

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate Power)	Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider.)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 14-1694-EL-AAM
Certain Accounting Authority.)	

**OHIO POWER COMPANY'S
MEMORANDUM CONTRA OCC'S THIRD APPLICATION FOR REHEARING**

On March 31, 2016, the Commission issued an Opinion and Order, based upon a Joint Stipulation and Recommendation, that authorized AEP Ohio to establish a Power Purchase Agreement (PPA) Rider that would include the net impacts of both an affiliate PPA and the Company's OVEC entitlement in the placeholder PPA Rider approved in its prior Electric Security Plan (ESP) proceeding. Following the Federal Energy Regulatory Commission's issuance of an Order in April 2016 concerning the proposed affiliate PPA, AEP Ohio filed an application for rehearing asking the Commission to adopt an OVEC-only PPA Rider going forward. Several other parties also filed applications for rehearing challenging the Stipulation. The Commission fully addressed those assignments of errors in its Second Entry on Rehearing on November 3, 2016.

On December 5, 2016, the Ohio Manufacturers' Association Energy Group (OMAEG), the Environmental Law and Policy Center (ELPC), the PJM Power Providers Group and the Electric Power Supply Association (P3/EPSA), the Office of the Consumers' Counsel (OCC), and Buckeye Power filed applications for rehearing challenging various findings and order in the Second Entry on Rehearing. OCC's Second Application for Rehearing, in particular, raised 13 assignments of

error. AEP Ohio responded to each of the assignments of error raised. AEP Ohio noted that at least eleven of OCC's thirteen assignments of error were procedurally improper, as they either re-argued points the Commission had previously rejected on rehearing or presented new arguments that OCC had waived by not including them in prior applications for rehearing. *See AEP Ohio Memo Contra Applications for Reh'g* at 3-4, 15-20, 22-26, and 29-33 (Dec. 15, 2016). On January 4, 2017, the Commission granted the applications for rehearing "for further consideration of the matters specified" in those applications. Third Entry on Reh'g ¶ 17 (Jan. 4, 2017). OCC now seeks rehearing of that Entry, arguing that the Commission erred by taking additional time to consider OCC's arguments. OCC's argument is legally and factually baseless.

To its credit, OCC acknowledges the Supreme Court of Ohio's ruling "that the PUCO may grant applications for rehearing for the limited purpose of allowing additional time to consider them[.]" OCC Application for Reh'g at 7 (citing *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 304, 2004-Ohio-2894, at ¶ 19). OCC complains, however, that the Commission is "unreasonably appl[y]ing" the Court's ruling, by taking "months or years" to review applications for rehearing after granting them for further consideration. OCC Application for Reh'g, Mem. Supp. at 7. OCC further suggests that the Commission must issue an immediate ruling on the applications for rehearing to protect AEP Ohio's residential customers from the initial PPA rider charge of "approximately \$20 per *month*" (corrected to "\$19.92 per *year* per residential customer using 1,000 kWh per month" in a footnote). (Emphases added.) *Id.* at 2 n.5.

OCC's arguments are unsupported by the facts. OCC cites only five Commission entries on rehearing in the past three years as evidence of the Commission's "unreasonabl[e]" delay. *See id.* n.18. Of these, one has already been resolved by an entry on rehearing (Case No. 13-2385-EL-SSO); two are not rider or rate cases (Case Nos. 13-893-EL-AIS and 12-2190-EL-POR *et al.*); and

one is in the process of being resolved by a joint stipulation (Case No. 14-1186-EL-RDR). Regardless, in this proceeding, there has been no unreasonable delay. The briefing on OCC's most recent application for rehearing finished less than six weeks ago, and the Commission ruled on OCC's prior application for rehearing in six months. The Commission has provided OCC no basis for complaining about its response to OCC's Second Application for Rehearing.

Nor has OCC aided the speedy resolution of this proceeding. As AEP Ohio noted in its last Memorandum Contra, Ohio law does not permit parties to keep requesting rehearing on issues on which the Commission has already ruled in prior entries on rehearing. *See* AEP Ohio Memorandum Contra Applications for Reh'g at 3 (Dec. 15, 2016) (citing *In the Matter of the Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corporation*, Case No. 96-999-EL-AEC, Second Entry on Reh'g, ¶ 10 (Sept. 13, 2006)). Nor does it allow them to raise arguments in a later application for rehearing that they could have raised in an earlier application for rehearing. *See id.* (citing, *e.g.*, *Consolidated Duke Energy Ohio, Inc., Rate Stabilization Plan Remand and Rider Adjustment Cases*, Case Nos. 03-93-EL-ATA et al., Third Entry on Rehearing, ¶¶ 13-16 (Nov. 5, 2008)). OCC's latest Application for Rehearing compounds its prior impropriety, as OCC's first Assignment of Error primarily resurrects arguments regarding R.C. 4928.38 that it included in its first application for rehearing. *Compare* OCC Application for Reh'g, Mem. Supp. at 3-5 (Jan. 20, 2017) and OCC Application for Reh'g, Mem. Supp. at 43-44 (May 2, 2016). Filing unnecessary applications for rehearing that primarily repeat arguments the Commission has already rejected is inefficient and counterproductive, itself causing more delay.

In short, OCC has no legal or factual basis to challenge the Commission's Third Entry on Rehearing. Ohio law clearly allows the Commission to grant an application for rehearing for the

purpose of giving the parties' arguments further consideration. And nothing in the record of this proceeding gives OCC a basis for complaining about the additional time the Commission is taking to consider its numerous assignments of error. Accordingly, AEP Ohio urges the Commission to deny OCC's Application for Rehearing.

Respectfully submitted,

/s/ Steven T. Nourse

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served upon the parties of record in this proceeding by electronic service this 30th day of January, 2017.

/s/ Steven T. Nourse

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Summary: Memorandum Contra OCC's Third Application for Rehearing submitted by Ohio Power Company electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company