

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of the Purchase of)	Case No. 15-1507-EL-EDI
Receivables Implementation Plan)	
for Ohio Power Company.)	

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

Consumers should be protected from the business risk associated with billing and collecting services for competitive electric service suppliers (“marketers”). But in this case, the Public Utilities Commission of Ohio (“PUCO”) has shifted the risk to consumers. That is a bad idea.

In the Order in this case,¹ the PUCO adopted a framework for Ohio Power Company’s (“AEP Ohio”) purchase of receivables (“POR”) program. The framework provides that AEP Ohio will purchase, at a discount, the receivables of participating marketers. As part of the program, AEP Ohio will be allowed to charge its customers through the Bad Debt Rider, “as a recovery mechanism of last resort,” for marketers’ receivables.² AEP Ohio will also be permitted to collect marketers’ receivables “when economic conditions overwhelm the discount rate or the viability of the POR program in general.”³

¹ Finding and Order (September 27, 2017).

² *Id.*, ¶67.

³ *Id.*

Because customers pay the Bad Debt Rider, they would assume the business risk associated with the program and thus they could be harmed by the program. Instead the business risk should be borne by marketers, who stand to profit from their sales activities.

For this reason, the Office of the Ohio Consumers' Counsel ("OCC") seeks rehearing of the Order. The Order is unjust, unreasonable, and unlawful in the following respects:

1. It was unjust, unreasonable, and unlawful for the PUCO to shift the risk of the POR program onto consumers who are supposed to be protected from marketers' default under R.C. 4928.08(B).
2. The Order is based on misstatement of a PUCO Staff recommendation regarding use of the Bad Debt Rider for the program, and thus the Order violates R.C. 4903.09 and creates potential harm for consumers.
3. The Order violates the due process rights of consumers by allowing review of the Discount Rate and the Bad Debt Rider only by the PUCO Staff.

The reasons why the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter (0067445), Counsel of Record
Kevin F. Moore (0089228)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-7964 (Etter Direct)

Telephone: 614-387-2965 (Moore Direct)

Terry.etter@occ.ohio.gov

Kevin.moore@occ.ohio.gov

(Both will accept service via email)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of the Purchase of)	Case No. 15-1507-EL-EDI
Receivables Implementation Plan)	
for Ohio Power Company.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the ESP 3 decision,⁴ the PUCO established the following requirements for an AEP Ohio POR program: (1) receivables must be purchased at a single discount rate that applies to all marketers; (2) only commodity-related charges may be included in the POR program; (3) participation in the POR program by marketers that elect consolidated billing must not be mandatory; and (4) discussion of a detailed implementation plan within the Market Development Working Group, with a proposal subsequently filed for the PUCO's consideration.⁵ The PUCO Staff docketed its proposal in November 2015. After receiving comments and reply comments on the proposal, the PUCO adopted the Order in this case.

Under the POR program, AEP Ohio may provide billing for marketers, as it currently does through its consolidated billing agreements with marketers. But unlike its current practice, AEP Ohio could pay participating marketers the amount customers owe them for electric generation service, less a discount to help defray costs of the program. AEP Ohio thus would assume full financial responsibility for collecting the marketers'

⁴ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 13-2385-EL-SSO, Opinion and Order (February 25, 2015) ("ESP 3 Order") at 80.

⁵ *Id.* at 80-81.

charges. But this really means that its *customers* would assume full responsibility because all these costs are collected from customers. The marketers would face no business risk regarding the collection of their accounts receivable from customers other than the risk embedded in the discount.

OCC has expressed concerns about adverse effects that POR programs may have on consumers.⁶ OCC still has those concerns. While the program the PUCO adopted alleviated some of those concerns,⁷ the PUCO included a provision that could harm consumers. The PUCO allowed AEP Ohio to collect marketers' receivables through its Bad Debt Rider, under certain circumstances.⁸ Because customers – and not marketers – pay the Bad Debt Rider, the Order has shifted marketers' business risk to customers. The Order is unjust, unlawful, and unreasonable, and should be modified so that marketers' receivables may not be collected through the Bad Debt Rider.

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,⁹ and filed comments and reply comments in this case.

⁶ See Case No. 13-2385-EL-SSO, Direct Testimony of James D. Williams (May 6, 2014) at 21-28; *id.*, Direct Testimony of Matthew I. Kahal (May 6, 2014) (“Kahal Testimony”) at 31-42.

