

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2018 Long-Term)	
Forecast Report on behalf of Ohio Power)	Case No. 18-0501-EL-FOR
Company and Related Matters.)	

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into Renewable Energy)	Case No. 18-1392-EL-RDR
Purchase Agreements for Inclusion in the)	
Renewable Generation Rider.)	

In the Matter of the Application of Ohio)	Case No. 18-1393-EL-ATA
Power Company to Amend its Tariffs.)	

**MEMORANDUM CONTRA THE MOTION OF OHIO POWER COMPANY TO
CONSOLIDATE PROCEEDINGS WHICH WOULD RESULT IN AN UNFAIR
PROCESS FOR CONSUMERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) should deny Ohio Power Company’s (“AEP”) motion that it filed to consolidate¹ these cases for hearing the important and *different* consumer issues presented in each one. AEP claims that consolidation is warranted because there are common and interrelated issues.² But AEP’s claims conflate two distinct issues. One is the narrow issue of whether circumvention of the competitive power plant market is proper (it isn’t) by adding monopoly charges for power plants on consumers’ electric bills (in the so-called “rider” case). The other is the

¹ Motion of Ohio Power Company to Consolidate Proceedings and Request for Expedited Ruling (Sept. 27, 2018).

² *Id.* at 1.

broader issue of whether there is a consumer need (there isn't) for 900 MW of renewable plants (in the forecast case).

AEP's filings made in the Forecast Case and the Rider Case violate (a) R.C. 4928.143, (b) the PUCO's Order in AEP's recent electric security plan extension ("ESP") case, and (c) Ohio Administrative Code 4901:5-5-06(B). Consolidating these cases that present different consumer issues under different legal authority would not add to administrative efficiency, but rather will add confusion that may cater to an unlawful result. For a fair process for consumers, the PUCO should proceed without consolidation. The PUCO should deny AEP's motion.

II. RECOMMENDATIONS

- A. AEP's filing in the Forecast Case is inconsistent with R.C. 4928.143, so there is no reason to consolidate that case with the other cases. To protect consumers with a fair process, the PUCO should only address the alleged consumer need for the 400 MW of solar power plants in AEP's filings in the individual solar project rider case.**

There is no benefit to consolidating these cases because AEP's recent amendment in Case No. 18-501-EL-FOR (the "Forecast Case") is irrelevant. AEP's Forecast Case amendment is not a valid starting point in any case for considering whether there is a need for individual renewable energy projects involving a monopoly instead of the competitive market. Furthermore, considering a blanket approval for 900 MW of renewable energy in Case No. 18-1392-EL-RDR (the "Rider Case") would be unlawful.

In the Forecast Case, AEP asks the PUCO to find that there is a consumer "need" for 900 MW of renewable energy generation in Ohio under R.C. 4928.143(B)(2)(c).³ But

³ Case No. 18-501-EL-FOR, Amendment to the 2018 Long-Term Forecast Report of Ohio Power Company (Sept. 19, 2018).

R.C. 4928.143(B)(2)(c) does not allow a utility to show that there is a *generic* need for unspecified power plants in Ohio. Under the statute, the utility must prove that there is a need for a particular power plant involving the monopoly.⁴ Thus, AEP's request for a blanket finding of the consumer "need" for 900 MW in the Forecast Case is irrelevant to the question to be answered in the Rider Case, which is whether there is a "need" for each of the specific solar facilities that AEP proposes in that case. And because R.C. 4928.143(B)(2)(c) requires the utility to prove that there is a consumer need for it (the monopoly) to be involved in developing a particular power plant, it would be unreasonable and unlawful to consider AEP's request for a generic need finding for unspecified power plants.

B. AEP's filing in the Forecast Case violates the PUCO's Order in AEP's ESP extension case, so there is no reason to consolidate that case with the other cases. To protect consumers, the PUCO should only address need for the 400 MW of solar power plants in AEP's filings in the individual solar project rider case.

