

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Establish)	Case No. 12-3255-EL-RDR
Initial Storm Damage Recovery Rider)	
Rates.)	

**MOTION AND MEMORANDUM IN SUPPORT OF
OHIO POWER COMPANY
TO FILE THE CORRECTED COPY OF THE MEMORANDUM CONTRA THE
OFFICE OF OHIO CONSUMERS' COUNSEL APPLICATION FOR REHEARING**

Ohio Power Company files this motion pursuant to Ohio Administrative Code Section 4901-1-12 seeking permission to replace the copy of the Company's Memorandum Contra filed with docketing on the afternoon of May 12, 2014 with the correct copy. The version scanned and sent to docketing and to parties was incomplete due to a secretarial mistake. Ohio Power filed the corrected version shortly after discovering the mistake at 5:40 PM on May 12, 2014.

The Company asks for leave for docketing to ensure the appropriate version of the filing is included in docketing and for Commission consideration. The parties received the document within minutes of discovery of the clerical error and were served a copy of the correct version.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On May 2, 2014, the Office of the Ohio Consumers' Counsel filed an Application for Rehearing of the Commission's Opinion and Order in this case. Under Ohio Administrative Code Rule 4901-1-35 a party has 10 days to file a memorandum contra to any such application for rehearing.

Ohio Power Company filed its response within the 10 day allowance within the rule on May 12, 2014. However, upon opening the service email the Company discovered that due to a clerical error the full version of the filing had not been the version provided docketing and served on the parties. The Company quickly reserved the document at 5:40 PM and refiled the version intended to be filed initially. The clerical error by the assistant doing the electronic filing led to the wrong version being filed and served initially.

There is no harm in accepting the filing within minutes of a timely submission in this case. OCC has no right to respond to the memorandum contra under the administrative code rules. The application for rehearing is a statutory instrument ruled by both R.C. 4903.10 and OAC 4901-1-35. But the memorandum contra is an instrument only included in the administrative code rule created for the benefit of the Commission in its timely processing of rehearing applications under the statute.

Ohio Power apologizes for the clerical error and is filing this motion still on the tenth day after the filing of the application for rehearing to stress the lack of harm due to the error. Ohio

Power respectfully requests that the Commission accept the attached version of the memorandum contra (the same as the copy filed around 5:40 PM on 5-12-14) as the official version.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above filing was served by electronic mail upon the individuals listed below **by the 12th day of May 2014. After Hours 6:15 PM**

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THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Establish)	Case No. 12-3255-EL-RDR
Initial Storm Damage Recovery Rider)	
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**MEMORANDUM CONTRA OF OHIO POWER COMPANY
TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
MAY 2, 2014 APPLICATION FOR REHEARING**

I. Introduction

The Office of the Ohio Consumers' Counsel (OCC) seeks rehearing on the Commission's April 2, 2014 Opinion and Order ("*AEP Storm Order*") in the case involving recovery of incremental major storm expenses for Ohio Power Company ("AEP Ohio" or "Company") from the 2012 calendar year, including the most destructive and expensive storm in its AEP Ohio's history. OCC's rehearing application seeks to second guess the factual findings of the Commission and ignores the record evidence supporting the Commission's decision. Ultimately, the Commission found that the settlement agreement was supported by the evidence of record including the analysis in the Staff audit that the Commission characterized as "lengthy and exhaustive." (*AEP Storm Order* at 14.) The Commission also relied on the testimony and expertise of AEP Ohio witnesses with extensive experience in storm restoration, as opposed to OCC's expert witness with no storm restoration experience, to determine the appropriateness of AEP Ohio's response to the catastrophic storms of 2012.

II. Argument

A. The Record Supports the Commission's findings that the Stipulation Met All Parts of the Three-Part Test for Approval of a Stipulation, Including Being in the Public Interest.

OCC fails to overcome the record support and reasonableness of the Stipulation that satisfies the three-part test for Commission adoption of stipulations.¹ As discussed in Ohio Power's Initial Brief, while stipulations filed pursuant to O.A.C. 4901-1-30 are not binding on the Commission, the terms of such agreements are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. The weight given the Stipulation, in combination with the evidence of record establishing the reasonableness of the incremental costs, support the Commission's acceptance of the Stipulation as a reasonable resolution of the issues in this proceeding.

