

**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 PURCHASE  
AGREEMENT FOR INCLUSION IN THE  
POWER PURCHASE AGREEMENT RIDER.**

**CASE NO. 14-1693-EL-RDR**

**IN THE MATTER OF THE APPLICATION  
OF OHIO POWER COMPANY FOR  
APPROVAL OF CERTAIN ACCOUNTING  
AUTHORITY.**

**CASE NO. 14-1694-EL-AAM**

**FOURTH ENTRY ON REHEARING**

Entered in the Journal on February 8, 2017

**I. SUMMARY**

{¶ 1} The Commission denies the application for rehearing filed by the Ohio Consumers' Counsel on January 20, 2017.

**II. DISCUSSION**

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31,

2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016). Among other matters, the Commission concluded that AEP Ohio's proposed power purchase agreement (PPA) rider, which would flow through to customers the net impact of the Company's contractual entitlement associated with the Ohio Valley Electric Corporation (OVEC), satisfies the requirements of R.C. 4928.143(B)(2)(d) and, therefore, is a permissible provision of an ESP. The Commission stated, however, that it was not persuaded, based on the evidence of record, that AEP Ohio's PPA rider proposal would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that is commensurate with the rider's potential cost. Noting that a properly conceived PPA rider proposal may provide significant customer benefits, the Commission authorized AEP Ohio to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP, with the Company being required to justify any future request for cost recovery. Finally, the Commission determined that all of the implementation details with respect to the placeholder PPA rider would be determined in a future proceeding, following the filing of a proposal by AEP Ohio that addresses a number of specific factors, which the Commission will consider, but not be bound by, in its evaluation of the Company's filing. In addition, the Commission indicated that AEP Ohio's PPA rider proposal must address several other issues specified by the Commission. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 5} On October 3, 2014, in the above-captioned proceedings, AEP Ohio filed an application seeking approval of a proposal to enter into a new affiliate PPA with AEP Generation Resources, Inc. (AEPGR).

{¶ 6} Following the issuance of the Commission's Opinion and Order in the *ESP 3 Case*, AEP Ohio filed, on May 15, 2015, an amended application and supporting testimony, again seeking approval of a new affiliate PPA with AEPGR and also

requesting authority to include the net impacts of both the affiliate PPA and the Company's OVEC contractual entitlement in the placeholder PPA rider approved in the *ESP 3 Case*.

{¶ 7} An evidentiary hearing in these proceedings commenced on September 28, 2015, and concluded on November 3, 2015.

{¶ 8} On December 14, 2015, AEP Ohio filed a joint stipulation and recommendation (stipulation) for the Commission's consideration.

{¶ 9} The evidentiary hearing on the stipulation commenced on January 4, 2016, and concluded on January 8, 2016.

{¶ 10} On March 31, 2016, the Commission issued an Opinion and Order that approved the stipulation with modifications.

{¶ 11} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 12} On May 25, 2016, the Commission issued an Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the March 31, 2016 Opinion and Order.

{¶ 13} By Second Entry on Rehearing dated November 3, 2016, the Commission granted, in part, and denied, in part, the applications for rehearing filed with respect to the March 31, 2016 Opinion and Order.

{¶ 14} On December 5, 2016, applications for rehearing of the November 3, 2016 Second Entry on Rehearing were filed by the Ohio Consumers' Counsel (OCC); Ohio

Manufacturers' Association Energy Group (OMAEG); Environmental Law & Policy Center (ELPC); PJM Power Providers Group (P3) and Electric Power Supply Association (EPSA) (jointly, P3/EPSA); and Buckeye Power, Inc. (Buckeye). AEP Ohio, Buckeye, Sierra Club, and Industrial Energy Users-Ohio filed memoranda contra the various applications for rehearing on December 15, 2016.

{¶ 15} On January 4, 2017, the Commission issued a Third Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the Second Entry on Rehearing.

{¶ 16} On January 20, 2017, OCC filed an application for rehearing of the January 4, 2017 Third Entry on Rehearing. AEP Ohio filed a memorandum contra OCC's application for rehearing on January 30, 2017.

{¶ 17} In its first ground for rehearing, OCC argues that the Commission erred by not granting rehearing and abrogating its Second Entry on Rehearing on the matters specified in the application for rehearing filed by OCC on December 5, 2016. OCC notes that, in its December 5, 2016 application for rehearing, it contends that the Commission violated R.C. 4928.38 and 4928.39, in permitting AEP Ohio to collect transition revenue or its equivalent through the OVEC-only PPA rider approved in the Second Entry on Rehearing. OCC asserts that the OVEC-only PPA rider is designed to guarantee AEP Ohio the revenue that the OVEC plants cannot recover on their own in the competitive market, which, according to OCC, constitutes unlawful transition revenue. *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-1608, ¶ 25. OCC also states that it explains, in its December 5, 2016 application for rehearing, that the OVEC contract can be the basis for transition or equivalent revenue, contrary to the Commission's finding in the Second Entry on Rehearing.

{¶ 18} In its memorandum contra, AEP Ohio argues that parties are prohibited from seeking rehearing on issues on which the Commission has already ruled in prior

entries on rehearing. *In re Ohio Power Co.*, Case No. 96-999-EL-AEC, et al., Second Entry on Rehearing (Sept. 13, 2006) at 3-4. AEP Ohio contends that OCC's arguments regarding R.C. 4928.38 were raised by OCC in its first application for rehearing and rejected by the Commission. AEP Ohio asserts that OCC's filing of unnecessary applications for rehearing that primarily repeat arguments that have already been rejected is inefficient, counterproductive, and contrary to OCC's request for a timely resolution of these proceedings.

