BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency.	)	Case No. 20-602-EL-UNC
In the Matter of the Application of Ohio Power Company for Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency.	)	Case No. 20-603-EL-WVR
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	)	Case No. 20-604-EL-AAM
In the Matter of the Application of Ohio Power Company for Approval of A Reasonable Arrangement.	)	Case No. 20-734-EL-AEC

MOTION FOR CLARIFICATION,
OR, IN THE ALTERNATIVE,
APPLICATION FOR REHEARING
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

Pursuant to Ohio Adm. Code 4901-1-12, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby moves for clarification of the Public Utilities Commission of Ohio's (Commission) May 6, 2020 Finding and Order in the above-captioned proceeding. Specifically, OMAEG respectfully requests that the Commission clarify that it approved Ohio Power Company's (AEP Ohio or the Company) proposal to waive late fees and defer as a regulatory asset any potential lost revenues associated with COVID-19 as proposed on March 17, 2020. The Commission should clarify that AEP Ohio's emergency plan to waive late fees was deemed automatically approved on March 17, 2020, and then later the Commission subsequently approved

AEP Ohio's proposal to defer as a regulatory asset foregone revenues and other costs associated with COVID-19 on May 6, 2020. The Commission should clarify that AEP Ohio is not authorized to retroactively collect late fees from customers on past bills that it announced that it was not going to collect as a benefit to customers during the COVID-19 emergency.

In the alternative, OMAEG requests that this pleading be considered as an application for rehearing filed pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35. OMAEG respectfully requests that this Commission find that its May 6, 2020 Order was unlawful, unjust, and unreasonable in the following five respects. First, commercial and industrial customers reasonably relied on AEP Ohio's COVID-19 Plan, which guaranteed the waiver of late fees during the emergency. Second, AEP Ohio's waiver of late fees was already deemed approved upon the filing of its COVID-19 Plan on March 17, 2020. Third, interpreting the Commission's Order as authorizing the future collection of foregone late fees on customers' bills conflicts with the plain language of AEP Ohio's COVID-19 Plan. Fourth, interpreting the Commission's order as an authorization for AEP Ohio to retroactively collect late fees incurred during the emergency is unreasonable in light of the optional opt-in payment program that the Commission created for special billing. Fifth, authorizing AEP Ohio's collection of forgone late fees presents double recovery issues. More specifically, the Commission's May 6, 2020 Order was unlawful and unreasonable in the following respects:

ASSIGNMENT OF ERROR: The Commission Erred in Unreasonably Authorizing AEP Ohio to Retroactively Collect Late Fees that AEP Ohio Waived During the COVID-19 Emergency in Violation of the Plain Language of AEP Ohio's COVID-19 Plan.

As further explained in the Memorandum in Support attached hereto, OMAEG respectfully requests that the Commission clarify its May 6, 2020 Order, or in the alternative, grant this application for rehearing.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 17, 2020, AEP Ohio filed a COVID-19 Plan[1] in response to the Commission's Entry directing public utilities to review policies and Ohio Administrative Code requirements that would impose a "service continuity hardship on residential and non-residential customers" during the COVID-19 emergency.[2] In its Plan, AEP Ohio requested accounting authority to implement a

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[1] *In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case Nos. 20-602-EL-UNC et al., Application (hereinafter, COVID-19 Plan (March 17, 2020)).

[2] *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry at ¶ 7 (hereinafter, State of Emergency Proceeding (March 12, 2020)).

rate mechanism to track, defer, and recover uncollectible costs that exceed the current pre-emergency level and to track and defer incremental operational costs associated with the COVID-19 Plan.[3] The Company also stated in its Plan that, "customer[s] will be notified that reconnection fees, as well as deposits, may be assessed on a future bill when payment terms are determined."[4] The Plan specifically states that "the Company will not charge late fees to commercial and industrial customers during the declared state of emergency, but amount of those forgone charges will be deferred as a regulatory asset for subsequent recovery."[5] AEP Ohio amended its COVID-19 Plan on March 24, 2020 and April 9, 2020, and requested approval of a reasonable arrangement under R.C. 4905.31 to allow minimum demand charges for commercial and industrial customers to be temporarily reset at lower usage levels.[6] On April 27, 2020, OMAEG and other stakeholders intervened and submitted comments on AEP Ohio's second amended COVID-19 Plan, as directed by the Commission's April 17, 2020 Entry.[7]

