

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power )  
Company for Approval of a Decoupling ) Case No. 20-1099-EL-ATA  
Mechanism. )

In the Matter of the Application of Ohio )  
Power Company for Approval to Change ) Case No. 20-1100-EL-AAM  
Accounting Methods. )

---

**MOTION TO INTERVENE AND COMMENTS  
OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

---

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully moves the Public Utilities Commission of Ohio (Commission) to intervene in this matter with the full powers and rights granted to intervening parties. On May 28, 2020, Ohio Power Company (AEP or the Company) filed an application for approval of a decoupling mechanism pursuant to R.C. 4928.471.<sup>1</sup> R.C. 4928.471 was enacted as part of Am. Sub. H. B. 6 (HB 6), which was signed into law on July 23, 2019 and went into effect on October 22, 2019. R.C. 4928.471 authorizes an electric distribution utility (EDU) to file an application to implement a decoupling mechanism for the 2019 calendar year and each year thereafter. AEP's proposed decoupling mechanism is the Conservation Rider which is designed to true up the Company's base distribution revenue to the corresponding base distribution revenue from 2018.<sup>2</sup>

---

<sup>1</sup> *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) (hereinafter, "Application").

<sup>2</sup> Id. at ¶ 10.

On May 29, 2020, the Commission directed interested parties to file comments by June 12, 2020 and reply comments by June 22, 2020 to assist the Commission in its review of AEP's Application.<sup>3</sup> As demonstrated in the attached Memorandum in Support, OMAEG has real and substantial interests that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other existing parties. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations.

Therefore, OMAEG respectfully requests that the Commission grant this motion to intervene and that OMAEG be made a full party of record in these proceedings. In addition, as directed by the Commission's May 29, 2020 Entry and for the Commission's consideration, OMAEG hereby submits its comments on AEP's Application.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

(willing to accept service by e-mail)

*Counsel for Ohio Manufacturers' Association  
Energy Group*

---

<sup>3</sup> Entry at ¶ 7 (May 29, 2020).

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power )  
Company for Approval of a Decoupling ) Case No. 20-1099-EL-ATA  
Mechanism. )

In the Matter of the Application of Ohio )  
Power Company for Approval to Change ) Case No. 20-1100-EL-AAM  
Accounting Methods. )

---

**MEMORANDUM IN SUPPORT AND COMMENTS**

---

**I. INTRODUCTION**

On May 28, 2020, AEP filed an application for approval of a decoupling mechanism pursuant to R.C. 4928.471.<sup>4</sup> R.C. 4928.471 authorizes an EDU to file an application to implement a decoupling mechanism for the 2019 calendar year *and* each year thereafter.<sup>5</sup> AEP's Application proposes to implement a decoupling mechanism in the form of the Conservation Rider, which AEP states is designed to true up the Company's base distribution revenue to its corresponding base distribution revenue from 2018.<sup>6</sup>

Pursuant to the Commission's directive on May 29, 2020, OMAEG hereby files its motion to intervene and comments on AEP's Application to establish a HB 6 decoupling mechanism.

**II. INTERVENTION**

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent part, that any person "who may

---

<sup>4</sup> Application at ¶ 6 (May 28, 2020).

<sup>5</sup> R.C. 4928.471 (emphasis added).

<sup>6</sup> Id. at ¶ 10.

be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor’s potential contribution to a just and expeditious resolution of the issues involved. Ohio Adm. Code 4901-1-11 permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

OMAEG is a non-profit entity that strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG members and their representatives work directly with elected officials, regulatory agencies, the judiciary, and the media to provide education and information to energy consumers, regulatory boards and suppliers of energy; advance energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocate in critical cases before the Commission. Indeed, OMAEG has been a participant in other cases before the Commission involving implementation of new provisions enacted by HB 6,<sup>7</sup> as well as other rate proceedings initiated by AEP concerning costs recovered from customers.<sup>8</sup> Here, OMAEG members purchase electric services from AEP and

---

<sup>7</sup> See, e.g., *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC (OVEC Cost Recovery Proceedings); *In The Matter Of The Application Of Ohio Power Company For Approval Of Its Energy Efficiency And Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020*, Case Nos. 17-1398-EL-POR, et al.; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Decoupling Mechanism*, Case Nos. 19-2080-EL-ATA, et al..

<sup>8</sup> See, e.g., *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, et al.; *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, et al., Case Nos. 14-1693-EL-RDR, et al.. Also see *In the Matter of the Application of Columbus Southern Power Company and Ohio Power*

OMAEG has an interest in ensuring that any application to implement a decoupling mechanism is just, reasonable, and consistent with Ohio law.

For these reasons, OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. It is regularly and actively involved in Commission proceedings and, as in previous proceedings, OMAEG's unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this case. OMAEG's interest will not be adequately represented by other parties and its timely intervention will not unduly delay or prolong these proceedings.

