

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Update Its) Case No. 15-240-EL-RDR
gridSMART Rider.)

In the Matter of the Application of)
Ohio Power Company to Update Its) Case No. 15-1513-EL-RDR
gridSMART Rider.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of Consumers' Counsel ("OCC") files this Application for Rehearing of a decision by the Public Utilities Commission of Ohio ("PUCO") that could require customers to pay unlawful charges to Ohio Power Company ("AEP Ohio" or "Utility"). In these proceedings, the PUCO authorized AEP Ohio to continue collecting millions of dollars from its 1.2 million residential customers for gridSMART Phase I. However, the Order was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR 1: The PUCO unlawfully failed to find, as required by R.C. 4928.02, how gridSMART Phase I investments collected from customers through the Distribution Investment Rider are reasonably priced and cost effective for AEP Ohio's customers.

ASSIGNMENT OF ERROR 2: The PUCO unlawfully and unreasonably found that distribution plant placed in service did not need to be used and useful in the provision of electric service for consumers who are paying for the investment.

ASSIGNMENT OF ERROR 3: The PUCO unreasonably found that AEP Ohio's reliability provided by Distribution Automation Circuit Reconfiguration avoided a significant number of customer minutes of interruption each year through 2015.¹

¹ Order at 14.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and reverse its Opinion and Order as requested by OCC.

Respectfully submitted,

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/s/ Jodi Bair

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In this case, AEP Ohio seeks to collect rider rates from its 1.2 million customers for gridSMART Phase I capital investments that have not been shown to be cost effective nor used and useful. In order for AEP Ohio to collect money from its customers for the gridSMART Phase I investment, the law requires² that the Utility demonstrate that the costs were prudently incurred and that the rider rates are just and reasonable. There has been no prudence review in this case that shows that the costs were prudently incurred, nor has the PUCO spoken to the reasonableness or the rates or the cost-effectiveness of gridSMART Phase I.

In accordance with R.C. 4903.10, OCC, files this Application for Rehearing asking the PUCO to reconsider certain provisions of the April 19, 2017 Order that negatively affect Ohio's residential utility consumers. In order to fulfill its duties under Title 49 of the Revised Code and particularly, Ohio Rev. Code Section 4928.10, the

² R.C. 4928.02 and *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Opinion and Order (Aug. 8, 2012) at 63.

PUCO should find the Order should be changed, and as such, abrogate or modify its decision to approve grid SMART rider rates.

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 is an intervenor in these proceedings and filed comments in both cases.

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 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: “If, 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 to abrogate the Order is met here.

III. RECOMMENDATIONS

ASSIGNMENT OF ERROR NO. 1: The PUCO unlawfully failed to find, as required by R.C. 4928.02, that gridSMART Phase I investments in the Distribution Investment Rider are reasonably priced and cost effective for AEP Ohio's customers and the PUCO failed to set forth its reasoning, as required by R.C. 4903.09 for not considering the cost effectiveness or reasonableness of the rate.

Nowhere in the PUCO Order is there any discussion about the cost of gridSMART Phase I that is being collected from consumers, yet, R.C. 4928.02 requires the availability to consumers of reasonably priced retail electric service.³ Furthermore, R.C. 4928.02 (D), (E) reiterate that innovation is encouraged if it is "cost-effective and efficient" for customers.⁴

OCC raised the issue of cost-effectiveness for residential consumers throughout its initial comments,⁵ but the PUCO did not address this very important issue. As required by R.C. 4903.09, PUCO orders must contain findings of fact and set forth the reasons prompting the decisions arrived at.⁶ The Ohio Supreme Court has consistently held that the PUCO must, in its orders, explain material matters. In two 2016 PUCO appeals, the court reversed PUCO decisions based upon R.C. 4903.09. In one, the court stated that “[t]he commission’s orders summarily concluded that [the company’s] application was consistent with state policy and corporate-separation rules, but the commission never explained *how* [the company’s] fourth amended plan complied with the plain language”

³ R.C. 4928.02(A).

