AEP TransCo Application). According to the AEP TransCo Application filed in Case Nos. 10-245-EL-UNC, et al., to establish AEP TransCo, AEP TransCo “will develop, construct, own and operate some new transmission facilities interconnected to existing AEP Ohio facilities within the PJM territory,” and AEP TransCo “will also be able to rely on the financial resources of its ultimate parent, [American Electric Power Company, Inc.], and its ability to supply, or cause to be supplied, capital.” AEP TransCo Application at ¶¶ 5, 9. While AEP retains ownership of *some* transmission assets, in accordance with the AEP TransCo Application, “AEP TransCo will develop and own *new* transmission assets within the state of Ohio and [AEP TransCo] will not acquire from [AEP] assets currently in-service and owned by [AEP].” AEP TransCo Application at ¶ 12. In other words, the responsibility for building new transmission infrastructure for any additional large load customers should be on AEP TransCo’s shoulders, not AEP’s.

Moreover, by AEP’s own admission, “[i]t cannot be determined which entity would construct any transmission investment needed to serve the more than 30,000 megawatts of data center projects on AEP Ohio’s queue of potential future projects.” OMAEG Ex. 22 (Response to OMAEG-INT-01-041) (Appx. 457); Tr. Vol. VII at 1504 (Appx. 395). Yet, the AEP Stipulation authorizes an electric distribution company to collect money from distribution customers to resolve a purported transmission constraint that AEP keeps to bolster its bottom line, or that AEP may

provide to its transmission company affiliate to fund the construction of new transmission facilities or that AEP may use to support the construction or funding, thereby subsidizing its transmission affiliate. This subsidization would violate Ohio's corporate separation policies as well as the important regulatory principle of avoiding cross-subsidization. These issues should have been addressed by the PUCO, but they were not, creating yet another reason for finding the PUCO Orders deficient in violation of R.C. 4909.09.

For all the reasons set forth above, AEP failed to provide sufficient evidence demonstrating the existence of a transmission capacity constraint, meaning that the PUCO's decision to accept AEP's claim is not and cannot be supported by sufficient record evidence as required by R.C. 4903.09. Therefore, OMAEG respectfully requests that the Court find that the PUCO's determination was unlawful pursuant to R.C. 4903.09 and against the manifest weight of the evidence, and reverse the PUCO Orders.

PROPOSITION OF LAW NO. 4: The PUCO Erred by Unjustly, Unreasonably, and Unlawfully concluding that AEP's Application was not an application for an increase in rates in violation of PUCO precedent.

The PUCO erred by failing to find that AEP's Application was an application for an increase in rates that did not comply with the requirements set forth in R.C. 4909.18 for such applications.

AEP does not dispute that its Application in this case was filed pursuant to R.C. 4909.18. Nor does it dispute that the express purpose for this filing, as set forth in the Application, was to create two new customer classes and two new corresponding tariffs. AEP Ex. 1 at 1 (Application) (Appx. 329). Previously, the PUCO has found that rate case reviews are applicable when utilities seek to impose new charges on customers for distribution, transmission, and ancillary services that would result in some customers paying rates higher than those currently authorized by an EDU's tariffs. *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its*

Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period, PUCO Case Nos. 03-93-EL-ATA, et al., Second Entry on Rehearing at ¶ 28 (January 19, 2005); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Revise its Rules and Regulations to Provide for a Delayed Payment Penalty Filed not for an Increase Pursuant to Section 4909.18, Revised Code*, PUCO Case No. 80-370-GA-ATA, Entry at ¶ 3 (May 14, 1980) (hereinafter, “1980 *Columbia Gas Case*”).

This Court has held on numerous occasions that “[i]t is the policy of courts to stand by precedent and not to disturb a point once settled.” *Dayton v. State*, 151 Ohio St.3d 168, 2017-Ohio-6909, 87 N.E.3d 176 at ¶ 30, quoting *Clark v. Snapper Power Equip., Inc.*, 21 Ohio St.3d 58, 60, 488 N.E.2d 138 (1986). Similarly, this Court has previously instructed the PUCO to “respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.” *In the Matter of the Complaint of Suburban Nat. Gas Co. v. Columbia Gas of Ohio, Inc.*, 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425 at ¶ 29.

While the doctrine of stare decisis “is limited to circumstances where the facts of a subsequent case are substantially the same as a former case,” that doctrine is applicable here given the similarities between this case and the 1980 *Columbia Gas Case* (PUCO Case No. 80-370-GA-ATA) cited above. *Acuity, A Mut. Ins. Co. v. Progressive Specialty Ins. Co.*, 2023-Ohio-3780, ¶ 21. Specifically, in the 1980 *Columbia Gas Case*, Columbia sought to revise its tariffs to impose a late payment charge on customers that “would result in some customers paying rates higher than those currently authorized by Applicant’s tariffs.” *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Revise its Rules and Regulations to Provide for a Delayed*

Payment Penalty Filed not for an Increase Pursuant to Section 4909.18, Revised Code, Case No. 80-370-GA-ATA, Entry at ¶ 3. Upon review of Columbia’s application, the PUCO held that “such a proposal is more appropriately the subject of a rate case . . . wherein revenue levels and tariff modifications affecting revenue levels are fully litigated.”

