

## 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. 16-1852-EL-SSO

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

CASE NO. 16-1853-EL-AAM

### ENTRY

Entered in the Journal on January 22, 2018

{¶ 1} 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.

{¶ 2} 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 (MRO), in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with R.C. 4928.143.

{¶ 3} R.C. 4928.141(B) directs the Commission to set a time for a hearing upon the filing of an MRO or ESP application, send written notice of the hearing to the electric distribution utility, and publish notice in a newspaper of general circulation in each county in the utility's certified territory.

{¶ 4} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved, pursuant to R.C. 4928.143, AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31, 2018. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015).

{¶ 5} On November 23, 2016, in the above-captioned cases, AEP Ohio filed an amended application that, if approved, would modify the current ESP and extend its term through May 31, 2024.

{¶ 6} By Entry issued February 7, 2017, the procedural schedule was established in these matters, including an evidentiary hearing to commence on June 6, 2017.

{¶ 7} By Entry dated March 7, 2017, four local public hearings were scheduled - one in Marietta, one in Bucyrus, and two in Columbus - to occur on various dates in April 2017. The Entry also directed AEP Ohio to publish notice of the hearings.

{¶ 8} The evidentiary hearing was subsequently rescheduled to commence on August 8, 2017, to afford the parties sufficient time to fully explore the possibility of reaching a resolution of some or all of the issues raised in these proceedings. On August 3, 2017, the attorney examiner granted a motion for continuance filed by Staff, such that the evidentiary hearing was continued to a date to be determined in the future.

{¶ 9} On August 25, 2017, AEP Ohio filed a Joint Stipulation and Recommendation (Stipulation), executed by the Company, Staff and numerous other parties, for the Commission's consideration. The Stipulation would resolve all of the issues raised in these matters.

{¶ 10} By Entry issued on September 5, 2017, a procedural schedule was issued to assist the Commission in its consideration of the Stipulation. The September 5, 2017 Entry included an evidentiary hearing to commence on November 1, 2017.

{¶ 11} The four local public hearings were held as scheduled in April 2017. The evidentiary hearing on the Stipulation commenced, as scheduled, on November 1, 2017, and concluded on November 6, 2017.

{¶ 12} On December 28, 2017, AEP Ohio filed a motion for relief from the Entry issued March 7, 2017. AEP Ohio states the Company inadvertently failed to publish notice of the hearings in a newspaper of general circulation in each county in its service territory, as directed in the March 7, 2017 Entry. AEP Ohio notes, despite its oversight, notice of the hearings was advertised by the Commission, covered by the press and other parties to these proceedings, and well-attended by the public. AEP Ohio notes customers learned about its amended ESP application and presented their views at the local hearings, including 7 witnesses in Bucyrus, 8 witnesses in Marietta, and a total of 31 witnesses at the Columbus public hearings. In addition, AEP Ohio notes, according to an article in a Bucyrus newspaper, approximately 30 people attended the hearing in Bucyrus held on April 10, 2017. AEP Ohio states, in addition to offering testimony at the public hearings, consumers and other interested persons submitted more than 7,219 pages of comments in these proceedings. In its amended application, AEP Ohio initially proposed to adjust its customer charge, a proposal which AEP Ohio admits was met with significant pushback at the local public hearings. AEP Ohio states that the Company took into account the comments received at the public hearings, and the Stipulation maintains the current residential customer charge and rate design. Accordingly, AEP Ohio requests that the Commission waive or otherwise grant relief from the directive to publish notice of the hearings. In the alternative, if the Commission deems it necessary to schedule another public hearing, AEP Ohio proposes that the Commission schedule an additional public hearing in Columbus to allow any customers who have not already commented on the amended application or the Stipulation to offer testimony, with notice to be published in each county of AEP Ohio's certified territory approximately 15 days in advance of the hearing.

