

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Authority to)
Establish a Standard Service Offer)
Pursuant to §4928.143, Revised Code,)
in the Form of an Electric Security Plan.)

Case No. 13-2385-EL-SSO

In the Matter of the Application of Ohio)
Power Company for Approval of)
Certain Accounting Authority.)

Case No. 13-2386-EL-AAM

**FOURTH APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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APPLICATION FOR REHEARING

The Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing¹ to protect the 1.2 million residential consumers of the Ohio Power Company ("AEP Ohio") from being charged approximately \$191 million dollars² to subsidize the Ohio Valley Electric Corporation ("OVEC") through an OVEC-only Power Purchase Agreement Rider ("PPA Rider"). This Public Utilities Commission of Ohio ("PUCO")-approved customer-funded agreement will subsidize, via government regulation, old, inefficient, coal-fired power plants that cannot compete in a market deregulated by the Ohio General Assembly over 16 years ago. The OVEC charge is unreasonable and unlawful.

¹ This application for rehearing is authorized under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

² See Tariff Sheet of Ohio Power Co., Purchase Power Agreement Rider, 1st Revised Sheet No. 473-1D, effective January 1, 2017 (0.0016624/kWh * 1,000kWh = \$1.66 per month or \$19.92 per year per residential customer using 1,000 kWh per month. \$19.92 * 1,200,000 residential AEP Ohio customers = \$23,904,000 per year. \$23,904,000 * 8 years=\$191,232,000).

On December 20, 2013, AEP Ohio filed its third Electric Security Plan (ESP”).³ On February 25, 2015, the PUCO issued an Opinion and Order modifying and approving AEP Ohio’s proposed ESP.⁴ The February 25, 2015 Order approved AEP Ohio’s request for a power purchase agreement rider as a placeholder rider set at zero. The power purchase agreement rider was designed to flow through to consumers the net cost (or benefit) from AEP Ohio’s sale of generation into the PJM Interconnection, LLC (“PJM”) market from its OVEC contractual entitlement.

On April 22, 2015, the PUCO issued an Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the February 25, 2015 Order.⁵ By Second Entry on Rehearing dated May 28, 2015, the PUCO granted, in part, and denied, in part, the applications for rehearing filed with respect to the February 25, 2015 Order.⁶ The PUCO, however, deferred ruling on the assignments of error related to the power purchase agreement rider. By Third Entry on Rehearing dated July 22, 2015, the PUCO granted rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the May 28, 2015 Second Entry on Rehearing.⁷

In October 2014, AEP Ohio filed an application to expand and to begin charging customers for the purchase power agreement rider in PUCO Case No. 14-1693-EL-

³ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Revised Code, in the Form of an Electric Security Plan*, et al., Case No. 13-2385-EL-SSO, Application (December 20, 2013).

⁴ Opinion and Order, Case No. 13-2385-EL-SSO, et al., (February 25, 2015).

⁵ See PUCO Entry on Rehearing, Case No. 13-2385-EL-SSO, et al., (April 22, 2015).

⁶ See PUCO Second Entry on Rehearing, Case No. 13-2385-EL-SSO, et al., (May 28, 2015).

⁷ See PUCO Third Entry on Rehearing, Case No. 13-2385-EL-SSO, et al., (July 22, 2015).

RDR.⁸ On March 31, 2016, the PUCO issued an Opinion and Order modifying and approving a Joint Stipulation and Recommendation filed by AEP Ohio and other signatory parties on December 14, 2015.⁹ The March 31, 2016 Order approved AEP Ohio's expanded request for a purchase power agreement rider. The expanded PPA Rider was designed to flow through to customers the net cost (or benefit) from AEP Ohio's sale of generation into the PJM market from its OVEC contractual entitlement and several power plants owned by AEP Ohio's unregulated affiliate, AEP Generation Resources.

In April 2016, the Federal Energy Regulatory Commission ("FERC") rescinded the waiver under which AEP Ohio claimed it could proceed with its PPA rider without FERC review. In response, AEP Ohio proposed its OVEC-only PPA Rider in its May 2016 Application for Rehearing.¹⁰ On November 3, 2016, the PUCO issued a Second Entry on Rehearing, which approved the OVEC PPA Rider in Case No. 14-1693-EL-RDR.¹¹

Also on November 3, 2016, the PUCO issued a Fourth Entry on Rehearing in this proceeding, granting, in part, and denying, in part, the applications for rehearing filed with respect to the May 28, 2015 Second Entry on Rehearing.¹² The Fourth Entry on Rehearing finally denied the assignments of error regarding the PPA Rider that were raised in the applications for rehearing submitted more than a year earlier.¹³

⁸ See *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, et al., Application (October 3, 2014).

