

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE PURCHASE OF
RECEIVABLES IMPLEMENTATION PLAN
FOR OHIO POWER COMPANY.

CASE No. 15-1507-EL-EDI

SECOND ENTRY ON REHEARING

Entered in the Journal on February 28, 2018

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing of the September 27, 2017 Finding and Order filed by Ohio Power Company d/b/a AEP Ohio and 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 (CRES) 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, in Case No. 13-2385-EL-SSO, et al., AEP Ohio filed, pursuant to R.C. 4928.143, an application for an ESP for the period of June 1, 2015, through May 31, 2018. In the application, AEP Ohio proposed to establish a purchase of receivables (POR) program, in order to support a competitive marketplace that is attractive to CRES providers, enhance shopping opportunities for customers, and provide financial security for

the Company. As proposed, the POR program would consist of an agreement between AEP Ohio and each participating CRES provider for the purchase of receivables billed on behalf of the CRES provider by the Company via utility consolidated billing.

{¶ 5} On February 25, 2015, the Commission issued its Opinion and Order, approving AEP Ohio's proposed ESP, with certain modifications. Among other matters, the Commission found that a POR program should be approved for AEP Ohio, with the implementation details to be discussed within the Market Development Working Group (MDWG) and determined in a subsequent proceeding, following the filing of a detailed implementation plan by Staff no later than August 31, 2015. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015) at 80-81. The Commission also determined that AEP Ohio's POR program should comply with the following requirements: receivables must be purchased at a single discount rate that applies to all CRES providers; only commodity-related charges may be included in the POR program; and participation in the POR program by CRES providers that elect utility consolidated billing must not be mandatory. *ESP 3 Case* at 80.

{¶ 6} By Entries dated September 2, 2015, and October 14, 2015, the deadline for the filing of the POR implementation plan by Staff was extended to October 15, 2015, and November 16, 2015, respectively.

{¶ 7} On November 16, 2015, in the above-captioned case, Staff filed its report on the MDWG's discussions regarding the implementation details for AEP Ohio's POR program (Staff Report). Staff filed a correction to the Staff Report on November 30, 2016.

{¶ 8} On November 3, 2016, the Commission issued a Fourth Entry on Rehearing in the *ESP 3 Case*, which, among other issues, addressed a number of arguments with respect to the POR program. The Commission also directed that the attorney examiners establish a procedural schedule in the above-captioned case, seeking comments in response to the Staff Report. *ESP 3 Case*, Fourth Entry on Rehearing (Nov. 3, 2016) at 57.

{¶ 9} By Entry dated November 8, 2016, a procedural schedule was established in the present case, in order to facilitate the Commission's review of the Staff Report. Consistent with the established procedural schedule, comments and reply comments were filed on December 8, 2016, and December 22, 2016, respectively.

{¶ 10} On September 27, 2017, the Commission approved the implementation details for AEP Ohio's POR program, consistent with Staff's recommendations, as modified in the Commission's Finding and Order.

{¶ 11} On October 27, 2017, AEP Ohio and the Ohio Consumers' Counsel (OCC) filed applications for rehearing of the September 27, 2017 Finding and Order. Memoranda contra the applications for rehearing were filed by AEP Ohio, OCC, and jointly by Interstate Gas Supply, Inc., Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Retail Suppliers) on November 6, 2017.

{¶ 12} By Entry on Rehearing dated November 21, 2017, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing filed by AEP Ohio and OCC.

{¶ 13} The Commission has reviewed and considered all of the arguments raised in AEP Ohio's and OCC's applications 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 Applications for Rehearing

1. AEP OHIO

{¶ 14} In its sole ground for rehearing, AEP Ohio argues that it was unreasonable and unlawful for the Commission to order the Company to implement a POR program without clarifying three key issues related to the program and associated cost recovery. First, AEP Ohio asserts that, after a good faith cost estimate is rendered by the Company and the number of participating CRES providers is determined, each CRES provider that elects to opt into the

POR program should be required to make a binding five-year participation commitment and agree to pay its fair share of prudently incurred program costs. Next, AEP Ohio contends that the Commission should clarify that the per-bill fee methodology addressed in Paragraph 46 of the Finding and Order will result in an annual true-up of the per-bill fee, which will consider, among other things, the current number of CRES providers and retail customers being served, as well as a final reconciliation of the per-bill fee that will be paid by the participating CRES providers until the costs are fully recovered by the Company. Finally, according to AEP Ohio, the Commission should clarify that any costs that are not recovered from participating CRES providers will be deferred with a carrying charge and recovered from the Company's customers through rates. In support of its request for clarification on these issues, AEP Ohio maintains that it was unreasonable for the Commission to create uncertainty about CRES participation during the five-year term of the POR program without providing certainty for the Company's cost recovery.

