

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio)
Power Company for Authority to Establish)
a Standard Service Offer Pursuant to R.C.) Case No. 13-2385-EL-SSO
4928.143, in the Form of an Electric)
Security Plan.)**

**In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 13-2386-EL-AAM
Accounting Authority.)**

**THE RETAIL ENERGY SUPPLY ASSOCIATION'S
MEMORANDUM CONTRA THE JULY 20, 2015 MOTION TO STRIKE
FILED BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. Introduction

Now comes the Retail Energy Supply Association (“RESA”),¹ who responds to the July 20, 2015 Motion to Strike filed by the Office of the Ohio Consumers’ Counsel (“OCC”).

On May 28, 2015, the Commission issued its Second Entry on Rehearing in this matter. On June 29, 2015, the Ohio Power Company (“AEP Ohio”) filed its application for rehearing setting forth four grounds on which it alleged that the Commission’s May 28, 2015 Second Entry on Rehearing was unreasonable and unlawful. In its third ground for rehearing, AEP Ohio alleged:

It is unreasonable for the Commission to delegate issues for the working group for detailed implementation and structure but not empower the working group to make recommendations that may

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

be necessary to implement a workable Purchase of Receivables ["POR"] Program in AEP Ohio's territory.

On July 9, 2015, RESA filed a memorandum in response to the application for rehearing of AEP Ohio. RESA argued that:

AEP Ohio's pending rehearing request for greater leeway for developing the POR program is a reasonable request, so long as the Commission makes clear that the greater leeway cannot alter its approval of AEP Ohio's ESP III, which requires establishment of a POR program pursuant to which it will (a) purchase the receivables of each participating CRES provider for whom AEP Ohio bills on a consolidated basis and (b) purchase the receivables at a single discount rate that applies to all participating CRES providers.

On July 20, 2015, OCC moved to strike RESA's July 9, 2015 pleading on the grounds that it was either an untimely application for rehearing or an impermissible memorandum in support of AEP Ohio's application for rehearing.

II. Argument – A memorandum in support is not an impermissible filing. Even so, RESA's response to AEP Ohio's second rehearing petition sought to limit AEP Ohio's rehearing request. As such, it cannot be construed as supporting AEP Ohio's request.

RESA filed an application for rehearing from the original Opinion and Order, but intentionally chose not to file an application for rehearing as to the Second Entry on Rehearing issued June 29th. AEP Ohio, in its rehearing petition to the Second Entry on Rehearing, asked for broad discretion by the Market Development Working Group to rewrite the POR plan. While RESA does not object to granting the Staff and the Working Group some leeway to work out the details of a POR plan, the major thrust of the RESA pleading was centered on what cannot be changed. Quoting from RESA's Memorandum:

However, at the same time and for the reasons explained above, the Commission should reaffirm its fundamental POR rulings – making clear that greater leeway does not alter the basic goal of the MDWG crafting a POR plan that provides for the: (a) purchase the receivables of each participating CRES provider for whom AEP

Ohio bills on a consolidated basis and (b) purchase the receivables at a discount rate that applies to all participating CRES providers.

RESA does not agree with the OCC that only a pleading that disagrees 100 percent can be filed in response to an application for rehearing. Nothing in Rule 4901-1-35, Ohio Administrative Code, prohibits a filing in support, or a filing that supports in part and disagrees in part with an application for rehearing.² As a result, OCC's motion to strike should be denied based on the plain reading of Rule 4901-1-35, Ohio Administrative Code.

Moreover, as the text of RESA's pleading, quoted above, clearly indicates RESA is asking the Commission to rein in AEP Ohio's request. RESA opposes giving the Market Development Working Group flexibility on several key points from the Opinion and Order. Such a position is at odds with a request to redo or amend the Opinion and Order. Simply put, these are complex issues in which there are often no black / white or yes / no answers. The fact that RESA is asking to significantly change AEP Ohio's request, though not an absolute rejection of all aspects of the request, should be considered as opposition to AEP Ohio's Application for Rehearing. It cannot fairly be labeled, as OCC has done, as an endorsement of the AEP Ohio's position by RESA. Further, RESA took no position on the other three items for which AEP Ohio petitioned for rehearing.

III. Conclusion

The July 9, 2015 filing was neither an untimely application for rehearing nor an impermissible response to the AEP Ohio application for rehearing. Whether it is titled a "memorandum contra" or a "memorandum in response," the RESA filing of July 9, 2015 asks

² *In Consolidated Duke Energy Ohio, Inc., Rate Stabilization Plan Remand and Rider Adjustment Cases*, Case Nos. 03-93-EL-ATA, Entry (January 2, 2007), the Attorney Examiner denied a motion to strike a memorandum in support of another party's motion noting that the Commission's Rule 4901-1-12 did not prohibit such a filing. Rule 4901-1-35 is similarly worded, also not prohibiting a memorandum in support.

the Commission to amend AEP Ohio's rehearing request. As such, it is an entirely proper pleading and should not be stricken from the record. OCC's motion to strike should be denied.

Respectfully Submitted,



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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 certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on 21st day of July 2015 upon all persons/entities listed below.


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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/21/2015 11:58:26 AM

in

Case No(s). 13-2385-EL-SSO, 13-2386-EL-AAM

Summary: Memorandum Contra OCC's Motion to Strike electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association