

**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. 4928.143, IN THE FORM  
OF AN ELECTRIC SECURITY PLAN.**

**CASE NO. 13-2385-EL-SSO**

**IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY FOR APPROVAL OF  
CERTAIN ACCOUNTING AUTHORITY.**

**CASE NO. 13-2386-EL-AAM**

**SIXTH ENTRY ON REHEARING**

Entered in the Journal on February 23, 2017

**I. SUMMARY**

{¶ 1} The Commission denies the application for rehearing filed by the Ohio Consumers' Counsel on February 3, 2017.

**II. DISCUSSION**

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On December 20, 2013, AEP Ohio filed, pursuant to R.C. 4928.143, an application for an ESP for the period of June 1, 2015, through May 31, 2018.

{¶ 5} On February 25, 2015, the Commission issued its Opinion and Order, approving AEP Ohio's proposed ESP, with certain modifications.

{¶ 6} 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.

{¶ 7} On April 22, 2015, the Commission issued an Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the February 25, 2015 Opinion and Order.

{¶ 8} By Second Entry on Rehearing dated May 28, 2015, the Commission granted, in part, and denied, in part, the applications for rehearing filed with respect to the February 25, 2015 Opinion and Order. The Commission, however, deferred ruling on the assignments of error related to AEP Ohio's power purchase agreement (PPA) rider, which was approved in the February 25, 2015 Opinion and Order as a placeholder rider set at zero.

{¶ 9} By Third Entry on Rehearing dated July 22, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the May 28, 2015 Second Entry on Rehearing.

{¶ 10} On November 3, 2016, the Commission issued a Fourth Entry on Rehearing, granting, in part, and denying, in part, the applications for rehearing filed with respect to the May 28, 2015 Second Entry on Rehearing, as well as denying the assignments of error regarding the PPA rider that were raised in the applications for rehearing of the February 25, 2015 Opinion and Order.

{¶ 11} On December 5, 2016, the Ohio Consumers' Counsel (OCC) and the Ohio Manufacturers' Association Energy Group (OMAEG) filed applications for rehearing of the

November 3, 2016 Fourth Entry on Rehearing. AEP Ohio filed a memorandum contra the applications for rehearing on December 15, 2016.

{¶ 12} On January 4, 2017, the Commission issued a Fifth Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing filed with respect to the Fourth Entry on Rehearing.

{¶ 13} On February 3, 2017, OCC filed an application for rehearing of the January 4, 2017 Fifth Entry on Rehearing. AEP Ohio filed a memorandum contra OCC's application for rehearing on February 13, 2017.

{¶ 14} In its first ground for rehearing, OCC argues that the Commission erred by not granting rehearing and abrogating its Fifth Entry on Rehearing on the matters specified in the application for rehearing filed by OCC on December 5, 2016. OCC notes that, in its December 5, 2016 application for rehearing, it contends that the Commission exceeded its statutory authority in approving the PPA rider under R.C. 4928.143(B)(2)(d). Specifically, OCC asserts that the Commission erred in finding that no statute prohibits the authorization of the PPA rider. OCC notes that, as a creature of statute, the Commission must have explicit authority to establish the PPA rider. *See, e.g., Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 620 N.E.2d 835 (1993). According to OCC, the Commission failed to specify a statute that permits the PPA rider and instead determined that no statute precludes the rider. For this reason, OCC contends that the Commission should have granted rehearing and abrogated the Fifth Entry on Rehearing to correct this alleged error.

{¶ 15} In its memorandum contra, AEP Ohio argues that parties are prohibited from seeking rehearing on issues on which the Commission has already ruled in prior entries on rehearing. *In re Ohio Power Co.*, Case No. 96-999-EL-AEC, et al., Second Entry on Rehearing (Sept. 13, 2006) at 3-4. AEP Ohio contends that OCC's arguments in both its third and fourth applications for rehearing were asserted in prior applications for rehearing and rejected by the Commission. AEP Ohio asserts that OCC's filing of unnecessary applications for

rehearing that repeat arguments that have already been rejected is inefficient, counterproductive, and contrary to OCC's request for a timely resolution of these proceedings.

