

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 A 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

ENTRY ON REHEARING

Entered in the Journal on July 1, 2020

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing filed by Ohio Power Company d/b/a AEP Ohio, Ohio Manufacturers' Association Energy Group, and the Ohio Consumers' Counsel.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric light company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.16 provides, in part, that, in the event of an emergency, when the Commission finds it necessary to prevent injury to the business or interests of the public or of any public utility, it may temporarily alter, amend, or suspend any existing rates or

schedules.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the Ohio Department of Health has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 6} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re 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 (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission extended its winter reconnection order through May 1, 2020, and directed all utility companies in this state to review their reconnection procedures. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 6. In the March 12, 2020, and March 13, 2020 Entries, the Commission also directed all utility companies to promptly seek any necessary approval, for the duration of the emergency, to suspend otherwise applicable disconnection or reconnection requirements that may impose a service continuity or service restoration

hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. The Commission determined that such filings shall be deemed approved on an emergency basis for a period of at least 30 days effective as of the filing date or until such date as the Commission may otherwise specify, which shall not be less than 30 days.

{¶ 7} On March 17, 2020, in the first three of the above-captioned cases, AEP Ohio filed an application for approval of its temporary plan for addressing the COVID-19 state of emergency.

{¶ 8} On March 20, 2020, in the *Emergency Case*, the Commission directed all utility companies to suspend in-person, actual meter readings in circumstances where a meter is located inside a customer's home or similar location, as well as all other non-essential functions that may create unnecessary COVID-19 risks associated with social contact. The Commission also clarified that requests for accounting authority or incremental cost recovery related to the emergency will be addressed in each utility's individual case by subsequent entry. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 10-11, 13.

{¶ 9} On March 24, 2020, AEP Ohio filed an amended application for approval of its temporary plan for addressing the COVID-19 state of emergency.

{¶ 10} On April 8, 2020, in the *Emergency Case*, the Commission, among other things, extended the 30-day automatic approval period for filings to suspend otherwise applicable disconnection requirements for an additional 30 days, unless otherwise ordered by the Commission. *Emergency Case*, Finding and Order (Apr. 8, 2020) at ¶ 9.

{¶ 11} AEP Ohio filed a second amended application on April 9, 2020. In the second amended application, AEP Ohio requested approval of its emergency plan, as well as a reasonable arrangement, and initiated Case No. 20-734-EL-AEC.

{¶ 12} On April 15, 2020, in the first three of the above-captioned cases, Staff filed its review and recommendations in response to AEP Ohio's request for approval of its

emergency plan, as amended. Staff's filing was also docketed in Case No. 20-734-EL-AEC on April 20, 2020.

{¶ 13} By Entry dated April 17, 2020, the attorney examiner directed that motions for intervention and comments be filed in these proceedings no later than April 27, 2020.

{¶ 14} On various dates, motions for intervention were filed by Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Ohio Energy Group (OEG), Interstate Gas Supply, Inc. (IGS), Ohio Hospital Association (OHA), Natural Resources Defense Council (NRDC), Ohio Environmental Council (OEC), Kroger Co. (Kroger), and Ohio Manufacturers' Association Energy Group (OMAEG).

{¶ 15} On April 27, 2020, comments were filed by OEG, OPAE, IEU-Ohio, IGS, Kroger, OHA, OMAEG, and OCC, as well as jointly by NRDC and OEC.

{¶ 16} By Finding and Order dated May 6, 2020, the Commission approved AEP Ohio's second amended application, subject to Staff's recommendations and modifications, and consistent with the Finding and Order. The Commission also granted the motions for intervention filed by IEU-Ohio, OCC, OPAE, OEG, IGS, OHA, NRDC, OEC, Kroger, and OMAEG.

{¶ 17} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 18} On June 8, 2020, AEP Ohio and OCC filed applications for rehearing of the May 6, 2020 Finding and Order, while OMAEG filed a motion for clarification or, in the

alternative, application for rehearing.¹ AEP Ohio filed a memorandum contra OCC's and

{¶ 19} OMAEG's applications for rehearing on June 15, 2020. On that same date, OCC filed a memorandum contra AEP Ohio's application for rehearing.