Similarly, in the case at bar, AEP’s proposed tariffs were intended to impose new financial requirements and additional charges on a particular type of customer that would result in those customers paying rates higher than those currently authorized by an EDU’s tariffs. Specifically, AEP proposed imposing an increased minimum billing demand of 90%, an initial contract of no fewer than 10 years, an increased exit fee, and significantly more stringent collateral requirements on a certain type of customer (including existing customers already being served by AEP under an existing tariff). AEP Ex. 1 at 8–9 (Application) (Appx. 336–37). Based on these proposals, the PUCO should have followed its own precedent and found that AEP’s Application was for an increase in rates. Moreover, the PUCO should have rejected AEP’s Application because it did not satisfy the requirements set forth in R.C. 4909.18 for applications for an increase in rates. This rejection could have been accompanied by a directive for AEP to file a rate case if the Company wanted to create two new classifications of customers and establish new tariffs for a new type of service. Had this been done, a proper COSS would have been performed, which would have provided much-needed insights into exactly how much it would cost AEP to serve a particular type of customer it claims are placing additional strain on AEP’s system.

In addition to failing to follow its own precedent, the PUCO’s decision to deem AEP’s Application not an application for an increase in rates was not supported by sufficient record evidence, in violation of R.C. 4903.09. Rather, the PUCO offered only a singular sentence “explanation,” stating that “the Company’s application did not propose an increase in rates

pursuant to R.C. 4909.18.” Order at ¶ 25 (Appx. 148). The Entry on Rehearing similarly simply reiterated the Order’s prior filing without elaborating further. Entry on Rehearing at ¶ 45 (Appx. 256). Once again, the PUCO seemingly chose to simply accept AEP’s representations without sufficient record evidence to support those representations. As such, the PUCO Orders were unlawful pursuant to R.C. 4903.09.

For the aforementioned reasons, OMAEG respectfully requests that the Court find that the PUCO unjustly, unreasonably, and unlawfully failed to find that the AEP’s Application was an application for an increase in rates that failed to meet the requirements set forth in R.C. 4909.18. As such, the PUCO Orders should be reversed.

PROPOSITION OF LAW NO. 5: The PUCO Erred by Unjustly, Unreasonably, and Unlawfully failing to reverse the ALJs’ unlawful decision to ignore statutory notice requirements and to commence the evidentiary hearing in violation of statutory due process and the plain language of R.C. 4909.18.

The PUCO erred by unjustly, unreasonably, and unlawfully failing to address and rule on the ALJs’ unlawful decision to ignore statutory notice requirements and to commence the evidentiary hearing in violation of the plain language of R.C. 4909.18 and statutory due process. R.C. 4909.18 requires that public notice of an evidentiary hearing be published *prior* to the start of the hearing. However, such notice was not published in any of the approximately 60 counties in which it was required. Accordingly, the hearing should not have commenced on December 3, 2024.

Applications filed pursuant to R.C. 4909.18 are either for an increase in rates or not. As discussed above, while AEP claimed that its Application was not for an increase in rates, the stated purpose of the Application and its contents demonstrate otherwise. That being said, regardless of whether the Application was for an increase in rates, the statutory notice requirement applies. As set forth in R.C. 4909.18, the PUCO could have proceeded one of two ways, assuming AEP’s

Application was not for an increase in rates—either (1) by permitting AEP to file its proposed tariffs and fixing the time when those tariffs would take effect, or (2) if the proposed tariffs appeared unjust or unreasonable, by setting the matter for hearing and publishing notice of such hearing. R.C. 4909.18 (Appx. 314).

Rather than allowing AEP to simply file its proposed tariffs and fixing the time when those tariffs would take effect, the PUCO set the matter for hearing. Thus, notice of said hearing should have been published as required by R.C. 4909.18. However, despite the hearing start date being moved no fewer than four times, at no point did the PUCO direct AEP to publish notice of the hearing. As such, the evidentiary hearing was never properly noticed and should not have been allowed to commence when it did.

