

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 R.C. 4928.143, 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

SEVENTH ENTRY ON REHEARING

Entered in the Journal on April 5, 2017

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing of the Fourth Entry on Rehearing.

II. PROCEDURAL BACKGROUND

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or 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} On December 20, 2013, AEP Ohio filed, pursuant to R.C. 4928.143, an application for an ESP for the period June 1, 2015, through May 31, 2018.

{¶ 5} On February 25, 2015, the Commission issued its Opinion and Order (ESP 3 Order), approving AEP Ohio's proposed ESP, with certain modifications, including the adoption of the power purchase agreement (PPA) rider as a placeholder rider at a rate of zero.

{¶ 6} 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.

{¶ 7} Numerous parties to these proceedings filed an application for rehearing of the ESP 3 Order, to which several memoranda contra were filed.

{¶ 8} On April 22, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the ESP 3 Order.

{¶ 9} On May 28, 2015, the Commission granted, in part, and denied, in part, the applications for rehearing filed with respect to the ESP 3 Order. The Commission, however, deferred ruling on the assignments of error related to AEP Ohio's PPA rider.

{¶ 10} On June 29, 2015, Ohio Consumers' Counsel (OCC), Ohio Manufacturers' Association Energy Group (OMAEG), and AEP Ohio filed applications for rehearing of the Second Entry on Rehearing. Memoranda contra the various applications for rehearing were filed by Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy), Retail Energy Supply Association (RESA), Industrial Energy Users-Ohio (IEU-Ohio), Environmental Law and Policy Center (ELPC), OCC, OMAEG, and AEP Ohio on July 9, 2015.

{¶ 11} By Third Entry on Rehearing dated July 22, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the Second Entry on Rehearing.

{¶ 12} By Fourth Entry on Rehearing issued November 3, 2016, the Commission granted, in part, and denied, in part, the applications for rehearing of the Second Entry on Rehearing, including the matters raised regarding the PPA rider.

{¶ 13} On December 5, 2016, OCC and OMAEG filed applications for rehearing of the Fourth Entry on Rehearing. On December 15, 2016, AEP Ohio filed a memorandum contra the applications for rehearing.

{¶ 14} By Fifth Entry on Rehearing dated January 4, 2017, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the Fourth Entry on Rehearing.

{¶ 15} On February 23, 2017, the Commission issued a Sixth Entry on Rehearing, denying an application for rehearing of the Fifth Entry on Rehearing filed by OCC on February 3, 2017.

{¶ 16} In their respective applications for rehearing of the Fourth Entry on Rehearing, OCC asserts four assignments of error and OMAEG asserts one assignment of error.

III. DISCUSSION

A. *PPA Rider*

{¶ 17} In its first assignment of error, OCC argues the Commission lacks the authority to approve a PPA rider under R.C. 4928.143(B)(2), as the Court determined that R.C. 4928.143(B)(2) allows ESPs to include only those provisions specifically expressed within the statute. *In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, 664. OCC claims the Commission was unable to find a statute that permits AEP Ohio to implement the PPA rider. Instead, OCC posits the Fourth Entry on Rehearing asserts that the statute does not prohibit the PPA rider. OCC argues, as a creature of statute, the Commission may exercise only that jurisdiction

conferred it by the General Assembly. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 620 N.E.2d 835, 838 (1993), citing *Dayton Communications Corp. v. Pub. Util. Comm.*, 64 Ohio St.2d 302, 414 N.E.2d 1051 (1980); *Pike Natural Gas Co. v. Pub. Util. Comm.*, 68 Ohio St.2d 181, 429 N.E.2d 444 (1981); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 423 N.E.2d 820 (1981); *Werlin Corp. v. Pub. Util. Comm.*, 53 Ohio St.2d 76, 372 N.E.2d 592 (1978); *Ohio Pub. Interest Action Group, Inc. v. Pub. Util. Comm.*, 43 Ohio St.2d 175, 331 N.E.2d 730 (1975). Accordingly, OCC reasons the Commission does not have the explicit authority required to institute the PPA rider and failed to state the specific authority relied on to adopt the PPA rider.

