

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Ohio Power Company for Authority to)
Establish a Standard Service Offer Pursuant to) Case No. 16-1852-EL-SSO
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) Case No. 16-1853-EL-AAM
Certain Accounting Authority.)

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S
MOTION TO REOPEN PROCEEDING**

I. Introduction

Nearly two years ago – and more than two years before its current electric security plan’s (“ESP”) expiration date and less than one year into that plan’s term – Ohio Power Company (“AEP Ohio” or the “Company”) filed an application to amend and extend the term of its current ESP III. *See* Case No. 13-2385-EL-SSO, *et al.*, Application and Testimony (May 13, 2016).¹ The Company amended its application on November 23, 2016. After several months of intense discovery and settlement negotiations, AEP Ohio and numerous other parties to this case filed a Joint Stipulation and Recommendation (“Stipulation”) on August 25, 2017. OCC alone opposes the Stipulation. After more discovery by OCC, an evidentiary hearing occurred in November 2017. The parties completed post-hearing briefing in December 2017, and the Public Utilities Commission of Ohio (“Commission”) conducted an additional public hearing on February 12, 2018. The Stipulation is ripe for Commission decision soon, as the term of the Company’s current ESP ends on May 31, 2018.

¹ At the Attorney Examiner’s direction, *see* Entry (Sept. 7, 2016), AEP Ohio refiled its amended application and supporting testimony in these dockets on November 23, 2016.

On March 2, 2018, the Office of the Ohio Consumers' Counsel ("OCC") filed a "Motion to Protect Consumers by Reopening Proceeding" ("Motion to Reopen"), in which OCC vaguely and unspecifically asks the Commission "to reopen this proceeding, in the interest of having a complete record before it" regarding the Tax Cuts and Jobs Act of 2017 (TCJA), enacted December 22, 2017, and the Ohio Supreme Court's decision in *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 ("*FirstEnergy*"), issued January 24, 2018. (OCC Mot. at 1.) OCC's motion does not explain why OCC waited more than two months (as to the TCJA; one month as to the *FirstEnergy* decision) to raise its unspecific concerns. Tellingly also absent from OCC's motion is any specific concern or basis for reopening this case now.

Good cause does not exist to reopen this case at this late stage. Both of the issues that OCC has broadly raised are being addressed and resolved in other proceedings, and neither necessitates or warrants also reopening this proceeding to address them. As set forth below, the Commission should deny OCC's motion in its entirety and issue a merits decision on the Stipulation as soon as practicable.

II. The Commission should deny OCC's Motion to Reopen.

OCC has failed to show good cause to reopen this proceeding under O.A.C. 4901-1-34. Contrary to OCC's vague and conceptual assertions otherwise, here is no need to reopen this proceeding to address either the impacts of the Tax Cuts and Jobs Act of 2017 on rider rates or the Ohio Supreme Court's recent retroactive ratemaking decision in *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 ("*FirstEnergy*").

A. There is no need to reopen this proceeding to address recent corporate tax rate changes.

AEP Ohio agrees that it is necessary and appropriate for the Commission to “consider the impacts of the Tax Cuts and Jobs Act of 2017 [(TCJA)] and determine the appropriate course of action to pass benefits resulting from the legislation on to ratepayers.” Case No. 18-47-AU-COI, Entry at ¶ 1 (Jan. 10, 2018). And there is little doubt that retail customers will realize benefits from tax reform through retail utility rates. But on the eve of a merit decision in this proceeding, OCC asks the Commission to reopen the adjudicative process and address the impacts of the TCJA enacted late last year after the close of the evidentiary record. The Commission should reject OCC’s latest bid to undermine the Stipulation and delay this proceeding on several bases.

As a threshold matter, OCC’s motion includes no specific concern or basis supporting its generic thesis that the riders that exist or are being proposed are flawed because they will not adequately capture the impacts of tax reform. OCC’s motion contains no specific example or factual claim to support its generalized and unsubstantiated allegation. Of course, it would be fundamentally unfair and improper for OCC to try and advance such an example for the first time in its reply memorandum. Thus, the whole premise of OCC’s complaint is academic and vague – confirming that there is no good cause to act on OCC’s request to reopen this proceeding.