On May 6, 2020, the Commission issued a Finding and Order on AEP Ohio's second amended COVID-19 Plan. The Commission stated that, "under AEP Ohio's proposal, customers *will be notified* that any fee or deposit that is *postponed may* be assessed on a future bill when payment terms are determined."[8] The Commission also stated, "this plan component will provide immediate bill relief, while affording flexibility to AEP Ohio and each customer to enter into an extended payment plan that includes payment of the fee or deposit at a later date."[9] The

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[3] COVID-19 Plan at 7-8.

[4] Id. at 4.

[5] Id. at 5.

[6] Second Amended COVID-19 Plan at 5-9 (April 9, 2020).

[7] Entry at ¶ 13 (April 17, 2020).

[8] Order at ¶ 30 (May 6, 2020) (emphasis added).

[9] Id.

Commission elaborated that "any fee or deposit that is not subsequently recovered from the customer, or through other means such as Neighbor-to-Neighbor bill assistance, should be deferred, with the issue of recovery to be addressed by the Commission in a future proceeding."[10] Lastly, the Commission denied AEP Ohio's request for a reasonable arrangement and directed the Company to file an optional extended payment plan mechanism for commercial and industrial customers benefiting from reduced minimum demand billing.[11]

II. ASSIGNMENT OF ERROR: The Commission Erred in Unreasonably Authorizing AEP Ohio to Retroactively Collect Late Fees that AEP Ohio Waived During the COVID-19 Emergency in Violation of the Plain Language of AEP Ohio's COVID-19 Plan.

A. Customers Reasonably Relied on AEP Ohio's Assurances that Late Fees Would be Waived During the COVID-19 Emergency.

Customers have reasonably relied on AEP Ohio's assurances that the Company will waive late fees during the declared emergency. Nowhere in AEP Ohio's proposal did AEP Ohio state that it will continue to assess late fees and postpone collection of those late fees until a future bill. AEP Ohio's COVID-19 Plan states that the Company has begun to forgo customers' deposits and reconnection fees but that customers should anticipate that those fees may be assessed on future bills.[12] Contrastingly, the Plan reiterates that AEP Ohio "will not charge late fees to commercial and industrial customers during the declared state of emergency, but amount of those forgone charges will be deferred as a regulatory asset." [13] The language is clear. The Plan plainly states that late fees are waived during the state of emergency, with the potential for AEP Ohio to recover those deferred amounts as a regulatory asset in the future, not that fees may be assessed on future

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[10] Id.

[11] Order at ¶ 40 (May 6, 2020).

[12] COVID-19 Plan at 4.

[13] Id. at 5.

bills. Customers relied on AEP Ohio's proposal when making choices as to which bills to pay first as they struggled during the emergency. Customers had no notice that late fees may be accumulated and assessed on future bills. Had they received such notice, they may have made different choices. While OMAEG has advocated that foregone revenues should not be deferred through a regulatory asset and recovered from customers as AEP Ohio should put some "skin in the game" and not be made whole during the emergency as customers will not be made whole,[14] allowing AEP Ohio the opportunity to defer and potentially recover foregone late fees through a Commission-approved mechanism is wholly different than authorizing AEP Ohio to retroactively collect from customers foregone late fees that AEP Ohio waived during the COVID-19 emergency. Additionally, postponing the collection of late fees (as AEP Ohio said it would do for reconnection fees and deposits) is different than waiving late fees.

