

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Ohio	)	
Valley Electric Corporation for Approval of	)	
The Termination of a Letter Agreement for the	)	Case No. 15-0892-EL-AEC
Temporary Supply of Arranged Power with	)	
The United States of America	)	

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**THE UNITED STATES DEPARTMENT OF ENERGY’S  
UNOPPOSED MOTION TO AMEND FINAL ORDER  
*NUNC PRO TUNC* OR, IN THE ALTERNATIVE,  
UNOPPOSED APPLICATION FOR REHEARING**

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COMES NOW, the United States Department of Energy (“the Department”), by and through its undersigned attorneys, and files this unopposed Motion to Amend the June 28, 2018 Public Utilities Commission of Ohio (“PUCO”) Opinion and Order (“June 28 Order”) in the above-referenced docket *nunc pro tunc*, for the sole purpose of correcting a misstatement included in the June 28 Order. If the Commission deems the correction requested more appropriately addressed on rehearing, then, in the alternative, the Department respectfully requests PUCO grant its Application for Rehearing, pursuant to Ohio Revised Code § 4903.10 and Ohio Administrative Code § 4901-1-35.

In support of its Motion to Amend the June 28 Order *Nunc Pro Tunc*, the Department states as follows:

- (1) On June 28, 2018, the PUCO issued an Order in Case No. 15-0892-EL-AEC approving the Joint Stipulation & Recommendation (“Joint Stipulation” or “Agreement”) filed jointly by the Department, the Ohio Power Company (“AEP Ohio”) and the Ohio Valley Electric Corporation (“OVEC”) on April 10, 2018.

- (2) The June 28 Order included the sentence:

Under the terms of the Stipulation, DOE's contract capacity is expected to be 36,000 kW, and DOE will reimburse AEP Ohio for construction costs of approximately \$23 million, including payment of an estimated \$1.8 million as contribution in aid of construction (Jt. Ex.1, at 7-8, Exs. C and D). June 28 Order at ¶13.

- (3) This sentence contains the erroneous phrase “and DOE will reimburse AEP Ohio for construction costs of approximately \$23 million.”

- (4) Pursuant to the Joint Stipulation and Agreement, the Department has not taken on an obligation to reimburse AEP Ohio for construction costs of approximately \$23 million unconditionally.

- (5) Rather, the reference to \$23,130,000 in Exhibit C to the Joint Stipulation and Agreement is to be paid by DOE to AEP Ohio in the event:

(a) Customer terminates this project, in accordance with the task order, or (b) a new electric service agreement is not executed prior to the service being energized.

Joint Stipulation and Agreement, Exhibit C, p. 2.

- (6) The Department respectfully requests that PUCO amend the current language located at pp. 4-5 in PUCO's June 28 Order in the following manner:

Under the terms of the Stipulation, DOE's contract capacity is expected to be 36,000 kW, and DOE will reimburse AEP Ohio for construction costs of approximately \$23 million, in the event DOE either terminates the project or a new electric service is not executed prior to the service being energized, and including payment of an estimated \$1.8 million as contribution in aid of construction (Jt. Ex.1, at 7-8, Exs. C and D).

- (7) The Department views the error contained in the June 28 Order as a clerical omission, and thus requests that the Commission enter a corrected Order *nunc pro tunc*.<sup>1</sup>
- (8) In the event PUCO determines that the correction the Department has requested is not appropriately addressed *nunc pro tunc*, then, in the alternative, the Department respectfully requests that the PUCO grant the Department's Application for Rehearing for the sole purpose of correcting the June 28 Order. The Department has attached a Memorandum in Support of its Application for Rehearing.
- (9) AEP Ohio, OVEC, and Industrial Energy Users of Ohio have indicated to DOE that they neither support nor oppose this Motion, or in the alternative, Application for Rehearing.
- (10) FOR THE FOREGOING REASONS, the Department respectfully requests the Commission grant the Department's Unopposed Motion to Amend the June 28 Order *Nunc Pro Tunc*, or, in the alternative, grant the Department's Application for Rehearing

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<sup>1</sup> The Supreme Court of Ohio, in its 1928 *Helle v. Pub. Util. Comm'n of Ohio* decision, explains as follows:

It is not the province of a nunc pro tunc order to correct a mistake in judgment, its sole function being that of correcting a clerical error in the execution of a ministerial act. Where an order has actually been rendered, but not entered on the record in consequence of mistake, neglect, omission, or inadvertence of the clerk or other ministerial officer, the court or other tribunal has power to order that the judgment or order be entered nunc pro tunc. Even so, the fact of its rendition must be satisfactorily established, and it must further appear that no intervening rights will be prejudiced. The power to enter a nunc pro tunc order is inherent in courts of justice. This power is necessary in order that the records of a court or other tribunal may be made to speak the truth where a clerical error has intervened.

