

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Adopt a)	Case No. 14-1186-EL-RDR
Final Implementation Plan for the)	
Retail Stability Rider.)	

**JOINT APPLICATION FOR REHEARING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL,
OHIO HOSPITAL ASSOCIATION
AND
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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The Office of the Ohio Consumers' Counsel ("OCC"), Ohio Hospital Association ("OHA"), and the Ohio Manufacturers' Association Energy Group ("OMAEG")¹ request rehearing to protect customers with an order for the retail stability rider to be collected *subject to refund*.

In its Finding and Order of April 2, 2015, the Public Utilities Commission of Ohio ("PUCO" or "Commission") approved the request of Ohio Power Company ("Utility" or "AEP Ohio") to charge customers over \$450 million of deferred capacity costs (plus carrying charges) over thirty two months, beginning June 1, 2015. The PUCO permitted the deferred capacity costs to be collected through a \$4/MWh retail stability charge. That charge otherwise would have ended on May 31, 2015.

¹ This application for rehearing is filed under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The Opinion and Order was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR: The PUCO violated R.C. 4903.09 by not ruling on recommendations that AEP Ohio's retail stability charge, if authorized, should be collected subject to refund (to protect customers in the event of reversal on appeal).

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and modify its Opinion and Order so as to make stability charges subject to refund to customers.

Respectfully submitted,

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I. INTRODUCTION

That discount was authorized by the PUCO in Ohio Power's capacity case.² In that case, the PUCO permitted Ohio Power to defer the difference between the market-based rate it would charge the CRES providers and Ohio Power's fully embedded cost (as determined by the PUCO).³ The PUCO subsequently ordered that Ohio Power could collect the deferred capacity costs from all customers, through a non-bypassable charge.

³ The PUCO subsequently ordered that Ohio Power could collect the deferred capacity costs from all customers, through a non-bypassable charge. *In the Matter of the Application of Columbus Southern Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO (“ESP II Case”), Opinion and Order (Aug. 8, 2012).

Establish a Standard Service Offer Pursuant to 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, Case No. 11-346-EL-SSO (“ESP II Case”), Opinion and Order (Aug. 8, 2012).

OCC and others appealed the PUCO’s decisions.⁴ Those appeals are pending before the Ohio Supreme Court. Under the PUCO’s decision in this case, the deferrals will be collected starting June 1, 2015. If the PUCO’s decision is overturned by the Supreme Court, Ohio Power will be unjustly enriched and consumers unjustly harmed by collecting the deferrals in the time between June 1, 2015 and the Court’s decision(s) overturning the PUCO’s prior rulings. This Application for Rehearing concerns the PUCO’s unwillingness to protect customers by ordering rates to be collected subject to refund, pending resolution of the two appeals.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC, OHA, and OMAEG filed motions to intervene in this proceeding, which were granted by Entry dated October 30, 2014. OCC, OHA, and OMAEG also filed comments and reply comments regarding the Application.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the

⁴*In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Supreme Court Case Nos. 2012-2098 and 2013-0228; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Supreme Court Case No. 2013-0521.

order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for abrogating the Order is met here. The Commission should grant and hold rehearing on the matters specified in this Application for Rehearing, and subsequently abrogate its Opinion and Order of April 2, 2015.

III. ARGUMENT

Under R.C. 4903.09, the PUCO must issue findings of fact and written opinions explaining the reasons for their decision. That statute prohibits the PUCO from issuing summary rulings and conclusions that do not develop the supporting rationale or record. *MCI Telecommunications Corp. v. Pub. Util. Comm.*, (1987), 32 Ohio St.3d 306, 312, 313 N.E2d. 803; *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, ¶30. Where contested cases are heard, R.C. 4903.09 requires the PUCO to address material issues raised by parties, including jurisdictional allegations. See, e.g., *In the Matter of the Complaint of Westside Cellular, Inc., v. GTE Mobilnet Inc.*, Case No.

93-1758, Entry on Rehearing at ¶7 (Apr. 13, 1995); accord, *In re: Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶71.