OCC seeks rehearing on the public benefit aspect of the Commission's approval of the Stipulation in this case. Specifically, OCC argues that the Commission based its finding upon the statement that the Stipulation was more beneficial than the public positions of the parties signing the Stipulation and therefore it satisfied the test. (OCC App for Rehearing at 5-6.) OCC misrepresents the *AEP Storm Order* by asserting that the Commission's finding is unreasonable based on five lines of a twenty six (26) line paragraph that discusses the basis of the finding. OCC includes the conclusion that the Stipulation is in the public interest and one sentence supporting that topic sentence, leaving out the analysis and weighing of evidence done by the Commission.

¹ AEP Ohio incorporates by reference its post hearing briefs in this case for Commission consideration in refuting the grounds stated for rehearing. OCC's claims argue with points already established in those briefs and supported by the Commission's *AEP Storm Order*.

A full reading of this source paragraph from the *AEP Storm Order* shows the Commission's analysis and citations to record support. The very next sentence in the Order, after the language included in the block quote on page 5 of OCC's Application for Rehearing as the issue it is seeking rehearing upon, shows the Commission discussing the record review of the evidence and points out that Staff only recommended a \$4.9 million disallowance after a lengthy and exhaustive audit of AEP Ohio's invoices and related documentation. (*AEP Storm Order* at 14.) The Commission noted the record evidence where Staff reviewed every invoice reflecting an amount greater than \$100,000, as well as an additional audit sample of transactions involving amounts greater than \$500. (*Id.*) The Commission stated, "[i]n short, Staff's total adjustment of \$4.9 million was proposed following an extensive review of the voluminous data provided in support of AEP Ohio's application." (*Id.*)

The Commission analysis of the public benefit did not stop at its consideration of the in-depth review of the record done by Staff. The Commission noted that despite the Staff audit that recommended a reduction of \$4.9 million, that the Company reduced the revenue requirement by \$6 million, as well as other benefits. For example, AEP Ohio agreed to flow through additional refunds received by customers. (*Id.*) The Commission also recognized the testimony of AEP Ohio witness Spitznogle that customers receive the benefit of power restoration as quickly as possible in exchange for payment of a reasonable fixed charge over a 12 month period. (*Id.*) The Commission also recognized AEP Ohio's commitment to discuss awareness and appreciation of the complex issues involved in storm restoration with interested parties, as part of the Stipulation benefits. (*Id.*) OCC improperly ignores the majority of the Commission analysis, seeking rehearing based on a summary or headline as opposed to recognizing the record established and relied upon by the Commission.

OCC further asserts that the actions in this case to consider some parties' public positions will encourage a future de facto negotiation with only a few parties to the proceeding. There are two obvious underlying problems with OCC's argument. First, the process set up by the Commission in the ESP II calls for 1) a Company filing, 2) public positions taken by interested parties and Staff on issues with the Company filing, 3) an attempt by the Company and interested parties to work out a resolution prior to 4) an evidentiary hearing if needed. The Commission established process was followed here and a settlement generated based on the Commission's enumerated path focused on cooperation. OCC seeks to dismiss that public cooperative process to seek an agreed outcome and instead favors a jump to litigation. The Commission should reject OCC's desire to dismiss the cooperative nature of the processing of this mechanism. Second, OCC's argument is belied by the fact that, as the Commission found under the first prong of the three-part test, that OCC participated throughout the negotiations in this case. (*AEP Storm Order* at 10.) OCC was not left out and its issues were not ignored. The fact that the final Stipulation includes an amount that exceeds any of the Signatory Parties recommended disallowance could be used to show that the settlement reached beyond the interests of the signatory parties. A settlement was reached based on the participation of all the interested parties in the case. OCC had the opportunity to participate in settlement and then challenge the outcome at hearing. The Commission found the Stipulation reasonable after going to great lengths to consider and reject many of the arguments OCC raised. The process in this case supports the importance of negotiations and is in the public interest.

