

BEFORE  
THE PUBLIC UTILITY 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 Section 4928.143, Revised	)	
Code, in the Form of an Electric Security	)	
Plan	)	
	)	
In the Matter of the Application of Ohio	)	Case No. 16-1853-EL-AAM
Power Company for Approval of Certain	)	
Accounting Authority	)	

---

**JOINT MEMORANDUM CONTRA THE OFFICE OF THE OHIO CONSUMERS'  
COUNSEL APPLICATION FOR REHEARING**

---

Joseph Olikier (0086088)  
Counsel of Record  
joliker@igsenergy.com  
Michael Nugent (0090408)  
mnugent@igsenergy.com  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
Telephone: (614) 659-5000

***Attorneys for IGS Energy***

Mark A. Whitt (0067996)  
Andrew J. Campbell (0081485)  
Rebekah J. Glover (0088798)  
WHITT STURTEVANT LLP  
The KeyBank Building, Suite 1590  
88 East Broad Street  
Columbus, Ohio 43215  
Telephone: (614) 224-3946  
whitt@whitt-sturtevant.com  
campbell@whitt-sturtevant.com  
glover@whitt-sturtevant.com

***Counsel for the Retail Energy Supply  
Association***

BEFORE  
THE PUBLIC UTILITY 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 Section 4928.143, Revised	)	
Code, in the Form of an Electric Security	)	
Plan	)	
	)	
In the Matter of the Application of Ohio	)	Case No. 16-1853-EL-AAM
Power Company for Approval of Certain	)	
Accounting Authority	)	

---

**JOINT MEMORANDUM CONTRA THE OFFICE OF THE OHIO CONSUMERS'  
COUNSEL APPLICATION FOR REHEARING**

---

**I. INTRODUCTION**

On April 25, 2018, the Public Utilities Commission of Ohio (“Commission”) issued an Opinion and Order (“Order”) that modified and approved the stipulation and recommendation filed in the above-captioned proceeding and authorized Ohio Power Company (“Ohio Power”) to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”) for the period of June 1, 2018, through May 31, 2024. As part of the ESP, Ohio Power will establish several new riders, including a placeholder Retail Reconciliation Rider (“RRR”).

On May 25, 2018, the Office of the Ohio Consumers’ Counsel (“OCC”) filed an application for rehearing requesting the Commission to modify and abrogate specific portions of Ohio Power’s ESP. OCC argues, in part, that the Commission’s order is

unlawful and unreasonable because it approved a placeholder RRR<sup>1</sup> and set the rider to zero; and violates important regulatory practices and principles by approving the rider without knowing its costs.<sup>2</sup> As discussed below, Interstate Gas Supply Inc., (“IGS Energy”) and the Retail Energy Supply Association (“RESA”) submit that the Commission should deny portions of OCC’s application for rehearing that challenge the RRR, because its arguments are substantively incorrect and its conclusions are inconsistent with the record.

## **II. ARGUMENT**

### **A. OCC’s first assignment of error that the Order violated the statutory ESP versus Market Rate Offer (“MRO”) test in R.C. 4928.143(C)(1) because it did not consider approved riders set at zero should be rejected.**

OCC argues that the Commission should reevaluate whether the ESP passed the statutory ESP versus MRO test in R.C. 4928.143(C)(1) because its analysis did not consider several riders, including the RRR, the Commission approved but set at zero. Therefore, OCC argues, the Commission could not accurately determine whether the ESP is more favorable in the aggregate than an expected MRO. In OCC’s view, the ESP fails the statutory test since the Commission cannot lawfully conduct the ESP/MRO test when costs are unknown. OCC’s argument misses the mark, given that the RRR is revenue neutral.

---

<sup>1</sup> OCC’s Application for Rehearing refers to and challenges the authorization of the Competition Incentive Rider and Standard Service Offer Credit Rider. Because the Order renamed that rider as the RRR, IGS and RESA refer to the RRR throughout this memo contra.

<sup>2</sup> OCC’s Application for Rehearing at 3, 8, and 15.

OCC's argument is based upon the premise that the Commission cannot perform the ESP versus MRO test when RRR costs are unknown. But the RRR does not in itself authorize the recovery of costs. Rather, it relates to the reallocation of costs to better reflect fairness and cost causation principles.

