

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company for Authority to) Case No. 16-1852-EL-SSO
Establish a Standard Service Offer)
Pursuant to R.C. 4928.143, in the Form of)
an Electric Security Plan.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 16-1853-EL-AAM
Accounting Authority.)

**INTERLOCUTORY APPEAL,
REQUEST FOR CERTIFICATION TO FULL COMMISSION,
AND APPLICATION FOR REVIEW
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority to Establish)	Case No. 16-1852-EL-SSO
a Standard Service Offer Pursuant to R.C.)	
4928.143, in the Form of an Electric Security)	
Plan.)	

In the Matter of the Application of Ohio Power)	
Company for Approval of Certain Accounting)	Case No. 16-1853-EL-AAM
Authority.)	

**INTERLOCUTORY APPEAL,
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In this case, AEP's consumers were not provided the prior public notice of hearings (local public hearings and the evidentiary hearing) that they are entitled to under Ohio law. Without this prior notice, consumers were not informed, as required by law, of the hearings in this proceeding. Consumers have a right to know, under the law.

Public participation in utility proceedings is important, and Ohio law recognizes this importance by requiring specific notice of the public hearings in the case.¹ Yet the PUCO, through an Attorney Examiner Entry, dated January 22, 2018("January 22

¹ R.C. 4901.13; see also R.C. 4901.12 (all PUCO proceedings are public records); R.C. 4928.141 (the PUCO must publish public notice of hearings in a newspaper of general circulation in each county in the utility's certified territory); O.A.C. 4901-1-27(C) (requiring the presiding hearing officer to permit members of the public the opportunity to offer testimony at hearings).

Entry”), disregards the law, unlawfully allowing itself and AEP to violate the requirement in R.C. 4928.141(B) that prior public notice be provided for hearings in electric security plan (“ESP”) proceedings.

The Office of the Ohio Consumers’ Counsel (“OCC”), the statutory representative of AEP’s 1.2 million residential consumers, files this Interlocutory Appeal² of the Attorney Examiners' Entry to protect these consumers.

OCC respectfully requests that the PUCO review this appeal, without the need for certification of the appeal by the Legal Director, Deputy Legal Director, or Attorney Examiner. The appeal terminates OCC's rights to participate in the proceeding, satisfying Ohio Adm. Code, 4901-1-15(A)(2).

If the interlocutory appeal is determined not to satisfy Ohio Adm. Code 4901-1-15(A)(2), the Attorney Examiner should nonetheless certify the appeal to the full Commission for review, under Ohio Admin. Code 4901-1-15(B). The Interlocutory Appeal should be certified³ to the PUCO because the January 22, 2018 Entry represents both a departure from past precedent and presents a new or novel question of interpretation, law, or policy. Additionally, an immediate determination by the PUCO is needed to prevent the likelihood of undue prejudice to AEP’s residential consumers and other members of the public.

OCC requests that the PUCO review the Entry and modify or reverse the Attorney Examiner’s ruling of January 22, 2018, which unlawfully waives the statutory notice requirement in R.C. 4928.141 and renders AEP’s ESP application unlawful in its current state.

² The appeal is filed pursuant to Ohio Admin. Code 4901-1-15.

³ Ohio Admin. Code 4901-1-15(B).

The support for these arguments is more fully explained in the attached
Memorandum in Support.

Respectfully Submitted,

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**BEFORE
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In the Matter of the Application of)	
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Standard Service Offer Pursuant to R.C.)	
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MEMORANDUM IN SUPPORT

I. BACKGROUND

The law in Ohio is that the public has a right to know about proposals that can increase their monthly utility bills and to participate in the hearing process. That right has been violated by the PUCO and Ohio Power Company (“AEP”) in this proceeding. On November 23, 2016, AEP filed a proposal to modify its current ESP and increase the utility bills of consumers. On March 7, 2017, the PUCO issued an entry scheduling four local public hearings and directed AEP to publish the statutorily required public notice in newspapers of general circulation in each county in the AEP’s certified territory. It also directed that the public notice provide information about the evidentiary hearing. AEP failed to publish the required public notice.

The four local public hearings proceeded as scheduled in April 2017. On September 5, 2017, after several continuances, the PUCO issued an Entry establishing an evidentiary hearing to commence on November 1, 2017. The evidentiary hearing began on November 1, 2017, and concluded on November 6, 2017. Notably, no public testimony was taken at the evidentiary hearing.

On December 28, 2017, AEP filed a motion for relief from the March 7, 2017 PUCO Entry. In its motion, AEP admitted that it failed to publish notice of the hearings in a newspaper of general circulation in each county in its service territory.⁴

On January 12, 2018, OCC filed a memorandum contra AEP's motion for relief. OCC recommended that the PUCO deny AEP's motion because under R.C. 4928.141(B), the PUCO was required to publish public notice of the public hearings and the evidentiary hearing in this proceeding.⁵ OCC also demonstrated that the PUCO, as a creature of statute, cannot waive statutory requirements, like public notice of the hearings.⁶ OCC asserted that the failure to provide public notice of the hearings in this proceeding rendered AEP's ESP application unlawful, in its current status.