{¶ 18} AEP Ohio retorts that the Commission has exhaustively addressed and supported its determination that R.C. 4928.143(B)(2)(d) authorizes the approval of the PPA rider. ESP 3 Order at 19-23. The Company notes that OCC previously recognized the Commission's expressed determination that R.C. 4928.143(B)(2)(d) permits the adoption of the PPA rider in its March 27, 2015 application for rehearing. AEP Ohio notes that, in response to the arguments of OCC and other intervenors, the Commission again cited R.C. 4928.143(B)(2)(d) as the authority for approval of the PPA mechanism. Fourth Entry on Rehearing at ¶ 48. The Company notes that OCC's focus is on a single paragraph of the Fourth Entry on Rehearing where the Commission responded to an assertion that the General Assembly precluded the Commission's authorization of a non-bypassable generation-related rider under R.C. 4928.143(B)(2)(d). AEP Ohio reasons OCC's arguments in this assignment of error are based on a selective and distorted misreading of the Fourth Entry on Rehearing.

{¶ 19} Further, AEP Ohio recalls the Commission found that R.C. 4928.143(B)(2)(d) authorizes electric utilities to include in an ESP terms related to the bypassability of charges to the extent that such charges have the effect of stabilizing or providing certainty regarding retail electric service. AEP Ohio submits that, by definition, retail electric service includes generation service. R.C. 4928.01(A)(27); see

Indus. Energy Users-Ohio v. Pub. Util. Comm., 138 Ohio St.3d 448, 456, 2014-Ohio-462, 8 N.E.3d 863, ¶ 32. Accordingly, AEP Ohio reasons R.C. 4928.143(B)(2)(d) affirmatively authorizes non-bypassable generation-related charges that otherwise satisfy the requirements of the statute and any further debate on this point is foreclosed by the Ohio Supreme Court's approval of another non-bypassable generation-related charge, the retail stability rider (RSR). *In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 43.

{¶ 20} The Commission finds that OCC ignores the Commission's statutory analysis of the PPA mechanism included in the ESP 3 Order, as referenced and reiterated in the Fourth Entry on Rehearing. ESP 3 Order at 20-22; Fourth Entry on Rehearing at ¶¶ 48-50. In light of the claims raised by opposing intervenors, including OCC, that R.C. 4928.143(B)(2)(d) does not permit the Commission to authorize a non-bypassable generation-related rider, the Commission also considered whether any provision of the ESP statute or any other provision within R.C. Chapter 4928 prohibits or precludes the approval of the PPA rider mechanism. Fourth Entry on Rehearing at ¶ 50. In total, the Commission finds that we have thoroughly considered the evidence of record, consistent with R.C. 4928.143(C)(1), and the arguments raised by opposing intervenors and set forth the statutory basis for approval of the PPA mechanism. OCC's claim that the Commission only considered whether any statute prohibits the PPA mechanism is without merit. Further, OCC did not present any new arguments not already considered by the Commission and, therefore, we deny the request for rehearing on this issue. ESP 3 Order at 12-27; Fourth Entry on Rehearing at ¶¶ 32-50.

{¶ 21} In its second assignment of error, OCC argues AEP Ohio failed to comply with the filing requirements set forth in Ohio Adm.Code 4901:1-35-03(C)(9)(c)(i), which requires AEP Ohio to include in its ESP application a descriptive rationale, and other information, for any component of the ESP that would have the effect of limiting customer shopping. OCC notes that, in the Fourth Entry on Rehearing, the Commission

recognized that AEP Ohio failed to comply with the rule; however, the Commission declared AEP Ohio was not required to comply with the rule, as AEP Ohio did not propose the PPA rider, at the time its ESP application was filed, as a limitation on customer shopping for retail generation service. Fourth Entry on Rehearing at ¶ 49. OCC submits that statutory requirements and rules, absent a waiver, are not optional provisions. OCC notes that AEP Ohio did not request, nor was a waiver of Ohio Adm.Code 4901:1-35-03(C)(9)(c)(i) granted. The opposing intervenor argues the Commission cannot rely, as it did, on the testimony of intervening parties to remedy the Company's application. According to OCC, AEP Ohio's application did not include the mandatory filing requirements and, therefore, the Commission should grant rehearing on this assignment of error.