OCC’s focus on this proceeding also misses that the tax impact issue is not a future issue for application only in the *ESP III Extension* term – it is an issue that already exists and is being addressed elsewhere. Of course, the Commission is actively working to address these issues outside of this proceeding in the 18-47 docket. In reality, the Company and the Staff have also been actively resolving those issues in individual rider proceedings. And there is no reason to

think that the remaining tariff language issues relating to the tax component of riders will not also be resolved in parallel to the tax reform docket or any other rate proceeding.

The Company has worked with Staff to identify the existing riders that have a tax component to flow through TCJA impacts through the approved rider mechanism. Of the existing riders, only six have a gross revenue conversion factor with a tax component: (1) Distribution Investment Rider (DIR), (2) Alternative Energy Rider (AER), (3) Basic Cost Transmission Rider (BTCR), which flows through of OATT rate after approval by FERC, (4) Enhanced Service Reliability Rider (ESRR), (5) Energy Efficiency/Peak Demand (EE/PDR) Rider, and (6) the gridSMART Phase 2 Rider. In coordination with Staff, the Company has already filed tariffs for *all six* of these riders to clarify that TCJA impacts will flow through the rider in due course. *See* Case Nos. 18-96-EL-RDR (BTCR), 17-1156-EL-RDR (gridSMART Phase 2), 14-1696-EL-RDR (DIR), 15-1052-EL-RDR (AER), 18-440-EL-ATA (EE/PDR) and 18-441-EL-ATA (ESRR). And the Commission has already approved some of these tariff filings. *See* Case Nos. 17-1156-EL-RDR (gridSMART Phase 2) and 14-1696-EL-RDR (DIR). Moreover, for the additional riders being proposed in the Stipulation that have a tax component (*e.g.*, Smart City Rider), the Company can similarly clarify the TCJA impacts will flow through those riders in due course. Of course, that is a complete non-issue for riders that will reflect a non-zero charge in the future as the new tax levels will already be incorporated from the outset. Consequently, there is no basis to reopen this proceeding and there is no issue unresolved that would justify such action.

OCC's request also fundamentally ignores that the purpose of the 18-47 investigation is to address issues regarding the impacts of tax reform for all utilities – and to foster individual solutions for individual utilities on a consistent basis. The Commission should not single out

AEP Ohio by delaying or reopening its ESP proceeding. Again, the issues being raised by OCC are already being addressed and resolved outside of this proceeding.

OCC's position also misconstrues the mechanics and design of existing and proposed riders – by assuming that all riders should incorporate all tax impacts relating to the subject of the rider (gridSMART investment, distribution investment, vegetation management costs, etc.). The existing terms and conditions of many riders certainly do reflect some of the TCJA impacts. But the reality is that not all tax impacts relate to the mechanics and scope of those riders. This is true for the riders previously approved for AEP Ohio in the *ESP III* decision (13-2385, *et al.*) and it is equally true for the rider proposals being created, modified or continued in the Stipulation in this proceeding. Consequently, the notion of reopening this proceeding for the stated purpose of modifying all riders to incorporate all impacts of tax reform is illogical, unreasonable and otherwise inappropriate.

The riders that contain tax components will operate to incorporate corresponding tax impacts. That is already being proven out in the tariff and rider filings, as demonstrated in the table above – and that progress will continue to completion in due course. Other jurisdictional tax impacts not reflected in current rider mechanisms will be captured as part of the regulatory liability ordered by the Commission in its January 10, 2018 Entry in 18-47. AEP Ohio has advanced the position that the regulatory liability issues should be accounted for and addressed as part of the next comprehensive base rate proceeding. AEP Ohio has also indicated that it is open to settlement opportunities to explore other alternatives relating to reflect the regulatory liability in retail rates. In any case, base rates are not part of this proceeding and there is no basis to reopen this proceeding at the eleventh hour to address an issue that is already being addressed elsewhere.

OCC also proposes (at 3) that the Commission “could, in ruling upon AEP’s electric security plan, require the eighteen rider tariffs that are under review to include language allowing tax refunds and other refunds.” To the extent that the Commission is concerned about the rider tariffs that have not yet been updated (as reflected in the above table), that is a matter that can be resolved through the Company’s compliance tariffs following a merit decision in this proceeding. It is certainly not necessary to reopen the proceeding for that simple purpose.