{¶ 15} As an alternate request, AEP Ohio asserts that, after the process set forth in Paragraph 25 of the Finding and Order takes place, the Commission should commit to issue an order that addresses and resolves all of these matters prior to the Company being required to undertake the obligation of moving forward with the POR program.

{¶ 16} In its memorandum contra, OCC responds that AEP Ohio's application for rehearing lacks the specificity required by R.C. 4903.10 and Ohio Adm.Code 4901-1-35(A) and does not provide the Commission with sufficient reason to abrogate or modify the Finding and Order. OCC asserts that AEP Ohio merely provided a list of unanswered issues and did not explain how the Commission's alleged failure to address these issues renders the Finding and Order unlawful or unreasonable. Further, in urging the Commission to reject AEP Ohio's third request for clarification, OCC notes that the Finding and Order expressly stated that the Company should collect its POR program costs from CRES providers, not customers. Consequently, OCC maintains that the Commission should reject AEP Ohio's attempt to ensure that customers pay for any error that the Company makes in estimating the costs associated with the POR program. According to OCC, if AEP Ohio's estimate is wrong, the

Company may adjust the monthly billing fee charged to CRES providers that participate in the POR program.

{¶ 17} In the Finding and Order, the Commission made three points abundantly clear. First, we affirmed our original mandate that CRES providers should be permitted to opt out of participation in AEP Ohio's POR program. Second, we directed that CRES providers that elect to participate in the POR program should pay for the program. Third, we reiterated that AEP Ohio should recover both the implementation and maintenance costs associated with the POR program. After confirming these guiding principles, we directed AEP Ohio to meet with any interested parties to discuss the costs and process for implementing an opt-out POR program and, following those discussions, to file a full cost estimate for implementation, along with a list of CRES providers that have agreed to participate in the program and compensate the Company for the implementation costs. Finding and Order at ¶ 25. Once that information has been filed in a new docket, the Commission will establish the next steps to proceed with the implementation of the opt-out POR program, including any necessary clarification regarding the implementation and cost recovery details. AEP Ohio's application for rehearing should, therefore, be denied at this time.

2. OCC

{¶ 18} OCC raises three grounds for rehearing. First, OCC argues that, in allowing AEP Ohio to use the bad debt rider (BDR) as a recovery mechanism of last resort to collect CRES providers' receivables, the Commission unreasonably and unlawfully shifted the risk of the POR program from CRES providers to consumers, contrary to the requirement in R.C. 4928.08(B) that consumers be protected from CRES providers' default. According to OCC, AEP Ohio has other means of protecting itself against losses from CRES providers' default, such as the financial security requirements of R.C. 4928.08(B) and Ohio Adm.Code 4901:1-24-14. OCC adds that a CRES provider's rates may include the costs incurred for providing AEP Ohio with the required financial security, and, therefore, consumers may pay twice for the Company's protection - once through their CRES provider's charges and again through the BDR. OCC recommends that AEP Ohio be required to sufficiently analyze the business risk for all CRES

providers participating in the POR program on a continual basis, as well as to collect from CRES providers the level of financial surety necessary to protect the Company and its customers from the risk associated with any bad debt from the POR program.

{¶ 19} In its memorandum contra, AEP Ohio replies that the requirements of R.C. 4928.08(B) do not support OCC's position that the BDR should not be used as a cost recovery backstop. Emphasizing that the BDR as a backstop is a crucial component of the POR program for AEP Ohio, the Company also points out that the financial surety requirements of the statute do not eliminate the financial risk of default. AEP Ohio argues that, in any event, the collateral requirements of R.C. 4928.08(B) are a separate matter from the Company's risk of not fully recovering its POR program costs from participating CRES providers. AEP Ohio notes that the financial security provided by CRES providers to the Company does not cover the Company's costs of deploying customer choice billing. AEP Ohio concludes that requiring a per-bill fee structure and allowing CRES providers to enter and leave the POR program, without also providing for a cost recovery backstop, would improperly leave the Company exposed to stranded capital investment and large customer bankruptcies.