⁷ For example, the PUCO made clear that non-commodity charges would not be included in the POR program (Order, ¶¶30, 47) and that AEP Ohio could not collect late payment fees on the receivables it purchases (*id.*, ¶33).

⁸ *Id.*, ¶67.

⁹ OCC's Motion to Intervene was granted in the Order, ¶10.

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.” As shown below, the statutory standard to modify the Order is met here.

III. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: It was unjust, unreasonable, and unlawful for the PUCO to shift the risk of the POR program onto consumers who are supposed to be protected from marketers’ default under R.C. 4928.08(B).

As part of the framework for the POR program, the PUCO allowed AEP Ohio to use its Bad Debt Rider as a hedge against losing money through the program. The Bad Debt Rider would be used to collect the costs of marketers’ receivables and generation-related uncollectible expense above the amount already collected from customers through base distribution rates.¹⁰ The PUCO has thus shifted the risk of the POR program onto consumers, instead of onto marketers where it belongs. Use of the Bad Debt Rider for this purpose is unjust, unlawful, and unreasonable.

The Order is unreasonable because it gives AEP Ohio protection against marketer default that it doesn’t need. AEP Ohio has other means for protecting itself against losses through the POR program. Ohio law requires the PUCO to certify marketers regarding their managerial, technical, and financial capabilities to provide retail electric service.¹¹

¹⁰ See Order, ¶62.

¹¹ R.C. 4928.08(B).

Marketers also must provide a financial guarantee sufficient to protect customers and electric utilities from default.¹² In addition, PUCO rules specifically require each marketer to maintain sufficient financial security to protect the electric distribution utility against the marketer's potential default.¹³ The financial surety required by the rule already gives AEP Ohio a hedge against supplier default.

Collecting the costs associated with a marketer's default through the Bad Debt Rider (even as a mechanism of last resort) unreasonably shifts the financial risks from marketers to consumers. Under the Order, the captive residential customers of AEP Ohio's regulated service would make AEP Ohio whole for the default of a marketer. This is contrary to R.C. 4928.08(B), which places as much emphasis on protecting customers from marketer default as protecting the electric utility. The Order is therefore unlawful, unjust, and unreasonable.

Further, the rates marketers charge customers might include the costs the marketer incurs for providing AEP Ohio with the financial required by R.C. 4928.08(B). Thus, consumers might pay twice for protecting AEP Ohio – once through their marketer's charges and again through the Bad Debt Rider. This is unjust and unreasonable.

The PUCO should modify the Order to remove the Bad Debt Rider as a mechanism for AEP Ohio to collect marketers' receivables it has purchased. Instead, the PUCO should require AEP Ohio to sufficiently analyze the business risk for all marketers participating in its POR program on a continual basis.

¹² *Id.*

¹³ Ohio Adm. Code 4901:1-24-14.

The PUCO should also require AEP Ohio to collect the level of security necessary to protect it *and* its customers against such risk. AEP Ohio would then be able to collect any bad debt from the POR program through the financial surety marketers must maintain. This will shift the business risk back to marketers where it belongs.

Assignment of Error No. 2: The Order is based on misstatement of a PUCO Staff recommendation regarding use of the Bad Debt Rider for the program, and thus the Order violates R.C. 4903.09 and creates potential harm for consumers.

The PUCO apparently based its decision on a PUCO Staff recommendation. The PUCO stated that it “agrees with Staff’s position that AEP Ohio’s [Bad Debt Rider] should be utilized as a recovery mechanism of last resort, *as well as* to facilitate the Company’s recovery of [marketers’] receivables when economic conditions overwhelm the discount rate or the viability of the POR program in general.”¹⁴ The PUCO appears to allow AEP Ohio to collect money from customers for two purposes related to the POR program: first, as a collection mechanism of last resort, and second, when certain economic conditions apply. This is a misinterpretation of the PUCO Staff’s actual position.

Although the PUCO Staff’s Report did initially use wording similar to that in the Order,¹⁵ the PUCO Staff later qualified its statement. The PUCO Staff tied the two concepts – collection mechanism of last resort, and collecting receivables under certain economic conditions – into a single notion.

The PUCO Staff stated that, as “an option of last resort,” the Bad Debt Rider could be used to collect marketers’ receivables “when the economic conditions

¹⁴ Order, ¶67 (emphasis added).