⁴ R.C. 4928.02(D) and (E).

⁵ OCC Comments at 7, 8, 9, 11, and 13.

⁶ R.C. 4903.09.

in Ohio law.⁷ And in the other reversed case, the Court found that a portion of the order “contained no record citations relevant to the pertinent issue....”⁸

The PUCO must provide written reasons, citing to evidence in the case to explain why it ruled the way it did. In this case, title 4928.02 required that electric customers be provided cost-effective and reasonably-priced electric service. The PUCO is charged with enforcing this mandate and failed to do so. If the PUCO is willing to allow AEP to charge its customers millions of dollars, the PUCO should certainly address the project’s cost-effectiveness. The PUCO order cited to R.C. 4928.143 as authority for implementing gridSMART. However, the PUCO ignored the requirements of R.C. 4928.02’s cost effectiveness standard and, in contravention of R.C. 4903.09, provided no record to explain why it chose to ignore the law and ignore issues raised by OCC in its Comments.

The PUCO’s Order thus is unlawful. The Order should be abrogated.

ASSIGNMENT OF ERROR NO. 2: The PUCO unlawfully found that under R.C. 4909.15 the used and useful standard is not applicable to gridSMART investments.

The PUCO’s Order states that OCC failed to explain how R.C. 4909.15(A)(1) and (A)(4) apply to a rider that was approved under R.C. 4928.143(B)(2)(h).⁹ Nothing in the Ohio Revised Code expressly exempts riders approved under R.C. 4928.143 from compliance with R.C. 4909.15.

In fact, R.C. 4909.15 is titled “Fixation of reasonable rates.” Whereas, R.C. 4928.143’s title is for an “Application for approval of electric security plan.”

⁷ *Interstate Gas Supply, Inc. v. PUCO*, 2016-Ohio-7535, ¶ 22, 2016 Ohio LEXIS 2693 (Nov. 1, 2016).

⁸ *In re Comm. Review of the Capacity Charges of Ohio Power Co.*, 2016-Ohio-1607, ¶ 55, 147 Ohio St.3d 59, 60 (2016).

⁹ Order at 13.

Specifically, R. C. 4928.143(B)(2)(h) discusses provisions regarding the utility's distribution service. R.C. 4928.143(B)(2)(h) only dictates what distribution investment riders can be part of an electric security plan ("ESP"). R.C. 4928 explains what the requirements are and the provisions permitted in an ESP, but this section of the Code does not speak specifically to how a rider rate itself should be evaluated by the PUCO. Because R.C. 4928.143 provides no direction regarding rates, statutory construction requires that the PUCO rely upon R.C. 4909.15 that governs utility rates. If the meaning of the statute is clear, then the PUCO must apply that meaning. In this circumstance, R.C. 4909.15 clearly governs rates and R.C. 4909.15 must be applied to the rider rate. Therefore, the ratemaking principles contained within R.C. 4909.15 would naturally be relied upon, as well as other provisions of Title 49 for guidance in the evaluation of riders.

R.C. 4909.15 ensures that rates are reasonable and also that any distribution investment must be deemed to be used and useful before consumers are asked to pay for it. To assert that R.C. 4909.15 is inapplicable to rider rates authorized under R.C. 4928.143 would mean that the PUCO will potentially approve customer payment for a utility's distribution plant that is not used and useful. Such an outcome puts consumers at risk for the technology investment's ultimate usefulness in providing utility service, and unreasonably converts customers into investors. The PUCO unreasonably and unlawfully failed to apply the used and useful standard to the rider. The Order should be abrogated.