{¶ 16} In its second ground for rehearing, OCC contends that the Commission erred by granting rehearing to allow itself more time to issue a final appealable order, without ordering that the PPA rider be made subject to refund. OCC claims that, in doing so, the Commission failed to fulfill its duty to hear matters pending before it without unreasonable delay and with due regard to the rights and interests of all litigants before it. *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122 Ohio St. 473, 475, 172 N.E. 284 (1930). OCC notes that, under R.C. 4903.10, the General Assembly established a 30-day process for the Commission to either grant or deny rehearing. OCC contends that the timely resolution of applications for rehearing within the 30-day period is important, because customers are being charged disputed rates without the likelihood of a refund and the parties cannot pursue an appeal until the Commission has issued a final order. Although OCC acknowledges that the Ohio Supreme Court has found that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider the applications, OCC asserts that the Commission has unreasonably extended the rehearing process in recent proceedings, in a manner that is counter to the Court's precedent. *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146, ¶ 19. According to OCC, the Fifth Entry on Rehearing issued in the present cases enabled the Commission to evade a timely judicial review of its orders and precluded the parties from exercising their right to appeal the Commission's orders to the Ohio Supreme Court, as established under R.C. 4903.10, 4903.11, and 4903.13.

{¶ 17} AEP Ohio replies that OCC acknowledges that the Ohio Supreme Court has found that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider them. *Consumers' Counsel* at ¶ 19. With respect to OCC's argument that the Commission has unreasonably applied the Court's precedent, AEP

Ohio responds that the argument is not supported by the facts. Noting that briefing on OCC's third application for rehearing was completed less than two months ago, AEP Ohio asserts that there has been no unreasonable delay in these proceedings. According to AEP Ohio, OCC has itself delayed the resolution of these cases by filing the fourth application for rehearing. AEP Ohio also asserts that the time-tested operation of the filed rate doctrine, which is the foundation for the prohibition against retroactive ratemaking in Ohio, is not a reason to rush a decision on rehearing matters that are properly slated for further consideration. Finally, AEP Ohio contends that, because the PPA rider charge did not take effect until January 1, 2017, any conceivable prejudice to the Company's customers from payment of the charge during the rehearing process would be minimal.

{¶ 18} The Commission finds that the first ground for rehearing in OCC's February 3, 2017 application for rehearing lacks merit. We found, in the Fifth Entry on Rehearing, that sufficient reason had been set forth by OCC and OMAEG to warrant further consideration of the matters specified in their applications for rehearing. The Commission, therefore, granted rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing. Fifth Entry on Rehearing at 3. As OCC admits, the Supreme Court of Ohio has determined that the Commission may grant rehearing for the limited purpose of allowing additional time to consider an application for rehearing. *Consumers' Counsel* at ¶ 19. OCC argues that the Commission exceeded its statutory authority in approving the PPA rider. OCC acknowledges, however, that the argument was already raised in its December 5, 2016 application for rehearing, which the Commission granted for further consideration of the matters specified in the application. OCC's argument related to the statutory authority for the PPA rider will be considered along with all of the other arguments raised in OCC's and OMAEG's applications for rehearing of the Fourth Entry on Rehearing.

{¶ 19} OCC's second ground for rehearing also lacks merit. The Commission is well within its purview to grant rehearing for the limited purpose of further consideration of the

matters specified in an application for rehearing. *Consumers' Counsel* at ¶ 19. OCC alleges that we have not fulfilled our duty to hear the issues in these complex proceedings without delay and with due regard to the rights and interests of OCC and the other parties. We do not agree that these proceedings have been unreasonably delayed, such that the parties have been precluded from exercising their appellate rights. In the course of thoroughly evaluating the parties' competing positions and endeavoring to resolve the issues in an efficient fashion, the Commission conducted an evidentiary hearing lasting four weeks; held an oral argument; reviewed countless pages of testimony, exhibits, briefs, and applications for rehearing; and issued extensive orders that encompass not just the PPA rider, but AEP Ohio's entire ESP. As AEP Ohio notes, OCC's filing of its fourth application for rehearing has itself distracted from the orderly resolution of the remaining issues in these proceedings. OCC also claims that customers have been harmed by the Fifth Entry on Rehearing, because the PPA rider has not been made subject to refund. However, in these cases, the Commission has authorized no cost recovery through the PPA rider, which was approved as a placeholder rider set at a rate of zero, and, therefore, there is no basis for OCC's claim that customers have been harmed.<sup>1</sup> For these reasons, the Commission finds that the application for rehearing filed by OCC on February 3, 2017, should be denied in its entirety.

### III. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That the application for rehearing filed by OCC on February 3, 2017, be denied. It is, further,

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<sup>1</sup> In Case No. 14-1693-EL-RDR, et al., the Commission modified and approved a stipulation, including authorization of AEP Ohio's request to include, in the placeholder PPA rider approved in these cases, the net impact of the Company's contractual entitlement associated with the Ohio Valley Electric Corporation, beginning with the first billing cycle of January 2017. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016).

{¶ 22} ORDERED, That a copy of this Sixth Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Asim Z. Haque, Chairman

*Lynn Slaby*

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*M. Beth Trombold*

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SJP/sc

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FEB 23 2017

*Barcy F. McNeal*

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Secretary