This matter was raised on the first day of the hearing by OMAEG and other Customer Coalition Stipulation Signatories, but the ALJs declined to continue the hearing, stating that the hearing had been set at the PUCO’s discretion. Tr. Vol. I at 37 (Appx. 343). This same unsupported, barebones rationale was later echoed by the PUCO itself in its Entry on Rehearing (notably, this matter was not addressed or even referenced in the PUCO’s initial Order). Entry on Rehearing at ¶ 57 (Appx. 265). *See also* Order (Appx. 142). However, this Court has long recognized that a “hearing is required [under R.C. 4909.18] in two instances: (1) when an application for an increase in an existing rate is filed or (2) if the application is not for an increase in an existing rate, if the proposals in the application appear ‘unjust or unreasonable.’” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, ¶ 19. In other words, assuming AEP’s Application was not to be for an increase of rates, the *only* reason that a hearing should have been set is because “the proposals in the application appear ‘unjust or unreasonable,’” which then triggers the mandatory notice requirement set forth in R.C. 4909.18.

Alternatively, if the Application was for an increase in rates (as OMAEG contends), the PUCO was required to set the matter for hearing, and the mandatory notice requirement *still* applies. R.C. 4909.19 (Appx. 317).

As discussed above, the PUCO is a creature of statute and thus required to give full effect to the plain language of R.C. 4909.18. The PUCO is not permitted to add, delete, or substitute words into or out of the statute, and, as written, R.C. 4909.18 is clear and unambiguous. If AEP's Application was not for an increase in rates, and since the matter was set for hearing, the PUCO should have "give[n] notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application." R.C. 4909.18 (Appx. 314).

As required by the plain language of R.C. 4909.18, the ALJs should have continued the hearing until after notice was properly published, but they declined to do so, which constitutes reversible error. Rather than reversing, however, the PUCO ignored this matter in its Order, and in its Entry on Rehearing, the PUCO merely reiterated the ALJs' singular, unsupported ground that notice was not required because the PUCO "set this matter for hearing at our discretion." Tr. Vol. I at 37 (Appx. 343); Entry on Rehearing at ¶ 57 (Appx. 265). But, as discussed above, there are only two reasons to set an application filed pursuant to R.C. 4909.18 for hearing. As such, the ALJs' and PUCO's one-sentence "reasoning" by no means justifies ignoring a statutory mandate, nor does it satisfy the requirements of R.C. 4903.09, which requires that the PUCO's decisions in a contested case be supported by sufficient findings of fact from the evidentiary record. R.C. 4903.09. This was undoubtedly a contested case, which requires the PUCO to set forth its findings

of fact and written opinions and its reasons prompting the decisions arrived at, based upon said findings of fact, but this was not done.

As a matter of law, the ALJs' decision not to continue the hearing until after the statutory notice requirements were satisfied violated R.C. 4909.18, and the PUCO's failure to address this issue in its Order and barebones "explanation" offered in its Entry on Rehearing violate R.C. 4903.09. For these reasons and those set forth above, OMAEG respectfully requests that the Court find that the PUCO's decision to ignore statutory notice requirements violated statutory due process, R.C. 4909.18, and R.C. 4903.09. As such, the PUCO Orders should be reversed.

PROPOSITION OF LAW NO. 6: The PUCO Erred by Unjustly, Unreasonably, and Unlawfully upholding the ALJs' rulings that precluded OMAEG from questioning AEP witnesses about matters directly relevant and material to this case in violation of due process rights and R.C. 4903.09.

The PUCO erred by unjustly, unreasonably, and unlawfully upholding the ALJs' rulings that precluded OMAEG from fully questioning AEP witnesses about matters directly relevant and material to this case in violation of OMAEG's due process rights. Specifically, the ALJs' improper narrowing of the scope of OMAEG's cross prevented OMAEG from asking questions and fully developing the record regarding (1) whether AEP considered other solutions to mitigate the alleged transmission capacity constraint aside from a discriminatory tariff, and (2) whether AEP was even acting in good faith when it initiated this case. This in turn denied the PUCO a full review and examination of facts and matters key to the disposition of this case. *See* Tr. Vol. I at 216–20 (Appx. 348–52); Tr. Vol. VIII at 1645–47 (Appx. 404–06).

This Court has previously held that due process in a PUCO proceeding occurs when parties are given: (1) "ample notice;" (2) "permitted to present evidence through the calling of its own witnesses;" (3) permitted to "*cross-examin[e] the other parties' witnesses;*" (4) introduce exhibits; (5) "argue its position through the filing of posthearing briefs;" and (6) "challenge the PUCO's

findings through an application for rehearing. *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 863 N.E.2d 599, 2006-Ohio-1386 at ¶ 53 (emphasis added). Further, this Court has held that the PUCO must, in order to comply with the law, provide “in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.” *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 89 (1999).

Here, OMAEG was denied the right to fully cross-examine AEP’s witnesses, despite the fact that OMAEG’s excluded lines of questioning were directly relevant to the PUCO’s ultimate determination of whether the AEP Stipulation satisfied the PUCO’s three-prong test, and involved matters at the very heart of this proceeding.

