

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY TO UPDATE ITS
GRIDSMART RIDER RATES.

CASE NO. 15-240-EL-RDR

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY TO UPDATE ITS
GRIDSMART RIDER RATES.

CASE NO. 15-1513-EL-RDR

SECOND ENTRY ON REHEARING

Entered in the Journal on December 6, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the April 19, 2017 Finding and Order filed by the Ohio Consumers' Counsel.

II. DISCUSSION

A. *Procedural History*

{¶ 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. 08-917-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for a first ESP, including the Company's proposal to establish a gridSMART rider and initiate Phase 1 of its gridSMART program, which would focus on

advanced metering infrastructure, distribution automation, and home area network initiatives. *In re Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, et al. (*ESP 1 Case*), Opinion and Order (Mar. 18, 2009) at 37-38, Entry on Rehearing (July 23, 2009) at 18-24.

{¶ 5} On August 8, 2012, the Commission approved, with certain modifications, AEP Ohio's application for a second ESP, effective with the first billing cycle of September 2012 through May 31, 2015. Among other provisions of the ESP, the Commission approved AEP Ohio's request to continue the gridSMART Phase 1 project, as well as the gridSMART Phase 1 rider, which enables the Company to recover its prudently incurred costs associated with Phase 1 and is subject to an annual true-up and reconciliation. The Commission also directed AEP Ohio to file an application addressing Phase 2 of the gridSMART program. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 62-63, Entry on Rehearing (Jan. 30, 2013) at 53.

{¶ 6} On February 2, 2015, in Case No. 15-240-EL-RDR, AEP Ohio filed an application to update its gridSMART rider for Phase 1 costs. The application included actual gridSMART project spending and revenue recovery during 2014 and projected spending and revenue requirements through 2015, with a total requested revenue requirement of approximately \$25.7 million. The application also included amounts for 2013, which, as of the filing date of the application, had not yet been addressed by the Commission in the Company's prior gridSMART case, Case No. 14-192-EL-RDR.

{¶ 7} In Case No. 13-2385-EL-SSO, et al., the Commission approved, pursuant to R.C. 4928.143, AEP Ohio's application for a third ESP for the period of June 1, 2015, through May 31, 2018. Among other matters, the Commission approved AEP Ohio's proposal to extend the gridSMART program. The Commission also noted that, consistent with its directive in the *ESP 2 Case*, AEP Ohio should file, within 90 days after the expiration of ESP 2, an application for review and reconciliation of the gridSMART Phase 1 rider. The Commission found that, after the review and reconciliation of the gridSMART Phase 1 costs,

AEP Ohio should be authorized to transfer the approved capital cost balance into its distribution investment rider (DIR), which would not be subject to the DIR caps, and should also transfer any unrecovered operations and maintenance balance into the gridSMART Phase 2 rider. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015) at 51-52.

{¶ 8} On March 18, 2015, the Commission modified and approved AEP Ohio's application to update its gridSMART rider rates to recover 2013 costs. *In re Ohio Power Co.*, Case No. 14-192-EL-RDR, Finding and Order (Mar. 18, 2015). The Commission directed that the approved gridSMART rider rate should continue with the commencement of the new ESP term on June 1, 2015, until otherwise ordered by the Commission.

{¶ 9} On August 28, 2015, in Case No. 15-1513-EL-RDR, AEP Ohio filed its final application for review and reconciliation of its gridSMART Phase 1 rider. The application included actual gridSMART project spending and revenue recovery from January through May 2015 and capital carrying costs from June through December 2015. In collaboration with Staff, AEP Ohio filed revised schedules on October 28, 2015, to correct an error in the carrying charge rate. As shown in the corrected schedules, AEP Ohio requested a total revenue requirement of approximately \$19.0 million.

{¶ 10} On January 21, 2016, Staff filed its review and recommendations in response to AEP Ohio's applications. AEP Ohio filed reply comments on April 19, 2016. Staff filed an updated review and recommendations on June 20, 2016.

{¶ 11} By Entry dated February 9, 2017, a procedural schedule was established, in order to assist the Commission in its review of AEP Ohio's applications to update its gridSMART rider for Phase 1 costs.

{¶ 12} In accordance with the established procedural schedule, AEP Ohio and the Ohio Consumers' Counsel (OCC) filed comments on March 6, 2017. Reply comments were filed by AEP Ohio on March 20, 2017.