Finally in this regard, AEP Ohio would like to address OCC’s suggestion (at 3) that the Commission “relook” at the commitment made in the Stipulation to file a base rate case by June 1, 2020. This is a very important provision to the balancing that occurred through the settlement negotiations leading up to the final package of terms and conditions contained in the Stipulation. It should not be modified and it is unnecessary to do so in this proceeding. Certainly, other utilities in Ohio have commitments either to stay out for a specified time period or come in to file within a specific time period; AEP Ohio’s commitment is not unique among Ohio electric utilities, let alone all public utilities. And AEP Ohio should be subject to the same set of requirements and outcomes as other utilities coming out of the 18-47 docket. OCC’s request to single out AEP Ohio and create a different approach outside of the 18-47 docket is inappropriate and should not be used as a basis to reopen this proceeding.

In sum, as with the *FirstEnergy* component of OCC’s request (addressed below), the Tax Reform component of OCC’s request fails to establish good cause to reopen this proceeding. Contrary to OCC’s argument (at 5), it has received and continues to receive a fair opportunity to address tax reform issues in the Commission’s open docket in the 18-47 investigation. Good cause under O.A.C. 4901-1-34(B) neither exists nor has been demonstrated by OCC in its motion.

B. There is no need to reopen this proceeding to address the Ohio Supreme Court's recent *FirstEnergy* decision.

There is also no basis to reopen this case to address the Supreme Court of Ohio's recent decision in the *FirstEnergy* case. (OCC Mot. at 7-9.) Although OCC claims broadly and vaguely that the record needs to be reopened "so that parties can ensure consumers are protected from any adverse consequences of the Court's *FirstEnergy* decision," OCC has failed to explain what additional process or proceeding it believes is necessary here. Moreover, to the extent OCC wishes to present additional evidence in the record, OCC's motion fails because OCC has not "specifically describe the nature and purpose of such evidence." *See* O.A.C. 4901-1-34(B).

Aside from simply further delaying a merit decision on the Stipulation filed August 25, 2017, there is basis for OCC's request to reopen to address *FirstEnergy*. OCC's concerns about the effect of the *FirstEnergy* decision on AEP Ohio's riders can be addressed through tariff language, as the decision makes clear and as OCC has recognized in other dockets. *See FirstEnergy* at ¶ 19 (holding that R.C. 4905.32 barred a refund of amounts collected through a rider because the rider "did not specify a refund process"); *see also* Case No. 17-1156-EL-RDR, OCC Comments at 5 (Feb. 5, 2018) (OCC proposing to address the impacts of *FirstEnergy* on AEP Ohio's gridSMART Phase 2 rider through tariff language).

As with the tax issues discussed above, AEP Ohio is already working cooperatively with Staff to revise rider tariff language to make clear that each existing rider is subject to reconciliation based upon the specific terms and conditions approved by the Commission when it approved the rider. *See, e.g.,* Case No. 14-1696-EL-RDR, Finding and Order at ¶ 11 (Feb. 21, 2018) (regarding AEP Ohio's Distribution Investment Rider); Case No. 17-1156-EL-RDR, Finding and Order at ¶ 11 (Feb. 28, 2018) (regarding AEP Ohio's gridSMART Phase 2 Rider); Case No. 15-1052-EL-RDR, Second Quarter Tariff Filing (Feb. 28, 2018) (regarding AEP

Ohio's Auction Cost Reconciliation Rider and Alternative Energy Rider); Case No. 18-0096-EL-RDR, Tariff (Mar. 8, 2018) (AEP Ohio's Basic Transmission Cost Rider); Case No. 18-0191-EL-RDR, Tariff (Mar. 8, 2018) (AEP Ohio's Economic Development Cost Recovery Rider). Moreover, to the extent the Commission approves new riders that have been proposed in the pending Stipulation, the Commission can direct that those riders contain comparable reconciliation language, as appropriate. It is not necessary to reopen and delay a merit decision on the substantive issues in this case, however, to ensure that the impacts of the *FirstEnergy* decision are incorporated into AEP Ohio's rider tariffs.

III. Conclusion

After more than a year of filings, hundreds of pages of pre-filed testimony, five well-attended public hearings, four days of evidentiary hearing, and hundreds of pages of briefing on the Joint Stipulation and Recommendation and OCC's objections to it, OCC now asks to reopen this proceeding to address issues that are already the subject of, and are being resolved in, other dockets before the Commission. OCC has not shown good cause to reopen and further delay a merit decision in this case. For these and the foregoing reasons, the Commission should deny OCC's motion 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 *Memorandum Contra* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 13th day of March 2018, via electronic transmission.

/s/ Steven T. Nourse

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Summary: Memorandum - Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Reopen Proceeding electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company