During the pandemic, customers have been forced to make difficult choices over which bills to prioritize in order to continue operations and retain employees. It is inherently unfair for customers to be induced into believing that they have flexibility with the timing of the payment of bills during the emergency and then for AEP Ohio to suddenly demand payment for foregone late fees on future bills without notice. The reality for many customers is that even after the pandemic ends, financial difficulties will persist. Allowing AEP Ohio to collect late fees from customers without clear notice is antithetical to the Commission's prior directives[15] and would only further harm Ohio's economy. Accordingly, the Commission should clarify that AEP Ohio is not

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[14] Second Amended COVID-19 Plan, OMAEG's Comments at 8-9 (April, 27 2020).

[15] State of Emergency Proceeding, Entry at ¶7 (March 12, 2020) (ordering that "all utility companies should promptly seek any necessary approval, for the duration of the emergency, to suspend otherwise applicable requires that may impose a service continuity hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact.").

permitted to retroactively collect from customers on future bills late fees that the Company waived during the emergency and that the Company touted as a benefit to customers.

As the Commission acknowledged,[16] relief from the COVID-19 emergency cannot last indefinitely. However, customers deserve proper notice when a utility plans to alter its COVID-19 response. For example, on May 29, 2020, Columbia Gas of Ohio (Columbia) filed a COVID-19 Transition Plan, seeking Commission approval to resume certain operations such as the issuing of termination notices for nonpayment.[17] Columbia plans to inform customers of bill payment assistance options and will not disconnect customers for nonpayment occurring before July 29, 2020.[18] After this date, Columbia will begin to disconnect customers for nonpayment.[19] Columbia also stated it will resume collecting late and reconnect fees from customers prior to reconnecting service.[20]

Columbia's transition plan strikes a reasonable balance between affording customers critical relief from the pandemic and allowing the utility to return to normal operations after notice is provided to customers. AEP Ohio has reasonable alternatives, as Columbia's transition plan exemplifies, and should provide its customers notice if it intends to assess late fees that it waived in its COVID-19 Plan during the emergency. Therefore, the Commission should clarify or reconsider its May 6, 2020 Order to ensure AEP Ohio's customers are not improperly assessed late fees without notice.

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[16] Order at ¶ 25 (May 6, 2020).

[17] *In the Matter of the Transition Plan of Columbia Gas of Ohio, Inc. to Suspend Certain Procedures and Process during the COVID-19 State of Emergency and Related Matters*, Case No. 20-0637-GA-UNC, Notification at ¶ 6 (May 29, 2020).

[18] Id.

[19] Id. at ¶ 7.

[20] Id.

B. The Commission's Order is Inconsistent with the Language in AEP Ohio's COVID-19 Plan.

AEP Ohio's COVID-19 Plan solely indicates that reconnection fees or deposits *may* be assessed on future bills. In AEP Ohio's COVID-19 Plan, the Company stated, "the customer[s] will be notified that *reconnection fees*, *as well as deposits,* may be assessed on a future bill when payment terms are determined.[21] However, in its May 6, 2020 Order, the Commission determined, "under AEP Ohio's proposal, customers will be notified that *any fee or deposit* that is *postponed* may be assessed on a future bill when payment terms are determined."[22] Although it is not clear, the Commission's Order appears to authorize AEP Ohio to collect all of the fees that it waived or postponed during the emergency, including late fees, by directly billing customers in the future. Without proper clarification, the May 6, 2020 Order could effectively permit AEP Ohio to retroactively collect late fees that it waived directly from customers when the Company never requested such relief. Consequently, OMAEG requests clarification, or in the alternative, reconsideration of this portion of the Order.

C. AEP Ohio's Waiver of Late Fees During the Emergency was Deemed Effective Upon the Filing of its COVID-19 Plan.

The Commission made it clear that emergency plans are deemed effective upon filing, apart from requests for deferrals and cost recovery.[23] AEP Ohio acknowledged this directive in its COVID-19 Plan and stated "the Company intends to commence the implementation of the Plan immediately, subject to further direction from the Commission.[24] Thus, AEP Ohio's explicit waiver of late fees became effective upon the filing of its COVID-19 Plan on March, 17, 2020.

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[21] COVID-19 Plan at 4 (emphasis added).

[22] Order at ¶ 30 (May 6, 2020) (emphasis added).

[23] State of Emergency Proceeding, Entry at ¶¶ 10-11, 13 (March 20, 2020).

