

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Lon-Term Forecast)	
Report of Ohio Power Company and Related)	Case No. 18-501-EL-FOR
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 OHIO POWER COMPANY'S
APPLICATION FOR REHEARING
BY
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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On December 23, 2019, the Ohio Power Company (AEP) sought rehearing of the Public Utilities Commission of Ohio's (Commission) November 21, 2019 Opinion and Order (Order). The Commission's Order was just and reasonable, consistent with Ohio law, and should be affirmed.

In its rehearing request, AEP argues that its approved settlement in its ESP IV case authorizes it to pursue development of 900 MW of renewable resources. However, AEP then admits that its pursuit and cost recovery for the development of renewables is in fact "subject to Commission approval."¹ AEP also admits that any cost recovery for the development of renewables was also "subject to a resource planning 'need' finding and approval of specific renewable projects, as well as additional conditions in R.C. 4928.143(B)(2)(c) and the ESP IV

¹ Application for Rehearing at 3 (December 23, 2019) (AFR).

Stipulation.”² AEP sought approval of the development of renewables and attempted to argue that there was a “need” for the renewable projects in order to obtain approval and cost recovery for such projects. AEP’s proposal to charge customers for non-competitive, utility-owned generation projects failed as it could not demonstrate need as required by the statute and the ESP IV Stipulation and, therefore, its proposal was deemed unlawful. The fact that AEP continued to explore other available options to make it economically feasible or more palatable to pursue its objectives is irrelevant.³ AEP’s proposal did not satisfy R.C. 4928.143(B)(2)(c), and thus its application was denied.

The Commission recognized that AEP conceded that there is not a need for at least 900 MW of generation based on resource planning projections and that there is no reliability or renewable portfolio compliance need.⁴ As such, the Commission properly and lawfully determined that “under any definition of ‘need’ put forth by the parties, AEP Ohio has failed to sustain its burden under R.C. 4928.143(B)(2)(c) and, in light of our decision, we find that phase II of these proceedings will not be necessary.”⁵

Although AEP seems to state in its rehearing request that it is not challenging the Commission’s decision on its merits,⁶ it does in fact challenge the language in the order that directed AEP (or its affiliates) to invest in renewable projects through another legal and regulatory framework that does not involve implementing a nonbypassable surcharge on all customers. If AEP is truly not challenging the Commission’s decision, then it should file an application in a new, separate proceeding to pursue renewable energy projects and/or cost recovery for such projects. A request for rehearing regarding the determination of need in its

² Id. at 4.

³ Id.

⁴ Order at ¶117 (November 21, 2019).

⁵ Id. at ¶128.

⁶ AFR at 5.

forecast proceeding is not the proper forum for a debate as to AEP's legal rights to file future proceedings, including future reasonable arrangement applications. This case was about whether AEP's specific forecast application (and request for cost recovery for certain renewable projects) satisfied Ohio law. The record was clear and the Commission's decision was clear—it did not.

In its rehearing request, AEP fails to demonstrate or even explain how the Commission's Order is unlawful or unreasonable in any respect as required by R.C. 4903.10 and Ohio Adm.Code 4901-1-35. Instead, AEP:

asks that the Commission confirm that, despite a negative finding of need, the Company can nonetheless file applications under R.C. 4905.31 (such as the preliminary filing in Case No. 19-2037-EL-AEC) to seek bypassable approval of retail contracts that support renewable projects in pursuit of the 900 MW renewable commitment, and that such filings will be considered as subsidiary/parallel filings linked to the reasonable arrangement option approved by the Commission in the ESP IV decision. Finally, the Company asks the Commission to confirm that AEP Ohio may continue to pursue the bypassable Green Tariff option reflected in Case No. 18-1392-EL-ATA in parallel with the bypassable reasonable arrangement option, which would enable residential customers to elect whether they want to individually support the renewable projects through REC purchases under the tariff.⁷

Seeking clarification on what legal rights AEP may or may not have in future proceedings and what cost recovery may or may not be lawful and available to AEP from customers is an improper rehearing request under R.C. 4903.10 and Ohio Adm.Code 4901-1-35. The Commission should decline to issue an advisory opinion and explain or clarify what legal and regulatory framework may or may not be proper in a future filing under R.C. 4905.31. The Commission should also decline to speculate as to whether any such future filing may be lawful or just and reasonable under Ohio law and the Commission's rules.

⁷ AFR at 6.

AEP Ohio has not demonstrated that the Commission's Order is unlawful or unreasonable and its request for an advisory opinion should be rejected. As such, the Commission should affirm its decision finding that AEP failed to make the requisite showing for a finding of need for the proposed generation facilities based on resource planning projections as required by R.C. 4928.143(B)(2)(c), and deny AEP's rehearing request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail January 2, 2020.

/s/ Kimberly W. Bojko_____
Kimberly W. Bojko

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Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA

Summary: Memorandum Memorandum Contra Ohio Power Company's Application for Rehearing electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group