{¶ 13} On January 12, 2018, Ohio Consumers' Counsel (OCC) filed a memorandum contra AEP Ohio's motion for relief. OCC requests that AEP Ohio's motion be denied because, according to OCC, R.C. 4928.141(B) requires public notice of the public hearings and the evidentiary hearing. OCC contends the Commission, as a creature of statute, cannot

waive or otherwise grant relief from a statutory requirement, like public notice of the hearings. *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 38 Ohio St.3d 266, 273, 527 N.E.2d 777 (1988) (Locher, J., dissenting) (citation omitted). OCC also asserts that the content of public notices should be revised to provide consumers with understandable information about utility proposals that can increase their electric bills, as well as other significant consumer issues, including the recent federal corporate income tax reduction. In light of AEP Ohio's failure to provide public notice of the hearings, OCC declares the Company's ESP application is unlawful, in its current status, and cannot be adopted by the Commission.

{¶ 14} On January 16, 2018, AEP Ohio filed a reply to OCC's memorandum contra. AEP Ohio notes that OCC does not assert and cannot demonstrate that OCC or any other party to these proceedings was prejudiced, as all parties to these cases were served with notice of the hearings when the March 7, 2017 Entry was issued. The Company further reiterates the various means by which the public was informed of and participated in the hearings, as well as the participation of the various parties who intervened in these cases. AEP Ohio concludes that customers were not deprived of information about the application or prevented from participating in the hearing process. AEP Ohio notes that OCC attended the local public hearings, participated in the evidentiary hearing, and did not mention the lack of public notice. Therefore, AEP Ohio argues that by waiting until the record has been closed, OCC waived its objection to the Company's failure to publish notice and cannot rely on it as a basis to assert the application is unlawful. *Liberty Highway Co. v. Pub. Util. Comm.*, 128 Ohio St. 586, 589-590, 193 N.E. 407 (1934). AEP Ohio also argues that OCC's attempt to include a new substantive issue in these proceedings, the federal corporate income tax reduction, is untimely and should be ignored and excluded from the notice of any additional hearings.

{¶ 15} The attorney examiner notes that while AEP Ohio failed to publish notice of the hearings, the public was made aware of the hearings through the Commission's news

release and website, various parties to the proceedings, newspaper articles, and interested organizations. The local public hearings were well-attended and 46 persons offered testimony. The case dockets include thousands of comments regarding the amended application. While it is apparent that many consumers were aware of the hearings, the attorney examiner finds it necessary to conduct another public hearing to ensure the public is notified of these proceedings and afforded an opportunity to provide testimony.

{¶ 16} In order to provide customers of AEP Ohio another opportunity to provide public testimony in these proceedings, a public hearing will be held on February 12, 2018, as set forth below. AEP Ohio is directed to publish notice of the public hearing one time in a newspaper of general circulation in each county in its certified territory. The notice should not appear in the legal notices section of the newspaper and should read as follows:

#### LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled a public hearing in Case No. 16-1852-EL-SSO, *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*, and in Case No. 16-1853-EL-AAM, *In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority*. In the application, Ohio Power Company d/b/a AEP Ohio seeks Commission approval of an electric security plan filed on November 23, 2016, and matters related to the company's procurement of power for the period of June 1, 2018 through May 31, 2024. On August 25, 2017, a Joint Stipulation and Recommendation was filed by various parties for the Commission's consideration, which, if approved by the Commission, would resolve all the issues raised in this matter.

The public hearing is scheduled for the purpose of providing an opportunity for interested members of the public to testify in this proceeding. The hearing will be held on Monday, February 12, 2018, at 6:00 p.m., at Ohio History Center, 800 East 17th Avenue, Cardinal Classroom, Columbus, Ohio 43211-2497.

Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puco.ohio.gov>, or contacting the Commission's hotline at 1-800-686-7826.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That AEP Ohio's motion for relief be granted to the extent set forth in this Entry. It is, further,

{¶ 19} ORDERED, That a public hearing in these matters be held as set forth in Paragraph 16. It is, further,

{¶ 20} ORDERED, That AEP Ohio publish notice of the hearing, as set forth in Paragraph 16, and file its proof of publication. It is, further,

{¶ 21} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Greta See

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By: Greta See  
Attorney Examiner

GS/mef

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 16-1852-EL-SSO, 16-1853-EL-AAM**

Summary: Attorney Examiner Entry Granting AEP's motion for relief and setting hearing for February 12, 2018, at 6PM electronically filed by Ms. Mary E Fischer on behalf of Greta See, Attorney Examiner, Public Utilities Commission of Ohio