⁹ See Opinion and Order, Case No. 14-1693-EL-RDR, et al., (March 31, 2016).

¹⁰ See AEP Ohio Application for Rehearing, Case No. 14-1693-EL-RDR, et al., (May 2, 2016).

¹¹ See Second Entry on Rehearing, Case No. 14-1693-EL-RDR, et al., (November 3, 2016).

¹² See PUCO Fourth Entry on Rehearing, Case No. 13-2385-EL-SSO, et al., (November 3, 2016).

¹³ See PUCO Fourth Entry on Rehearing, Case No. 13-2385-EL-SSO, et al., (November 3, 2016).

On December 22, 2016, AEP Ohio filed tariff sheets in compliance with the PUCO orders and entries.¹⁴ The tariff sheet will allow AEP Ohio to charge each residential consumer approximately \$20 per year.¹⁵ Under the PUCO-modified ESP, the \$20 per year charge to residential customers will allow AEP Ohio to collect \$191 million from all residential customers, shopping and non-shopping alike, over an eight-year period starting January 1, 2017.¹⁶

On December 5, 2016, the OCC filed an application for rehearing from the PUCO's Fourth Entry on Rehearing in this proceeding.¹⁷ On January 4, 2017, the PUCO issued a Fifth Entry on Rehearing. In that Fifth Entry on Rehearing, the PUCO granted rehearing “for further consideration of the matters specified in the applications for rehearing.”¹⁸ The PUCO's Fifth Entry on Rehearing of January 4, 2017 was unreasonable or unlawful in the following respects:

Assignment of Error 1: The PUCO erred by not granting and holding rehearing, and abrogating its Entry on the matters specified in OCC's December 5, 2016 application for rehearing.

Assignment of Error 2: The PUCO erred by granting rehearing to allow itself more time to issue a final appealable order, all without ordering rates be collected subject to refund. By doing so, the PUCO fails to fulfill its duty to hear matters pending before it

¹⁴ See Tariff Sheet of Ohio Power Co., Purchase Power Agreement Rider, 1st Revised Sheet No. 473-1D, effective January 1, 2017.

¹⁵ See Tariff Sheet of Ohio Power Co., Purchase Power Agreement Rider, 1st Revised Sheet No. 473-1D, effective January 1, 2017 (0.0016624/kWh * 1,000kWh = \$1.66 per month or \$19.92 per year per residential customer using 1,000 kWh per month).

¹⁶ Id.

¹⁷ OCC Application for Rehearing, Case No. 13-2385-EL-SSO, et al., (December 5, 2016).

¹⁸ Fifth Entry on Rehearing at ¶ 14, Case No. 13-2385-EL-SSO, et al., (January 4, 2017).

without unreasonable delay and with due regard to the rights and interests of all litigants before it. The PUCO's Order permits it to evade a timely judicial review of its order and precludes parties from exercising their rights to appeal a PUCO order to the Ohio Supreme Court -- a right that is established under R.C. 4903.10, 4903.11 and 4903.13.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Fifth Entry on Rehearing as requested by OCC.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) still has the ability in this proceeding to protect 1.2 million Ohioans from paying massive unwarranted charges to AEP Ohio to subsidize its OVEC generation. The OVEC PPA will require all residential consumers to pay approximately \$191 million over the next eight years.¹⁹

In 1999, the Ohio General Assembly approved Senate Bill 3 (“S.B. 3”) that replaced cost-based regulation for generation with competitive markets. The fundamental premise behind S.B. 3 is that retail customers should not now be asked to protect Ohio electric utilities from competitive generation market risks or losses. After receiving a \$702 million regulatory transition charge funded by customers,²⁰ AEP Ohio has been wholly responsible for whether it is in a competitive position in the generation market. Under the law (R.C. 4928.38) there can be no more customer-funded generation

¹⁹ See Tariff Sheet of Ohio Power Co., Purchase Power Agreement Rider, 1st Revised Sheet No. 473-1D, effective January 1, 2017.