{¶ 13} By Finding and Order dated April 19, 2017, the Commission modified and approved AEP Ohio's applications to update and reconcile its gridSMART Phase 1 rider rates. The Commission also granted OCC's motions to intervene in these proceedings.

{¶ 14} 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.

{¶ 15} On May 19, 2017, OCC filed an application for rehearing of the April 19, 2017 Finding and Order. AEP Ohio filed a memorandum contra OCC's application for rehearing on May 30, 2017.

{¶ 16} By Entry on Rehearing dated June 14, 2017, the Commission granted rehearing for further consideration of the matters specified in OCC's application for rehearing.

{¶ 17} The Commission has reviewed and considered all of the arguments raised in OCC's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Application for Rehearing

{¶ 18} OCC raises three grounds for rehearing. First, OCC argues that the Commission unlawfully failed to find, as required by R.C. 4928.02, that gridSMART Phase 1 investments collected from customers through the DIR are reasonably priced and cost-effective for customers. OCC adds that the Commission failed to set forth its reasoning, as

required by R.C. 4903.09, for not considering the cost-effectiveness or reasonableness of the rate. In support of its arguments, OCC asserts that there is no discussion in the Finding and Order regarding the cost of gridSMART Phase 1 that is being collected from consumers, despite the fact that R.C. 4928.02(A) requires the availability to consumers of reasonably priced retail electric service, while R.C. 4928.02(D) and (E) require that innovation be encouraged if it is cost-effective and efficient for customers. OCC concludes that the Commission ignored the requirements of R.C. 4928.02, provided no record support for its decision on the issue of cost-effectiveness, and failed to address this critical issue, as required by both R.C. 4903.09 and Ohio Supreme Court precedent.

{¶ 19} In response, AEP Ohio asserts, as an initial matter, that OCC's first ground for rehearing is nothing more than a broad, general claim and, therefore, it fails to satisfy R.C. 4903.10(B), which requires that an application for rehearing set forth specifically the grounds on which the applicant considers the order to be unreasonable or unlawful. AEP Ohio further asserts that, contrary to OCC's position, the Commission, throughout the Finding and Order, identified the evidence that it considered, as well as properly supported and explained its approval of the Company's applications. AEP Ohio maintains that OCC failed to identify any gridSMART Phase 1 expenditure that was not cost-effective for residential customers. AEP Ohio adds that OCC did not participate in the Company's prior gridSMART cases over the last seven years to offer input regarding the cost-effectiveness of specific expenditures as they were made and reviewed by Staff. AEP Ohio concludes that, to the extent that OCC now seeks to challenge the underlying statutory bases and justifications for the gridSMART Phase 1 rider, its arguments constitute an untimely request for rehearing of the Commission's orders in the Company's ESP cases.

{¶ 20} The Commission finds that OCC's first ground for rehearing lacks merit and should be denied. Although OCC contends that nowhere in the Finding and Order did the Commission address the costs being collected from customers through the gridSMART

Phase 1 rider, the Commission, in fact, thoroughly addressed such costs in the course of considering and adopting Staff's recommended adjustments to the rider. Finding and Order at ¶¶ 14-22, 32. OCC's arguments on the issue of gridSMART Phase 1 costs were also thoroughly addressed in the Finding and Order. Finding and Order at ¶¶ 33-35. The Commission noted that OCC had offered no recommendations regarding any of AEP Ohio's gridSMART Phase 1 expenditures and that OCC's general opposition to Phase 1 of the gridSMART program constituted an untimely request for rehearing of the Commission's orders authorizing the continuation and completion of Phase 1. Finding and Order at ¶ 33 (citing *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 62; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 52). Further, we noted that the costs and benefits associated with gridSMART technologies have already been extensively considered by the Commission in the numerous cases in which we directed AEP Ohio to take reasonable steps to modernize its distribution infrastructure. Finding and Order at ¶ 35 (citing *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 37-38, Entry on Rehearing (July 23, 2009) at 22-24; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 62; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 51-52; *In re Ohio Power Co.*, Case No. 13-1939-EL-RDR, Opinion and Order (Feb. 1, 2017) at 25, 28).