Because OMAEG satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, it is authorized to intervene in this proceeding with the full powers and rights granted by the Commission to intervening parties. As such, OMAEG respectfully requests that the Commission grant this motion to intervene and that OMAEG be made a full party of record.

### **III. COMMENTS**

#### **A. AEP's Application Should be Rejected as it Fails to Comply with the Plain Language of R.C. 4928.471 and AEP Failed to Sustain its Burden of Proof.**

R.C. 4928.471(A) provides that EDUs "may file an application to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter."<sup>9</sup> The language is clear. If AEP desires to apply to implement a decoupling mechanism, the law requires it to file to implement the mechanism "for the 2019 calendar year and each calendar year thereafter." AEP's Application fails to follow the law: it was not timely filed; it seeks to retroactively increase

---

*Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates.*, Case Nos. 11-351-EL-AIR, et al., Entry at ¶ 4 (granting OMAEG's Motion to Intervene) (November 1, 2011).

<sup>9</sup> R.C. 4928.471(A) (emphasis added).

customers' costs; it seeks a supplemental mechanism; it does not ensure that the mechanism is just and reasonable and designed to recover 2018 annual revenues; and it does not ensure that double recovery does not occur. AEP's request to implement a supplemental decoupling mechanism for the first time in mid-2020 is unjust and unreasonable, effectively increasing customers' costs retroactively. As the Commission has previously noted,<sup>10</sup> the Commission must first look "to the plain language in the statute and the purpose to be accomplished." AEP's Application was not timely filed to establish a mechanism for the 2019 calendar year. AEP should not be able to rewrite the law in its favor, picking and choosing when it implements this particular provision at a time that is most advantageous to AEP, and at the expense of consumers.

AEP's Application also seeks a "supplemental" mechanism, which is not authorized by the law, and does not demonstrate that the supplemental mechanism is just and reasonable and designed to recover 2018 annual revenues. Moreover, as explained further below, AEP's Application does not ensure that double recovery does not occur. Therefore, for all of the reasons stated herein, the Commission should reject AEP's Application as it fails to comply with R.C. 4928.471(A).

**B. AEP's Request to Establish a Decoupling Mechanism Should be Evaluated in Light of the Company's COVID-19 Deferral Authority and Application to Increase Distribution Rates.**

AEP's Application for approval to establish and implement a decoupling mechanism to recover lost distribution revenues comes after the Commission already granted AEP authority to defer and subsequently recover costs and forgone revenues associated with the Company's

---

<sup>10</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Decoupling Mechanism*, Case Nos. 19-2080-EL-ATA, et al., Order at ¶¶ 25-26 (January 15, 2020) (citations omitted).

COVID-19 Plan.<sup>11</sup> OMAEG has advocated that foregone revenues should not be deferred through a regulatory asset and recovered from customers as AEP should put some “skin in the game” and not be made whole during the emergency as customers will not be made whole.<sup>12</sup> AEP’s application for a HB 6 decoupling mechanism is an attempt to further insulate the Company from the financial burdens that the rest of Ohio is experiencing and to increase its revenues at the expense of Ohio’s businesses. AEP is ensuring that it is made whole during the COVID-19 emergency by deferring lost revenues for later recovery while at the same time it is proposing a decoupling mechanism to capture any lost revenue that the Company did not receive in 2019, and subsequently will not receive in 2020 during the pandemic. As Ohio’s economy restarts, and the forgone revenues that AEP can defer decreases, the decoupling mechanism would make the Company whole with 2018 revenues until a rate increase become effective.

R.C. 4928.471(E) only permits EDUs to recoup lost distribution revenue through a decoupling mechanism until the next distribution rate case. On June 1, 2020, AEP filed an application to increase its electric distribution base rates.<sup>13</sup> AEP then filed a motion requesting to delay the processing of its application by sixty days.<sup>14</sup> The Company stated that approval of its motion will “offer an additional ‘cushion’ of the 60-day delay in order to help further mitigate the impacts of the pandemic.”<sup>15</sup> AEP’s proposed “cushion” is an attempt to earn good-will during the COVID-19 emergency. However, AEP’s delay of the rate case will allow the Company to use the

---

<sup>11</sup> *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, Order at ¶ 61 (May 6, 2020).

<sup>12</sup> Second Amended COVID-19 Plan, OMAEG’s Comments at 8-9 (April, 27 2020).

<sup>13</sup> *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, et al., Application (June 1, 2020).

<sup>14</sup> Motion at 2 (June 8, 2020).

<sup>15</sup> *Id.* at 1.

proposed decoupling mechanism to be made whole with 2018 revenues until the rate increase becomes effective. At the same time, AEP will continue to defer all expenses and lost revenues associated with COVID-19 until after the decoupling mechanism ends and/or the deferrals are collected through new rates. Or AEP could wait until after the pandemic ends and after its distribution rate increase to request to collect the lost revenues incurred during the state of emergency.