²⁰ See *In re: Columbus Southern Power Company and Ohio Power Company Electric Transition Plan Cases*, Case Nos. 99-1729-EL-ETP and 99-1730 EL-ETP, Opinion and Order (Sept. 8, 2000).

subsidies. Such subsidies undermine competitive markets. Instead, consumers should receive the benefits of historically low competitive market pricing as the Ohio General Assembly intended when it required the separation of generation and distribution facilities from Ohio utilities in 1999.

The OCC, on behalf of Ohio's residential energy consumers, submits this application for rehearing on the PUCO's Fifth Entry on Rehearing. Because the PUCO's decision violated Ohio law and the policy underlying the law, OCC seeks rehearing.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding on December 24, 2013, which was granted. OCC also filed testimony regarding the application and participated in the evidentiary hearing on the application.

R.C. 4903.10 requires that an application for rehearing must be, "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be

changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for abrogating some portions of the Order and modifying other portions is met here. The PUCO should grant and hold rehearing on the matters specified in this Application for Rehearing, and subsequently abrogate or modify its Fifth Entry on Rehearing of January 4, 2017. The PUCO’s ruling was unreasonable or unlawful in the following respects.

III. ERRORS

Assignment of Error 1: The PUCO erred in not granting and holding rehearing, and abrogating its Entry on the matters specified in OCC's December 5, 2016 Application for Rehearing.

The PUCO ruled that rehearing should be granted for further consideration of the matters specified in the applications for rehearing.²¹ The PUCO was wrong in doing so, particularly where it failed to protect customers (by not ordering rates collected subject to refund) while it delays issuing a decision.²² It should have granted OCC’s rehearing on the matters specified in its Application for Rehearing, and accordingly should have held a rehearing and abrogated its Entry to address OCC's claimed errors.

OCC requested rehearing contending that, among other things, the PUCO exceeded its authorized powers under the law when it approved AEP Ohio’s PPA Rider. Under R.C. 4928.143(B)(2), a utility’s ESP may only include those provisions listed in the statute. The Ohio Supreme Court (“Court”) has ruled that “[b]y its terms, R.C. 4928.143(B)(2) allows plans to include only ‘any of the following’ provisions. It does not

²¹ Fifth Entry on Rehearing at ¶14, Case No. 13-2385-EL-SSO, et al., (January 4, 2017).

²² PUCO Fourth Entry on Rehearing at 38, Case No. 13-2385-EL-SSO, et al., (November 3, 2016); PUCO Second Entry on Rehearing at 78, Case No. 14-1693-EL-RDR, et al., (November 3, 2016).

allow plans to include ‘any provision.’”²³ So if a provision does not fit specifically within the statute, it is not authorized. In addition, the Court has made it clear that “[i]t is axiomatic that the PUCO, as a creature of statute, may exercise only that jurisdiction conferred upon it by the General Assembly.”²⁴

In approving the PPA charge under R.C. 4928.143(B)(2)(d), the PUCO stated that there is nothing in “R.C. Chapter 4928 that *prohibits* AEP Ohio from providing a generation service to shopping customers as part of an ESP, as long as such service is consistent with the terms of R.C. 4928.143(B)(2)(d).”²⁵ It further stated that R.C. 4928.143(B)(2)(d) “does not *preclude authorization* of a [PPA] charge.”²⁶ That is, instead of finding a statute that permitted the PPA charge, the PUCO stated that no statute prohibited the charge. This is improper. The PUCO must have explicit authority to permit the charge.

The PUCO has exceeded its authorized powers. The PUCO, as an agency created by statute, must specify a statute that permits it to add the PPA charge on customers’ bills, not simply state that nothing prevents it. The error is clear. The PUCO should have granted rehearing and abrogated its Entry to cure the errors of which OCC complained.

²³ *In Re Application of Columbus Southern Power Co.* (2011), 128 Ohio St.3d 512, 947 N.E.2d 655 at 664.

²⁴ *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835, citing *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 O.O.3d 478, 414 N.E.2d 1051; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 O.O.3d 410, 429 N.E.2d 444; *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 153, 21 O.O.3d 96, 423 N.E.2d 820; *Werlin Corp. v. Pub. Util. Comm.* (1978), 53 Ohio St.2d 76, 7 O.O.3d 152, 372 N.E.2d 592; *Ohio Pub. Interest Action Group, Inc. v. Pub. Util. Comm.* (1975), 43 Ohio St.2d 175, 72 O.O.2d 98, 331 N.E.2d 730.