On January 16, 2018, AEP filed a reply to OCC's memorandum contra and on January 22, 2018, the PUCO issued an Entry granting AEP Ohio's motion for relief. The Entry ignores the statutory requirements in R.C. 4928.141(B). In the January 22 Entry the PUCO ordered that one additional local public hearing be held in this proceeding and that AEP publish notice of the local public hearing. The January 22 Entry did not order a new evidentiary hearing.

II. STANDARD OF REVIEW

Under Ohio Adm. Code 4901-1-15(A), there are certain circumstances adversely affecting a party that allow the party to take an interlocutory appeal directly to the Commission without the need for the appeal to be certified to the Commission by the

⁴ AEP Ohio Motion for Relief at 1.

⁵ See OCC Memo Contra AEP Ohio's Motion for Relief at 2-3.

⁶ See OCC Memo Contra AEP Ohio's Motion for Relief at 2-3 citing *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 38 Ohio St.3d 266 (1988).

Attorney Examiner. Appeals can be taken without certification, inter alia, when an Attorney Examiner has terminated a party's right to participate in a proceeding.⁷

If a party does not satisfy the criteria in Ohio Adm. Code 4901-1-15(A), the PUCO's procedural rules nonetheless allow an interlocutory appeal to be taken as long as the Attorney Examiner certifies the appeal to the PUCO. The standard applicable to certifying such an appeal is "that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice ... to one or more of the parties, should the commission ultimately reverse the ruling in question."⁸

Upon consideration of the interlocutory appeal under either of these two subsections of Ohio Adm. Code 4901-1-15, the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.⁹

III. BECAUSE THIS APPEAL SATISFIES OHIO ADM. CODE 4901-1-15(A) (2) IT MAY BE TAKEN TO THE PUCO WITHOUT CERTIFICATION

An interlocutory appeal may be taken directly to the Commission without the need for the appeal to be certified to the Commission by the Attorney Examiner if the Entry in question has terminated a party's right to participate in a proceeding.¹⁰ The January 22 Entry has terminated customers' rights in this proceeding. Customers were not afforded the required notice of the hearings and thus their opportunity to fully participate in the proceeding was terminated.

⁷ See Ohio Admin. Code 4901-1-15(A)(2).

⁸ Ohio Admin. Code 4901-1-15(B).

⁹ Ohio Adm. Code 4901-1-15(E).

¹⁰ See Ohio Admin. Code 4901-1-15(A)(2).

A. The attorney examiner's ruling terminates the public's right to fully participate in this proceeding, which harms consumers.

The January 22 Entry terminates the ability of the public to participate in this proceeding. Under R.C. 4928.141, public notice of hearings on proposed electric security plans like the one AEP has proposed in this proceeding is required. As a creature of statute, the PUCO cannot waive this statutory notice requirement.¹¹ In a March 2, 2017 Entry, the PUCO directed AEP to provide the requisite public notices. AEP failed to do so. Failure to provide the public with notice of AEP's proposal to increase consumers' monthly utility bills deprived the public of information regarding AEP's proposal and terminated its opportunity to learn of and participate in the hearing process.¹²

The January 22 Entry failed to rectify this problem by not ordering a new evidentiary hearing in which the public could participate. Nor did the January 22 Entry order new local public hearings and new notices to be published in each county in AEP's service territory. Instead, the January 22 Entry only directed AEP to hold one more local public hearing in Columbus, Ohio. Thus, the AEP consumers outside of Franklin County will still not have received the public notice of the hearings that they deserve. And no AEP customer will have an opportunity to participate in the evidentiary hearing. An immediate decision by the Commission is needed to allow the public to fully participate in this proceeding consistent with Ohio law.

¹¹ See *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 38 Ohio St.3d 266 (1988).

¹² AEP Ohio's argument that the public received sufficient notice of the hearings from other third-party media sources is meritless. R.C. 4928.141 requires the PUCO to publish the public notice in newspapers of general circulation in each county in the utility's service territory. The notices were not published and this requirement is not waivable.

IV. REQUEST FOR CERTIFICATION

The criteria for an appeal to be certified to the full Commission, which are also satisfied here, are as follows: does the appeal present a new or novel question of interpretation, law, or policy, or is it taken from a ruling which represents a departure from past precedent and, which requires immediate determination by the commission to prevent the likelihood of undue prejudice to one or more of the parties, should the commission ultimately reverse the ruling in question.¹³ As explained below, the January 22 Entry satisfies both of these criteria because the PUCO has consistently followed the public notice requirement that is required under Ohio law. Thus, the January 22 Entry departs from this past precedent and presents a new interpretation of Ohio law.