{¶ 20} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. *Consideration of the Applications for Rehearing*

1. SUSPENSION OF LATE FEES AND CREDIT CARD FEES

{¶ 21} In its first ground for rehearing, AEP Ohio asserts that the Commission, in Paragraph 30 of the Finding and Order, incorrectly referenced a customer notification that did not occur and that the Commission should, therefore, clarify or modify the Finding and Order to confirm that the Company is not required to rebill late fees that were already foregone during the emergency period in order to defer and recover the costs. More specifically, AEP Ohio notes that, in Paragraph 30, the Commission stated that, "[u]nder 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." AEP Ohio further notes that its proposed customer notification process pertained only to reconnection fees and deposits and did not extend to late fees. According to AEP Ohio, its billing system was modified to suspend late fees on a temporary basis starting with bills rendered on or after March 27, 2020, with no notice provided that such fees may be charged to the customer on a future bill. AEP Ohio contends that there would be informal and formal customer complaints if the Company attempts to now charge late fees, while it would be equally

¹ Due to the closure of the Commission's offices from June 1, 2020, through June 5, 2020, the applications for rehearing, which were submitted by the parties on June 5, 2020, were accepted for filing on June 8, 2020, and deemed timely filed in accordance with R.C. 1.14 and Ohio Adm.Code 4901-1-07 and 4901-1-13. *In re the Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 20-1132-AU-UNC, Entry (June 8, 2020).

unreasonable to restrict the Company's recovery of these foregone fees, which have been tracked and deferred in accordance with its emergency plan. Accordingly, AEP Ohio requests that, as part of its accounting authority, the Company be permitted to defer the late fees that were suspended during the emergency, or otherwise recover the foregone late fees through the net uncollectible expense recovery, without being required to first attempt to recover the late fees from the impacted customers. Alternatively, AEP Ohio requests that, if the Commission decides that late fees should be prospectively charged to customers after notice is provided, that process should be clarified before it takes effect, along with the provision for deferral of foregone late fees.

{¶ 22} In its second ground for rehearing, AEP Ohio argues that Paragraph 51 of the Finding and Order should be clarified or modified to confirm that the Company is not required to rebill credit card fees already foregone during the emergency period in order to defer and recover the costs. AEP Ohio notes that the Finding and Order states that, "[w]ith regard to the avoidance of credit card fees associated with the reconnection of service, we find that any such fee that is not subsequently recovered from the customer should be deferred, with the issue of recovery to be addressed by the Commission in a future proceeding." AEP Ohio states that customers that used credit cards to make payments were not informed at that time that they may be charged credit card fees in the future. AEP Ohio adds that it was able to reduce the credit card fees with its vendors and that it should not be precluded from recovering these fees, which have been tracked and deferred. AEP Ohio, therefore, requests that it be permitted, as part of its accounting authority, to defer the costs associated with credit card payments during the emergency, without being required to first attempt to recover the credit card fees from the customers that made the payments.

{¶ 23} In response to AEP Ohio's first and second grounds for rehearing, OCC argues that customers should be informed regarding the charges that they may face from the emergency and that the Commission should reject the Company's attempt to avoid this obligation. OCC further argues that the Commission should deny AEP Ohio's proposal to

charge all customers for suspended late fees and foregone credit card fees regardless of whether they benefit from the proposal.

{¶ 24} In its motion for clarification, OMAEG requests that the Commission clarify that AEP Ohio's proposal to waive late fees as part of its emergency plan was deemed automatically approved on March 17, 2020, with the Commission subsequently approving, in the May 6, 2020 Finding and Order, the Company's proposal to defer, as a regulatory asset, the foregone revenues and other costs associated with the emergency plan. OMAEG further requests that the Commission clarify that AEP Ohio is not authorized to retroactively collect late fees from customers on past bills, given that the Company announced that it would not collect such fees as a benefit to customers during the emergency. Alternatively, OMAEG states that its pleading should be construed as an application for rehearing. In its sole ground for rehearing, OMAEG argues that the Commission erred in unreasonably authorizing AEP Ohio to retroactively collect late fees that the Company waived during the emergency, in violation of the plain language in the Company's emergency plan. In support of its contention, OMAEG asserts that commercial and industrial customers reasonably relied on AEP Ohio's emergency plan, which guaranteed the waiver of late fees during the emergency; the Company's waiver of late fees was deemed approved upon the filing of the emergency plan on March 17, 2020; the future collection of foregone late fees on customers' bills conflicts with the plain language of the emergency plan; the retroactive collection of late fees incurred during the emergency is unreasonable in light of the optional opt-in payment program that the Commission created for special billing; and the collection of foregone late fees presents double recovery issues.

{¶ 25} In response, AEP Ohio states that, while the Company concurs with OMAEG that Paragraph 30 in the Finding and Order should be clarified or modified on rehearing, the Company disagrees with most of the points offered by OMAEG in support of its request. In particular, AEP Ohio emphasizes that OMAEG bypasses the issue of the Company's recovery of the foregone late fees, which is not consistent with the Company's emergency plan or the Commission's Finding and Order. AEP Ohio asserts that, to the extent that

OMAEG seeks to require the Company to write off late fees that were deferred, the Company opposes this result as unreasonable and unjustified.