[24] Id. at 2.

Interpreting the May 6, 2020 Order as an authorization for AEP Ohio to collect the late fees that it already waived would retroactively modify this feature of the Plan and afford the Company relief that it never requested. And it would do so without proper notice to customers. For these reasons, the Commission should clarify its May, 6 2020 Order in regards to AEP Ohio's touted waiver of late fees as a benefit to customers during the emergency and afford customers this stated benefit that they may have relied upon when making difficult decisions.

E. Authorizing AEP Ohio to Collect Late Fees would be Unreasonable in Light of the Commission's Creation of Optional Payment Plans for Specialized Billing.

In its May 6, 2020 Order, the Commission carefully considered AEP Ohio's request for a reasonable arrangement proposal to recover the forgone revenue associated with the temporary reduction of minimum demand billing provisions.[25] In doing so, the Commission stated that it appreciated AEP Ohio's efforts to assist commercial and industrial customers "at a time when the operations of, and the cash flow available to, many Ohio businesses have been curtailed by efforts to address the COVID-19 public health emergency."[26] Ultimately, the Commission rejected the reasonable arrangement proposal and directed the Company to file for approval an optional extended payment plan mechanism for commercial and industrial customers benefiting from reduced minimum demand billing if the customers affirmatively chose to take advantage of such special billing.[27] The Commission also directed AEP Ohio to create an opt-in process for its commercial and industrial customers to affirmatively avail themselves of this proposal.[28] The Commission's actions and statements associated with the creation of an optional payment plan

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[25] See Order at ¶ 40 (May 6, 2020).

[26] Id.

[27] Id.

[28] Id.

evidence that it intends for commercial and industrial customers to have notice and flexibility in deciding how to best maintain operations and retain employees during the pandemic. Interpreting the May 6, 2020 Order as authorizing AEP Ohio to retroactively collect waived fees without any notice and affirmative choice by customers contravenes this intent. Commercial and industrial customers can knowingly and voluntarily avail themselves of the optional payment mechanism prospectively. Charging the same class of customers foregone late fees without clear notice effectively eliminates any choice that these customers may have on a critical business decision and unreasonably punishes those customers for relying on AEP Ohio's proposal to waive those late fees during the pandemic. Therefore, the Commission should clarify that AEP Ohio is not permitted to retroactively apply late fees to past bills that were waived and assess those waived fees on future commercial and industrial customers' bills, especially without proper notice.

F. Authorizing AEP Ohio's Collection of Forgone Late Fees Creates Double Recovery Issues.

In the May 6, 2020 Order, the Commission granted AEP Ohio deferral authority for the expenses and forgone revenue, such as late fees, associated with the Company's COVID-19 Plan.[29] Should AEP Ohio be authorized to assess customers late fees that the Company forewent during the emergency, AEP Ohio may unlawfully double recover the same forgone revenues. Furthermore, it unclear how deferral and subsequent recovery of forgone revenues associated with COVID-19 will coincide with AEP Ohio's recent requests before the Commission. Specifically, AEP Ohio has requested approval of a decoupling mechanism to make it whole to 2018 revenues until its next base rate case.[30] Simultaneously, AEP Ohio also filed for an increase in its base rates,

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[29] Order at ¶ 61 (May 6, 2020).

[30] *In the Matter of the Application of Ohio Power Company for Approval a Decoupling Mechanism*, Case Nos. 20-1099-EL-ATA, et al., Application at ¶ 6 (May 28, 2020)

but has requested to delay the rate case for the benefit of customers.[31] Therefore, the Commission should clarify or reconsider its May 6, 2020 Order to prevent double recovery and evaluate OMAEG's request in light of AEP Ohio's recent requests before the Commission.

III. CONCLUSION

For the aforementioned reasons, the Commission should clarify its previous Order, or in the alternative, grant OMAEG's Application for Rehearing and modify its Order as delineated herein.

Respectfully submitted,

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[31] *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, Application at ¶ 13 (June 1, 2020).

CERTIFICATE OF SERVICE

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Summary: Application for Rehearing of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group