A. The January 22 Entry represents a departure from past precedent that will harm consumers.

When a utility files an application for an ESP, Ohio law requires that written notice of the hearings be published in a newspaper of general circulation in each county in the utility's certified territory before the hearings commence.¹⁴ The PUCO has consistently complied with this law in the past.¹⁵ The January 22 Entry only orders a single local public hearing in Columbus, Ohio, and public notice of that hearing. It does not order publication of public notice for the evidentiary hearing or local public hearings

¹³ Ohio Admin. Code 4901-1-15(B).

¹⁴ See R.C. 4928.141(B).

¹⁵ See FirstEnergy ESP 1, Case No. 08-935-EL-SSO, Entry (September 9, 2008); FirstEnergy ESP 2, Case No. 10-388-EL-SSO, Entry (April 12, 2010); FirstEnergy ESP III, 12-1230-EL-SSO, Entry (May 9, 2012); FirstEnergy ESP 4, Case No. 14-1297-EL-SSO, Entry (December 2, 2014); Duke ESP 1, Case No. 08-920-EL-SSO, Entry (September 17, 2008); Duke ESP 2, Case No. 11-3549-EL-SSO, Entry (July 22, 2011); Duke ESP 3, Case No. 14-841-EL-SSO, Entry (August 5, 2014); AEP Ohio ESP 1, Case No. 08-917-EL-SSO, Entry (September 24, 2008); AEP Ohio ESP 2, Case No. 11-346-EL-SSO, Entry (March 3, 2011); AEP Ohio ESP 3, Case No. 13-2385-EL-SSO, Entry (March 31, 2014); DP&L 3, Case No. 16-395-EL-SSO, Entry (August 16, 2016). On two occasions, the PUCO ordered publication of notice for local public hearings for an electric security plan, which did not mention the evidentiary hearing. See DP&L ESP 1, Case No. 08-1094-EL-SSO, Entry (February 2, 2009); DP&L ESP 2, Case No. 12-426-EL-SSO, Entry (December 6, 2012).

in each county in AEP's certified territory. Thus, the January 22 Entry is a departure from law and legal precedent.

Additionally, the January 22 Entry departs from past precedent by providing the PUCO power and authority not given to it by the Ohio General Assembly. The PUCO is a creature of statute with limited and defined powers. It may not act beyond what it is authorized to do by statute.¹⁶ The January 22 Entry not only violated the statutory requirements regarding publishing public notice, it also assumed authority for the PUCO that it simply does not have. There is no authority for the PUCO to ignore the Ohio legislature's determination that the public has a right to know about proposals that can increase their monthly utility bills and to participate in the hearing process. Were the PUCO to assume such authority, it would be a vast departure from precedent.

B. The January 22 Entry presents a new or novel question of interpretation, law, or policy that will harm consumers.

The January 22 Entry presents a new or novel question of interpretation, law, or policy because the PUCO has consistently ordered the respective utility to publish public notice of hearings in each county in the utility's certified territory as required by R.C. 4928.141(B).¹⁷ While the January 22 Entry attempts to remedy the failure to provide the statutorily required public notice by establishing a single additional local public hearing, it did not order AEP to publish public notices in each county in its certified territory. Nor did the January 22 Entry order a new evidentiary hearing to be noticed or held. Law and legal precedent clearly holds that public notice of hearings in ESP proceedings must be

¹⁶ See, e.g., *MCI Tele. Corp. v. PUCO*, 38 Ohio St. 3d 266, 273 (1988) (citation omitted).

¹⁷ The PUCO has ordered publication of notice for hearings on two occasions which did not mention the evidentiary hearing. See DP&L ESP 1, Case No. 08-1094-EL-SSO, Entry (February 2, 2009); DP&L ESP 2, Case No. 12-426-EL-SSO, Entry (December 6, 2012).

published in a newspaper of general circulation in each county in the utility's certified territory. The January 22 Entry does not call for that. Therefore, the Attorney Examiner's ruling in the January 22 Entry is a novel question of interpretation, law, or policy.