²⁵ Fourth Entry on Rehearing at 23, Case No. 13-2385-EL-SSO, et al., (emphasis added).

²⁶ *Id.* (emphasis added).

Assignment of Error 2: The PUCO erred by granting rehearing to allow itself more time to issue a final appealable order. By doing so, the PUCO fails to fulfill its duty to hear matters pending before it without unreasonable delay and with due regard to the rights and interests of all litigants before it. The PUCO's Order permits it to evade a timely review and reconsideration of its order by the Ohio Supreme Court and precludes parties from exercising their rights to appeal a PUCO order to the Ohio Supreme Court -- a right that is established under R.C. 4903.10 and 4903.11 and 4903.13.

The Court has held that, "[i]t is the duty of the commission to hear matters pending before the commission without unreasonable delay and with due regard to the rights and interests of all litigants before that tribunal."²⁷ This duty is described, with defined parameters, under R.C. 4903.10.

Under R.C. 4903.10, the General Assembly established a 30-day process for the PUCO to either grant or deny rehearing. Under the statute, if the PUCO does not grant or deny the applications within 30 days, the applications are denied by operation of law. This provision is to ensure that the PUCO resolved applications in timely manner--30 days under the statute. The statute is designed to enforce the axiom that "justice delayed is justice denied."²⁸

The timely resolution of applications for rehearing (within 30 days) is important because an order of the PUCO cannot be appealed as a "final order" until the PUCO has substantively ruled on all rehearing applications or the rehearing has been denied by operation of law.²⁹ Yet while the Fifth Entry on Rehearing is not a final appealable order,

²⁷ *State ex rel. Columbus Gas & Fuel Col. v. Pub. Util. Comm.* (1930), 122 Ohio St. 473, 475.

²⁸ See, e.g., *Moeller v. Moeller* (C.A. 9th Dist.), 1993 Ohio App. LEXIS 50 (finding that a similar statute, R.C. 2701.02, setting forth the time limit in which courts must render decisions on certain matters, was designed to enforce the axiom that "justice delayed is justice denied."

²⁹ See R.C. 4903.11.

customers are being charged rates that are being challenged on rehearing.³⁰ That means AEP Ohio can charge residential customers rates that include a \$191 million PPA Rider charge, regardless of the fact that OCC is challenging that charge before the PUCO. This happens because under Ohio law the PUCO has authority to implement its Order, regardless of challenges made through the rehearing process. The law (R.C. 4903.10) makes clear that the filing of an application for rehearing does not excuse compliance with the order or operate to stay or postpone enforcement of the order.

The PUCO, however, has routinely been side-stepping the 30-day review by instead employing a process under which rehearing has been extended by months, and in some cases, even years.³¹ And while the Court has ruled that the PUCO may grant applications for rehearing for the limited purpose of allowing additional time to consider them,³² the Court's ruling is being unreasonably applied in a manner that disrupts timely

³⁰ There are few exceptions to this. The exceptions provide that through a special order of the PUCO, the filing of an application may stay the order. Also if parties file an application prior to the effective date of the order the order is stayed, "unless otherwise ordered by the commission."

³¹ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (Sixth Entry on Rehearing) (December 7, 2016) (granting rehearing allowing PUCO more time to consider OCC/NOAC and others' application for rehearing); *In the Matter of the Application of Ohio Power Company*, Case No. 13-2385, Third Entry on Rehearing (July 27, 2015) (granting rehearing allowing PUCO more time to consider OCC and others' application for rehearing). A substantive Entry on Rehearing was finally issued on November 3, 2016, more than a year later. *In re: Duke Energy Ohio*, Case No. 14-841-EL-SSO, Entry on Rehearing (May 28, 2015) (granting rehearing allowing PUCO more time to consider OCC and others' application for rehearing). No substantive Entry on Rehearing has been issued. *In the Matter of the Application of The Dayton Power and Light Company for Authority to Issue and Sell and Amount Not to Exceed \$490 Million of First Mortgage Bonds, Debentures, Notes, or Other Evidences of Indebtedness or Unsecured Note*, Case No. 13-0893-EL-AIS, Entry on rehearing (Sept. 4, 2013) (Granting application for rehearing filed by OCC for the limited purpose of further consideration) No final entry. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013-2015*, Case Nos. 12-2190-EL-POR, 12-2191-EL-POR, and 12-2192-EL-POR, Entry on rehearing (Jan. 14, 2015) (Granting the application for rehearing by FirstEnergy, OCC, OMAEG, and Environmental Groups be granted for further consideration) No final entry. *In the Matter of the Application of Ohio Power Company to Adopt a Final Implementation Plan for the Retail Stability Rider*, Case No. 14-1186-EL-RDR, Entry on Rehearing (May 28, 2015) (Granting application for rehearing by The Kroger Company and Joint Applicants, including OCC, for further consideration) No Final Entry.

