

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of the Purchase of Receivables) Case No. 15-1507-EL-EDI
Implementation Plan for Ohio Power)
Company.)

**MEMORANDUM CONTRA AEP OHIO’S APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

Ohio law requires that consumers be protected from the business risk associated with competitive electric service suppliers (“marketers”). R.C. 4928.06(B) requires marketers to provide “a financial guarantee sufficient to protect customers and electric distribution utilities from default.” In this case, the Public Utilities Commission of Ohio (“PUCO”) has shifted the risk to Ohio Power Company (“AEP Ohio”) customers, by allowing their utility to collect marketers’ uncollected receivables through a Bad Debt Rider.¹ To keep consumers from being harmed, the Office of the Ohio Consumers’ Counsel (“OCC”) has asked the PUCO to reverse its decision.² The PUCO should protect consumers and grant OCC’s application for rehearing.

AEP Ohio also has sought rehearing of the PUCO’s Order. In its third assignment of error, AEP Ohio asserts that the Order was unreasonable and unlawful because the PUCO did not clarify that any costs not collected from participating marketers would be deferred with a carrying charge and collected from AEP Ohio’s customers through rates.

¹ Finding and Order (September 27, 2017), ¶67.

² OCC Application for Rehearing (October 27, 2017).

OCC files this Memorandum Contra AEP Ohio's third assignment of error.³ As discussed below, AEP Ohio's application for rehearing does not meet the statutory standard for the PUCO to abrogate or modify the Order. In addition, AEP Ohio provides no support for the PUCO to clarify the Order as AEP Ohio requests. And AEP Ohio's concerns regarding uncollected program costs are unfounded, given the PUCO's annual review of program cost calculations. The PUCO should deny AEP Ohio's application for rehearing.

II. RECOMMENDATIONS

A. AEP Ohio's application for rehearing does not provide the PUCO with sufficient reason to grant rehearing under R.C. 4903.10.

R.C. 4903.10 requires that applications for rehearing of an order "shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."⁴ The statute also states that the PUCO may grant rehearing "if in its judgment sufficient reason therefor is made to appear." AEP Ohio's application for rehearing lacks the specificity required by R.C. 4903.10 and does not provide the PUCO with sufficient reason to abrogate or modify the Order.⁵

AEP Ohio has not provided reasons why the Order is unreasonable or unlawful. Instead, AEP Ohio merely presents a list seven questions that it believes were left unanswered by the Order.⁶ AEP Ohio also does not identify which questions pertain to

³ Ohio Adm. Code 4901-1-35(B). OCC expresses no opinion regarding AEP Ohio's first two assignments of error.

⁴ See also Ohio Adm. Code 4901-1-35(A).

⁵ See, e.g., *Wiley v. Duke Energy Ohio*, Case No. 10-2463-EL-CSS, Entry on Rehearing (November 29, 2011); *Cochran v. Ameritech Ohio*, Case No. 00-970-TP-CSS, Entry on Rehearing (February 21, 2002).

⁶ AEP Ohio's Application for Rehearing at 3-4.

each assignment of error. AEP Ohio also does not explain why any of these questions provide a basis for the PUCO to grant rehearing under R.C. 4903.10. And beyond the vague, general claim there is “uncertainty” concerning the purchase of receivables (“POR”) program, AEP Ohio also does not explain how the PUCO’s alleged failure to answer the questions to AEP Ohio’s liking makes the Order unlawful or unreasonable. The PUCO should not have to guess the basis for assignments of error in an application for rehearing.

AEP Ohio’s application for rehearing lacks specificity and explanation regarding how the Order is unreasonable or unlawful. It does not meet the requirements of R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A). The PUCO should deny AEP Ohio’s application for rehearing.

B. The Order expressly stated that AEP Ohio is to collect program costs from *marketers*, not consumers, and thus the PUCO should reject AEP Ohio’s attempt to make consumers pay (with interest) for any error AEP Ohio may make in estimating costs associated with the purchase of receivables program.

