

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY FOR APPROVAL
OF AN ADVANCED METER OPT-OUT
SERVICE TARIFF

CASE NO. 14-1158-EL-ATA

SECOND ENTRY ON REHEARING

Entered in the Journal on February 1, 2017

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing filed by Ohio Power Company and the Ohio Consumers' Counsel.

II. PROCEDURAL HISTORY

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio) is a public utility as defined in R.C. 4905.02 and an electric utility as defined in R.C. 4928.01(A)(11) and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On May 19, 2014, AEP Ohio filed an application in this case for approval of advanced meter opt-out service tariffs pursuant to Ohio Adm.Code 4901:1-10-05(J). AEP Ohio's proposed advanced meter opt-out service tariffs would provide customers who are scheduled to receive an advanced meter with the option to retain their traditional meter. Additionally, AEP Ohio's proposed tariffs would provide customers who currently have an advanced meter with the option to have it replaced with a traditional meter.

{¶ 4} Thereafter, on March 23, 2015, a joint stipulation and recommendation (Stipulation) signed by Staff and AEP Ohio was filed in this case (Jt. Ex. 1). The Stipulation contained an agreement by the signatory parties on a one-time charge of \$43.00 and a monthly charge of \$24.00 for advanced meter opt-out service. AEP Ohio filed the testimony of Andrea E. Moore in support of the Stipulation (AEP Ohio Ex. 1), while the Ohio Consumers' Counsel (OCC) filed the testimony of James D. Williams in

opposition to the Stipulation (OCC Ex. 4). Both OCC and Ohio Partners for Affordable Energy (OPAE) opposed the Stipulation in this case.

{¶ 5} On April 17, 2016, the Commission issued its Opinion and Order in this case finding that the Stipulation, as modified by the Commission, was reasonable and should be approved. Accordingly, the Commission found that AEP Ohio could implement a one-time charge of \$43.00 and a monthly charge of \$24.00 for advanced meter opt-out service once AEP Ohio implements a mechanism to return the benefits of its gridSMART program to customers.

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

{¶ 7} On May 27, 2016, AEP Ohio and OCC filed applications for rehearing in this case. Thereafter, on June 6, 2016, AEP Ohio, OCC, and OPAE filed memoranda contra to the applications for rehearing. On June 15, 2016, the Commission granted the parties' applications for rehearing for the limited purpose of consideration of the matters raised in the application for rehearing. The Commission now addresses the assignments of error raised in the applications for rehearing.

III. DISCUSSION

{¶ 8} Pursuant to Ohio Adm.Code 4901:1-10-05(J), each electric utility must provide customers with the option to remove an installed advanced meter and replace it with a traditional meter, and the option to decline installation of an advanced meter and retain a traditional meter, including a cost-based, tariffed opt-out service. Additionally, Ohio Adm.Code 4901:1-10-05(J)(5)(c) and (d) provide that the electric utility may establish a one-time fee to recover the costs of removing an existing advanced meter, and the subsequent installation of a traditional meter, and the electric utility may establish a

recurring fee to recover costs associated with providing meter reading and billing services associated with the use of a traditional meter. Finally, Ohio Adm.Code 4901:1-10-05(J)(5)(e) provides that costs incurred by an electric utility to provide advanced meter opt-out service shall be borne only by customers who elect to remove advanced meter opt-out service.

{¶ 9} As noted above, on April 27, 2016, the Commission modified and approved the Stipulation authorizing AEP Ohio to implement a one-time charge of \$43.00 and a monthly charge of \$24.00 for advanced meter opt-out service. However, the Commission modified the Stipulation such that AEP Ohio could only assess the advanced meter opt-out service charges once it implements a mechanism to return the benefits of its gridSMART program to customers.

A. OCC Assignment of Error 1

{¶ 10} OCC's first assignment of error is that the Commission violated R.C. 4903.09 because the Commission's Opinion and Order failed to explain how the settlement was product of serious bargaining between capable parties representing a wide diversity of interests. OCC argues that the Commission failed to explain how only two signatory parties to the Stipulation, in this case Staff and AEP Ohio, constitutes a wide variety of diverse interests. Further, OCC asserts the Commission determined only that the signatory parties were capable and knowledgeable, but did not address whether the stipulation was signed pursuant to serious bargaining.

