

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**MEMORANDUM IN OPPOSITION OF OHIO POWER COMPANY**

---

**I. Introduction**

On March 9, 2020, Governor DeWine declared a state of emergency regarding the COVID-19 pandemic and the Commission subsequently issued as series of Entries in Case No. 20-591-AU-UNC (*Emergency Case*) starting on March 12, 2020. In response to the Commission's initial Entry in the *Emergency Case*, AEP Ohio filed a Second Amended Application in the above-captioned cases to a comprehensive COVID-19 emergency plan on April 9, 2020. After Staff filed its review and recommendations and intervenors filed comments regarding the Company's Second Amended Application, the Commission issued its Finding and Order approving the Second Amended Application subject to Staff's recommendations and modifications and consistent with the Finding and Order. *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., May 6, 2020 Finding and Order (Finding and Order), at ¶ 69. As part of the Finding and Order, the Commission directed AEP Ohio to take all necessary steps to carry out the terms of the Finding and Order. (Finding and Order at ¶ 70.) And the Commission granted the Company accounting authority to defer both expenses and foregone revenues associated with the emergency plan, subject to certain caveats stated in the Finding and Order. (*Id.* at ¶ 61.)

On June 5, 2020, AEP Ohio, the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Manufacturing Association Energy Group (OMAEG) filed applications for rehearing. In response, the Company submits this memo contra in response to the intervenor rehearing requests.

## **II. ARGUMENTS IN RESPONSE TO OCC**

### **A. The OCC's first assignment of error should be denied as being beyond the scope of this proceeding, lacking basis in law or fact and unreasonable on its face.**

OCC first argues that the Finding and Order was unreasonable for failing to suspend disconnections of submetered customers even though that issue was not previously raised in this docket and is not a defensible conclusion. (OCC Memo in Support at 3-4.) This assignment of error attempts to take a second "bite at the apple" by raising new issues on rehearing. More importantly, the claim has no basis in law or fact and is unreasonable.

The OCC's multiple quotations from the 1992 decision where the Commission generically reserved the right to impose public interest conditions on landlords have no relevance here and certainly do not provide a basis for rehearing. *In re Shroyer*, Case No. 90-182-WS-CSS, et al., Opinion and Order (Feb. 27, 1992). Although AEP Ohio is not a supporter of submetering companies or the result reached by the prior Commission in deciding *In the Matter*

*of the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Finding and Order (December 7, 2016), the rehearing stage of this emergency proceeding is not the time or place for any reform of submetering rules. Further, it is not reasonable to expect the Commission to address such matters that were not previously raised and go far beyond the scope of the proceeding. The whole premise of OCC's request is illogical and unreasonable: forcing a middle man to continue providing service without any assurance of payment. Of course, if the Commission were to consider such regulations, it would have done so in its orders in the *Emergency Case* or in a rulemaking proceeding after fulfilling due process or getting input from stakeholders and interested parties – most notably including the submetering providers that would be affected by such a dramatic expansion of regulatory authority.

Moreover, OCC's request for relief under this section would require *AEP Ohio* acting as a regulated public utility to provide service “only to those submeterers that will themselves comply with the Order.” (OCC Memo in Support at 4.) This would be a new regulation on AEP Ohio, not submetering companies. Such an obligation would place AEP Ohio in the position of regulator, judge and jury over its master meter customers to enforce the terms and intentions of the Commission's order, which is itself an unreasonable and unlawful result.

Similarly, OCC's invocation of the emergency ratemaking statute in this context is of no assistance since that applies to regulated public utilities and not landlords or property owners. OCC also ignores that AEP Ohio must consent to any emergency ratemaking action involving the Company by the express terms of RC 4909.16. So the emergency statute cannot and does not support the OCC's claim.

The OCC's first request should be denied.

**B. The OCC's second assignment of error should be denied because it simply reflects second-guessing based on OCC's judgment as if it were the decision maker.**

Next, the OCC merely renews an argument it already made: that the Company should go back in time to unilaterally reconnect customers that had been disconnected 30 days prior to the beginning of the disconnection moratorium. (OCC Memo in Support at 4; OCC Comments at 6.) The Commission already considered the Company's proposal in light of all of the comments and issued a decision that did not incorporate OCC's recommendation in this regard. That is not an appropriate basis for rehearing and this argument should again be rejected.