Moreover, the RRR relates to SSO costs that are currently recovered in distribution rates. Such a rider could be authorized in either an ESP or a distribution rate case. Given that fact, the rate reflected that will be ultimately reflected in the RRR would be the same under either an ESP or an MRO. Thus, it is simply irrelevant for purposes of the ESP versus MRO test. Accordingly, the Commission should reject OCC's argument.

**B. OCC's fourth assignment of error that the proposed ESP is not the appropriate proceeding to establish the RRR should be rejected.**

OCC's fourth assignment of error argues that the Commission's Order is unreasonable and unlawful because the proposed ESP is not the appropriate proceeding to establish the RRR.<sup>3</sup> OCC argues that the inclusion of the rider in the ESP is unnecessary, and, in doing so, attempts to leverage the Commission's decision to set the rider at zero as a placeholder until Ohio Power's next distribution rate case as evidence to support its claim.<sup>4</sup> OCC's application for rehearing takes the position that "*there is no good reason to charge Ohioans more* for the standard offer in any type of charge . . .". Contrary to OCC's claim, the record demonstrates that the SSO is a subsidized product. Removal of the RRR would leave this subsidy in place.

---

<sup>3</sup> OCC's Application for Rehearing at 8.

<sup>4</sup> *Id.* at 9.

OCC's fourth assignment of error willfully ignores that a portion of the cost associated with providing Ohio Power's SSO is recovered from *all* customers regardless of which entity they select to provide their service. This extra cost is harmful to Ohio shopping customers in that it effectively serves as a shopping tax that Choice customers must pay to subsidize the SSO. Knowing that, the Commission established the RRR to account for the costs associated with providing retail electric service not reflected in SSO rates, and advance the state policy objectives enumerated in R.C. 4928.02(A) and (B) and (H).<sup>5</sup>

The fact that the Commission established RRR as a placeholder rider set at zero does not support OCC's claim that the rider is unnecessary. The parties to this proceeding negotiated the RRR as a package with an understanding that while there was disagreement as to the value of the rider—the negotiated outcome was significantly lower than the evidence presented by IGS and RESA—it served as a bridge until Ohio Power's next distribution rate case where a more detailed analysis can be performed.

Moreover, as demonstrated by IGS' Application for Rehearing, the Commission should not only reject OCC's argument, but also authorize the RRR rate as proposed in the Stipulation. To date, no party has presented evidence through testimony or cross-examination to rebut the testimony provided by witness White. Therefore, the rider is necessary and also required to ensure that the ESP is lawful.

Therefore, OCC's fourth assignment of error should also be rejected.

---

<sup>5</sup> R.C. 4928.02 (A) and (B) and (H) provides that it is the policy of the state to not only ensure the availability of unbundled and comparable retail electric service, but also to ensure effective competition in the provision of retail electric service by prohibiting the recovery of any generation-related costs through distribution rates.

**C. OCC's eighth assignment of error that the Order erred in finding that the ESP did not violate any important regulatory principle or practice by setting approved riders to zero should be rejected.**

OCC's eighth assignment of error argues, in part, that the Commission erred in finding that the ESP does not violate any important regulatory principle or practice because its approval of certain riders set at zero violates R.C. 4905.22. OCC argues that the Commission's approval of placeholder rider RRR is contrary to 4905.22 because its approval of "riders without knowing their costs does not lead to just and reasonable rates . . . ." <sup>6</sup>

First, as discussed above, the RRR contains a reallocation of previously approved costs, thus the rider is not a placeholder rider in the common sense. Its underlying costs have already been authorized in prior proceedings. Thus, OCC's claim is factually incorrect.

Second, under R.C. 4905.22, all charges made or demanded by a public utility are required to be just, reasonable, and not more than the charges allowed by law. Riders such as the RRR, which serve to reallocate SSO-related costs consistent with principles of cost causation, are just and reasonable inasmuch as the rider accounts for a more accurate allocation of the costs associated with providing competitive retail electric service not reflected in existing SSO rates.