³² See, *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, (2004), 102 Ohio St.3d 301, 304.

judicial review of PUCO rulings, prejudicing would-be appellants. The PUCO can thwart (and evade) judicial review by granting itself more time to consider the applications and issuing a final order months or years down the road, while at the same time uneconomic and unwarranted subsidies are being collected from Ohioans.³³ Compounding the harm to customers is the PUCO's failure to order the charges to customers collected subject to refund.

Delaying judicial review matters to Ohioans because of Court precedent³⁴ that generally precludes refunds to customers for rates already charged. Each day that the PUCO delays issuing a final order, is a day that PPA Rider rates are charged to customers without an opportunity to stop these unnecessary charges and without a likely recourse to a refund for customers.

The delay in ruling upon OCC's application for rehearing harms customers because customers must pay increased rates that are not paid subject to refund or not stayed. OCC requested that any funds charged under the PPA Rider be done subject to refund in the event that the rider is later struck down.³⁵ The PUCO denied OCC's request for rehearing on this issue.³⁶ This is prejudicial, and manifestly unjust.³⁷ The delay in a substantive ruling on OCC's latest application for rehearing forecloses OCC from seeking

³³ A factor that contributes to harm to customers is that the PUCO as a matter of course denies requests to stay rates or collect rates subject to refund. A ruling granting a stay of rates, or collecting rates subject to refund would potentially limit the harm to customers that is occurring when the PUCO delays issuing a final order. Typically, the PUCO has not ordered such relief.

³⁴ *Keco Industries v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 3d 254, 257, 141 N.E.2d 445 (1957).

³⁵ OCC Application for Rehearing at 41-42, Case No. 13-2385-EL-SSO, et al., (March 27, 2015); OCC Application for Rehearing at 33-35, Case No. 14-1693-EL-RDR, et al., (May 2, 2016).

³⁶ PUCO Fourth Entry on Rehearing at 38, Case No. 13-2385-EL-SSO, et al., (November 3, 2016); PUCO Second Entry on Rehearing at 78, Case No. 14-1693-EL-RDR, et al., (November 3, 2016).

³⁷ See, e.g., *Knox v. Knox*, (C.A. 5th Dist), 26 Ohio App. 3d 236, where the appellate court held that the trial court's delay in rendering a judgment was an abuse of discretion considering that the delay foreclosed the relief that appellant otherwise would have been afforded.

relief from the Ohio Supreme Court, including relief (non-payment of disputed rates) by staying the charge of rates. While OCC may pursue extraordinary relief ³⁸ from the Court, even without a ruling on rehearing, that relief is generally beyond OCC's grasp. This is because it is likely that, based on past experience,³⁹ the Court will deny such relief on the theory that OCC has a so-called "adequate remedy at law": an appeal from the eventual PUCO final order.

Rehearing should be granted (or denied), substantively addressing OCC's latest application for rehearing. A final appealable order should be issued. Granting more time to consider issues raised on rehearing unreasonably delays the issuance of a final order all the while customers are paying higher unnecessary charges. Under the PUCO's practice, there is no denial of the application for rehearing, either by law or by entry. Thus, there is no final order. This makes it impossible for parties to exercise their rights under R.C. 4903.11 and 4903.13 to appeal PUCO decisions to the Court. And because the PUCO has not ordered a stay of the rates, and denied OCC's request that rates be collected subject to refund, its dilatory rulings unduly delay any relief customers can seek, resulting in immediate and material harm to customers.⁴⁰

³⁸ Through a writ of procedendo or prohibition.

³⁹ See, e.g., *State of Ohio ex rel. OCC et al. v. Alan R. Schriber et al.*, Case No. 2009-0710, Entry (June 17, 2009) (denying the writ of prohibition because the issues raised in the complaint could be resolved on appeal).