¹⁵ See PUCO Staff Report at 1.

overwhelm the discount rate or the viability of the POR program in general.”¹⁶ The PUCO Staff went on to explain that the conditions for using the Bad Debt Rider as a collection mechanism of last resort may include “supplier default (bankruptcy), a large customer bad debt that would itself raise the customer class discount rate 10%, or overall economic conditions that would raise the discount rate significantly in a single year (after the first year).”¹⁷ The PUCO Staff’s recommended use of the Bad Debt Rider in the POR program is not as broad as the PUCO permits in the Order.

Allowing the Bad Debt Rider to be used as a collection mechanism of last resort without the limitation in the PUCO Staff’s recommendation is problematic. First, there’s no discussion in the Order as to the meaning of “a collection mechanism of last resort.” The Order doesn’t explain the steps AEP Ohio would have to take before using the Bad Debt Rider to collect marketers’ receivables from customers. The PUCO did not set parameters for using the Bad Debt Rider to collect marketers’ receivables from customers through the program. This would create potential for harm to consumers because the Bad Debt Rider could be used to collect marketer receivables from customers for any reason and in any amount. The PUCO should explain what it means by “a collection mechanism of last resort.”

Second, using the Bad Debt Rider for the purposes set forth in the Order is contrary to the stated purpose of the Rider. As the PUCO noted, the Bad Debt Rider is meant to collect marketers’ receivables and generation-related uncollectible expenses *above the amount already being recovered through base distribution rates*.¹⁸ AEP Ohio

¹⁶ *Id.* at 8.

¹⁷ *Id.*

¹⁸ *See* Order, ¶62.

already has \$12.2 million in bad debt expense reflected in base distribution rates.¹⁹ But the Order appears to allow AEP Ohio to collect marketers' receivables *in addition to* the \$12.2 million for bad debt in AEP Ohio's base distribution rates. Any bad debt AEP Ohio incurs through the POR program should be collected first through the \$12.2 million in bad debt expense already reflected in base distribution rates.

Although the PUCO agreed with the PUCO Staff's recommendation for using the Bad Debt Rider in the POR program, the Order does not limit the use of the Bad Debt Rider as recommended by the PUCO Staff. Thus, the Order is not based on the record of this case, in violation of R.C. 4903.09. If the PUCO rejects OCC's first assignment of error and retains the Bad Debt Rider for collection of marketers' receivables, it should place severe restrictions on the use of the Rider in the POR program. The Bad Debt Rider should only be used under extreme circumstances, such as if a marketer's default creates liability that exceeds the surety the marketer posts with AEP Ohio.

Assignment of Error No. 3: The Order violates the due process rights of consumers by allowing review of the Discount Rate and the Bad Debt Rider only by the PUCO Staff.

In the Order, the PUCO directed AEP Ohio to provide PUCO Staff with the initial discount rates calculations and to update these calculations annually.²⁰ The Order also directed AEP Ohio to calculate the Bad Debt Rider on an annual basis, with the calculations to be reviewed by the PUCO Staff.²¹ However, the Order did not specify the process for reviewing the calculations in the Bad Debt Rider. The process should allow consumers – who ultimately pay for the uncollectible expenses that are embedded in AEP

¹⁹ See ESP 3 Order at 81.

²⁰ Order, ¶67.

²¹ *Id.*

Ohio's rates, marketer rates, and any charges in the Bad Debt Rider – to examine the calculations for themselves.

Due process for consumers demands a more open review of the calculations in the POR and the Bad Debt Rider than the one set forth in the Order. To make sure that consumers' rights are protected, the PUCO should modify the Order to direct that AEP Ohio initiate a case to review calculations for the POR and the Bad Debt Rider in each year that it is to be updated. Consumers should be allowed to participate as parties in such cases.

IV. CONCLUSION

The Order in this case unreasonably and unlawfully shifts the financial burden of the POR program away from marketers and AEP Ohio, and onto consumers. This harms consumers. To make sure this doesn't happen, the PUCO should correct this error and modify the Order as OCC recommends.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter (0067445), Counsel of Record
Kevin F. Moore (0089228)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-7964 (Etter Direct)

Telephone: 614-387-2965 (Moore Direct)

Terry.etter@occ.ohio.gov

Kevin.moore@occ.ohio.gov

(Both will accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission this 27th day of October 2017.

/s/ Terry L. Etter
Terry L. Etter
Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

Attorney Examiners:
Sarah.parrot@puc.state.oh.us
Greta.see@puc.state.oh.us

stnourse@aep.com
cblend@aep.com
mjsettineri@vorys.com
glpetrucci@vorys.com
mdortch@kravittllc.com
joliker@igsenergy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/27/2017 4:19:46 PM

in

Case No(s). 15-1507-EL-EDI

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