{¶ 22} In response, AEP Ohio declares this is the same argument advanced by OMAEG in its application for rehearing filed March 27, 2015, which the Commission considered and rejected. Fourth Entry on Rehearing at ¶¶ 37, 49. The Company declares that OCC fails to raise any new arguments in its application for rehearing and, for this reason alone, the Commission should deny rehearing. Further, AEP Ohio reiterates that, because the Company did not propose the PPA rider at the time of filing its application as a limitation on shopping for retail electric generation service, Ohio Adm.Code 4901:1-35-03(C)(9)(c)(i) was not applicable. According to AEP Ohio, the filing requirements set forth in the rule apply, or do not apply, based on the facts that exist at the time the application is filed and cannot be retroactively resurrected and applied to new facts or circumstances that develop only after the application has been filed. Further, AEP Ohio asserts, as explained when this argument was first raised, Ohio Adm.Code 4901:1-35-03(C)(9)(c)(i) is inapplicable, as it contemplates only components of an ESP that are designed to affect the level of customer shopping. According to AEP Ohio, Ohio Adm.Code 4901:1-35-03(C)(9)(c) requires a "listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric service." As interpreted by AEP Ohio, using the standard

principles of construction, "limitation" describes an action that would have the effect of either decreasing or increasing the level of customer shopping. The Company declares the PPA rider has no such effect and notes the Commission concluded, and the record evidence supports, that the PPA rider constitutes "a financial limitation on shopping that would help to stabilize rates" without "physical restraints on shopping." Fourth Entry on Rehearing at ¶ 49, citing Tr. XI at 2539, 2559. Finally, if the Commission elects to grant OCC's request for rehearing on this issue, AEP Ohio recommends the Commission address default service as an alternative statutory authority, as argued by AEP Ohio in its initial brief and April 6, 2015 memorandum contra. The Company notes that the Commission expressly relied on the default service component of R.C. 4928.143(B)(2)(d) in approving the RSR in Case No. 11-346-EL-SSO, et al. *In re AEP Ohio*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Entry on Rehearing (Jan. 30, 2013) at 15-16.

{¶ 23} The Commission notes that OCC's second assignment of error was previously presented by another intervenor, thoroughly considered, and ultimately rejected by the Commission. Fourth Entry on Rehearing at ¶¶ 36-37, 49. OCC presents no new arguments for the Commission's consideration. Accordingly, we deny OCC's request for rehearing of this issue.

{¶ 24} In its third assignment of error, OCC continues to argue the Commission lacked the authority to consider the assignments of error regarding the PPA rider separately from the other issues raised on rehearing of the ESP 3 Order. OCC acknowledges that the Commission addressed each of the issues raised regarding the separate consideration of the PPA rider, along with the other issues in the Fourth Entry on Rehearing. Fourth Entry on Rehearing at ¶¶ 87-94. However, OCC reasons the Commission's authority is limited as expressly stated by statute. Therefore, OCC contends it is not enough that R.C. 4903.10 does not prevent the Commission from deferring its decision on an issue raised in an application for rehearing. OCC avers nothing in R.C. 4903.10, or any other statute, permits the Commission to bifurcate

consideration of the parties' applications for rehearing. Accordingly, OCC asserts the Commission's deferred consideration of the issues raised regarding the PPA mechanism was unjust and unreasonable and rehearing should be granted.

{¶ 25} In its memorandum contra, AEP Ohio notes that OCC and numerous other parties to these proceedings argued assignments of error related to the Commission's approval of the PPA rider. In addition, upon the Commission's decision to defer ruling on the assignments of error regarding the PPA rider in the Second Entry on Rehearing, OCC, OMAEG, and AEP Ohio filed applications for rehearing on this issue. AEP Ohio explains that, in the Fourth Entry on Rehearing, the Commission addressed the merits of all the assignments of error raised regarding the PPA rider, including its decision to defer ruling on the assignments of error raised regarding the PPA rider. The Company notes that OCC argued in its June 29, 2015 application for rehearing that the Commission's decision to defer ruling on the PPA-related assignments of error was unlawful and unreasonable. AEP Ohio submits that OCC raises no new arguments in its current request for rehearing and, therefore, it should be summarily denied. Further, AEP Ohio reasons that rehearing on this matter should be denied as moot. In the alternative, AEP Ohio argues OCC's interpretation of the Commission's authority is overly narrow, because, from the perspective of OCC, the Commission can never act unless the exact action is affirmatively authorized by statute in minute detail. AEP Ohio asserts OCC's perspective is at odds with the established principle that, where the statute does not prescribe in detail how the Commission is to carry out its duty, "the commission [has] the discretion to find its way." *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 51, 2011-Ohio-2383, 950 N.E.2d 164, ¶ 27. AEP Ohio avers the Commission's discretion includes the "inherent power to manage the orderly flow of its business." *Senior Citizens Coalition v. Pub. Util. Comm.*, 69 Ohio St.2d 625, 627, 433 N.E.2d 583 (1982).