AEP's application for a HB 6 decoupling mechanism is one component of the Company's comprehensive plan to maximize its revenues as many of its customers face financial difficulties. Accordingly, OMAEG requests that the Commission consider the totality of the impact that AEP's applications will have on customers and find that AEP's Application for a supplemental decoupling mechanism is unjust and unreasonable and fails to cure the potential for double recovery as prohibited by R.C. 4928.471(D). Accordingly, the Commission should reject the Company's request to establish a decoupling mechanism.

**C. The Commission Should Ensure that there is No Double Recovery of Lost Distribution Revenue.**

As explained above and as required by R.C. 4928.471(D), the Commission should ensure that there is no double recovery of costs through the proposed "supplemental" decoupling mechanism, including lost distribution revenue. HB 6 requires the EDUs to continue their respective energy efficiency programs through December 31, 2020. If the cumulative energy savings collectively achieved *as of December 31, 2020* is *less than* 17.5% of the baseline, the Commission is required to decide how to further implement the EE programs to reasonably reach 17.5%.<sup>16</sup> Pursuant to R.C. 4928.66(G)(3), each EDU's cost recovery mechanism authorized by

---

<sup>16</sup> See R.C. 4928.66(G)(2)(b).



the Commission for compliance with R.C. 4928.66 continues until full compliance with the statute is achieved, subject to final reconciliation.

Given that AEP's Rider EE/PDR recovers costs incurred associated with the EE/PDR programs and its compliance with R.C. 4928.66, Rider EE/PDR will continue until the termination of AEP's EE/PDR programs and through final reconciliation. AEP's Rider EE/PDR states that costs recovered under Rider EE/PDR include costs associated with lost distribution revenues resulting from the implementation of such programs.<sup>17</sup>

Therefore, AEP should not be able to collect in 2020 (and after) the same lost distribution revenue already collected in Rider EE/PDR or that which will be collected in Rider EE/PDR while the EE/PDR programs continue or during the reconciliation program. As long as Rider EE/PDR is in effect, the decoupling mechanism (Conservation Rider) must exclude recovery of the same lost distribution revenue in order to prevent double recovery. Without further detail in the Application and/or review of future filings, it is difficult to confirm that no double recovery will occur between Rider EE/PDR and the proposed Conservation Rider.

**D. The Commission Should Require the Conservation Rider to be Subject to a Refund.**

If AEP's Application is approved, the Commission should require additional tariff language to be added to the proposed Conservation Rider to specify that the Conservation Rider is subject to refund for costs deemed to be imprudent, unreasonable, or unlawful, or that have already been collected through other riders and/or rate proceedings. AEP's proposed language is too narrow and should be expanded beyond "the results of audits ordered by the Commission" in its Opinion and Order in its ESP case. The language should also clearly state that the Conservation

---

<sup>17</sup> *In the Matter of the Application of Ohio Power Company to Update the Energy Efficiency and Peak Demand Reduction Rider*, Case No. 14-873-EL-RDR, Application at (May 15, 2014).

Rider will be reconciled or adjusted on an annual basis as required by R.C. 4928.471(B). The inclusion of this language will help ensure AEP's customers only incur costs that are just, reasonable, and consistent with Ohio law.

#### **IV. CONCLUSION**

As discussed above, OMAEG satisfies the criteria for intervention set out in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. OMAEG, therefore, respectfully requests that the Commission grants this motion, allows OMAEG to intervene with the full powers and rights granted by the Commission to intervening parties, and makes OMAEG a full party of record. OMAEG further requests that the Commission gives due consideration to the comments articulated herein.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

(willing to accept service by e-mail)

*Counsel for Ohio Manufacturers' Association  
Energy Group*

### **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on June 12, 2020 upon the parties listed below.

/s/ Kimberly W. Bojko  
Kimberly W. Bojko

*Counsel for Ohio Manufacturers'  
Association Energy Group*

[stnourse@aep.com](mailto:stnourse@aep.com)  
[Steven.Darnell@ohioattorneygeneral.gov](mailto:Steven.Darnell@ohioattorneygeneral.gov)  
[Werner.Margard@ohioattorneygeneral.gov](mailto:Werner.Margard@ohioattorneygeneral.gov)

Attorney Examiners:

[Sarah.Parrot@puco.ohio.gov](mailto:Sarah.Parrot@puco.ohio.gov)  
[Greta.See@puco.ohio.gov](mailto:Greta.See@puco.ohio.gov)

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

**Commission of Ohio Docketing Information System on**

**6/12/2020 4:52:46 PM**

**in**

**Case No(s). 20-1099-EL-ATA, 20-1100-EL-AAM**

Summary: Motion to Intervene and Comment of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group