{¶ 26} The Commission notes that, in its emergency plan, AEP Ohio stated that it “will not charge late fees to commercial and industrial customers during the declared state of emergency, but [the] amount of those foregone charges will be deferred as a regulatory asset for subsequent recovery.” AEP Ohio further stated that “[t]he waived * * * late fees will be deferred for subsequent cost recovery.” In addressing the emergency plan’s treatment of customer deposits, reconnection fees, and late fees, the Finding and Order concluded:

The Commission finds that AEP Ohio’s proposal for the temporary avoidance of customer deposits, reconnection fees, and certain late fees is reasonable and consistent with the Commission’s directives in the *Emergency Case*. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 6. 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. We find that 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. 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, as discussed further below.

Finding and Order at ¶ 30.

{¶ 27} AEP Ohio and OMAEG raise a number of concerns with these findings. Initially, AEP Ohio claims that the Commission incorrectly stated that customers would be informed by the Company that late fees may be assessed on a future bill. In response to this contention, we note that the sentence referencing customer notification was limited to fees

and deposits that are postponed for collection, as opposed to late fees for commercial and industrial customers, which the Company indicated would be waived under its emergency plan. Aside from this customer notification issue, AEP Ohio's primary argument, with which OMAEG agrees, is that late fees should not be subsequently collected from the affected industrial or commercial customer. Consistent with AEP Ohio's proposal to waive (rather than delay) late fees for commercial and industrial customers, we agree that the Company has no obligation to attempt to recover these fees from each affected customer on a future bill. Any late fees that AEP Ohio waives for an industrial or commercial customer under the emergency plan may be deferred as a regulatory asset; the issue of the Company's recovery of any waived late fees will be addressed by the Commission in a future proceeding. As we emphasized in the Finding and Order, recovery is not guaranteed until the deferred amounts have been thoroughly reviewed and considered by the Commission in that later proceeding. May 6, 2020 Finding and Order at ¶ 61. At that time, the Commission will determine, among other things, whether it is reasonable to permit AEP Ohio to recover waived late fees. With this clarification, we find that AEP Ohio's first ground for rehearing, as well as OMAEG's motion for clarification or alternate request for rehearing, should be denied.

{¶ 28} Turning to AEP Ohio's second ground for rehearing, the Commission notes that, in its emergency plan, the Company indicated that it was "working with its vendors to pursue a potential solution to avoid credit card fees for customers that pay with a credit card when they are being reconnected," in order to encourage online payments and minimize social contact through in-person payments at payment centers. AEP Ohio also proposed that "[t]he resulting costs associated with any foregone or reduced charges that are paid or reimbursed by the Company will be tracked and deferred for recovery." In the Finding and Order, we directed that "any such [credit card] fee that is not subsequently recovered from the customer should be deferred, with the issue of recovery to be addressed by the Commission in a future proceeding." May 6, 2020 Finding and Order at ¶ 51. The Commission's preference for this approach, where costs are postponed for future collection from each individual customer through a reasonable extended payment plan, was reflected

throughout the Finding and Order, with the exception of waived late fees. May 6, 2020 Finding and Order at ¶¶ 30, 40. As we stated, the benefit of this approach is that it provides immediate bill relief, while affording flexibility to AEP Ohio and each customer to enter into an extended payment plan that includes payment of the postponed fees and charges at a later date. May 6, 2020 Finding and Order at ¶ 30. It also minimizes cost shifting among customer classes. In its application for rehearing, AEP Ohio has offered no convincing reason for its request to depart from this approach. Although AEP Ohio emphasizes that it did not inform customers that credit card fees would be collected at a later point, the Commission was clear, in the *Emergency Case*, that requests for accounting authority or incremental cost recovery were not subject to automatic approval and that such requests would be addressed in each utility's individual case. *Emergency Case*, Entry (Mar. 20, 2020) at ¶ 13. AEP Ohio's second ground for rehearing should, therefore, be denied.

2. SUSPENSION OF DISCONNECTIONS

{¶ 29} In its first ground for rehearing, OCC argues that the Commission erred by failing to suspend disconnections for submetered customers in AEP Ohio's service territory and by failing to extend other consumer protections to submetered customers. OCC urges the Commission to further exercise its emergency authority under R.C. 4909.16 and direct AEP Ohio to provide, for the duration of the declared emergency and a reasonable time thereafter, master metering service only to submeterers that will comply with the consumer protections addressed in the Finding and Order.

{¶ 30} AEP Ohio responds that OCC has inappropriately attempted to raise a new issue on rehearing and one that is beyond the scope of these proceedings, which, according to the Company, are not the proper place for reform of submetering rules. AEP Ohio adds that OCC's request is illogical and unreasonable, as it would require the Company to continue providing service without any assurance of payment, while also placing the Company in the position of regulator over its master-meter customers with respect to the terms and intentions of the Commission's Finding and Order. Finally, AEP Ohio notes that R.C. 4909.16 does not apply to landlords or property owners.