{¶ 26} As previously noted, by Second Entry on Rehearing dated May 28, 2015, the Commission granted, in part, and denied, in part, the applications for rehearing filed

with respect to the ESP 3 Order. However, the Commission deferred ruling on the assignments of error related to AEP Ohio's PPA rider, which was approved as a placeholder rider in the ESP 3 Order. On June 29, 2015, OCC, OMAEG, and AEP Ohio filed applications for rehearing of the Commission's Second Entry on Rehearing, including arguments opposing the Commission's decision to delay consideration of the assignments of error raised on rehearing regarding the PPA mechanism. Each of the claims regarding the Commission's decision to delay ruling on the PPA-related issues was addressed in the Fourth Entry on Rehearing, to the extent the argument was not otherwise addressed. Fourth Entry on Rehearing at ¶¶ 87-94. The Commission thoroughly considered and rejected the assignments of error regarding the bifurcation of the decision on the PPA mechanism, as OCC admits. In this current application for rehearing, OCC does not present any new arguments for the Commission's consideration that were not previously presented and rejected. Further, OCC has failed to demonstrate any prejudice caused by the bifurcation of the decision on the PPA mechanism. For this reason, we deny the request for rehearing of this issue.

{¶ 27} In its fourth assignment of error, OCC submits the Commission unreasonably and unlawfully concluded AEP Ohio is not required to comply with the corporate separation requirements in R.C. 4928.17. According to OCC, the Commission misinterprets R.C. 4928.17, as a plain reading of the statute requires the Commission to identify language in R.C. 4928.143 or 4928.142 that also demonstrates the corporate separation provisions do not apply. Instead, OCC declares the Commission interpreted R.C. 4928.17 to mean the statute does not apply if the program satisfies the requirements in R.C. 4928.142 or 4928.143. Such an interpretation of the statute, in OCC's opinion, does not comply with the intentions of the General Assembly and would effectively nullify R.C. 4928.17. OCC reasons that a plain reading of R.C. 4928.17 and R.C. 4928.143(B)(2)(d), and reading the statutes in *pari materia*, would require that the program proposed under the latter meets the requirements of the former, which is not the case. Accordingly, OCC reasons the Commission should grant rehearing of this issue.

{¶ 28} In response, the Company notes that OCC acknowledges other intervenors have raised this argument and the Commission denied the request for rehearing. Therefore, AEP Ohio reasons OCC simply disagrees with the Commission's dispositive conclusion and the request for rehearing should be denied. Further, the Company concludes the Commission's interpretation of R.C. 4928.17 and 4928.143(B)(2)(d) is correct. Moreover, where OCC reads the statutes to require an affirmative declaration in both R.C. 4928.17 and 4928.143, to allow an exemption from the requirements of R.C. 4928.17, AEP Ohio reasons such an exemption would render R.C. 4928.17 a nullity. Further, AEP Ohio explains, under R.C. 1.51, any special provision in R.C. 4928.142 or 4928.143 would automatically negate the application of R.C. 4928.17. Therefore, according to AEP Ohio, the exception in R.C. 4928.17 is superfluous if the specific language that demonstrates the corporate separation provisions do not apply must also be stated in R.C. 4928.142 or 4928.143. AEP Ohio reasons the interpretation advanced by OCC is inconsistent with the presumption in R.C. 1.47(B) that all language in a statute is intended to be meaningful.

{¶ 29} Further, AEP Ohio reasons that OCC's argument ignores the language in R.C. 4928.17 that specifically overrules R.C. 4928.143 and other statutes. According to AEP Ohio, the language in R.C. 4928.17 is a clear and unambiguous expression of legislative intent that actions or programs authorized by R.C. 4928.143(B) are not subject to the corporate separation requirements of R.C. 4928.17. Finally, AEP Ohio recalls that R.C. 4928.17 was enacted as a component of Senate Bill 3 in 1999 and was subsequently amended in 2008, as a part of Senate Bill 221, to exempt the ESP provisions from the corporate separation requirements. Accordingly, AEP Ohio concludes the Commission's interpretation is consistent with the General Assembly's intent and the revision of the electric utility regulatory structure enacted in 2008.