OCC was fully involved in the settlement process that led to the Stipulation. OCC does not possess a unilateral veto right on stipulations offered to the Commission for review. In addition the Staff of the Commission is responsible for considering the interests of residential

customers. Ultimately, a stipulation is judged by the Commission as appropriate or not based on the purpose of the case. The record supports satisfaction of all prongs of the three-part test for Commission approval of the stipulation and OCC's rehearing request should be denied.

B. The Commission's *AEP Storm Order* Supports the Reasonableness of the Incremental Storm Expenses.

OCC mistakenly argues that the Commission failed to show that Company established that the incremental costs included in the Stipulation were reasonable and prudent. Again OCC ignores the evidence of record supporting the implementation of the mechanism approved by the Commission in the ESP II proceeding.

First, the Stipulation as a whole represents the Signatory Parties' agreement to the level of costs that are reasonable and prudent as a compromise of the positions offered in the process outlined by the Commission to resolve this case. The opinions of a variety of interested parties can serve as evidence to the Commission for a factual decision it must determine in a proceeding. The mechanism was established in the ESP II proceeding and recovery of incremental restoration costs from major storms are presumed justified if shown as reasonable and prudent.² The Stipulation considered by the Commission is the product of the discussions established by the Commission as part of this process to determine that proper level of incremental costs to include in the established mechanism.

Second, the record evidence supported the level of incremental expenses included in the Stipulation. The Company presented three witnesses to answer all of the assertions made in the

² OCC's introduction that the Commission is adding to the costs suffered by customers as a result of the 2012 storms is an improper attack on the ESP II Order that established the mechanism and unfairly expands the proceeding beyond its proper scope to provide recovery for prudently incurred costs to provide service.

comment cycle by interested parties to justify the level of incremental expenses sought in the Company's Application. The Company provided testimony that establishes the reasonableness of the request. Further evidence of record exists to explain the Staff's audit of all the financial records in this case. As stated above in the discussion of the public positions of the parties, the Commission recognized the lengthy and extensive audit performed by the Commission Staff that produced a recommendation lower than the ultimate amount included in the final Stipulation. (*AEP Storm Order* at 14.) Just as OCC ignores the Staff analysis in the public benefit section of its rehearing and it ignores the evidence of the extensive audit analyzing the reasonableness of the expenses in this section of its rehearing request. The Staff audit is evidence that establishes that a lower amount could be used for the basis of final revenue requirement. The Company agreed to reduce the amount of recovery by an amount greater than what was supported by Staff in the record. Based on the evidence sponsored by the Company and Staff's thorough analysis, OCC's claim that the Company did not meet its burden of proof ignores the record evidence and should be denied.

OCC also reiterates a number of points it unsuccessfully argued at hearing and in briefs, rather than rely on the Commission's weighing of the evidence and credibility of the witnesses in this proceeding. OCC repeatedly mentions its self-proclaimed exhaustive or meticulous review of AEP Ohio costs by its witness Anthony Yankel and the positions he took based on his level of experience. OCC also continues to rely on his analysis concerning the search for hotel rooms in the days after the storm restoration began and the plans and resources for restoration were already in place. Unfortunately, OCC's analysis is not focused on storm restoration. The *AEP Storm Order* is focused on the proper implementation of the mechanism and storm restoration

and therefore properly recognizes the relevant facts and the importance of the timing of those facts in this case.

Use of Storm Services was not limited to a search for hotel rooms as OCC and its witness Mr. Yankel would have the Commission believe. As pointed out in the *AEP Storm Order*, the extreme circumstances related to the Derecho storm supported the use of Storm Services to coordinate and provide housing, food, and other services necessary during the restoration efforts. (*AEP Storm Order* at 22.) The destructive nature of the storm is well documented in the record and recognized by the Commission. (*Id.*) The Commission discussed the devastation of the storm and large amount of resources necessary to respond in its conclusion that it was not unreasonable or imprudent to hire Storm Services. (*Id.*)