In its third assignment of error, AEP Ohio asserts that the Order was unreasonable and unlawful because it did not clarify that any costs not collected from participating marketers would be deferred and collected (with carrying charges) from AEP Ohio’s customers through rates.⁷ To support this claim, AEP Ohio apparently relies on the last of its seven questions in the application for rehearing. There, AEP Ohio presents the following hypothetical: “What if the Company’s up-front estimate is wrong and the rate paid by participating CRES providers does not fully compensate the Company for the

⁷ See *id.* at 1.

cost of the POR program?”⁸ The answer to AEP Ohio’s question is simple: AEP Ohio may adjust the monthly billing fee charged to marketers.

In the Order, the PUCO made clear that *marketers*, not consumers, are to pay the costs associated with the POR program. In deciding to allow marketers to opt out of the POR program, the PUCO noted that an opt-out program would increase AEP Ohio’s costs.⁹ The PUCO stated that “[t]hose suppliers that participate in the POR program, and do not opt out, will need to pay for those additional costs, and we reiterate that AEP Ohio should recover both the implementation and maintenance costs associated with the program.”¹⁰ The PUCO directed AEP Ohio to meet with marketers, the PUCO Staff, and other interested parties to discuss the costs and process for implementing the opt-out POR program.¹¹ Afterwards, AEP Ohio would then file in a new docket its estimate of the full costs for implementing the POR program.¹² That filing is to include “a list of suppliers that have agreed to participate in the program *and compensate the Company for the implementation costs*.”¹³ Hence, the marketers that participate in the POR program are responsible for compensating AEP Ohio for the program’s costs.

The PUCO reiterated this directive in paragraph 46 of the Order, which AEP Ohio cites in its application for rehearing. The PUCO noted that the PUCO Staff presented three means to collect the costs: through a charge to marketers; as a component of the

⁸ *Id.* at 4.

⁹ Order, ¶25.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (emphasis added).

discount rate; or through the Bad Debt Rider.¹⁴ The PUCO also noted that the Staff reported the preference of the Market Development Working Group was as a charge to *marketers* in the form of a monthly per-bill fee collected over a five-year period.¹⁵ The PUCO also noted that AEP Ohio supported collecting program costs only from marketers in its reply comments.¹⁶ There, AEP Ohio stated that it “agrees with the OCC in that *all costs associated with POR program and implementation should be paid for by the supplier.*”¹⁷ From this, the PUCO determined that implementation costs of the POR program should be collected from those marketers “that elect to participate in the program.”¹⁸

Thus, the PUCO directed that only the marketers who use the POR program are to pay for the program’s costs. Customers are not to pay for the program, although many likely will if their marketer makes the business decision to pass on to its customers the monthly billing fee charged by AEP Ohio.¹⁹

So what recourse would AEP Ohio have if it undercollects program costs from marketers through the monthly fee? The answer lies in the PUCO’s annual review of AEP Ohio’s implementation cost calculations.²⁰ If AEP Ohio’s up-front cost estimate is in error, resulting in either undercollection or overcollection²¹ of costs from marketers,

¹⁴ *Id.*, ¶41.

¹⁵ *Id.*

¹⁶ *Id.*, ¶42.

¹⁷ AEP Ohio Reply Comments (December 22, 2016) at 5 (emphasis added).

¹⁸ Order, ¶46.

¹⁹ In such instances, allowing AEP Ohio to also collect program costs from customers could result in some customers paying twice for POR program costs.

²⁰ *Id.*

²¹ Notably, AEP Ohio does not raise a concern about its up-front estimate being wrong and the rate paid by marketers over-compensates AEP Ohio for the cost of the POR program.

the PUCO could order the monthly fee paid by marketers to be adjusted accordingly. There is no need for customers – who do not benefit from the POR program – to pay (with interest) if AEP Ohio initially underestimates POR program costs. The PUCO should reject AEP Ohio’s third assignment of error.

III. CONCLUSION

AEP Ohio has not adequately supported its third assignment of error, which would require customers to pay costs (plus interest) the PUCO has determined should be paid by marketers. The PUCO should deny AEP Ohio’s third assignment of error. And to protect consumers, the PUCO should grant OCC’s application for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra AEP Ohio's Application for Rehearing was served electronically on the persons stated below this 6th day of November 2017.

/s/ Terry L. Etter

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Case No(s). 15-1507-EL-EDI

Summary: Memorandum Memorandum Contra AEP Ohio's Application for Rehearing by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.