{¶ 30} We note that opposing intervenors claimed the ESP 3 Order was unlawful to the extent it approved the PPA rider without the Commission first approving a

corporate separation plan for AEP Ohio pursuant to R.C. 4928.17(A). In the Fourth Entry on Rehearing, the Commission determined R.C. 4928.17 mandates certain exceptions, which includes R.C. 4928.142 or 4928.143, from compliance with corporate separation plan. Fourth Entry on Rehearing at ¶ 54. R.C. 4928.17(A) specifically provides:

*Except as otherwise provided in section 4928.142 or 4928.143 * * * of the Revised Code * * * no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission under this section, is consistent with the policy specified in section 4928.02 of the Revised Code * * * .*

We find that OCC's interpretation of R.C. 4928.17 would essentially require the Commission to ignore select language in the statute. Ohio law and the rules of statutory construction demand the Commission give effect to each and every word in the statute. *State v. Moaning*, 76 Ohio St.3d 126, 128, 666 N.E.2d 1115 (1996); *Shover v. Cordis Corp.* 61 Ohio St.3d 213, 218, 574 N.E.2d 457, 461 (1991). Further, we note that opposing intervenors' arguments were previously presented, thoroughly considered by the Commission, and denied. Fourth Entry on Rehearing at ¶¶ 51-54. Accordingly, we affirm our decision in the Fourth Entry on Rehearing and deny the request for rehearing of this issue.

B. Distribution Investment Rider

{¶ 31} As a part of the ESP 3 Order, the Commission approved AEP Ohio's request to continue the distribution investment rider (DIR), with certain modifications, and established the DIR annual revenue caps for 2015 through 2017, and January through

May 2018. ESP 3 Order at 46-47. Upon consideration of AEP Ohio's application for rehearing of the ESP 3 Order, the Commission revised, in the Second Entry on Rehearing, the DIR annual revenue caps on the basis that the Commission's intent was to provide for growth in the DIR revenue caps of three to four percent annually. However, the ESP 3 Order did not recognize any growth in the DIR revenue cap for 2014, as approved in the *ESP 2 Case*, to the DIR revenue cap for 2015 set forth in the ESP 3 Order. The revised annual caps were intended to afford AEP Ohio growth in the DIR, as a percentage of customer base distribution charges, and facilitate the Company's continued implementation of the 2015 DIR plan. All other applications for rehearing on the DIR were denied. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 46-47, Entry on Rehearing (Jan. 30, 2013) at 44-49; ESP 3 Order at 40-47, Second Entry on Rehearing at 16-25, Fourth Entry on Rehearing at ¶¶ 105-115.

{¶ 32} In its application for rehearing of the Second Entry on Rehearing, AEP Ohio argued that the modified DIR annual revenue caps do not support the Commission's expectation that continuation of the DIR, enhanced service reliability rider, and other distribution-related riders should enable the Company to hold base distribution rates constant over the term of ESP 3, while facilitating significant investments in distribution infrastructure and improving service reliability, as stated in the Second Entry on Rehearing. Second Entry on Rehearing at 17-23. Several intervenors opposed various aspects of AEP Ohio's application for rehearing.

{¶ 33} In the Fourth Entry on Rehearing, the Commission reaffirmed its approval of DIR annual revenue caps, as opposed to specific projects; rejected AEP Ohio's methodology and calculation of the DIR annual revenue caps; emphasized, as noted in the ESP 3 Order and the Second Entry on Rehearing, the Commission's intent was to reflect growth in the DIR annual revenue cap from 2014 to 2015; and, therefore, adjusted the annual caps for the term of ESP 3 accordingly in the Second Entry on Rehearing. Second Entry on Rehearing at 24-25. Upon consideration of the Company's application

for rehearing and the Commission's intent, as expressed in the Second Entry on Rehearing, the Commission adjusted the DIR annual revenue caps for 2017 to \$190 million and for January through May 2018 to \$89.6 million, to enable the Company to make necessary investments in capital infrastructure projects that impact the reliability of the distribution system.

{¶ 34} In its application for rehearing, OMAEG argues the Commission's decision to grant AEP Ohio's requests to increase the DIR annual revenue caps in the Second Entry on Rehearing to a total of \$581 million and again in the Fourth Entry on Rehearing by an additional \$8.6 million to a total of \$589.6 million was erroneous, unreasonable, and unlawful. OMAEG avers the Commission unreasonably increased the annual revenue caps first by \$37.8 million and then by \$8.6 million and failed to set forth the rationale and record support for increasing the caps, as required by R.C. 4903.09. Nor did the Commission explain, according to OMAEG, the necessary investments AEP Ohio needs to make in capital infrastructure or cite any actual projects. OMAEG declares it is unjust and unreasonable for the Commission to increase the revenue caps by such a significant amount without requiring AEP Ohio to file a distribution rate case where AEP Ohio's costs associated with aging infrastructure can be evaluated against revenues.¹

{¶ 35} In its memorandum contra, AEP Ohio notes that OMAEG reiterates the same arguments made in its initial brief and its first and second applications for rehearing, which the Commission has consistently rejected. AEP Ohio contends OMAEG has not raised any new arguments or presented any new information or meaningful nuance in its third application for rehearing, and, therefore, rehearing is not required nor appropriate. Further, AEP Ohio offers that the Commission's approval of the Company's request to continue the DIR was amply supported by the record as presented in the ESP 3 Order and the subsequent increases corrected the DIR cap levels consistent with the

¹ In an effort to preserve its rights on appeal, OMAEG incorporates all other arguments raised in its prior applications for rehearing filed in these proceedings.

