

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

THIRD ENTRY ON REHEARING

Entered in the Journal on April 25, 2018

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the February 28, 2018 Second Entry on Rehearing 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 (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} 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.

{¶ 12} 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.

{¶ 13} 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.

{¶ 14} In a Second Entry on Rehearing issued on February 28, 2018, the Commission denied AEP Ohio's and OCC's applications for rehearing of the September 27, 2017 Finding and Order.

{¶ 15} On March 30, 2018, OCC filed a second application for rehearing. AEP Ohio and the Retail Suppliers filed memoranda contra on April 9, 2018.

B. *Consideration of the Application for Rehearing*

{¶ 16} In its sole ground for rehearing, OCC argues that the Commission's interpretation of R.C. 4928.08(B) in the Second Entry on Rehearing was unjust, unreasonable, and unlawful, because it diminished the consumer protections found in the statute. Specifically, OCC notes that the Commission determined that the certification requirements in R.C. 4928.08(B) are separate and distinct from AEP Ohio's risk of not fully collecting its POR program costs from participating CRES providers. According to OCC, the Commission's view of the statute means that the financial guarantee required of CRES providers cannot be used as a backstop to collect unforeseen POR program costs, thereby shifting the risk associated with uncollectible costs entirely to customers, with AEP Ohio and CRES providers held harmless. OCC contends that the financial guarantee required by R.C. 4928.08(B) is separate from the showing of financial capability to provide electric service that a CRES provider must make and that the statute is intended to shield both electric companies and consumers from the uncertainties of the competitive marketplace. OCC maintains that, if AEP Ohio cannot fully collect POR program costs through the discount rate, it should be able to charge CRES providers for the costs, instead of customers, because CRES providers benefit most from the program and uncollectible expenses are a routine cost of doing business. OCC requests that the Commission establish a mechanism, including the financial guarantee supplied by CRES providers under R.C. 4928.08(B), to be used by AEP Ohio to collect unforeseen POR program costs from CRES providers.

{¶ 17} In its memorandum contra, AEP Ohio replies that OCC's application for rehearing merely repeats the same assertions that OCC has already raised twice in this proceeding and that the Commission has already thoroughly considered and rejected. AEP Ohio argues that, contrary to OCC's position, it is clear from the Commission's orders that the costs of the POR program will be collected from CRES providers and that the bad debt rider (BDR) is to be relied on as a recovery mechanism of last resort. AEP Ohio adds that OCC is incorrect in claiming that the Commission interpreted R.C. 4928.08(B) in the Second

Entry on Rehearing, given that the Commission merely recognized the plain language of the statute.

{¶ 18} The Retail Suppliers assert that OCC has raised no new arguments and that its application for rehearing is another attempt to ensure that CRES providers bear the entire cost of retail market developments. The Retail Suppliers contend that OCC provides no explanation for how the Commission's restatement of R.C. 4928.08(B) forecloses any ability to collect costs from CRES providers or how the Commission's description of the BDR as a backstop is counter to the statute. The Retail Suppliers also note that the Commission has already rejected OCC's position that the collection of POR program costs through the BDR is unjust and unreasonable, as OCC again claims in its second application for rehearing.

{¶ 19} The Commission finds that OCC's second application for rehearing should be denied. In the Second Entry on Rehearing, we rejected OCC's assertion that, by allowing the BDR to serve as a backstop mechanism for AEP Ohio's recovery of POR program costs, the Commission shifted the risk associated with the POR program from CRES providers to consumers, in violation of R.C. 4928.08(B). The Commission noted that the statute specifically addresses the 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. The Commission also agreed with AEP Ohio's position that the certification requirements set forth in R.C. 4928.08(B) are a separate issue from the Company's risk of not fully recovering its POR program costs from participating CRES providers. Second Entry on Rehearing at ¶ 21.

{¶ 20} Initially, we find that, to the extent that OCC repeats its earlier argument that it is unjust and unreasonable to permit AEP Ohio to recover POR program costs through the BDR, the argument has already been thoroughly considered and denied. Finding and Order at ¶ 67; Second Entry on Rehearing at ¶¶ 21, 26. The crux of OCC's second application for rehearing, however, is that the Commission's "interpretation" of R.C. 4928.08(B) was

erroneous. As AEP Ohio and the Retail Suppliers emphasize in their memoranda contra, the Commission merely recited the language of the statute in the Second Entry on Rehearing. Second Entry on Rehearing at ¶ 21. We note again that R.C. 4928.08(B) requires CRES providers, in advance of providing CRES to consumers in this state, to be certified by the Commission regarding their managerial, technical, and financial capability and to supply "a financial guarantee sufficient to protect customers and electric distribution utilities from default." OCC takes a broad view of the statute's financial guarantee requirement in arguing that it should encompass any POR program costs that AEP Ohio is unable to recover through the discount rate or the per-bill implementation fee paid by participating CRES providers. We find that OCC's position is not consistent with the statute or the Commission's rules.

{¶ 21} As the Commission has previously found, R.C. 4928.08(B) vests the Commission with the discretion to determine the sufficiency of a financial guarantee and under what circumstances the guarantee is applicable. *In re Village of Indian Hill, Ohio*, Case No. 03-1145-EL-GAG, Entry on Rehearing (July 8, 2003) at 6. The financial security requirement of R.C. 4928.08(B) is addressed in Ohio Adm.Code 4901:1-24-14(A), which authorizes an electric utility to obtain financial security from a CRES provider to protect the utility in the event that the CRES provider "fails, in whole or in part, to deliver contracted retail generation service to a customer for which the electric utility supplied to the customer in its capacity as default supplier." The financial guarantee, therefore, is intended to protect against a CRES provider's failure to provide retail generation service and to cover costs that AEP Ohio would incur if customers are returned to the SSO. It would not ensure that AEP Ohio recovers its POR implementation costs under other circumstances, such as a situation where the Company's recovery of significant capital investments is at risk due to insufficient CRES provider participation in the program. We, therefore, affirm our decision that the BDR should serve as a recovery mechanism of last resort to ensure that AEP Ohio fully recovers the implementation and maintenance costs associated with the POR program. Finding and Order at ¶¶ 25, 67; Second Entry on Rehearing at ¶¶ 21, 26.

III. ORDER

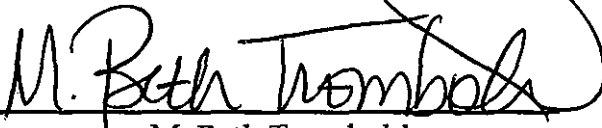
{¶ 22} It is, therefore,


{¶ 23} ORDERED, That OCC's second application for rehearing be denied. It is, further,

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

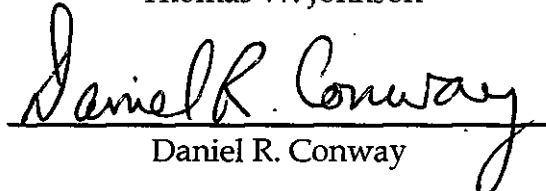
THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

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Barcy F. McNealBarcy F. McNeal
Secretary