OCC asserts that the customers disconnected prior to the emergency were disconnected "by sheer happenstance" and should be automatically reconnected. (OCC Comments at 4.) This argument ignores that the emergency had not yet been declared and simply fails to draw the line in time to establish a meaningful distinction of when the emergency actually began. Further, it ignores that the Company's plan provides a remedy for those customers. As AEP Ohio stated in its Second Amended Application:

[T]he Company has begun to temporarily forego customer deposits and reconnection fees for customers that have been recently disconnected. Upon getting a customer contact to the call center, AEP Ohio will begin reconnection for customers that are currently disconnected for nonpayment. The reconnection fee will not be charged on such accounts.

(Second Amended Application at 4.) The Finding and Order adopted these components of the Company's plan as being reasonable and sufficient to promote service continuity during the emergency period and OCC's renewal of its own different idea does not provide a basis to modify that conclusion on rehearing.

**C. The OCC's third and fourth assignment of error should be denied due to a lack of justification and because they prematurely attack the adequacy of the**

**Company's upcoming plan to transition away from the disconnection moratorium.**

The OCC's third and fourth claims on rehearing are closely related if not completely redundant. In the third claim, OCC argues that the Commission erred in not providing for continuation of the disconnection moratorium until some undetermined future date after the emergency ends. (OCC Memo in Support at 5.) And in the fourth claim, OCC claims that the Commission erred in failing to order a continuation of the disconnection moratorium. (*Id.* at 5-6.) Both of these claims point to an indefinite continuation of the disconnection moratorium. Significantly, OCC fails to address the significant cost that would surely accompany such a requirement. The result sought by OCC is neither justified nor reasonable, especially when OCC fails to acknowledge cost recovery and given that there are alternative options and remedies for the subset of customers that cannot pay their electric bill (publicly-funded programs, flexible payment plans, Neighbor-to-Neighbor funding, etc.).

The Finding and Order acknowledged that the disconnection moratorium could not extend indefinitely and ordered the Company to develop a plan for ending the moratorium in an orderly fashion:

The Commission recognizes that, even in light of the emergency, service disconnections for non-payment cannot be suspended indefinitely. Therefore, at this time, consistent with the Executive Order and the Commission's emergency authority under R.C. 4909.16, the Commission directs AEP Ohio to work with Staff to develop a plan for the resumption of meter reading and of service disconnections, including timelines and provisions for extended payment plans for both residential and non-residential customers impacted by this emergency. This plan should be filed in these dockets at least 45 days prior to the resumption of service disconnections. Interested persons may file comments regarding the plan within ten days after the filing of the plan.

(Finding and Order at ¶ 25.) The Company is working with Staff and plans to file its transition plan soon. Obviously, OCC and other stakeholders will get an opportunity to comment once the

plan is filed and the Commission can consider all interests when it issues a ruling. In the meantime, OCC's third and fourth rehearing claims are both unjustified and premature.

### **III. ARGUMENTS IN RESPONSE TO OMAEG**

The OMAEG asks for rehearing related to the Finding and Order's requirement in Paragraph 30 that AEP Ohio bill customers the foregone late fees prior to deferring those costs. (OMAEG Memo in Support at 6-11.) While the Company agrees with OMAEG that Paragraph 30 should be clarified or modified on rehearing (in a manner set forth by AEP Ohio in its own Application for Rehearing), the Company disagrees with most of the points set forth in the five headings supporting OMAEG's assignment of error. Most notably, OMAEG sidesteps the issue of cost recovery of the foregone late fees and such a result is not consistent with either the Company's Plan or the Finding and Order's approval of the plan.