{¶ 11} AEP Ohio argues the Commission should reject this assignment of error. AEP Ohio asserts the Commission's Opinion and Order fully supported its conclusion that the Stipulation was the product of serious bargaining. The Order cited the testimony of Andrea Moore that "the stipulation was the product of meetings and negotiations involving experienced counsel, as well as technical experts from the parties in the case" (Order at 6, 7; AEP Ohio Ex. 1 at 4; Tr. at 215-216). Further, AEP Ohio asserts that OCC does not have a monopoly on the consideration of residential interests. AEP Ohio points

out that OCC's witness even recognized that Staff balances the interests of customers of all classes and the utility (Tr. at 216). More importantly, AEP Ohio notes that the Commission has recognized that the "three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component, as presented by OCC," and thus the Commission has rejected previous attempts by OCC to "revise the test to evaluate stipulations based on the diversity of signatory parties." *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 52.

CONCLUSION

{¶ 12} Initially, we note that we thoroughly addressed OCC's argument in the Opinion and Order in this case. The Commission specifically held that "the stipulation is the product of serious bargaining among capable, knowledgeable parties" (Order at 7-8). Additionally, the record demonstrates that all of the parties who had intervened before the Stipulation was filed were included in settlement discussions and were provided opportunities to represent their interests in the Stipulation (Order at 7, *citing* AEP Ohio Ex. 1 at 4; Tr. at 215-216). We found that the signatory parties balance a variety of diverse interests, even though OCC and OPAE did not ultimately sign the Stipulation (Order at 7). In addition, OCC acknowledges that Staff has a duty to balance the interests of all customer classes, including residential customers (Order at 7, *citing* Tr. at 216).

{¶ 13} When the Commission considers a stipulation, the ultimate issue is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a Stipulation, the Commission uses the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 14} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court has stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126. Nowhere in the analysis of the reasonableness of a stipulation is the Commission required to determine that the stipulation contains OCC's signature. We agree with AEP Ohio that the "three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component, as presented by OCC," and we have rejected previous attempts by OCC to "revise the test to evaluate stipulations based on the diversity of signatory parties." *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 52.

{¶ 15} We have repeatedly held that we will not require any party to agree to a stipulation in order to meet the first part of the three-part test. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18, Entry on Rehearing (Mar. 23, 2005) at 7-8; *In re The Dayton Power and Light Co.*, Case No. 12-3062-EL-RDR, et al., Opinion and Order (Dec. 17, 2014) at 9. Further, there is no evidence in the record that any class of customers was excluded from the settlement negotiations in this case. See *Time Warner AxS v. Pub. Util.*

Comm., 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). Therefore, upon review of the record, the Commission finds, as we did in the Opinion and Order, that the first prong of the Commission's three-part test for the reasonableness of a stipulation has been met. Accordingly, we find that OCC's assignment of error must be denied.

B. OCC Assignment of Error 2

{¶ 16} OCC's second assignment of error is that the Commission erred by finding the modified Stipulation provides customers with a new service. OCC argues that customers already had the ability to opt-out of advanced meter service, at no cost. According to OCC, this case only sets the cost for the service.

{¶ 17} AEP Ohio argues that advanced meter opt-out service is a new service that was not previously offered. The Commission's rules specifically directed AEP Ohio to "file a proposed tariff for opt-out service within thirty calendar days of the effective date of this rule" (Ohio Adm.Code 4901:1-10-05(I)(5)(a)). AEP Ohio asserts that this proceeding, which is AEP Ohio's effort to comply with the Commission's rules, seeks a new tariffed service, which is advanced meter opt-out service. Further, AEP Ohio argues that OCC has it backwards because there currently is no smart meter service. Instead, AEP Ohio installs advanced meters as part of service under its existing tariffs. However, the Commission directed AEP Ohio to offer a new service, which is advanced meter opt-out service.

CONCLUSION

{¶ 18} The Commission finds that rehearing on this assignment of error should be denied. Advanced meter opt-out service is a new service that was not previously offered by AEP Ohio. The Commission held that "the modified stipulation also benefits ratepayers and the public interest by providing them with a service that they did not previously have, at a reasonable cost, below the actual cost for AEP Ohio to provide that service" (Order at 10). The Commission established that the new service should be provided through its rules and then directed AEP Ohio to file a new tariff to implement

the new service. While customers previously had traditional meters, AEP Ohio is currently installing advanced meters throughout its service territory. However, some customers may prefer to be metered by a traditional or analog meter. Therefore, the Commission adopted rules directing the utilities to file tariffs to establish this new service, allowing customers to opt-out of the advanced meters. Subsequently, in this case, AEP Ohio filed its proposed tariff to implement the new advanced meter opt-out service, consistent with Ohio Adm.Code 4901:1-10-05(J). Accordingly, OCC's assignment of error should be denied.