⁴⁰ PUCO Fourth Entry on Rehearing at 38, Case No. 13-2385-EL-SSO, et al., (November 3, 2016); PUCO Second Entry on Rehearing at 78, Case No. 14-1693-EL-RDR, et al., (November 3, 2016).

An OCC application for rehearing, very similar to this one, was recently denied by the PUCO in FirstEnergy's⁴¹ ESP proceeding.⁴² The PUCO denied OCC's application for rehearing for two main reasons, both of which are not applicable to this proceeding. First, the PUCO stated that the sheer complexity of the proceedings and voluminosity of record evidence is a "quintessential example" of the reason why the PUCO has authority to grant rehearing for the limited purpose of further consideration.⁴³ For example, the PUCO notes that there are eleven applications for rehearing to consider on a record that spanned 51 days of hearing. The PUCO states that granting rehearing without thorough review of the arguments raised in the applications for rehearing would be irresponsible and of no value to any of the parties to the proceeding.⁴⁴

Such rationale lacks merit and applicability to the present case. OCC's chief concern here is not with the pace at which the PUCO issues its orders. Indeed, the OCC fully supports the PUCO's efforts to issue just and reasonable decisions. However, when requests to have charges stayed or implemented subject to refund are denied, coupled with the inability to appeal the issue or compel refunds for rates already charged, then the PUCO's lengthy decision-making process produces an unjust and unreasonable situation. If the PUCO wishes to grant itself more time to consider the issues, then it should likewise grant more time before the rates from those issues can be charged to Ohio

⁴¹ "FirstEnergy" consists of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

⁴² See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, PUCO Seventh Entry on Rehearing (February 1, 2017) (While the OCC does not agree with the PUCO's decision in the Seventh Entry on Rehearing, the current application for rehearing should not be misconstrued as a collateral attack on the PUCO's Seventh Entry on Rehearing).

⁴³ PUCO Seventh Entry on Rehearing at 5, Case No. 14-1297-EL-SSO (Feb. 1, 2017).

⁴⁴ PUCO Seventh Entry on Rehearing at 5, Case No. 14-1297-EL-SSO (Feb. 1, 2017).

consumers. Otherwise consumers are being subject to immediate and irreparable material harm.

In addition, the PUCO's rationale that it needs more time to review the eleven applications for rehearing on a record spanning 51 days of hearing is not applicable here. Here, only two applications for rehearing were filed on the November 3, 2016 Fourth Entry on Rehearing. And, those two applications for rehearing contained a total of just five assignments of error between them. In addition, naturally, the issues in each successive application for rehearing become smaller in number and more focused in content. Here, the PUCO did not have to wade through a dozen applications for rehearing containing a multitude of broad and technical arguments. The issues were few, clear, and concise.

The PUCO's second reason for denying OCC's application for rehearing in the FirstEnergy ESP proceeding was that no party was prejudiced by the granting of rehearing because the charges OCC complained of did not take effect until January 1, 2017.⁴⁵ The same is not true in this proceeding.⁴⁶ Here, the PUCO issued its Fifth Entry on rehearing on January 4, 2017. The PPA Rider charges took effect January 1, 2017. Therefore, residential consumers, who are being charged under the nonbypassable PPA Rider, were being prejudiced when the Fifth Entry on Rehearing was issued and are being prejudiced now.

The PUCO should not be able to evade judicial review of its decisions by failing to issue a timely final appealable order. Rehearing should be granted, with the PUCO issuing substantive findings on OCC's claimed errors, so that a final appealable order is

⁴⁵ PUCO Seventh Entry on Rehearing at 5, Case No. 14-1297-EL-SSO (Feb. 1, 2017).

⁴⁶ OCC is not conceding that the same is true in Case No. 14-1297-EL-SSO.

issued. This will allow parties to exercise their statutory rights to appeal the PUCO's decisions.

IV. CONCLUSION

To protect customers from unnecessary charges, the PUCO should grant rehearing and abrogate or modify its Fifth Entry on Rehearing. This would ensure that parties, including OCC, can exercise their statutory right to appeal the PUCO decisions in a timely manner. Such action will help to protect the interests of the residential customers that OCC represents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Fourth Application for Rehearing was electronically served via electric transmission on the persons stated below this 3rd day of February 2017.

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Summary: App for Rehearing Fourth Application for Rehearing by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Moore, Kevin F. Mr.