

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)	
of Ohio Power Company)	Case No. 15-240-EL-RDR
to Update its gridSMART Rider Rates)	
In the Matter of the Application)	
of Ohio Power Company)	Case No. 15-1513-EL-RDR
to Update its gridSMART Rider Rates)	

**OHIO POWER COMPANY’S MEMORANDUM CONTRA THE OFFICE OF THE
OHIO CONSUMERS’ COUNSEL’S APPLICATION FOR REHEARING**

I. INTRODUCTION

Ohio Power Company (“AEP Ohio” or the “Company”) hereby submits this memorandum contra the application for rehearing that the Office of the Ohio Consumers’ Counsel (“OCC”) filed in these dockets on May 19, 2017. OCC’s positions on rehearing regarding the Commission’s April 19, 2017 Finding and Order are misplaced and incorrect, both as to the law and to the record, and OCC improperly seeks to litigate and/or relitigate issues that are not properly before the Commission here. As set forth below, the Commission should disregard OCC’s arguments in their entirety and affirm its Finding and Order.

II. LAW AND ARGUMENT

A. The Commission properly supported and explained its approval of AEP Ohio’s applications.

OCC generically argues that the Commission failed set forth the evidence and reasons “to explain why it ruled the way it did” on AEP Ohio’s applications. (OCC AFR at 3-4.) As an initial matter, OCC’s first assignment of error fails to satisfy R.C. 4903.10(B), which requires that an application for rehearing “set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” The Ohio Supreme Court has

repeatedly and clearly held that when a party's grounds for rehearing "fail to specifically allege in what respect the PUCO's order was unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met." *Disc. Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 2007-Ohio53, 859 N.E.2d 957, ¶ 59 (citing numerous earlier decisions holding the same). An assignment of error, like OCC's first assignment of error here, that alleges "nothing more than broad, general claims" is insufficient as a matter of law to satisfy Section 4903.10. *Id.* at ¶ 60. OCC has not identified any specific ruling that it alleges the Commission failed to support or explain in its detailed 16-page Finding and Order, instead broadly and conclusorily arguing that the Commission allegedly "provided no record to explain why it chose to ignore the law and ignore issues raised by OCC in its Comments." (OCC AFR at 4.) Thus, OCC's first assignment of error is insufficient under R.C. 4903.10(B) and should be denied on that basis alone.

Moreover, OCC's position that the Commission did not support its approval of AEP Ohio's applications with evidence is incorrect as a factual matter. Throughout its Finding and Order, the Commission identified the facts and evidence that it considered in evaluating AEP Ohio's proposed gridSMART Rider rates, including AEP Ohio's application, Staff's report and recommendations after auditing AEP Ohio's gridSMART Phase 1 expenditures, AEP Ohio's response to Staff's analysis, and Staff's revised report and recommendations based upon AEP Ohio's response. *See* Finding and Order at 4-7, 12-15.

As the Commission pointed out, OCC's comments in these proceedings "offered no recommendations regarding any particular gridSMART Phase 1 expenditures or any of Staff's adjustments." *Id.* at 11. In other words, OCC never identified any gridSMART Phase 1 expenditure that allegedly was not cost effective for residential customers. Nor did OCC participate in the Company's prior gridSMART cases over the last 7 years to offer input

regarding the cost effectiveness of specific expenditures as they were made and reviewed by Staff. *Id.* at 12. Rather, OCC now “raise[s] general opposition” to the gridSMART program that OCC already raised, and the Commission already thoroughly addressed, in the Company’s *ESP I*, *ESP II*, and *ESP III* cases. *Id.* at 11-12.¹ To the extent OCC now seeks to challenge the underlying statutory bases and justifications for the gridSMART Phase 1 Rider, its arguments also constitute a very untimely request for rehearing of the Commission’s decisions in AEP Ohio’s ESP cases. For all of these reasons, the Commission should disregard OCC’s first assignment of error on rehearing.