C. OCC Assignment of Error 3

{¶ 19} OCC's third assignment of error claims that the Commission erred by finding that a monthly meter reading charge provides a benefit to customers. OCC argues that AEP Ohio failed to meet its burden of demonstrating that its proposed monthly meter reading charge of \$31.80 was cost-based. OCC contends that negotiating the \$31.80 down to \$24.00 does not make it a cost-based charge, which is required by Ohio Adm.Code 4901:1-10-05(J)(5)(b)(ii). Further, OCC asserts that the Stipulation does not benefit customers and is not in the public interest because AEP Ohio will not be required to even perform monthly meter reads.

{¶ 20} AEP Ohio argues the Commission's Opinion and Order benefits customers and the public interest. AEP Ohio notes that OCC merely repeats the same arguments that were in its post-hearing brief and rejected by the Commission. AEP Ohio asserts that there is ample record evidence supporting the monthly meter reading charge and the Commission found as much in its Opinion and Order (Order at 10). AEP Ohio performed cost estimates for a manual meter reading charge that the Commission approved in AEP Ohio's last distribution base rate case (Tr. at 17, 24, 105-108). Then AEP Ohio adjusted the cost estimates for the likely annual rate of reading opt-out residential meters, which was laid out in the application and explained by AEP Ohio witness Moore (Tr. at 9, 17, 23-25, 38-40, 106-111). AEP Ohio argues there is sufficient evidence in the record justifying the cost-basis of the advanced meter opt-out service charges.

{¶ 21} Further, AEP Ohio asserts the reduction of the recurring monthly charge from \$31.80 to \$24.00 is a compromise negotiated by the signatory parties that benefits the public interest. AEP Ohio avers that it justified the cost-based charge at \$31.80, but agreed to a settlement in the amount of a recurring monthly charge of \$24.00 to the benefit of customers. AEP Ohio notes that in calculating the cost basis of the advanced meter opt-out service charge, it specifically took into account the estimated frequency of 8.875 meter readings per year for advanced meter opt-out service customers. AEP Ohio notes that OCC has not provided any grounds for second-guessing that number or provided an alternative calculation. Accordingly, AEP Ohio argues that OCC's argument is meritless.

CONCLUSION

{¶ 22} The Commission thoroughly addressed this issue in the Opinion and Order. The Commission relied upon the record evidence in this case and found that the evidence demonstrated that \$31.80 was the actual monthly cost to provide advanced meter opt-out service (Order at 10, 11-12; Tr. at 9, 17, 23-25, 38-40, 105-111). However, AEP Ohio and Staff agreed, as a compromise, that the monthly charge to customers for the service should be \$24.00. Thus, we determined that lowering the charge from the actual \$31.80 cost demonstrated by AEP Ohio to \$24.00 benefits the public interest. Moreover, although there is no requirement that meters be read every month, the rate demonstrated by AEP Ohio contemplates the projected 8.875 meter reads per years for advanced meter opt-out service customers (Order at 3; Tr. at 49-51; AEP Ohio Ex. 2 at 91). Accordingly, we affirm our decision to adopt the Stipulation and the agreed upon monthly charge of \$24.00 for advanced meter opt-out service. Rehearing on this assignment of error should be denied.

D. OCC Assignment of Error 4

{¶ 23} OCC argues the Commission erred by not requiring the charge for advanced meter opt-out service to be determined in a subsequent proceeding. OCC

asserts the Commission did not go far enough when it delayed imposition of advanced meter opt-out service charges until the operational savings of AEP Ohio's gridSMART program is returned to customers. OCC avers the Commission should go further and determine the costs for advanced meter opt-out service in a separate proceeding, such as in the case regarding phase two of AEP Ohio's gridSMART program.

{¶ 24} AEP Ohio argues that OCC's argument is baseless. AEP Ohio asserts the Commission has already conducted a complete examination of the proper charges for AEP Ohio's advanced meter opt-out service in this proceeding. AEP Ohio avers that OCC's proposed delay of advanced meter opt-out service would threaten the effectiveness of AEP Ohio's gridSMART Phase 2 deployment. According to AEP Ohio, the record in this proceeding fully supports the implementation of advanced meter opt-out service; there is no reasons to throw out the record and start over, as OCC proposes.

CONCLUSION

{¶ 25} The Commission finds the assignment of error lacks merit. The purpose of this proceeding was to determine the actual cost of providing advanced meter opt-out service and the proper charge to customers. Two of the parties, AEP Ohio and Staff, signed a Stipulation recommending resolution of the issues. The Commission has determined that this Stipulation is in the public interest, as it adopts a charge for advanced meter opt-out service that is less than what it costs to provide the service. There is no reason to defer ruling on the Stipulation and revisit these issues in a separate proceeding. Accordingly, rehearing on this assignment of error should be denied.

