

In the Matter of the Application of )  
Ohio Power Company to Update Its ) Case No. 17-1156-EL-RDR  
gridSMART Phase 2 Rider Rates. )

**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

- The tariff language approved in the Order is too limited in scope, and does not provide that consumers may be eligible for refunds of unlawful charges on their electric bills beyond the two cases identified in the tariff.

<sup>2</sup> Finding & Order (Feb. 28, 2018) (“Order”).

Respectfully submitted,

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/s/ Terry L. Etter

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## I. INTRODUCTION

On February 5, 2018, OCC filed comments to direct the PUCO’s attention to a Supreme Court of Ohio (“Court”) decision that could affect all utility company riders – and the consumers who pay the riders. This includes the gridSMART Phase 2 rider at issue in this case. The Court ruled that where riders are updated quarterly and automatically approved, the collection of expenses later found imprudent could not be refunded to customers unless the tariff included language stating the rider was to be

<sup>5</sup> *See id.*

collected subject to refund.<sup>6</sup> OCC urged the PUCO to take action so the settlement in the gridSMART Phase 2 rider case may function as the PUCO intended and to protect consumers.<sup>7</sup> And OCC recommended language to include in the tariff.<sup>8</sup>

On February 20, 2018, AEP Ohio filed a reply to OCC's comments. AEP Ohio did not suggest alternative tariff language, but instead stated that it would work with the PUCO Staff to develop language.<sup>9</sup> After consulting with the PUCO Staff,<sup>10</sup> AEP Ohio filed revised tariff language on February 23, 2018. The revised tariff language stated that the rider would be reconciled "including, but not limited to, refunds to customers, based upon the impact to the carrying charge rate recovered through this Rider of changes in Federal corporate income taxes due to the Tax Cuts and Jobs Act of 2017 or based upon the results of audits ordered by the Commission in accordance with the February 1, 2017 Opinion and Order in Case No. 13-1939-EL-RDR." On February 26, 2018, the PUCO Staff docketed a recommendation that the PUCO approve the new tariff language.<sup>11</sup> The PUCO approved the language on February 28, 2018.<sup>12</sup>

By referring to only two cases, the tariff language is extremely limited in scope. It does not protect consumers from unforeseen circumstances, such as legislation (state or federal) or court decisions (like *FirstEnergy*), that affect tariffs such as the one in this case. The Order is unjust and unreasonable, and should be modified.

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<sup>6</sup> *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 ("*FirstEnergy*"), ¶¶18-20.

<sup>7</sup> OCC Comments at 4-5.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> AEP Ohio Reply Comments at 2.

<sup>10</sup> See cover letter to revised tariff filing (February 23, 2018).

<sup>11</sup> Review and Recommendation (February 26, 2018).

<sup>12</sup> Order, ¶11.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC is an intervenor in this case<sup>13</sup> and filed comments.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” The statutory standard to modify the Order is met here.

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<sup>13</sup> OCC was granted intervention in the Order (§12).

### III. ERROR

**The tariff language approved in the Order is too limited in scope, and does not provide that consumers may be eligible for refunds of unlawful charges on their electric bills beyond the two cases identified in the tariff.**

In Comments, OCC recommended revising the tariff to make it subject to refund so that it comports with the *FirstEnergy* decision.<sup>14</sup> The language OCC proposed specifically mentioned the prudency audits that were ordered in Case No. 13-1939-EL-RDR. The tariff language AEP Ohio and the PUCO Staff agreed upon – and that the PUCO ultimately adopted – specifically mentioned the 13-1939 case and the federal tax cuts enacted in December 2017. Accounting for the effect of the federal tax cuts on collections made through the rider was an improvement in the tariff. But the tariff does not go far enough.

Events other than the prudency audits and the tax cuts may trigger a need to adjust amounts that have already been collected from customers through the rider. There may be other legislation – federal or state – that may require recalculating what has already been collected through the rider. Other decisions by the PUCO or courts could also affect the rider. In order to help protect consumers in light of the *FirstEnergy* decision, the tariff should contemplate that unforeseen legislative actions, PUCO rulings, and court decisions may need to be addressed.

The tariff language approved in the Order is inadequate to deal with *FirstEnergy* and the prospect it raises of consumers paying unlawful and unreasonable charges. It might not address the situation where the PUCO approves a charge and the charge is later found unlawful or unreasonable by the Court. It might not address other decisions that

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<sup>14</sup> OCC Comments (February 5, 2018) at 5.

may affect recalculation of amounts already collected from customers. In addition, making the rider subject to “reconciliation” is vague and ambiguous, at best. The PUCO should modify the Order to broaden the scope of events that would make the tariff subject to refund to customers. This would help prevent consumers from paying unlawful rates, as happened in the FirstEnergy case.

To protect consumers, the PUCO should make the following changes to the tariff language:

This tariff is collected subject to ~~reconciliation, including, but not limited to, refunds or similar adjustment~~ to customers, based upon (1) the impact to the carrying charge rate recovered through this Rider of changes in Federal corporate income taxes due to the Tax Cuts and Jobs Act of 2017, or based upon (2) the results of audits ordered by the Commission in accordance with the February 1, 2017 Opinion and Order in Case No. 13-1939-EL-RDR, or (3) any other legislation, Commission decision, or court decision that makes collection of amounts from customers under this Rider unlawful, imprudent, or unreasonable.

#### **IV. CONCLUSION**

The tariff language approved in the PUCO’s Order does not adequately protect consumers from paying unlawful charges on their electric bills. The Order is unjust and unreasonable, and should be modified as OCC recommends to protect consumers.

Respectfully submitted,

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/s/ Terry L. Etter

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Application for Rehearing was served on the persons stated below via electronic transmission this 30th day of March 2018.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

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

**Commission of Ohio Docketing Information System on**

**3/30/2018 4:30:05 PM**

**in**

**Case No(s). 17-1156-EL-RDR**

Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.