

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

In this case, the Public Utilities Commission of Ohio ("PUCO") has created a program that may absolve Ohio Power Company ("AEP Ohio") *and* electric marketers of all risk, with consumers paying the bill. This thwarts the legislative intent to protect consumers from the uncertainties of the competitive electric marketplace.

In the Order in this case,¹ the PUCO adopted a framework for AEP Ohio's purchase of receivables program ("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 ("Rider"), "as a recovery mechanism of last resort," for unforeseen costs in collecting marketers' receivables.² AEP Ohio will be permitted to collect marketers' receivables from customers through the Rider "when economic conditions overwhelm the discount rate or the viability of the Program in general."³

R.C. 4928.08(B) requires electric marketers to be certified by the PUCO and provide "a financial guarantee sufficient to protect customers and electric distribution

¹ Finding and Order (September 27, 2017).

² *Id.*, ¶67.

³ *Id.*

utilities from default.” This is meant to shield both electric utilities and consumers from the uncertainties involved in marketing of electric service. In its Second Entry on Rehearing (“Entry”), the PUCO – for the first time in this case – interpreted the financial guarantee provision of R.C. 4928.08(B). There, the PUCO determined that the certification requirements of R.C. 4928.08(B) “are separate and distinct” from AEP Ohio’s risk of not fully collecting its Program costs from participating marketers.⁴

The PUCO’s interpretation of R.C. 4928.08(B) is flawed. For this reason, the Office of the Ohio Consumers’ Counsel (“OCC”) seeks rehearing of the Entry. The Entry is unjust, unreasonable, and unlawful in the following respect:

- The PUCO’s interpretation of R.C. 4928.08(B) was unjust, unreasonable, and unlawful because it diminished the consumer protections found in that statute.

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

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⁴ Entry (February 28, 2018), ¶21.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Under the Program adopted in the Order, 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 total amount customers owe them for electric generation service, less a discount to help defray costs of the Program. The PUCO allowed AEP Ohio to collect from customers unforeseen Program costs through the Rider, as a mechanism of last resort.⁵ Because *customers* – and not marketers – pay the Rider, this means that AEP Ohio's customers would assume full responsibility for the unforeseen costs. AEP Ohio would be made whole at consumers' expense. Marketers would face no business risk regarding the collection of their accounts receivable from customers other than the risk embedded in the discount.

In its Order, the PUCO did not explain its decision. It only stated that it agreed with the PUCO Staff's recommendation that the Rider be used for a collection mechanism of last resort.⁶

⁵ Order, ¶67.

⁶ *Id.*

OCC applied for rehearing of that decision. OCC argued the Order was unlawful because it did not protect consumers by requiring AEP Ohio to collect Program costs from the financial guarantee marketers are required to provide under R.C. 4928.08(B).

But in its Entry, the PUCO – for the first time in this case – interpreted the financial guarantee provision of R.C. 4928.08(B) in a way that harms customers. The PUCO determined that the certification requirements of R.C. 4928.08(B) “are separate and distinct” from AEP Ohio’s risk of not fully collecting its Program costs from participating marketers.⁷ This means that the financial guarantee that marketers provide cannot be used as a backstop to collect unforeseen purchase of receivables costs. This interpretation is unjust, unreasonable, and unlawful. It shifts the risks of uncollectibles in the Program entirely to customers, with the marketers and the utility held harmless. The PUCO should modify its Entry to allow the financial guarantee of marketers to be used to collect unforeseen costs associated with the Program.

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,⁸ and filed comments, reply comments, and an earlier application for rehearing in this case.

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

⁷ Entry (February 28, 2018), ¶21.

⁸ OCC’s Motion to Intervene was granted in the Order, ¶10.

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 Entry is met here.

III. ASSIGNMENT OF ERROR

A. The PUCO’s interpretation of R.C. 4928.08(B) was unjust, unreasonable, and unlawful because it reduced the consumer protections in the statute.

As part of the framework for the Program, the PUCO allowed AEP Ohio to use its Bad Debt Rider as a hedge against losing money through the Program. The Rider would be used to collect from customers the costs of marketers’ receivables and generation-related uncollectible expense above the amount already collected from customers through base distribution rates.⁹ The PUCO thus shifted the entire risk of the Program onto consumers, instead of onto marketers where it belongs.

Uncollectible charges are routine business-related costs associated with providing goods or services to the public. The Order did not explain the PUCO’s reasoning for allowing AEP Ohio to collect unforeseen costs from customers through the Rider, instead of from marketers through the financial guarantee that AEP Ohio already has or some other means. Instead, the PUCO stated only that it agreed with the PUCO Staff that the Rider should be used as a mechanism of last resort to collect such expenses.¹⁰

⁹ See Order, ¶62.

¹⁰ *Id.*, ¶67.

It was not until the Entry that the PUCO stated the financial guarantee was a certification requirement meant to protect electric companies and consumers from marketer default.¹¹ With this pronouncement, the PUCO has shut down the right to collect unforeseen costs from marketers and not customers. The PUCO's decision is erroneous and should be overturned.

The financial guarantee required by R.C. 4928.08(B) is separate from the showing of financial capability to provide electric service that a marketer must make under the law. It is meant to shield both electric companies *and* consumers from the uncertainties of the competitive marketplace. As part of that competitive marketplace, the PUCO created the Program, which includes uncertainties as well. But instead of retaining the consumer protections of R.C. 4928.08(B), the PUCO has diminished them by allowing AEP Ohio to collect Program costs from consumers through the Rider. This is unjust and unreasonable because it protects AEP Ohio at the expense of consumers, who would pay for any Program costs not collected from marketers.¹² The Entry thus unlawfully thwarts the intent of R.C. 4928.08(B) to protect consumers.

Costs associated with the Program should be paid by those who benefit the most: marketers. If AEP Ohio cannot fully collect costs associated with the Program through the discount, it should be able to charge the marketers for the costs. Consumers should not have to pay. This would further the intent of R.C. 4928.08(B).

¹¹ Entry, ¶21.

¹² See *id.*, ¶26.

The PUCO should modify the Entry and establish a mechanism – including the financial guarantee required by R.C. 4928.08(B) – for AEP Ohio to charge marketers for unforeseen costs associated with the Program.

IV. CONCLUSION

The Entry in this case contains an erroneous characterization of the financial guarantee marketers must provide AEP Ohio under R.C. 4928.08(B). This interpretation shifts the entire risk of uncollected accounts from the marketers (where it belongs as a cost of doing business) to customers. The Entry unjustly, unreasonably, and unlawfully diminishes the consumer protections in the law. The PUCO should correct this error and modify the Order as OCC recommends.

Respectfully submitted,

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/s/ Terry L. Etter

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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 30th day of March 2018.

/s/ Kevin F. Moore

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