

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority to)	Case No. 16-1852-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. 4928.143, in the Form of)	
an Electric Security Plan.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 16-1853-EL-AAM
Accounting Authority.)	

**MEMORANDUM CONTRA AEP’S MOTION FOR RELIEF FROM
COMMISSION ENTRY
(AFTER FAILING TO NOTIFY THE PUBLIC OF HEARINGS)
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Ohio legislature has determined that the public has a right to know about proposals that can increase their monthly utility bills.¹ The public can use this information to testify at hearings in cases at the Public Utilities Commission of Ohio (“PUCO”), to contact the PUCO with their concerns, and for other purposes. Public participation in PUCO hearings is so vital that the Ohio legislature has mandated that they be open to the public.² It is unacceptable, and contrary to law,³ that over a million Ohio consumers were not provided the public notice of hearings (local public hearings and the evidentiary hearing) on AEP’s proposed rate increases.

¹ R.C. 4928.141(B).

² R.C. 4901.13; see also R.C. 4901.12 (all PUCO proceedings are public records); O.A.C. 4901-1-27(C) (requiring the presiding hearing officer to permit members of the public the opportunity to offer testimony at hearings).

³ R.C. 4928.141(B).

There is also a related issue of the *content* of public notices. Notices should be improved to provide consumers with understandable information about utility proposals that can increase their electric bills. This case involves AEP's proposals for consumers to pay more for electric service to subsidize AEP power plants and other services.⁴ Also, there is a proposal to increase the price of AEP's standard offer, which would benefit marketers that compete against the standard offer, to the detriment of standard offer consumers.⁵ Finally, there is a significant consumer issue involving what should be a rate reduction for customers of utilities to reflect the recent reduction of federal corporate taxes.

The PUCO should deny AEP's Motion for Relief from Commission Entry ("Motion). That means AEP's application is unlawful, and in its present form it cannot be adopted by the PUCO.

II. RECOMMENDATIONS

A. Public notice is a statutory requirement that the PUCO cannot waive.

Ohio Power Company ("AEP") would have the PUCO believe that it can simply "waive or otherwise grant relief" from the Attorney Examiner's March 7, 2017 Entry setting local public hearings and requiring AEP to publish public notice thereof.⁶ AEP completely misses the point.

R.C. 4928.141 requires public notice for the hearings, which includes local public hearings and the evidentiary hearing. Notice is a *statutory requirement* that cannot be

⁴ See, e.g., Joint Stipulation and Recommendation at 7-10.

⁵ See *id.* at 31-32.

⁶ Motion at 1.

waived or otherwise relieved.⁷ And issuing the notice is a PUCO responsibility under the law, even though the PUCO required AEP to arrange for the notice. Tellingly, AEP did not reference the law in its Motion, perhaps hoping to avoid the reality of the legal infirmity of its case.

AEP's request that the PUCO ignore the statutory requirements regarding publishing public notice would plunge the PUCO into illegal waters. The PUCO is a creature of statute with limited and defined powers. It may not act beyond what it is authorized to do by statute.⁸ Granting AEP's Motion would not only violate the statutory requirements regarding publishing public notice, it would assume authority for the PUCO that it simply does not have. There is no authority for the PUCO to ignore the Ohio legislature's determination that the public has a right to know about proposals that can increase their monthly utility bills and to participate in the hearing process.

Failure to provide the public with notice of AEP's proposal to increase consumers' monthly utility bills deprived the public of information regarding AEP's proposal and the opportunity to participate in the hearing process. This is contrary to the Ohio legislature's directives. And thus the status of AEP's case is presently unlawful. The Motion should be denied.

B. Notices should be improved to provide consumers with understandable information about utility proposals to increase their electric utility bills.

Public notice should provide consumers with understandable information about utility proposals that can increase their electric bills. Here, AEP proposes that consumers

⁷ R.C. 4928.141(B); O.A.C. 4901-1-38 (explaining that the PUCO may not waive statutory requirements).

⁸ See, e.g., *MCI Tele. Corp. v. PUCO*, 38 Ohio St. 3d 266, 273 (1988) (citation omitted).

pay more for electric service to subsidize AEP power plants and other services.⁹ Also, there is a proposal to increase the price of AEP's standard offer, which would benefit marketers that compete against the standard offer, to the detriment of standard offer consumers.¹⁰ Finally, there is a significant consumer issue involving what should be a rate reduction for customers of utilities to reflect the recent reduction of federal corporate taxes. Customers should be able to know how these issues may affect the utility bills they pay. Any public notices issued in this proceeding must be understandable and convey meaningful information to customers.

III. CONCLUSION

The public has a right to know about proposals that can increase their monthly utility bills and a right to meaningfully participate in the hearing process.¹¹ The Ohio legislature has acknowledged as much, and mandated by statute that the public receive from the PUCO notice of such proposals and be able to meaningfully participate in the hearing process.¹² The PUCO cannot simply excuse the failure to provide the statutorily required notice, as AEP would have it do. Doing so would violate the law. The PUCO should deny AEP's Motion, which leaves AEP's application with an unlawful status. .

⁹ See, e.g., Joint Stipulation and Recommendation at 7-10.

¹⁰ See *id.* at 31-32.

¹¹ R.C. 4928.141(B); R.C. 4901.13; see also R.C. 4901.12 (all PUCO proceedings are public records); O.A.C. 4901-1-27(C) (requiring the presiding hearing officer to permit members of the public the opportunity to offer testimony at hearings)..

¹² *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum Contra was served via electronic transmission upon the following parties of record this 12th day of January 2018.

/s/ Kevin F. Moore

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Summary: Memorandum Memorandum Contra AEP's Motion for Relief from Commission Entry (After Failing to Notify the Public of Hearings) by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Michael, William Mr.