The Commission specifically relied upon the expert testimony of AEP Ohio witnesses in support of the incremental expenses of storm restoration. The Commission relied on the record evidence that the use of Storm Services enabled the Company to secure more responders at that initial moment in time when all other territories impacted by the storm were competing for the same resources; a fact resulting in restoration five days sooner at a savings of around \$50 million for customers in AEP Ohio's territory. (*Id.*) The Commission weighed the evidence and dismissed OCC's attacks on Mr. Kirkpatrick's analysis. (*Id.* at 23.) The Commission specifically relied on the record evidence and recognized Mr. Kirkpatrick's considerable experience with respect to distribution operations and storm restoration. (*Id.*) As the Commission noted, even OCC expert Yankel agreed that if restoration can be sped up for any reason it is a benefit. (Tr. V at 949-950.) Now the Commission has determined based on the evidence of experts that deal with service restoration that power was restored five days quicker,

which according to Mr. Yankel, would also make the costs more reasonable. (Tr. V at 945-946.) Storm Services sped up restoration and was a reasonable and prudent expense.

OCC improperly seeks to counter the Commission's reliance upon Mr. Dias and Mr. Kirkpatrick's expert testimony with more opinions of Mr. Yankel. The experience of the AEP Ohio witnesses dealing directly with storm restoration and the critical decisions that need to be made can be found in their direct testimony and throughout the transcript. The testimony of OCC witness Yankel was not credible and could not be relied upon by the Commission. The Company will incorporate the points made in its post hearing briefs on the lack of experience by Mr. Yankel in storm restoration and the questions dealing with previous sworn statements. (See specifically, Company Initial Brief at 20-22.) It appears that OCC wants to rely on the fact that Mr. Yankel appeared in a past Commission case dealing with storms as validation of some level of expertise on the issues in the present docket. That is not the case. The Commission weighed the evidence in this docket and specifically relied on the expertise of AEP Ohio witnesses and not the expertise of OCC witness Yankel. Mr. Yankel's testimony on emails searching for hotel rooms and other issues ignores the main issues in the case and the overwhelming evidence of Company focus on restoring power as quickly and safely as possible to 700,000 customers in Ohio. The testimony of the experienced responders provided by the Company to substantiate the actions taken in this extreme event was the appropriate basis for the Commission decision. OCC witness Yankel, the witness for almost all of OCC's arguments, cannot be relied upon in this case and is not a proper basis for rehearing.

The Commission was clear on the utility of Storm Service type of services in extreme situations like the 2012 Derecho in Ohio. (*AEP Storm Order* 22-23.) But, OCC's blind opposition to the use of any type of Storm Services restoration vendor, regardless of the benefits,

is shown in its dismissing of AEP Ohio's competitive bid process as it describes it on page 10 of its Application for Rehearing. OCC argues that AEP Ohio used a competitive bid, but that it was for similar types of services and therefore should not be relied upon by the Commission. OCC places itself in the shoes of the Commission and essentially makes the declaration that any type of storm response vendor like Storm Services would be improper. Instead, OCC would have the Commission rely upon Mr. Yankel, its accounting witness with no restoration experience, to determine what is best in these emergency restoration situations with widespread damage, because according to him hotel rooms might be available. OCC's argument fails to even deal with the essential issues in restoration like safety and efficiency and the other benefits from using a vendor like Storm Services. The Commission properly declined to take such a step in the *AEP Storm Order* and should do so again on rehearing focused on safe and efficient restoration.

III. Conclusion

The Commission relied upon the record evidence to find the Stipulation in this case passed the three-part test traditionally used to weigh stipulations. OCC's arguments on rehearing focus solely on the positions offered by its limited and unreliable witness as opposed to the balance of the record evidence including a thorough review of the costs by Commission Staff and the field experience of AEP Ohio restoration veterans. The Commission should reiterate the factual findings of its initial order and affirm the *AEP Storm Order*. For the foregoing reasons, Ohio Power requests that the Commission deny OCC's request for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above filing was served by electronic mail upon the individuals listed below **by the 12th day of May 2014.**

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Summary: Motion and Memorandum In Support of OPCo to File the Corrected Copy of the Memorandum Contra the Office of OCC's Application for Rehearing electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company