{¶ 21} We, therefore, disagree with OCC's assertion that the Commission disregarded the cost-effectiveness standard enumerated in R.C. 4928.02. Again, Staff performed a thorough review of AEP Ohio's gridSMART Phase 1 rider filings and offered a number of recommended adjustments. OCC, however, provided no comments addressing any particular expenditures that OCC deems imprudent or too costly. Consistent with the state policy set forth in R.C. 4928.02(A), (D), and (E), the Commission's approval of AEP Ohio's applications to reconcile its gridSMART Phase 1 rider, as modified to accept Staff's adjustments, encourages innovation and facilitates the Company's deployment of smart grid technologies, while Staff's review of the rider ensures that the Company's retail electric service remains reasonably priced and cost-effective.

{¶ 22} As its second ground for rehearing, OCC contends that the Commission unlawfully and unreasonably found that distribution plant placed in service did not need to be used and useful in the provision of electric service for the consumers who are paying for the investment. Specifically, OCC asserts that the ratemaking principles set forth in R.C. 4909.15, including the used-and-useful standard, must be applied to the rider rate. According to OCC, nothing in the Revised Code expressly exempts riders approved under R.C. 4928.143 from compliance with R.C. 4909.15. OCC argues that R.C. 4928.143 provides no direction regarding rates and, therefore, proper statutory construction requires that the Commission rely upon R.C. 4909.15, which governs the fixation of reasonable rates. OCC concludes that, if the Commission does not apply the used-and-useful standard in these rider proceedings, consumers are at risk for the technology investment's ultimate usefulness in providing utility service.

{¶ 23} AEP Ohio responds that the Commission correctly concluded that R.C. 4909.15(A)(1) and (A)(4) have no application in these proceedings. According to AEP Ohio, OCC has merely stated its conclusion, without any support, that the traditional ratemaking requirements of R.C. 4909.15 are applicable to the ESP statute's alternative regulation for distribution infrastructure investments. AEP Ohio contends that OCC's statutory construction would lead to the absurd result of eliminating the flexibility provided by the legislature to the electric distribution utilities in R.C. 4928.143. In any event, AEP Ohio asserts that the gridSMART assets are all used and useful, as verified through the gridSMART audit, and consistent with the Company's accounting policy, which requires that assets cannot be placed into service until they are actually in place, fully tested, and being used for their intended purpose (i.e., used and useful).

{¶ 24} As the Commission noted in the Finding and Order, AEP Ohio's gridSMART program has been subject to an annual audit by Staff, which has included review of the prudence of expenditures and the reconciliation of investments placed in service with

revenues collected. Finding and Order at ¶ 34 (citing *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 38; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 62; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 52). We, therefore, found no merit in OCC's claim that AEP Ohio's gridSMART Phase 1 costs have not been subject to sufficient review for prudence or other considerations by Staff. We also noted that OCC had not explained how R.C. 4909.15(A)(1) or (A)(4) is related to the review and reconciliation of the gridSMART Phase 1 rider, which was approved under the alternative regulation provisions in R.C. 4928.143(B)(2)(h) rather than the traditional ratemaking formula set forth in R.C. 4909.15. Finding and Order at ¶ 34.

{¶ 25} We do not agree with OCC's position that the used-and-useful standard of R.C. 4909.15(A)(1) must be applied in the present proceedings. The Commission has previously found that, where the case before it does not involve a public utility seeking to adjust its base rates, R.C. 4909.15 does not apply. *See, e.g., In re Monongahela Power Co.*, Case No. 05-765-EL-UNC, Opinion and Order (Nov. 9, 2005) at 11. More generally, the Commission has rejected the application of a traditional used-and-useful type of review in prior gridSMART Phase 1 rider true-up proceedings, noting that prudent costs should be recovered by AEP Ohio as they are incurred, in order to encourage the expedient installation and operation of gridSMART technologies. *In re Columbus Southern Power Co.*, Case No. 11-1353-EL-RDR, Opinion and Order (Aug. 24, 2011) at 3. Even if we were to assume that R.C. 4909.15 is applicable to these proceedings, the Ohio Supreme Court has rejected OCC's previous attempts to conflate R.C. 4909.15(A)(1) and (A)(4). *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148, ¶¶ 17-27. The Court determined that "the used-and-useful standard applies only to the calculation of the rate base under R.C. 4909.15(A)(1) and not to cost recovery under R.C. 4909.15(A)(4)." *Duke* at ¶ 21. For these reasons, the Commission finds that OCC's second ground for rehearing should be denied.