B. The Commission correctly concluded that R.C. 4909.15(A)(1) and (A)(4) have no application here.

The Commission should also disregard OCC’s second assignment of error, as it, too, is without merit from both a legal and a factual standpoint. (*See* OCC AFR at 4-5.) The Commission correctly concluded 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)” because OCC provided no explanation in its comments in this docket. (*Id.* at 4; *see also* OCC Comments at 7-8.) Rather, as in its application for rehearing, OCC’s comments merely stated OCC’s conclusion, without any support, that R.C. 4909.15 applies to alternative regulation for distribution infrastructure investments under the ESP statute. OCC has cited no authority to support its position that R.C. 4928.143 is subject to the traditional ratemaking requirements set forth in R.C. 4909.15. And indeed, such a construction of the two statutes would lead to an absurd result that would eliminate the flexibility that the legislature provided electric distribution utilities in the ESP statute. R.C. 4909.15 simply has no application here.

¹ *See also ESP I*, Case No. 08-917-EL-SSO, *et al.*, Entry on Rehearing at 22-24 (July 23, 2009) (confirming, over OCC’s argument to the contrary, that AEP Ohio’s gridSMART program satisfies the state policy considerations set forth in R.C. 4928.02(D) and (E)).

It also does not follow that because R.C. 4909.15 is inapplicable to rider rates authorized under R.C. 4928.143, “the PUCO will potentially approve customer payment for a utility’s distribution plant that is not used and useful,” as OCC suggests. (OCC AFR at 5.) As the Commission explained in its Finding and Order, and as AEP Ohio explained in its reply comments, the gridSMART assets as of the time of this filing are all used and useful as verified through the gridSMART audit. *See* Finding and Order at 12-13; AEP Ohio Reply Comments at 3-4. The assets’ final true-up can be verified through the current removal of the Net Book Value of the gridSMART assets through the DIR. Upon Commission approval in this case, the Net Book Value of the gridSMART assets will not be excluded from the DIR calculation but rather included for recovery through the DIR rider. The Company’s accounting policy requires that assets cannot be placed into service until they are in place, fully tested and being used for their intended purpose, otherwise known as used and useful. OCC’s position on this issue is misplaced, and the Commission should disregard it.

C. The Commission correctly concluded that Distribution Automation Circuit Reconfiguration provides a reliability benefit.

Contrary to OCC’s argument, the Commission’s conclusion that Distribution Automation Circuit Reconfiguration (DACR) provides a reliability benefit confirmed by the avoidance of a significant number of customer minutes each year through 2015 is correct and supported by the record in this case. (*See* OCC AFR at 6-7.) Indeed, AEP Ohio demonstrated as much in its reply comments, which it incorporates and relies upon here. (*See* AEP Ohio Reply Comments at 4-7.)

OCC continues to advance the misguided position that DACR does not improve reliability because AEP Ohio’s SAIFI did not improve in 2014 and 2015 and seeks to tie AEP Ohio’s pending reliability standards proceeding, Case No. 16-1511-EL-ESS, to DACR. However, as AEP Ohio previously explained, and the Commission recognized, SAIFI and other

reliability performance metrics can increase and decrease from year to year due to factors that are outside the Company's control and completely unrelated to DACR performance. (AEP Ohio Reply Comments at 6); *see also* Finding and Order at 13-14. OCC's position ignores that DACR tends to make SAIFI performance better than it would have been without DACR. (AEP Ohio Reply Comments at 6, Table 2.) It also ignores that "DACR installed on 70 circuits serving approximately eight percent of AEP Ohio's customer base is [not] sufficient to affect the Company's SAIFI or other reliability performance standards for its entire system." Finding and Order at 13-14. And it ignores the other benefits of DACR, such as avoided service calls and more efficient use of labor. *Id.* at 14. Stated differently, it is inappropriate to look only to AEP Ohio's system-wide reliability performance metrics to judge the impact of AEP Ohio's DACR on the circuits where it is installed and the customers who benefit from it. The Commission correctly found that DACR provides a significant and meaningful reliability benefit, and it should affirm that conclusion on rehearing.

III. CONCLUSION

For the foregoing reasons, the Commission should deny OCC's application for rehearing and affirm the Commission's April 19, 2017 Finding and Order in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Rehearing* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 30th day of May, 2017, via electronic transmission.

/s/ Steven T. Nourse

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Summary: Memorandum - Ohio Power Company's Memorandum Contra the Office of Ohio Consumers' Counsel Application for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company