As explained by OMAEG’s counsel during the hearing, OMAEG’s line of questions for Mr. Ali were relevant to this case because “it’s important for the record to know whether [Mr. Ali] did or did not include in his modeling generation resources that are PJM RTO controlled, . . . which he said would affect transmission constraints and could solve the problem,” and since “he didn’t provide his model to us, . . . it’s important to know what is included or is not included in his model.” Tr. Vol. I at 215 (Appx. 347). Determining whether AEP even considered solutions other than constructing a 765 kV line or having its transmission affiliate construct the line and implementing discriminatory tariffs with increased costs to certain customers would have aided the PUCO in determining whether the AEP Stipulation and Schedule DCT actually benefits customers and the public interest. Moreover, had OMAEG been given the opportunity to do so, OMAEG would have further examined Mr. Ali’s credibility and his underlying modeling assumptions, as well as the credibility of said assumptions. Specifically, Mr. Ali’s inability to testify about the underlying assumptions of his own modeling, as well as what projects he actually factored into the modeling went directly to his credibility, which is certainly a matter that the

PUCO should be considering as part of its deliberations regarding the competing stipulations in this case and the facts of the case.

Similarly, OMAEG's questions to Mr. McKenzie about both his own contradictory statements, and AEP's contradictory actions with regard to AEP unlawfully instituting a moratorium on connecting a particular type of customer in Central Ohio, while at the same time courting these same types of customers and encouraging them to locate in AEP's service territory were also directly relevant to this case. As discussed previously, AEP filed its Application ostensibly in response to an existing transmission capacity constraint. But if it could be demonstrated that (1) this constraint simply does not exist, as possibly evidenced by AEP encouraging these supposedly burdensome customers to locate in its service territory, or (2) that the constraint was of AEP's own making, this would have provided significant facts and evidence that should be taken into account by the PUCO when evaluating the reasonableness of AEP's Stipulation, whether AEP's Stipulation was in the best interest of customers, whether AEP's Stipulation violated any regulatory principle, and, of course, which of the competing stipulations at issue was the most reasonable under the circumstances. OMAEG should have been permitted to further flesh out these issues on cross-examination so that additional facts could be added to the record for the PUCO's review. As such, the ALJs' ruling ending this line of questioning and precluding OMAEG from fully examining the witnesses resulted in the effective exclusion of facts and evidence relevant and material to this case, causing prejudice to OMAEG and other parties.

Additionally, as has been true throughout the PUCO Orders, the PUCO's decision to uphold the ALJs' rulings were not properly supported by "written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact," in violation of R.C. 4903.09. Without citing relevant findings of fact supported by record evidence, the PUCO declared (and

later affirmed on rehearing) that OMAEG’s line of questioning for Mr. Ali had no bearing on the points OMAEG was attempting to make, and that OMAEG was given “significant leeway” to question Mr. McKenzie. Order at ¶¶ 28, 31 (Appx. 149–51); Entry on Rehearing at ¶ 61 (Appx. 267). But being ordered to terminate two relevant and material lines of questioning without sufficient explanation can hardly be called leeway—significant or otherwise. Since the PUCO failed to provide record evidence that supports the PUCO’s decision, in violation of R.C. 4903.09, the PUCO’s decision to uphold the ALJs’ rulings was unjust, unreasonable, and unlawful. As such, the PUCO Orders should be reversed.

V. CONCLUSION

As set forth above, the PUCO Orders approving Schedule DCT were unjust, unreasonable, unlawful, and against the manifest weight of the evidence. The hearing itself should not have proceeded when it did given the lack of statutorily mandated published notice, and once the hearing was underway, OMAEG was improperly prevented from developing a fulsome and robust record. What evidence was entered into the record failed to demonstrate that an actual transmission capacity constraint exists, and in fact indicates that AEP failed to conduct the necessary analysis to determine if a transmission constraint actually exists. As such, there is no justification for creating a new classification of customers without a COSS or proper rate case filing and there is no justification authorizing a new tariff that is discriminatory on its face. The PUCO’s approval of the AEP Stipulation and Schedule DCT was unjust, unreasonable, and unlawful, and against the manifest weight of the evidence in violation R.C. 4903.09. For these reasons, OMAEG respectfully requests that the Court find that the PUCO’s July 9, 2025 Order and September 3, 2025 Entry on Rehearing are unjust, unreasonable, and unlawful and reverse the PUCO’s decisions.

Respectfully submitted,

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Dated: February 2, 2026

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of the Ohio Manufacturers' Association Energy Group was served in accordance with S.Ct.Prac.R. 3.11(D)(1) and R.C. 4903.13 upon all parties of record via electronic transmission on February 2, 2026.

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