{¶ 31} As AEP Ohio notes, OCC failed to offer its recommendations regarding submetered customers in its comments. No other party addressed the effect of AEP Ohio's emergency plan on submetered customers. OCC has, therefore, inappropriately sought to raise new issues on rehearing. R.C. 4903.10 specifies that an application for rehearing may be filed "in respect to any matters determined in the proceeding." The Commission, therefore, finds that OCC's first ground for rehearing should be denied.

{¶ 32} In its second ground for rehearing, OCC maintains that the Commission erred by failing to require reconnections of customers that AEP Ohio disconnected during the time period beginning 30 days before the Commission's Entry in the *Emergency Case* went into effect. OCC notes that customers whose service was disconnected by AEP Ohio during the period of time immediately prior to the declaration of the emergency are no less worthy of protection than customers that experienced a disconnection of service after the declaration of the emergency.

{¶ 33} In response, AEP Ohio argues that 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. AEP Ohio also contends that OCC has not offered an appropriate basis for rehearing and has ignored the service continuity provisions of the Company's emergency plan.

{¶ 34} In the Finding and Order, the Commission declined to adopt OCC's recommendation that AEP Ohio be required to reconnect service of customers who were disconnected for non-payment in the 30-day period prior to the declaration of the emergency. In lieu of an overly prescriptive beginning date for disconnections that should trigger a reinstatement of service due to the emergency, we encouraged AEP Ohio to work with its customers to agree on terms to reconnect service, regardless of when disconnection occurred, and to temporarily forego the collection of deposits and fees, where it is reasonable to do so under the circumstances. May 6, 2020 Finding and Order at ¶ 31. OCC has raised no new argument on this issue and we, thus, find that its request for rehearing should be denied.

{¶ 35} In its third ground for rehearing, OCC asserts that the Commission erred by failing to continue the suspension of disconnections by AEP Ohio for a reasonable period of time after the declared emergency has ended. OCC notes that consumers should not be concerned with their basic utility service as they struggle with lost wages, jobs, and health matters.

{¶ 36} Finally, in its fourth ground for rehearing, OCC contends that the Commission erred by failing to order that the declared emergency will continue indefinitely, consistent with the threat of the virus to Ohioans and the consequences of its financial impact. OCC cautions that consumer protections should not end too early and should continue at least until the emergency declaration is terminated.

{¶ 37} AEP Ohio replies that OCC's third and fourth grounds for rehearing should be denied due to a lack of justification and for prematurely attacking the adequacy of the Company's transition plan. According to AEP Ohio, OCC has ignored the significant cost that would accompany an indefinite continuation of the suspension of disconnections. AEP Ohio adds that, once its transition plan is filed, OCC and other stakeholders will have an opportunity to provide comments to the Commission.

{¶ 38} As the Commission noted in the Finding and Order, the state has taken steps to responsibly relax requirements of the Department of Health's Amended Stay at Home Order. We further noted that the issue of how AEP Ohio should responsibly return to otherwise applicable protocols related to maintenance and restoration of service requires further consideration by the Commission. Recognizing that disconnections for non-payment cannot be suspended indefinitely, the Commission directed AEP Ohio to work with Staff to develop a plan to resume suspended activities, such as disconnections, and to offer extended payment plans for both residential and non-residential customers impacted by the emergency. We also specified that AEP Ohio's plan to return to operations previously precluded by the Commission's directives in the *Emergency Case* will be a matter for comment by OCC or any other interested stakeholder. May 6, 2020 Finding and Order at ¶¶ 24-25.

{¶ 39} The alleged errors raised in OCC's third and fourth grounds for rehearing pertain to the duration of the suspension of disconnections and other emergency measures. Consistent with the Finding and Order, OCC's recommendations with respect to the proper timeframe for resuming disconnections and other activities that have been temporarily suspended due to the emergency should be offered for the Commission's consideration following the filing of AEP Ohio's transition plan. Accordingly, OCC's arguments are premature and should, therefore, be denied.

III. ORDER

{¶ 40} It is, therefore,

{¶ 41} ORDERED, That the applications for rehearing filed by AEP Ohio, OMAEG, and OCC be denied. It is, further,

{¶ 42} ORDERED, That a copy of this Entry on Rehearing be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/kck

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

Summary: Entry denying the applications for rehearing filed by Ohio Power Company d/b/a AEP Ohio, Ohio Manufacturers' Association Energy Group, and the Ohio Consumers' Counsel electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio