

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO
POWER COMPANY FOR A LIMITED WAIVER OF
OHIO ADM.CODE 4901:1-18-06(A)(2).

CASE NO. 13-1938-EL-WVR

IN THE MATTER OF THE APPLICATION OF OHIO
POWER COMPANY FOR A LIMITED WAIVER OF
OHIO ADM.CODE 4901:1-18-06(A)(2).

CASE NO. 17-1380-EL-WVR

IN THE MATTER OF THE APPLICATION OF OHIO
POWER COMPANY FOR A LIMITED WAIVER OF
OHIO ADM.CODE 4901:1-18-06(A)(2).

CASE NO. 17-1381-EL-WVR

ENTRY ON REHEARING

Entered in the Journal on September 6, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed jointly by Ohio Consumers' Counsel and Ohio Partners for Affordable Energy.

II. DISCUSSION

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or 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} In Case No. 08-917-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for its first ESP, including the Company's proposal to establish a gridSMART rider and initiate Phase 1 of its gridSMART program, which would focus on

advanced metering infrastructure (AMI), distribution automation, and home area network initiatives. *In re Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, et al., Opinion and Order (Mar. 18, 2009) at 37-38, Entry on Rehearing (July 23, 2009) at 18-24.

{¶ 5} On August 8, 2012, the Commission approved, with certain modifications, AEP Ohio's application for a second ESP, effective with the first billing cycle of September 2012 through May 31, 2015. Among the provisions adopted as part of the ESP, the Commission approved AEP Ohio's request to continue the gridSMART Phase 1 project and the associated rider. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 62-63, Entry on Rehearing (Jan. 30, 2013) at 53.

{¶ 6} Ohio Adm.Code 4901:1-18-06(A)(2) requires the utility company to provide the customer or an adult consumer with personal notice on the day service is to be disconnected or attach written notice of the disconnection to the premises in a conspicuous location.

{¶ 7} By Entry issued March 18, 2015, in Case No. 13-1938-EL-WVR (*Waiver Case*), the Commission approved, with certain modifications, AEP Ohio's requests for a temporary waiver of Ohio Adm.Code 4901:1-18-06(A)(2) to initiate a two-year, remote disconnect pilot program within the gridSMART Phase 1 project area to end August 1, 2017, or until otherwise ordered by the Commission. The Commission also directed AEP Ohio to file a request, by June 1, 2017, if the Company wished to continue or expand the remote disconnect pilot. The pilot area includes AEP Ohio's gridSMART Phase 1 area and the surrounding vicinity, which serves approximately 132,000 residential customers. The Entry also specifically recognized that, at the conclusion of the temporary pilot period, should AEP Ohio file an application to continue or expand the pilot, AEP Ohio, Staff, and the other parties to the *Waiver Case* would be afforded the opportunity to evaluate the pilot. Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) filed for and were granted intervention in the *Waiver Case*. *In re Ohio Power Co.*, Case No. 13-1938-EL-

WVR (*Waiver Case*), Entry (Mar. 18, 2015) at 3, 13, Second Entry on Rehearing (Sept. 9, 2015) at 6-7.

{¶ 8} On June 1, 2017, in Case No. 17-1380-EL-WVR (*Waiver Extension Case*), AEP Ohio filed a motion for a permanent waiver or indefinite extension of the waiver of Ohio Adm.Code 4901:1-18-06(A)(2), as approved in the *Waiver Case*. If the Commission does not approve a permanent waiver, in the alternative, AEP Ohio requested at least a six-month extension of the waiver to adjust its workforce resources and procedures to accommodate personal notice on the day of disconnection. AEP Ohio requested an expedited ruling on its motion for a permanent waiver.

{¶ 9} On June 1, 2017, AEP Ohio also filed, in Case No. 17-1381-EL-WVR (*Waiver Expansion Case*), a motion to expand the waiver of Ohio Adm.Code 4901:1-18-06(A)(2) to apply to 894,000 customers with AMI, also known as smart meters, to be installed in the Company's service area. AEP Ohio stated installation of the smart meters is scheduled to commence during the summer of 2017 and to be completed over the next four years.