{¶ 20} The Retail Suppliers note that the Commission already rejected OCC's contention that R.C. 4928.02(B) offers sufficient protection to obviate the necessity of the BDR in the event of default. The Retail Suppliers add that OCC's arguments regarding credit requirements are a collateral attack on issues being addressed in AEP Ohio's current ESP proceedings and, therefore, it would be inappropriate to relitigate those issues in the present case.

{¶ 21} In the Finding and Order, the Commission agreed with Staff's recommendation that the BDR established in the *ESP 3 Case* should be relied on as a recovery mechanism of last resort. Finding and Order at ¶ 67. We find no merit in OCC's contention that the use of the BDR as a backstop mechanism for AEP Ohio's recovery of POR program costs is contrary to R.C. 4928.08(B). The statute pertains to the Commission's certification of CRES providers following demonstration of their managerial, technical, and financial capability to provide CRES and a financial guarantee sufficient to protect customers and electric distribution utilities

from default. We agree with AEP Ohio that the CRES certification requirements of R.C. 4928.08(B) are separate and distinct from the risk to the Company of not fully recovering its POR program costs from participating CRES providers. Accordingly, OCC's request for rehearing on this issue should be denied.

{¶ 22} As its second ground for rehearing, OCC asserts that the Finding and Order is based on a misstatement of a Staff recommendation regarding use of the BDR for the POR program. OCC further asserts that, consequently, the Finding and Order violates R.C. 4903.09 and creates potential harm for consumers. In support of its position, OCC notes that the Commission stated that it agreed with Staff's position that the BDR should be utilized as a recovery mechanism of last resort, as well as to facilitate the Company's recovery of CRES providers' receivables when economic conditions overwhelm the discount rate or the viability of the POR program in general. OCC acknowledges that the Staff Report, at one point, is consistent with the Finding and Order. According to OCC, Staff later narrowed its position in the Staff Report, such that Staff recommended that the BDR, as an option of last resort, could be used to collect CRES providers' receivables when economic conditions overwhelm the discount rate or the viability of the POR program in general. OCC argues that the Commission did not limit the use of the BDR as recommended by Staff and, therefore, the Finding and Order is not based on the record, contrary to R.C. 4903.09.

{¶ 23} OCC adds that the Commission failed to explain what it means by collection mechanism of last resort or to establish any parameters for AEP Ohio's use of the BDR to collect CRES providers' receivables from customers. OCC also contends that the Commission may have permitted a use for the BDR that is contrary to its purpose of enabling AEP Ohio to collect CRES providers' receivables and generation-related uncollectible expenses that exceed the amount already being recovered through base distribution rates. OCC claims that the Commission appears to have authorized AEP Ohio to collect CRES providers' receivables in addition to the amount recovered through base distribution rates. OCC concludes that the BDR should only be used under extreme circumstances, such as where a CRES provider's default creates liability that exceeds the surety provided to AEP Ohio.

{¶ 24} AEP Ohio responds that the Commission should not place severe restrictions on the use of the BDR or require that the rider can only be used under extreme circumstances, as OCC requests. With respect to OCC's argument that the BDR should only be used to collect bad debt expense above the amount reflected in base rates, AEP Ohio replies that the bad debt associated with the POR program was not reflected in the test year from the Company's last rate case. Consequently, AEP Ohio asserts that all of the bad debt costs associated with the POR program should be recovered through the BDR, if the costs are not recovered through the per-bill fee, discount rate, or CRES providers' collateral.

{¶ 25} The Retail Suppliers assert that OCC ignores the fact that the BDR will only be used as a last resort, just as recommended in the Staff Report. According to the Retail Suppliers, the Finding and Order is consistent with the Staff Report, and offers no reason to conclude that the Commission adopted anything other than Staff's recommendation on this issue. The Retail Suppliers conclude that the Commission fully complied with R.C. 4903.09.

{¶ 26} As recommended by Staff and OCC, we agree that the BDR should be used by AEP Ohio to recover CRES receivables when economic conditions overwhelm the discount rate or the viability of the POR program in general. However, in the Finding and Order, the Commission was also clear that AEP Ohio should recover its implementation and maintenance costs associated with the opt-out POR program. Finding and Order at ¶ 25, citing *ESP 3 Case, Second Entry on Rehearing* (May 28, 2015) at 40. We, therefore, found that the BDR should be used as a recovery mechanism of last resort to ensure that AEP Ohio is made whole. Finding and Order at ¶ 67. Our determination that AEP Ohio should use the BDR, as a backstop mechanism, to recover any bad debt costs associated with the POR program that are not otherwise recovered from CRES providers is consistent with our position that the Company should be assured of full cost recovery before proceeding with the implementation of the program. Finding and Order at ¶ 25; *ESP 3 Case, Second Entry on Rehearing* (May 28, 2015) at 40. The Commission's position is also consistent with the Staff Report (Staff Report at 1). OCC's assertion that the Finding and Order is contrary to R.C. 4903.09 lacks merit and rehearing on this issue should be denied.

{¶ 27} Finally, OCC claims that the Finding and Order violates the due process rights of consumers by allowing review of the discount rate and the BDR only by Staff. OCC, therefore, recommends that AEP Ohio be directed to initiate a case to openly review the calculations for the POR program and the BDR in each year that the calculations are updated, with participation from consumers.

{¶ 28} AEP Ohio maintains that the Finding and Order does not violate customers' due process rights, because customers have no right to participate in a ratemaking proceeding, in the absence of an express statutory provision. *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 638 N.E.2d 550 (1994). AEP Ohio adds that OCC cannot, in any event, assert constitutional rights on behalf of individual customers.

{¶ 29} In the *ESP 3 Case*, AEP Ohio recommended that the BDR be subject to an annual true-up proceeding with an application period of January 1 to December 31, and the Commission did not modify this aspect of the Company's request for approval of the BDR. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 72, 81. Consistent with the annual review process previously established for the BDR, we adopted, in the Finding and Order, Staff's recommendation that the discount rate calculations should also be provided by AEP Ohio as part of the annual review, and reiterated that the BDR should be calculated on an annual basis. Finding and Order at ¶¶ 54, 67. The Finding and Order was not intended to suggest that interested stakeholders will not be afforded the opportunity to participate in the annual true-up proceeding. We, therefore, find no merit in OCC's argument that consumers have been excluded from the annual review of the BDR and the discount rate. Consequently, OCC's request for rehearing on this issue should be denied.

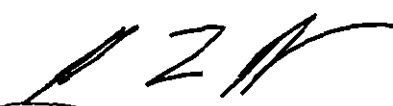
III. ORDER

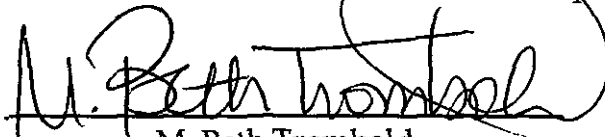
{¶ 30} It is, therefore,

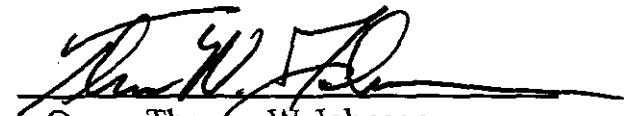
{¶ 31} ORDERED, That the applications for rehearing filed by AEP Ohio and OCC be denied. It is, further,

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

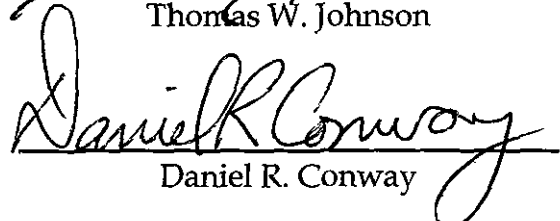
THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


M. Beth Trombold

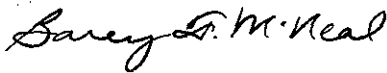

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