

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power            )  
Company for a Limited Waiver of Rule 4901:1-            )    Case No. 18-713-EL-WVR  
35-10, Ohio Administrative Code.                            )

---

**MEMORANDUM CONTRA AEP’S APPLICATION FOR WAIVER  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

---

**I. INTRODUCTION**

The Office of the Ohio Consumers’ Counsel (“OCC”) opposes the application filed by Ohio Power Company (“AEP”) to delay the Public Utilities Commission of Ohio (“PUCO”) review of AEP’s 2017 earnings. AEP is required to file an application with the PUCO for administration of the significantly excessive earnings test (“SEET”) by May 15 each year. In that review, the PUCO must determine if AEP overcharged consumers causing the Utility to collect significantly excessive earnings, and if so, the PUCO must order the excess be refunded to consumers.<sup>1</sup>

On April 18, 2018, AEP filed an application for waiver requesting that the PUCO extend its May 15<sup>th</sup> filing deadline until July 2, 2018.<sup>2</sup> AEP has not provided sufficient justification for the PUCO to grant its application. It has already reported its earnings to the Securities and Exchange Commission (“SEC”) in Form 10-K<sup>3</sup> and FERC Form 1.<sup>4</sup>

---

<sup>1</sup> Ohio Adm. Code 4901:1-35-10.

<sup>2</sup> See AEP Application (Apr. 18, 2018).

<sup>3</sup> AEP FORM 10-K (2017)  
[https://www.aep.com/investors/FinancialFilingsAndReports/Filings/docs/AEP\\_10K\\_2017.pdf](https://www.aep.com/investors/FinancialFilingsAndReports/Filings/docs/AEP_10K_2017.pdf).

<sup>4</sup> AEP FERC FORM No. 1 (AEP 2017 Annual Report)  
<https://www.aep.com/investors/financialfilingsandreports/fercFilings/docs/2018/Ohio%20Power%20Comp any.pdf>.

AEP has also made earnings presentations to investors that explicitly identify its earned return on equity in 2017.<sup>5</sup> The Tax Cuts and Jobs Act of 2017 (“TCJA”) did not provide good cause to delay AEP from reporting its earnings to the SEC or investors; neither does it provide good cause for AEP to delay reporting its earnings to the PUCO.<sup>6</sup> The PUCO should deny AEP’s application for waiver and direct AEP to file its application for SEET review by May 15<sup>th</sup>. Otherwise, the delay works against the interests of customers because it potentially puts off any refund of significantly excessive earnings to customers.

## **II. RECOMMENDATION**

The PUCO should deny AEP’s application for waiver of Ohio Adm. Code 4901:1-10-35 and direct AEP to file its application for SEET review of its 2017 earnings by the May 15<sup>th</sup> deadline. R.C. 4928.143(F) requires the PUCO to compare a utility’s earnings under an electric security plan (“ESP”), measured by return on common equity, to the earnings of comparable companies during the same period.<sup>7</sup> If the utility’s earnings are “significantly in excess” of those comparable companies’ earnings, then the utility must refund the excess amounts to consumers.<sup>8</sup> If the PUCO orders such a refund, the utility then has the option to terminate its ESP and immediately file a Market Rate Offer.<sup>9</sup>

---

<sup>5</sup> AEP Earnings Release Presentation <http://www.aep.com/newsroom/resources/earnings/2018-01/4Q17EarningsReleasePresentation.pdf>.

<sup>6</sup> Tax Cuts and Jobs Act of 2017, Public Law No. 115-97.

<sup>7</sup> R.C. 4928.143(F) (the PUCO must determine if “the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk”).

<sup>8</sup> *Id.* See also *In re Application of Columbus S. Power Co.*, 134 Ohio St.3d 392, 2012-Ohio-5690 ¶1.

<sup>9</sup> R.C. 4928.143(F).

AEP seeks to delay the PUCO's review of its 2017 earnings. Instead of giving sound justification for its requested delay, AEP argues that the PUCO has previously granted waivers of Ohio Adm. Code 4901:1-35-10 and good cause exists because the TCJA was passed in 2017.<sup>10</sup> But while the TCJA may have impacted AEP's earnings, AEP still filed both its Form 10-K<sup>11</sup> and FERC Form 1<sup>12</sup> for the year 2017. AEP is obviously capable of adjusting for the impacts of the TCJA by the May 15 deadline. It has already done so for other regulatory authorities. It should do so now, without further delay that could prejudice customers by delaying a potential refund of significantly excessive earnings to them.

Further, AEP argues that "it is appropriate to analyze and determine the necessary adjustments to the book earnings to reverse the extraordinary impacts of the TCJA on 2017 earnings."<sup>13</sup> Actually, it is not appropriate. AEP should not, once again, be permitted to revise and "analyze" its methodology for reporting its earnings and the proposed earnings threshold of companies facing comparable business and financial risk. It is neither detailed nor time consuming, as AEP argues, for it to file its 2017 earnings and the earnings of utility companies with similar business and financial risk.

Good cause does not exist for granting AEP a waiver. The PUCO should timely review a utility's earnings to determine if they are significantly excessive. Similarly, customers should get timely refunds for funding a utility's significantly excessive

---

<sup>10</sup> Tax Cuts and Jobs Act of 2017, Public Law No. 115-97.

<sup>11</sup> AEP FORM 10-K (2017)

[https://www.aep.com/investors/FinancialFilingsAndReports/Filings/docs/AEP\\_10K\\_2017.pdf](https://www.aep.com/investors/FinancialFilingsAndReports/Filings/docs/AEP_10K_2017.pdf).

<sup>12</sup> AEP FERC FORM No. 1 (AEP 2017 Annual Report)

[https://www.aep.com/investors/financialfilingsandreports/fercFilings/docs/2018/Ohio%20Power%20Comp any.pdf](https://www.aep.com/investors/financialfilingsandreports/fercFilings/docs/2018/Ohio%20Power%20Comp%20any.pdf).

<sup>13</sup> See AEP Application (Apr. 18, 2018).

earnings. But this process would be jeopardized by allowing AEP to delay its filing by two months. The PUCO should deny AEP's application for waiver and direct AEP to report its 2017 earnings and earnings threshold on May 15<sup>th</sup>, as required by Ohio Adm. Code 4901:1-35-10.

### **III. CONCLUSION**

AEP has not provided good cause for the PUCO to delay its review of AEP's 2017 earnings. To protect consumers from the delay in obtaining potential refunds, the PUCO should deny AEP's application for waiver of Ohio Adm. Code 4901:1-10-35 and direct AEP to file its application for SEET review of its 2017 earnings by the May 15<sup>th</sup> deadline.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Bryce McKenney

Bryce McKenney (0088203)  
Counsel of Record  
William Michael (0070921)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Telephone [McKenney]: (614) 466-9585  
Telephone [Michael]: (614) 466-1291  
bryce.mckenney@occ.ohio.gov  
william.michael@occ.ohio.gov  
(Both will accept service via email)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission this 25<sup>th</sup> day of April 2018.

/s/ Bryce A. McKenney  
Bryce A. McKenney  
Assistant Consumers' Counsel

**SERVICE LIST**

william.wright@ohioattorneygeneral.gov

stnourse@aep.com  
cblend@aep.com

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

**Commission of Ohio Docketing Information System on**

**4/25/2018 4:33:25 PM**

**in**

**Case No(s). 18-0713-EL-WVR**

Summary: Memorandum Memorandum Contra AEP's Application for Waiver by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of McKenney, Bryce