{¶ 19} In its second ground for rehearing, OCC contends that the Commission erred by granting rehearing to allow itself more time to issue a final appealable order and that, in doing so, the Commission failed 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. *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122 Ohio St. 473, 475, 172 N.E. 284 (1930). OCC notes that, under R.C. 4903.10, the General Assembly established a 30-day process for the Commission to either grant or deny rehearing. OCC contends that the timely resolution of applications for rehearing within the 30-day period is important, because customers are being charged disputed rates without the likelihood of a refund and the parties cannot pursue an appeal until the Commission has issued a final order. Although OCC acknowledges that the Ohio Supreme Court has found that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider the applications, OCC asserts that the Commission has unreasonably extended the rehearing process in recent proceedings, in a manner that is counter to the Court's precedent. *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146, ¶ 19. According to OCC, the Third Entry on Rehearing issued in the present cases enabled the Commission to evade a timely judicial review of its orders and precluded the parties from exercising their right to appeal the Commission's orders to the Ohio Supreme Court, as established under R.C. 4903.10, 4903.11, and 4903.13.

{¶ 20} AEP Ohio replies that OCC acknowledges that the Ohio Supreme Court has found that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider them. *Consumers' Counsel* at ¶ 19. With respect to OCC's argument that the Commission has unreasonably applied the Court's precedent, AEP Ohio responds that the argument is not supported by the facts. Noting that briefing on OCC's second application for rehearing was completed less than six weeks ago, AEP Ohio asserts that there has been no unreasonable delay in these proceedings. According to AEP Ohio, OCC has itself delayed the resolution of these cases by filing the third application for rehearing.

{¶ 21} In the Third Entry on Rehearing, the Commission found that sufficient reason had been set forth by OCC, OMAEG, ELPC, P3/EPSC, and Buckeye to warrant further consideration of the matters specified in their applications for rehearing. Accordingly, the Commission granted rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing. Third Entry on Rehearing at 4. Upon review of OCC's January 20, 2017 application for rehearing, the Commission finds no merit in OCC's first ground for rehearing. The Commission is not precluded from granting rehearing for the limited purpose of allowing additional time to consider an application for rehearing, as OCC acknowledges. *Consumers' Counsel* at ¶ 19. With respect to its argument that the Commission authorized AEP Ohio to collect transition or equivalent revenue through the OVEC-only PPA rider, OCC admits that the argument was already raised in OCC's December 5, 2016 application for rehearing, which the Commission has granted for further consideration of the matters specified in the application. We will, therefore, consider OCC's argument regarding transition revenue during the course of our review of all of the arguments in the applications for rehearing filed by OCC and the other parties on December 5, 2016, as well as the memoranda filed in opposition.

{¶ 22} We likewise find no merit in OCC's second ground for rehearing. As noted above, consistent with longstanding Ohio Supreme Court precedent, the Commission may grant rehearing for the limited purpose of further consideration of the matters specified in an application for rehearing. *Consumers' Counsel* at ¶ 19. Additionally, the Commission does not agree with OCC's contention that we have not fulfilled our duty to hear the issues in these complex proceedings without delay and with due regard to the rights and interests of OCC and the other parties. Following approximately five weeks of evidentiary hearings, the Commission has reviewed thousands of pages of testimony, exhibits, briefs, and applications for rehearing and issued lengthy orders addressing numerous arguments, and has done so expeditiously and with careful consideration of all of the parties' positions. We, therefore, find no basis for OCC's claim that the Commission has precluded the parties from exercising their appellate rights. We also find no basis for OCC's assertion that collection of the OVEC-only PPA rider has resulted in material harm for customers. AEP Ohio's collection of OVEC costs only began with the first billing cycle of January 2017. Further, the stipulation in these cases, as approved and modified by the Commission, includes many other provisions addressing grid modernization, renewable energy resources, and retail competition that will be implemented for the benefit of consumers, while the OVEC-only PPA rider is projected to provide ratepayers with a net credit of approximately \$110 million over the period of October 31, 2015, through December 31, 2024, or approximately \$11 million over the current ESP term. Second Entry on Rehearing at 29, 31. For these reasons, the Commission finds that the application for rehearing filed by OCC on January 20, 2017, should be denied in its entirety.

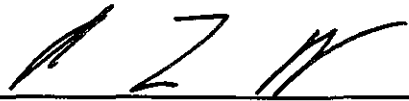
### III. ORDER

{¶ 23} It is, therefore,

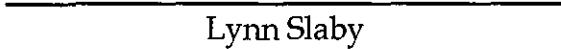
{¶ 24} ORDERED, That the application for rehearing filed by OCC on January 20, 2017, be denied. It is, further,

{¶ 25} ORDERED, That a copy of this Fourth Entry on Rehearing be served upon all parties of record.

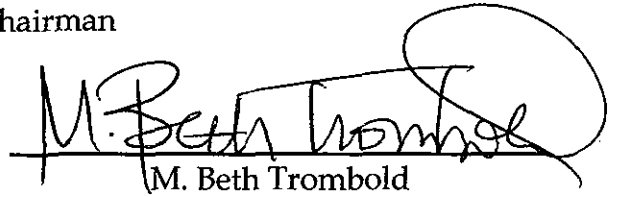
THE PUBLIC UTILITIES COMMISSION OF OHIO



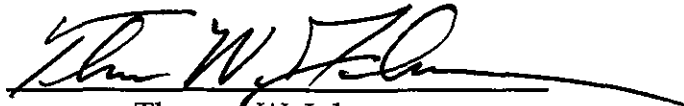
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

SJP/sc

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Barcy F. McNeal  
Secretary