E. OCC Assignment of Error 5

{¶ 26} OCC argues the Commission violated Ohio Adm.Code 4901:1-10-05 by not providing alternative options for residential customers to decrease the cost of advanced meter opt-out service. OCC asserts that it explained in detail the requirement adopted by the Commission in Case No. 12-2050-EL-ORD that the utilities work with customers to provide multiple options to having an advanced meter. OCC argues that the

Commission should allow customers who do not want an advanced meter to read their own traditional meter, thus allowing customers to decrease the cost of meter reading and the corresponding monthly advanced meter opt-out service charge.

{¶ 27} AEP Ohio asserts that contrary to OCC's argument, customers do have options other than advanced meter opt-out service. AEP Ohio notes that the tariff approved by the Commission specifically contains a separate provision under which AEP Ohio will "give the customer the option to relocate the current [i.e. advanced] meter location" so that the customer will "still have an AMI or AMR meter installed, but at a location acceptable to the customer and the company." AEP Ohio avers this is precisely the kind of alternative solution to advanced meter opt-out service that the Commission contemplated in Case No. 12-2050-EL-ORD. AEP Ohio works with customers on a case-by-case basis to determine if they can achieve an agreeable solution such as relocating the customer's advanced meter or allowing the customer to use a traditional meter under the advanced meter opt-out service tariff. Further, AEP Ohio notes that OCC implies that customers should be provided the opportunity to read their own meters at a decreased cost, but AEP Ohio's mail-in meter reading program is limited customers with meter access issues. Further, such mail-in meter readings can be inaccurate and can generate customer complaints when customer meter reads are reconciled with actual meter reads.

CONCLUSION

{¶ 28} The Commission finds that rehearing on OCC's assignment of error should be denied. The Commission and AEP Ohio have provided customers with options to decrease their meter related costs, such as having the advanced meter moved to a more satisfactory location. However, if a customer refuses an advanced meter, even in a new location, then the customer should pay a monthly advanced meter opt-out service charge for AEP Ohio to service the meter. While OCC contends that the monthly charge for advanced meter opt-out service does not require a monthly meter read, we reject the notion that all advanced meter opt-out service customers should be provided the opportunity to read their own meters. Allowing customers to read their own meters on

a widespread basis would lead to misread meters, which can then lead to billing confusion when customer meter readings are reconciled with actual meter readings (Tr. at 80-81). While the Commission recognizes that some customers are provided the opportunity to read their own meter, this option is only provided to a limited number of customers who have meter access issues (Tr. at 79-81, 116-117). Therefore, we find that rehearing on OCC's assignment of error should be denied.

F. OCC Assignment of Error 6

{¶ 29} OCC argues the Commission violated R.C. 4905.18 and 4905.22, as well as Ohio Adm.Code 4901:1-10-05(J)(5)(b)(ii), because AEP Ohio and Staff failed to prove the charges for advanced meter opt-out service are just, reasonable, and cost-based. OCC notes the burden of proving the reasonableness of a stipulation rests with the proponents, which in this case are AEP Ohio and Staff. OCC argues AEP Ohio and Staff failed to meet their burden in this case for numerous reasons. First, OCC claims the manual meter rate for commercial meters is an inappropriate starting point. OCC then criticizes the estimate of 30 minutes per meter read travel time and 15 minutes for average time at the meter for a read. Thereafter, OCC claims that AEP Ohio failed to justify its estimated time to remove an advanced meter and install a traditional meter. OCC also asserts that AEP Ohio's cost estimates should have been adjusted for the cost of contractor labor.

{¶ 30} AEP Ohio asserts that the Commission already considered and denied the arguments raised by OCC. AEP Ohio then rebuts each of the arguments raised by OCC in support of the assignment of error. Regarding the manual meter read rate, AEP Ohio notes that the service territory-wide manual meter read rate is appropriate because it reflects a single average cost for providing advanced meter opt-out service throughout AEP Ohio's service territory. AEP Ohio then notes that its estimates of 30 minutes of travel time and 15 minutes at the meter per meter read is based upon considerable real-world experience of AEP Ohio's meter reading personnel (Tr. 47, 151, 158-160). Similarly, AEP Ohio's estimate regarding the amount of time to remove an advanced meter and

install a traditional meter is based upon considerable experience and expertise of AEP Ohio's meter reading personnel (Tr. at 144).