{¶ 10} By Entry issued on July 12, 2017, in the above-noted cases, the Commission granted the motions for intervention filed by OCC and OP&E in the *Waiver Extension Case* and the *Waiver Expansion Case*. Further, in the July 12, 2017 Entry, the Commission directed AEP Ohio to provide all parties to the *Waiver Case* the monthly data metrics collected to evaluate the remote disconnect pilot and the monthly metrics data tabulated as part of the pilot for the 24 months ended July 31, 2017. The Entry also established due dates for the filing of comments and reply comments regarding the evaluation of the pilot and extended AEP Ohio's waiver of Ohio Adm.Code 4901:1-18-06(A)(2), consistent with the Commission's decision in the *Waiver Case*, to afford the parties an opportunity to evaluate the remote disconnect pilot. *Waiver Case*, Entry (Mar. 18, 2015) at 13, Second Entry on Rehearing (Sept. 9, 2015) at 7.

{¶ 11} 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

therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 12} On August 11, 2017, OCC and OPAE filed a joint application for rehearing of the July 12, 2017 Entry in the *Waiver Case* and the *Waiver Extension Case*.

{¶ 13} On August 21, 2017, AEP Ohio filed a memorandum contra the application for rehearing.

{¶ 14} In the application for rehearing, OCC and OPAE argue the July 12, 2017 Entry is unjust, unreasonable, and unlawful in two respects. In their first assignment of error, OCC and OPAE argue that the indefinite continuation of the pilot violates R.C. 4903.09. OCC and OPAE submit that the July 12, 2017 Entry overlooks the evidence presented regarding the adverse impact of the waiver on residential customers. OCC and OPAE submit that AEP Ohio's Annual Report of Service Disconnections for Nonpayment reveals the number of residential disconnections for nonpayment has increased since the pilot was approved. OCC and OPAE state, according to the reports, 29.7 percent of the total number of AEP Ohio customers disconnected for nonpayment for the 2016 reporting year reside in the pilot area, although only 10 percent of the Company's total residential customers reside in the pilot area. Accordingly, OCC and OPAE conclude residential customers in the pilot area were disconnected at a disproportionately high rate during the 2016 reporting year. OCC and OPAE submit that the number of residential customers who have been disconnected for nonpayment substantially increased within the pilot area in comparison with the number of residential customers disconnected for nonpayment outside the pilot area. OCC and OPAE also note that although AEP Ohio disconnected fewer residential customers during the 2017 reporting year than during the 2016 reporting year, the number of customers disconnected is still greater than the number of customers disconnected prior to the 2015 reporting year, before the pilot started.¹

¹ The reporting year in the Annual Report of Service Disconnections for Nonpayment is based on the 12 months ended May 31 of each year.

{¶ 15} AEP Ohio contends the arguments of OCC and OP&E are misplaced, premature, and incorrect, as the July 12, 2017 Entry preserves the status quo and affords the parties an opportunity to evaluate the pilot consistent with the approval of the pilot in the *Waiver Case*. According to AEP Ohio, the July 12, 2017 Entry did not, as the application for rehearing asserts, disregard record evidence. The Company notes that the Entry makes no substantive decision on AEP Ohio's motions to permanently continue and expand the pilot or as to OCC's and OP&E's claims regarding the pilot. Accordingly, the Company recommends that the Commission deny the application for rehearing. Nonetheless, AEP Ohio argues OCC's and OP&E's claims asserting the pilot's adverse impact on residential customers are incorrect. The Company states, based on the data collected consistent with the directives in the *Waiver Case*, there were 17,425 fewer disconnections in 2017 than in 2016. The Company also notes the average number of customers remotely disconnected per month from September 2015, when the pilot began, through May 2016 was approximately 3,613 per month and for September 2016 through May 2017, the average number of customers remotely disconnected per month was 2,732, a decrease of 881 customers on average. AEP Ohio states OCC's and OP&E's claim that residential customers in the pilot were disconnected at a disproportionately high rate is flawed. The Company represents that OCC and OP&E compared the percentage of total disconnections in the pilot area (29.7 percent) to the percentage of total residential customers in the pilot area (10 percent). AEP Ohio asserts, however, that calculation disregards the fact that the disconnection rate in the area prior to the implementation of the pilot was significantly higher, approximately 20 percent, and ignores several other factors that independently affect the residential disconnection rate, including weather, the number of AEP Ohio employees, the availability of low income assistance, and the number of customers with delinquent accounts.