A number of parties, including OCC, OHA, and OMAEG filed comments that focused on ways to protect customers while the two appeals of the PUCO's Orders are pending. See OHA Comments at 2-3; OCC Comments at 15; OMAEG Reply Comments at 3-4. But these comments were not addressed for resolution in a decision.

While the PUCO in its Order acknowledged the arguments, it nonetheless failed to address them. The PUCO claimed that '[w]ith respect to the intervenors' remaining comments, we find that their arguments in opposition***have already been thoroughly considered and rejected by the Commission in the *Capacity Case* and the *ESP 2 Case*.'⁵ Nonetheless, after a review of the orders, the rationale for rejection of the arguments is missing. Nowhere in the *Capacity Charge Case* or the *ESP II Case* Orders did the PUCO address measures to protect customers while the PUCO orders are under appeal.

If the deferral balance is found to be unlawful by the Ohio Supreme Court, AEP Ohio may allege that principles against retroactive ratemaking⁶ prevent a refund to customers of the collected charges. Customers could be irreparably harmed. On the other hand the utility would not suffer harm if the rates are collected subject to refund.

The PUCO has, in the past, ordered that rates should be collected subject to refund. In 1983, for example, the PUCO determined that a portion of the allowance related to Columbus & Southern Ohio Electric Company's construction work in progress for the Zimmer plant would be collected subject to refund to customers.⁷ After the

⁵ Finding and Order at ¶33.

⁶ *Keco Industries*, 166 Ohio St. 254.

⁷ *In re: Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Entry (Nov. 17, 1982).

Commission's action was upheld on appeal,⁸ the PUCO ordered the Utility to refund approximately \$4.5 million to its customers.⁹

Another example where the PUCO has collected rates subject to refund involved the Ohio Utilities Company.¹⁰ After a rate order was issued,¹¹ legislation was enacted that changed Ohio's ratemaking formula. The PUCO opened an investigation to determine if the previously established rates were still reasonable in light of the new law.¹² The PUCO determined that the rates were excessive, taking into account the new law, and ordered the utility to withdraw its tariffs and file new lower rates consistent with the PUCO findings.¹³ The Utility sought a stay of the PUCO Order, pending further review, which was granted with the condition that the utility was required to collect rates subject to refund.¹⁴

⁸ *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 12.

⁹ *In re: Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

¹⁰ *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry at 2 (June 7, 1978).

¹¹ *In the Matter of the Ohio Utilities Co. Application for an Increase in Rates*, Case No. 79-529-WS-AIR, Opinion and Order (Jan. 18, 1977).

¹² *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (Sept. 7, 1977).

¹³ *Id.*, Opinion and Order (May 18, 1978).

¹⁴ *Id.*, Entry (June 7, 1978). The utility was also required to file an "undertaking" consisting of a promise to refund any amount collected for service rendered after the date of the Entry by a method later determined by the PUCO (either cash refund or as a credit to future bills). The undertaking was required to be under oath by an officer of the utility and was to include a promise to include interest. The amount ordered for refund was the amount collected for service in excess of those rates ultimately determined to be lawful. *Id.*

More recently, in 2011, the PUCO ordered riders to be collected subject to refund. This ruling occurred while remand proceedings associated with Ohio Power's first electric security plan were underway.¹⁵

These examples illustrate the point that the PUCO can order utilities to collect rates subject to refund to customers. Such a ruling protects customers in event that the Ohio Supreme Court rules that the utility was collecting more from customers than warranted by law, rule, or reason. The PUCO should have ordered these rates be collected subject to refund, given the two pending appeals. It did not. And the PUCO failed to address this important issue in its Order. This PUCO approach violated R.C. 4903.09. Rehearing should be granted.

IV. CONCLUSION

The PUCO should grant rehearing. It should abrogate its February 25, 2015 Opinion and Order and order the stability rider to be collected subject to refund. Doing so will protect customers who could otherwise be irreparably harmed.

¹⁵ *In re: the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Entry (May 25, 2011).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Application for Rehearing was served on the persons stated below via electronic transmission to the persons listed below, this 4th day of May 2015.

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Summary: App for Rehearing Joint Application for Rehearing by Office of the Ohio Consumers' Counsel, Ohio Hospital Association and Ohio Manufacturers' Association Energy Group electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.