CONCLUSION

{¶ 31} The Commission notes OCC misstates the burden of proof in determining the reasonableness of the Stipulation. In this case, we found that AEP Ohio and Staff met their burden by demonstrating that the Stipulation was the product of serious bargaining among capable, knowledgeable parties; benefits ratepayers and the public interest; and does not violate any important regulatory principle or practice. Additionally, the Commission modified the Stipulation to further benefit the public interest by staying the charges until AEP Ohio implements a mechanism to return the operational savings of its gridSMART program to customers. Further, evidence in the record demonstrates that the charges for advanced meter opt-out service are just, reasonable, and cost-based. The evidence demonstrated that the real-world experience of AEP Ohio's meter reading personnel requires approximately 30 minutes of travel time and 15 minutes at the meter per meter read (Tr. 47, 151, 158-160). Further, AEP Ohio relied upon the considerable experience and expertise of its meter reading personnel when it estimated the amount of time to remove an advanced meter and install a traditional meter (Tr. at 144). We afforded substantial weight to this evidence and find it to be reasonable.

G. *AEP Ohio Assignment of Error and Request for Clarification*

{¶ 32} AEP Ohio argues the Commission should reverse its modifications to the Stipulation and permit AEP-Ohio to immediately implement advanced meter opt-out service charges. AEP Ohio then presents five arguments in support of its assignment of error, as well as a request for clarification. AEP Ohio argues the Commission's modification to the Stipulation is unreasonable, undermines incentives for settlement, and reduces customer incentives to accept advanced meters. Further, AEP Ohio asserts the Commission's modifications to the Stipulation will lead to customer confusion when advanced meter opt-out fees kick in during the gridSMART Phase 2 deployment.

{¶ 33} OCC and OPAE argue the Commission must modify stipulations, when necessary, to ensure they are in the public interest. They assert the Commission's role is to ensure that any final decision is in the public interest, which requires the Commission to modify those stipulations that are not in the public interest. Further, they claim that AEP Ohio has demonstrated through its argument that the advanced meter opt-out service charge is not intended to recover AEP Ohio's costs but to punish those customers who refuse an advanced meter. They assert the Commission reasonably modified the Stipulation to require some equity for opt-out customers by finding that operational savings of advanced meters must be considered in setting the cost recovery in the tariff.

{¶ 34} OCC then argues that customers have not yet received the benefits of advanced meters. Advanced meters are supposed to save costs, OCC avers, but customers have not yet benefitted from these savings. OCC states that "If expansion of advanced meters costs customers more than it saves customers the expansion should not occur."

CONCLUSION

{¶ 35} The Commission finds the assignment of error raised by AEP Ohio is now moot, as a mechanism to return the operational savings of advanced meters has been approved by the Commission. The Commission finds that AEP Ohio's gridSMART Phase 2 deployment contains sufficient mechanisms to return the operational savings of advanced meters to customers. Contemporaneous with the issuance of this Entry, the Commission, in *In re Ohio Power Co. to Initiate Phase 2 of its gridSMART Project*, Case No. 13-1939-EL-RDR, has authorized AEP Ohio to implement a mechanism to return the benefits of advanced meters to customers. The stipulation in that case proposed a credit reflecting projected operational savings that offset the cost recovered through the rider be set at a stipulated amount of \$400,000 per quarter starting in the fourth quarter of the first year of the gridSMART Phase 2 deployment. Therefore, the Commission has now authorized such a mechanism as required by the Order in this case, and AEP Ohio may assess its advanced meter opt-out service charges. Accordingly, rehearing on this

assignment of error is denied because it is moot. AEP Ohio is authorized to implement its advanced meter opt-out service tariff and begin charging for advanced meter opt-out service, where applicable.

IV. ORDER


{¶ 36} It is, therefore,

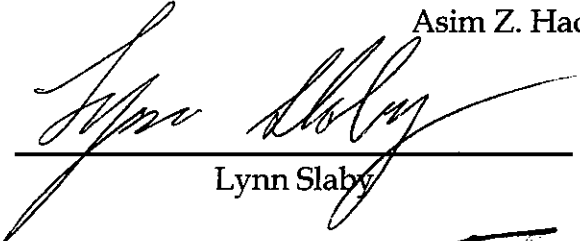
{¶ 37} ORDERED, That the applications for rehearing filed by AEP Ohio and OCC be denied. It is, further,

{¶ 38} ORDERED, That nothing in this Entry on Rehearing shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 39} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby

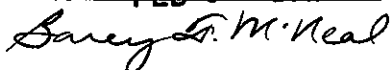

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Secretary