OMAEG's first point in support of modifying Paragraph 30 is that customers relied on the component of the Company's plan that indicated late fees would be waived. (OMAEG Memo in Support at 6-8.) In support of this point, OMAEG suggests that AEP Ohio should put "skin in the game" but acknowledges that even though it did not endorse the deferral, recovery of the late fees through a deferral 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." (*Id.* at 7.) To the extent OMAEG seeks to depart from the approved plan and force the Company to writeoff fees that were deferred, the Company opposed such an outcome as unreasonable and unjustified.

OMAEG's second point in support of modifying Paragraph 30 is that the Finding and Order is inconsistent with the Company's plan in this regard. (OMAEG Memo in Support at 9.) In the course of making this point, OMAEG cites that statement in Paragraph 30 saying that the

Company's plan stated that customers would be notified that postponed late fees may be assessed on a future bill. This misstatement from the Finding and Order referenced by OMAEG is addressed in the Company's Application for Rehearing and the Company agrees that the Finding and Order conflicts with the Plan. (AEP Ohio Application for Rehearing at 2-5.) That, however, does not substantiate the position taken by OMAEG.

OMAEG's third point in support of modifying Paragraph 30 is that the Company's plan was automatically approved and, therefore, the foregone late fees are permanently waived. (OMAEG Memo in Support at 9-10.) In making this argument, however, OMAEG fails to acknowledge that the auto-approval of this component of the Company's plan also means that the component for deferral of the foregone late fees for subsequent recovery was also approved. Try as it might, OMAEG cannot have it both ways.

In its fourth point in support of modifying Paragraph 30, OMAEG claims that the Commission's adoption of an opt-in payment plan in lieu of a reasonable arrangement somehow conflicts with the idea of re-billing for the foregone late fees. (OMAEG Memo in Support at 10-11.) In other words, because the payment plan is voluntary, so too should be the payment of late fees. This point lacks any logical basis and adds nothing to OMAEG's argument.

OMAEG's final point is equally unavailing: that the Company should not get to both rebill the late fees and defer them as a regulatory asset since that could lead to double recovery. (OMAEG Memo in Support at 11-12.) Ironically, even in the context of raising this contrived double recovery claim, OMAEG cannot bring itself to acknowledge that the Company should at least get to recovery the late fees once. As the Finding and Order stated, "[a]ny 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." (Finding and Order at ¶ 30 (emphasis added).)

Obviously, when it comes to collection through rebilling or recovery through deferral of uncollected fees, it is “either or” and not “both.” AEP Ohio has no intention of pursuing such double recovery – but should get to recover the fees once.

#### **IV. Conclusion**

The Commission should incorporate the Company’s argument when ruling on the rehearing requests of OCC and OMAEG.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705)

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1608

Fax: (614) 716-2950

Email: [stnourse@aep.com](mailto:stnourse@aep.com)

**Counsel for Ohio Power Company**



## **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties.

In addition, I hereby certify that a service copy of the foregoing *Memorandum in Opposition* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15<sup>th</sup> day of June, 2020, via electronic transmission.

/s/ Steven T. Nourse

Steven T. Nourse

### **EMAIL SERVICE LIST**

mpritchard@mwncmh.com;  
rglover@mcneelaw.com;  
William.Michael@occ.ohio.gov;  
Ambrosia.Wilson@occ.ohio.gov;  
mkurtz@BKLawfirm.com;  
kboehm@BKLawfirm.com;  
jkylercohn@BKLawfirm.com;  
rdove@keglerbrown.com;  
bethany.allen@igs.com;  
joliker@igsenergy.com;  
mnugent@igsenergy.com;  
dborchers@bricker.com;  
dparram@bricker.com;  
mleppla@theOEC.org;  
tdougherty@theOEC.org;  
ctavenor@theoec.org;  
Bojko@carpenterlipps.com;  
paul@carpenterlipps.com;

### **Attorney Examiners**

Greta.See@puc.state.oh.us  
Sarah.Parrot@puc.state.oh.us

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

**Commission of Ohio Docketing Information System on**

**6/15/2020 3:38:27 PM**

**in**

**Case No(s). 20-0602-EL-UNC, 20-0603-EL-WVR, 20-0604-EL-AAM, 20-0734-EL-AEC**

Summary: Memorandum -Memorandum in Opposition of Ohio Power Company electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company