The PUCO has already ruled that AEP must prove that there is a "need" under R.C. 4928.143(B)(2)(c) for each individual renewable power plant involving a utility monopoly, and that this "need" showing must be made in a rider case, not a forecast case. In the PUCO's own words: "In each EL-RDR proceeding proposing a specific

⁴ R.C. 4928.143(B)(2)(c) ("No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is *need for the facility* based on resource planning projections submitted by the electric distribution utility") (emphasis added).

project, AEP Ohio will be required to demonstrate need for each proposed facility and to satisfy all of the other criteria in R.C. 4928.143(B)(2)(c)”⁵

Thus, AEP’s attempt to demonstrate a blanket “need” for 900 MW of renewable power plants in the Forecast Case is barred by the PUCO’s Order in AEP’s ESP extension case. And AEP’s proposal in the Forecast Case has nothing to do with the ultimate issue that must be resolved in the Rider Case—whether there is a “need” for specific plants: AEP’s proposed 300 MW Highland Solar facility or AEP’s proposed 100 MW Willowbrook Solar facility.⁶

C. AEP’s filing in the Rider Case is premature under Ohio Adm. Code 4901:5-5-06(B), so there is no reason to consolidate that case with the Forecast Case.

As explained above, it is inappropriate for AEP to proceed in the manner requested because of Ohio law and the PUCO’s Opinion and Order. And even if the PUCO determines otherwise (which it should not) AEP’s filing is premature under PUCO rules. The Ohio Administrative Code governs the timing of a utility’s request to charge monopoly customers for a power plant under R.C. 4928.143(B)(2)(c). Under Ohio Adm. Code 4901:5-5-06(B), the utility must file its long-term forecast report “in the forecast year prior to any filing for an allowance under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code.” In *In re Matter of the Long-Term Forecast Report of Ohio Power Company*,⁷ the PUCO interpreted this rule to mean that the utility

⁵ *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 16-1852-EL-SSO, Opinion & Order ¶ 227 (Apr. 25, 2018). *See also id.*, Second Entry on Rehearing ¶ 50 (Aug. 1, 2018) (“AEP Ohio will be required to demonstrate, in each EL-RDR proceeding proposing a specific project, need for the proposed project and to satisfy all other requirements of R.C. 4928.143(B)(2)(c).”

⁶ Case No. 18-1392-EL-RDR, Application at 1-2 (Sept. 27, 2018).

⁷ Case No. 10-501-EL-FOR.

must make the request to charge monopoly customers for a power plant under R.C. 4928.143(B)(2)(c) in the year following the year in which the long-term forecast report is filed.⁸ There, the PUCO found that the utility complied with the rule because the long-term forecast report was filed in 2010, and the request for charges to monopoly consumers under R.C. 4928.143(B)(2)(c) was initially filed in 2011.⁹

Here, AEP filed its long-term forecast report in 2018, and it also filed the Rider Case in 2018. Under the rule, AEP is required to wait until 2019—the year after the long-term forecast report—before filing its request to charge monopoly customers under R.C. 4928.143(B)(2)(c). The Rider Case is thus premature, and the PUCO should not consolidate this improper application with the other cases.

III. CONCLUSION

For an exception to developing a power plant in the competitive market, the law requires AEP to demonstrate the consumer “need” for each specific power plant (among other things) before it can propose making regulated charges to monopoly customers for that power plant. In the Forecast Case, AEP seeks instead to demonstrate a generic “need” for 900 MW of renewable generation in Ohio. That is wrong. The law governing the limited exception for monopoly utilities to propose power plants requires more.

R.C. 4928.143(B) (2)(c) requires the monopoly utility that wants to circumvent the market to identify a consumer need “for the facility,” rather than identifying a mere general need for power. AEP’s attempt here to use its forecast for 900 Megawatts of renewable power to meet the exception under the statute is unlawful and should fail. If

⁸ *Id.*, Opinion & Order at 23-24.

⁹ *Id.*

monopoly AEP wants to proceed with its proposal to charge captive customers on their electric bills for the 300 MW Highland Solar facility or the 100 MW Willowbrook Solar facility, it is required to first prove the consumer “need” for each of these facilities individually. And that proof is required in the Rider Case when (and if) it becomes timely to do so.¹⁰

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¹⁰ In AEP’s recent ESP extension case, OCC asserted that AEP was required to demonstrate “need” in the ESP case itself, not in a separate rider case. *See* Case No. 16-1852-EL-RDR, Application for Rehearing by the Office of the Ohio Consumers’ Counsel, Assignment of Error 3 (May 25, 2018). OCC reserves the right to continue to argue that the PUCO lacks statutory authority to make a finding of “need” outside of an ESP case, *i.e.*, that AEP is not legally permitted to establish “need” in the Forecast Case or Rider Case.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission, this 4th day of October 2018.

/s/ Maureen R. Willis

Maureen R. Willis
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Summary: Memorandum Memorandum Contra the Motion of Ohio Power Company to Consolidate Proceedings Which Would Result in an Unfair Process for Consumers by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.