ASSIGNMENT OF ERROR NO. 3: The PUCO unreasonably found that AEP Ohio’s reliability improved because the Distribution Automation Circuit Reconfiguration avoided a significant number of customer minutes of interruption each year through 2015.¹⁰

The PUCO states that AEP Ohio’s reliability is better due to expenditures on gridSMART Phase 1,¹¹ but AEP Ohio’s own data shows otherwise. On January 8, 2016, AEP Ohio filed its reliability standards case. In that case, the Utility asks the PUCO to approve worse reliability standards than the Utility is currently held to.¹² In 2014, the PUCO approved a settlement of AEP Ohio’s reliability standards. The 2014 case set a System Average Interruption Frequency Index (“SAIFI”) standard of 1.20 and a Customer Average Interruption Duration Index (“CAIDI”) standard of 150.¹³ In its most recent and pending reliability case, AEP Ohio proposed to worsen the reliability standards for service to residential customers.¹⁴ AEP Ohio’s proposal for calculating the standards going forward results in allowing customers to experience more (in number) and longer (in duration) outages before AEP Ohio would be considered to have violated the standards.

The PUCO inaccurately characterized AEP Ohio’s performance as an improvement in reliability. The PUCO’s statement that the number of customer minutes of interruption avoided each year through 2015 has improved is not accurate. According

¹⁰ Order at 14.

¹¹ *Id.* “As AEP notes, OCC ignores the true reliability benefit provided by DACR, as confirmed by the significant number of customer minutes of interruption avoided in each year through 2015.”

¹² See OCC Comments (March 6, 2017) at 6, citing *In the Matter of the Establishment of 4901:1-10-10(B) Minimum Reliability Performance Standards for Ohio Power Company*, Case No. 16-1511-EL-ESS, Application (June 30, 2016).

¹³ See OCC Comments (March 6, 2017) at 10.

¹⁴ See *id.* at 6, citing *In the Matter of the Establishment of 4901:1-10-10(B) Minimum Reliability Performance Standards for Ohio Power Company*, Case No. 16-1511-EL-ESS, Application (June 30, 2016).

to AEP Ohio's own annual reliability report, dated March 31, 2016, pursuant to the Ohio Adm. Code 4901:1-10-10(C), AEP's actual SAIFI, which is the average number of interruptions that a customer would experience, was worse in 2014 and 2015 than it was in 2013. In 2013, AEP Ohio's SAIFI performance was 1.03; whereas, in 2014 and 2015, AEP Ohio's SAIFI performance was 1.13.¹⁵

OCC asks for rehearing on its finding that the positive impact that Distribution Automation Circuit Reconfiguration has had on customers. AEP Ohio's reliability statistics and its current request to lower its reliability standards indicate that electric service reliability in its territory is not improving. And when the PUCO approved the gridSMART phase 1, it stated that "gridSMART Phase I will provide CSP with beneficial information as to implementation, equipment preferences, customer expectations, and customer education requirements ... More *reliable* service is clearly beneficial to CSP's customers.¹⁶ Its 1.3 million residential customers should not be asked to continue to pay for results that the PUCO did not expect when it approved gridSMART Phase I or the Distribution Investment Rider.

IV. CONCLUSION

AEP Ohio's residential customers have nearly 60 million¹⁷ of dollars for improvements to the Utility's distribution system, including gridSMART Phase I. But

¹⁵ *See id.* at 10. A higher SAIFI number indicates more outages and thus worse performance.

¹⁶ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Opinion and Order at 62 (Aug. 8, 2012), citing *In the Matter of 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, Opinion and Order at 37 (March 18, 2009).

¹⁷ Application at 4.

AEP Ohio's investments have not resulted in cost-effective benefits for customers, the rider rates that AEP Ohio wants to charge customers have not been shown to be reasonable. AEP Ohio is asking for worse reliability standards, and thus customers may, in the future, experience longer and more outages. This is not what gridSMART Phase I investments, paid for by customers, were intended to do.

The PUCO's Order is unlawful and unreasonable, and should be abrogated. To protect consumers, the PUCO should reverse its approval of the amounts to be collected from customers through gridSMART Phase I rider in these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Application for Rehearing was served on the persons stated below via electronic transmission this 19th day of May 2017.

/s/ Jodi Bair _____

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Summary: App for Rehearing Application for Rehearing by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Bair, Jodi Mrs.