As witness Matthew White testified, CRES providers must incur many of the costs that Ohio Power incurs to provide the SSO but it currently recovers such costs through distribution rates:

CRES providers incur legal and compliance expense to meet extensive regulatory requirements to offer a product in the market. CRES providers

---

<sup>6</sup> OCC's Application for Rehearing at 15.

must pay the PUCO and OCC assessments based on their generation sales. CRES providers incur uncollectible expense and collection costs. CRES providers must maintain a call center, and provide other account management services to customers. CRES providers have overhead expense including IT and office space. All of these expenses are required to make a retail product available in the market.<sup>7</sup>

CRES providers, however, “must reflect these costs directly in the prices they charge customers.”<sup>8</sup> Yet “SSO service incurs these costs, but the costs are recovered from all distribution customers, which CRES customers also pay. Thus, CRES customers are paying not only for their own generation product, but they are also paying to support SSO generation service through distribution rates.”<sup>9</sup>

Mr. White’s testimony makes clear that it is not the Order’s authorization of a placeholder RRR that is unjust and unreasonable. Rather, not authorizing a rate in the RRR—in other words, continuing to make shopping customers pay too much to subsidize the SSO—results in unjust and unreasonable rates. Accordingly, that portion of OCC’s eighth assignment of error that argues that the Order erred in finding that the ESP did not violate any important regulatory principle or practice by setting approved riders to zero should be rejected.

#### **IV. CONCLUSION**

For the reasons contained herein, OCC’s application for rehearing should be denied as to its first, fourth, and eighth assignments of error.

/s/ Joseph Olikar  
Joseph Olikar (0086088)

---

<sup>7</sup> RESA Ex. 1 at 5.

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

<sup>9</sup> *Id.*

Counsel of Record  
joliker@igsenergy.com  
Michael Nugent (0090408)  
mnugent@igsenergy.com  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
Telephone: (614) 659-5000

***Attorneys for IGS Energy***

/s/ Rebekah Glover  
Mark A. Whitt (0067996)  
Andrew J. Campbell (0081485)  
Rebekah J. Glover (0088798)  
WHITT STURTEVANT LLP  
The KeyBank Building, Suite 1590  
88 East Broad Street  
Columbus, Ohio 43215  
Telephone: (614) 224-3946  
whitt@whitt-sturtevant.com  
campbell@whitt-sturtevant.com  
glover@whitt-sturtevant.com

***Counsel for the Retail Energy Supply  
Association***



## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that this document is also being served electronically on the following parties on this 4th day of June 2018.

/s/ Michael Nugent

Robert.eubanks@ohioattorneygeneral.go  
v  
stnourse@aep.com  
msmckenzie@aep.com  
cmblend@aep.com  
fdarr@mwncmh.com  
mpritchard@mwncmh.com  
Kurt.Helfrich@ThompsonHine.com  
Stephanie.Chmiel@ThompsonHine.com  
Michael.Austin@ThompsonHine.com  
mkurtz@BKLawfirm.com  
kboehm@BKLawfirm.com  
jkylercohn@BKLawfirm.com  
sean.mcglone@ohiohospitals.org  
mwarnock@bricker.com  
rdove@attorneydove.com  
rsahli@columbus.rr.com  
mjsettineri@vorys.com  
glpetrucci@vorys.com  
ibatikov@vorys.com  
joliker@igsenergy.com  
mdortch@kravitzllc.com  
amy.spiller@duke-energy.com  
Elizabeth.watts@duke-energy.com  
joe.halso@sierraclub.org

Bojko@carpenterlipps.com  
perko@carpenterlipps.com  
mfleisher@elpc.org  
cmooney@ohiopartners.org  
paul@carpenterlipps.com  
mleppla@theOEC.org  
tdougherty@theOEC.org  
lhawrot@spilmanlaw.com  
dwilliamson@spilmanlaw.com  
charris@spilmanlaw.com  
ibatikov@vorys.com  
whitt@whitt-sturtevant.com  
campbell@whitt-sturtevant.com  
glover@whitt-sturtevant.com  
tony.mendoza@sierraclub.org  
dborchers@bricker.com  
eakhbari@bricker.com  
sechler@carpenterlipps.com  
cpirik@dickinsonwright.com  
todonnell@dickinsonwright.com  
wvorys@dickinsonwright.com  
callwein@keglerbrown.com  
werner.margard@ohioattorneygeneral.go  
v

Attorney Examiners:

Sarah.parrot@puc.state.oh.us  
Greta.see@puc.state.oh.us

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

**Commission of Ohio Docketing Information System on**

**6/4/2018 3:53:57 PM**

**in**

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

Summary: Memorandum IGS Energy and RESA's Joint Memorandum Contra the Office of the Ohio Consumers' Counsel Application for Rehearing electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc. and Retail Energy Supply Association