Commission's analysis discussed in the ESP 3 Order. ESP 3 Order at 45-47, Second Entry on Rehearing at 23-24, Fourth Entry on Rehearing at ¶¶ 114-115. The Company notes the Commission already rejected a request that the Company present specific projects to be undertaken as part of the DIR. Fourth Entry on Rehearing at ¶ 112. AEP Ohio states that OMAEG's claim that increasing the DIR caps without requiring AEP Ohio to file a distribution rate case ignores the fact that R.C. 4928.143(B)(2)(h) specifically grants the Commission the authority to include, as a component of an ESP, provisions regarding distribution infrastructure modernization incentives. Accordingly, AEP Ohio argues OMAEG's request for rehearing should be denied.

{¶ 36} The Commission stated its basis and rationale for granting the Company's requests to continue the DIR and established the DIR caps for the term of the ESP in the ESP 3 Order, as revised in the Second Entry on Rehearing. ESP 3 Order at 45-47, Second Entry on Rehearing at 23-24. In the Fourth Entry on Rehearing, the Commission increased the DIR cap for 2017 by \$5.0 million and the DIR cap for January through May 2018 by \$3.6 million for a total of \$8.6 million, maintaining the three to four percent growth rate based on the method used by the Commission and explained in the ESP 3 Order. As designed, the DIR mechanism allows that, for any year the Company's DIR investment results in revenues to be collected that exceed or are less than the annual DIR cap, the overage or difference is recovered or applied, as applicable, to the DIR cap in the subsequent period. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 42-43. Recognizing that AEP Ohio was likely required to commit to distribution infrastructure investments for 2016 and very likely 2017 before the Fourth Entry on Rehearing was issued, so as not to inhibit the proactive replacement of aging distribution infrastructure, and to avoid any decrease in service reliability and facilitate the installation of distribution technology, the Commission modestly increased, within the stated range of growth, the DIR caps for 2017 and January through May 2018. (Co. Ex. 4 at 3-5, 9, 13-14, 17, 19.) We, therefore, find that OMAEG's application for rehearing should be denied.


IV. ORDER

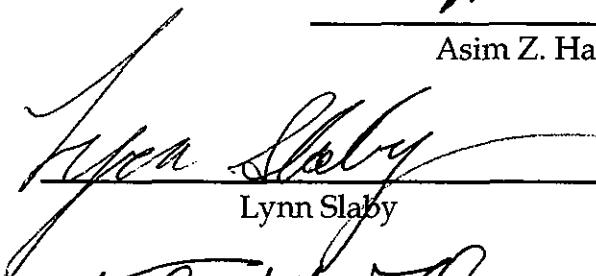
{¶ 37} It is, therefore,

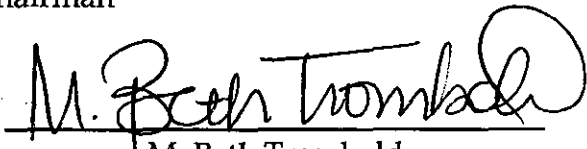
{¶ 38} ORDERED, That the applications for rehearing filed by OCC and OMAEG on December 5, 2016, be denied. It is, further,

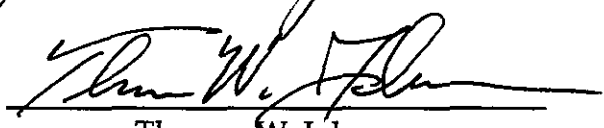
{¶ 39} ORDERED, That a copy of this Seventh Entry on Rehearing be served upon all parties of record.

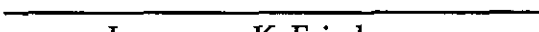
THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby

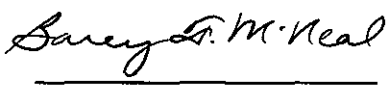

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Barcy F. McNeal
Secretary