C. An immediate determination is needed to prevent undue prejudice to consumers.

An immediate determination is needed on this interlocutory appeal to prevent undue prejudice to consumers. Given that the evidentiary hearing has already occurred and the parties have filed initial and reply briefs, the PUCO could issue an Opinion and Order approving AEP's proposed rate increase at any time. If the PUCO does approve AEP's proposal, it could then begin charging consumers increased rates. It is unlikely that AEP would be obligated to return this money to consumers should the PUCO decision be overturned on appeal at the Ohio Supreme Court.¹⁸ Thus, the PUCO could allow AEP to charge consumers increased rates, which may not be refundable to consumers, before the public has been given a properly noticed – and statutorily required – opportunity to fully participate in this proceeding. That prejudices consumers. That element for certification of the Interlocutory Appeal is also met.¹⁹

V. APPLICATION FOR REVIEW

This appeal should be granted or certified to the full Commission because the January 22 Entry unlawfully ignores the non-waivable public notice requirement under Ohio law. According to Ohio R.C. 4928.141(B),²⁰ the PUCO must publish notice of

¹⁸ See *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel.Co.*, 166 Ohio St. 254 (1957); *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011) (stating that the rule against retroactive ratemaking bars the PUCO from ordering a refund or otherwise adjusting rates to make up for overcharges under previously recorded rates).

¹⁹ Ohio Admin. Code 4901-1-15(B).

²⁰ R.C. 4928.141(B).

hearings (local public hearings and evidentiary hearings) in a newspaper of general circulation in each county in the utility's certified territory. This is a requirement that cannot be waived by the PUCO or AEP. The January 22 Entry is therefore in violation of this law by not ensuring that public notice be published before all hearings.

The Attorney Examiner Entry acknowledges AEP's argument that consumers were given sufficient notice through third-party media releases.²¹ But this argument fails because it does not comply with the non-waivable requirement in R.C. 4928.14(B) that all notices must be publicly noticed. Thus, it matters not whether the hearings were widely reported by various media. The PUCO was required by non-waivable statute to publish notice of the hearings (local public hearings and the evidentiary hearing) in a newspaper of general circulation in each county in AEP's certified territory. This law was not complied with.

Further, the Attorney Examiner's solution -- to hold one local public hearing that is properly noticed -- is not sufficient to comply with R.C. 4928.141(B). The statute refers to notice requirements related to a "hearing of a filing under section 4928.142 or 4928.143 of the revised code." The "hearing" must be interpreted to mean not only the local public hearing(s), but also the mandatory evidentiary hearing, referred to as the "proceeding" in R.C. 4928.143(C)(1). Otherwise, parties and the interested public are denied the right to challenge evidence supporting a rate increase to customers under an ESP filing. The Attorney Examiner misses the point that the proposed solution did not require proper notice for the evidentiary hearing as well. As a result, the status of the case continues to be unlawful.

²¹ Attorney Examiner Entry at 4,5.

Also, this appeal should be granted or certified to the full Commission because the January 22 Entry will unduly prejudice residential consumers, despite AEP's assertions otherwise.²² There is no support for the contention that because some customers participated in the proceeding, that properly noticed hearings would not have produced any more customer testimony or evidence. And in turn, there is no support for the notion that whatever evidence not produced would not have made a difference. AEP's residential consumers will be harmed and prejudiced if the January 22 Entry is not reversed or modified. Consumers will not have been given the ability to participate in all hearings (including a properly noticed evidentiary hearing). Thus, the PUCO could render a decision on AEP's proposal, which will increase consumers' rates, without first allowing consumers to exercise their right to participate in properly noticed proceedings. Thus, an immediate reversal of the January 22 Entry is warranted because consumers' harm can only be remedied now, before a PUCO decision is made on the merits of the case. That decision on the merits must be made based on a proper record. There is no proper record here where the law's notice requirements were not met.

OCC's Application for Review meets the requirements of Ohio Admin. Code 4901-1-15(C). The application has been filed "within five days after the ruling is issued" and the application does "set forth the basis of the appeal and citations of any authorities relied upon." Consistent with R.C. 4928.141, the PUCO should modify or reverse the January 22 Entry because it is unlawful in its current state.

²² AEP reply at 2.

VI. CONCLUSION

For the reasons set forth above, this appeal should be granted or certified to the full Commission. The Commission should reverse or modify the Attorney Examiner's January 22 Entry. The PUCO should require proper public notice of its hearings, including evidentiary hearings, as it was required to do under R.C. 4928.141, in this proceeding. The public has a right to know about proposals that can increase their monthly utility bills and to participate in the hearing process. That hearing process includes both local public hearings and an evidentiary hearing. The PUCO has violated that right and the Attorney Examiner's solution does not resolve the problem associated with notice. Proper public notice of local public hearings and evidentiary hearings are required under standard PUCO practice, is required by Ohio law, PUCO precedent, and is in the public interest. Without a reversal of the January 22 Entry, the public will suffer irreparable, undue prejudice as the PUCO will not have a proper record before it when it goes forward to consider AEP's electric security plan.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Interlocutory Appeal was served by electronic service to the counsel identified below (provided electronically to the Attorney Examiners) this 29th day of January, 2018.

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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

By: Greta See
Attorney Examiner

GS/mef

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in

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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/29/2018 5:19:28 PM

in

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

Summary: Request Interlocutory Appeal, Request for Certification to Full Commission, and Application for Review by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Moore, Kevin F. Mr.