{¶ 26} Finally, OCC asserts that the Commission unreasonably found that AEP Ohio's reliability improved because distribution automation circuit reconfiguration (DACR) avoided a significant number of customer minutes of interruption each year through 2015. OCC argues that, according to AEP Ohio's annual reliability report dated March 31, 2016, the Company's system average interruption frequency index (SAIFI) was worse in 2014 and 2015 than it was in 2013. According to OCC, AEP Ohio's reliability statistics and its current request in Case No. 16-1511-EL-ESS to lower its reliability standards indicate that electric service reliability in its territory is not improving. OCC asserts that customers should not continue to pay for results that the Commission did not expect when it approved the gridSMART Phase 1 rider or the DIR.

{¶ 27} AEP Ohio replies that the Commission correctly concluded that DACR provides a significant reliability benefit. AEP Ohio asserts that OCC's position ignores several facts: SAIFI and other reliability performance metrics can increase or decrease from year to year due to factors beyond the Company's control and for reasons unrelated to DACR performance; DACR tends to make the Company's SAIFI performance better than it would have been without DACR; DACR has not yet been installed on a sufficient number of circuits to affect the Company's SAIFI for its entire system; and DACR has other benefits, such as avoided service calls and more efficient use of labor. AEP Ohio concludes that OCC's position is misguided.

{¶ 28} In the Finding and Order, the Commission found that AEP Ohio's deployment of DACR has provided a reliability benefit. Finding and Order at ¶ 36. As AEP Ohio noted in its reply comments, customers have experienced the benefit of a significant number of minutes of interruption avoided each year from 2011 through 2015 by having DACR installed. AEP Ohio further noted that only a small portion of its customer base, about eight percent, is located in the gridSMART Phase 1 territory where the DACR system is installed. (AEP Ohio Reply Comments at 4-5.) We therefore, stated that we were not convinced by

OCC's apparent position that DACR has been sufficiently installed to the extent that its effects are fully reflected in the Company's system-wide reliability performance metrics. We also noted that, in emphasizing the reliability performance of AEP Ohio's entire distribution system, OCC had disregarded the clear benefit provided by DACR in the gridSMART Phase 1 territory. Finding and Order at ¶ 36.

{¶ 29} In its application for rehearing, OCC continues to focus on AEP Ohio's system-wide SAIFI performance and the reliability standards proposed by the Company in Case No. 16-1511-EL-ESS, rather than on the issue of DACR's impact on reliability in the gridSMART Phase 1 territory. OCC also repeatedly mischaracterizes the Finding and Order, in stating that the Commission "unreasonably found that AEP Ohio's reliability improved" and that "AEP Ohio's reliability is better due to expenditures on gridSMART Phase 1" (OCC App. at 6). The Commission made no findings with respect to AEP Ohio's system-wide reliability performance. Instead, the Commission noted the benefits provided by DACR for customers in the gridSMART Phase 1 territory, such as avoided minutes of interruption, avoided service calls, and more efficient use of labor. OCC's third ground for rehearing should, therefore, be denied.

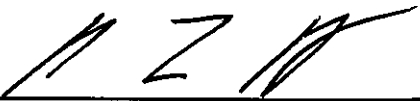
III. ORDER

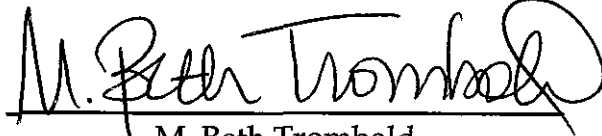
{¶ 30} It is, therefore,

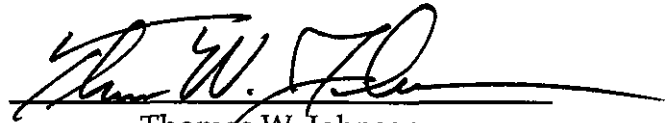
{¶ 31} ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

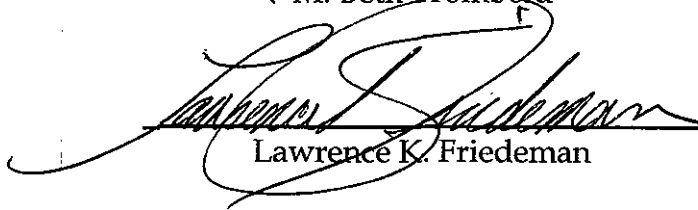
{¶ 32} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


M. Beth Trombold


Thomas W. Johnson


Lawrence K. Friedeman


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