{¶ 16} In their second assignment of error, OCC and OP&E argue there is no record support for an indefinite continuation of the disconnect waiver as provided in the July 12, 2017 Entry and, therefore, the Entry violates R.C. 4903.09. OCC and OP&E note, in the alternative, AEP Ohio requested the disconnection waiver be extended for at least six months, until February 1, 2018, to allow the Company to adjust its workforce resources and

procedures to resume visits to the premises on the day of disconnection. Therefore, OCC and OPAE reason the indefinite continuation of the disconnection waiver is unjust and unreasonable based on the procedural schedule set forth in the July 12, 2017 Entry. With comments and reply comments completed by October 2, 2017, OCC and OPAE submit only a limited continuation of the waiver was necessary to accommodate the procedural schedule. Therefore, OCC and OPAE conclude limiting the waiver to no more than six months should give the Commission ample time to evaluate the pilot.

{¶ 17} In reply to the second assignment of error, AEP Ohio reiterates that the application for rehearing mischaracterizes the Entry as a substantive decision on the Company's motions, which overlooks the Commission's expressed statements otherwise in the Entry. Further, AEP Ohio maintains it was not unreasonable or unlawful for the Commission to continue the pilot, as approved in the *Waiver Case*, until it orders otherwise. The Company concludes it is well settled that the Commission has broad discretion to manage its dockets, including the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay, and eliminate unnecessary duplication of effort. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 10, citing *Duff v. Pub. Util. Comm.*, 69 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). Accordingly, the Company reasons it is well within the Commission's discretion to order the continuation of the pilot, in order to facilitate the review of the pilot and to avoid customer confusion resulting from terminating and subsequently resuming the pilot. For these reasons, AEP Ohio submits that OCC's and OPAE's arguments are premature and otherwise without merit and the application for rehearing should be denied.

{¶ 18} R.C. 4903.09 provides that in all contested cases heard by the Commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the Commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

{¶ 19} The Commission finds that both assignments of error should be denied. The July 12, 2017 Entry is not a ruling on the merits of AEP Ohio's motions to permanently waive, indefinitely extend, or expand the waiver of Ohio Adm.Code 4901:1-18-06(A)(2) and, therefore, the very premise on which OCC and OP AE contend the Entry violates R.C. 4903.09 is without merit. The July 12, 2017 Entry is merely to facilitate an evaluation of the pilot, including the filing of comments and reply comments, for the Commission's consideration in evaluating AEP Ohio's motions. An evaluation of the pilot is consistent with the Commission's ruling in the *Waiver Case*. As explained in the *Waiver Case*, and emphasized in the July 12, 2017 Entry, the Commission determined that if AEP Ohio requested to continue or expand the pilot, the parties would first have the opportunity to evaluate the pilot before the Commission ruled on the Company's request. *Waiver Case*, Entry (Mar. 18, 2015) at 11-13, Second Entry on Rehearing (Sep. 9, 2015) at 7. As OCC and OP AE acknowledged in their memorandum contra, the initial period of the pilot did not end until August 1, 2017, and an evaluation of the pilot has not been performed by the parties. The Commission will consider the issues raised regarding the pilot after the comment cycle is complete.

{¶ 20} In consideration of AEP Ohio's request to continue the pilot for at least six months, until February 1, 2018, to allow time to secure staff and reestablish operations without the pilot, OCC and OP AE reason the indefinite continuation of the waiver, until the Commission orders otherwise, is unlawful under R.C. 4903.09. The Commission disagrees. The Commission is vested with comprehensive discretion to manage its dockets including how to conduct the orderly flow of its business. *Duff v. Pub. Util. Comm.*, 69 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). It is clearly within the Commission's discretion to continue the pilot until the Commission makes a decision on the merits of AEP Ohio's motions to extend and expand the waiver. Accordingly, the Commission denies OCC's and OP AE's application for rehearing.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the application for rehearing filed jointly by OCC and OP&E be denied. It is, further,

{¶ 23} ORDERED, That a copy of this Entry on Rehearing be served upon all persons of record in these matters.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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