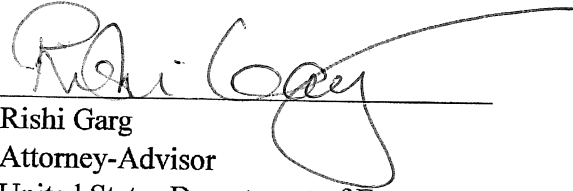
*Helle v. Pub. Util. Comm'n of Ohio*, 116 N.E. 282, 283 (1928).

for the sole and limited purpose of correcting the June 28 Order in Case No. 15-0892-EL-AEC.

Respectfully Submitted,



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Date: July 25, 2018

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**MEMORANDUM IN SUPPORT  
OF APPLICATION FOR REHEARING**

**Introduction**

1. On June 28, 2018, the Public Utilities Commission of Ohio issued an Opinion and Order (“June 28 Order”) approving a Stipulation filed on April 10, 2018 by AEP Ohio, Ohio Valley Electric Corporation (“OVEC”) and the U.S. Department of Energy (“the Department” or “DOE”).
2. The June 28 Order approved the termination of 345 kV service to the Department by OVEC and replacement of electric service to the Department by AEP Ohio at 138 kV.
3. Section 4903.10 of the Ohio Revised Code states that Applications for Rehearing shall be filed within thirty days after the entry of an order. This provision also states if the commission grants such rehearing, it shall specify in the notice of such granting the purpose for which it is granted.
4. Section 4901-1-35 of the Ohio Administrative Code states that Applications for Rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the Application for Rehearing.

5. DOE respectfully requests a corrected order *nunc pro tunc*, or, in the alternative, rehearing for the sole and limited purpose of correcting an omission in the June 28 Order.

### **Ground for Rehearing**

6. Paragraph 13 of the June 28 Order contains the statement:

Under the terms of the Stipulation, DOE's contract capacity is expected to be 36,000 kW, and DOE will reimburse AEP Ohio for construction costs of approximately \$23 million, including payment of an estimated \$1.8 million as contribution in aid of construction (Jt. Ex.1, at 7-8, Exs. C and D).

7. In fact, Exhibit C to the Joint Stipulation and Agreement makes reference to the obligation of the Department to reimburse AEP Ohio \$23.1 million only in the unlikely conditions that

(a) Customer terminates this project, in accordance with the task order, or (b) a new electric service agreement is not executed prior to the service being energized.

Joint Stipulation and Agreement, Exhibit C, p. 2.

8. The Department respectfully requests that PUCO grant Rehearing for the sole and limited purpose of clarifying in the June 28 Order that DOE's \$23.1 million reimbursement obligation is conditional and that the non-conditional reimbursement obligation DOE has taken on is for the \$1.8 million contribution in aid of construction.

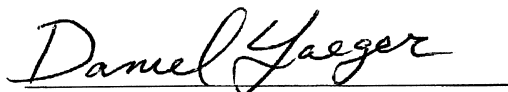
9. The correction to the June 28 order can be accomplished in the following manner:

Under the terms of the Stipulation, DOE's contract capacity is expected to be 36,000 kW, and DOE will reimburse AEP Ohio for construction costs of approximately \$23 million, in the event DOE either terminates the project or a new electric service is not executed prior to the service being energized, and including payment of an estimated \$1.8 million as contribution in aid of construction (Jt. Ex.1, at 7-8, Exs. C and D).

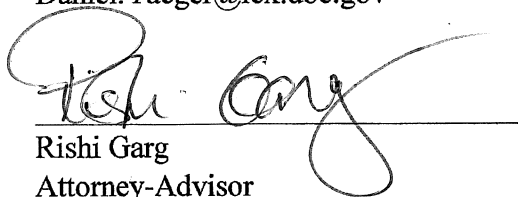
10. AEP Ohio, OVEC, and Industrial Energy Users of Ohio have indicated to DOE that they neither support nor oppose the Motion for Amendment *nunc pro tunc* or Application for Rehearing.

FOR THE FOREGOING REASONS, the Department respectfully requests the Commission grant the Department's Unopposed Motion to Amend the June 28 Order *Nunc Pro Tunc*, or, in the alternative, grant the Department's Application for Rehearing for the sole and limited purpose of correcting the June 28 Order in Case No. 15-0892-EL-AEC.

Respectfully Submitted,



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Date: July 25, 2018

## CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of July, 2018, a copy of the foregoing *Unopposed Motion to Amend*, or, in the alternative, *Application for Rehearing* was served by email to counsel for Ohio Valley Electric Corporation, Ohio Power Company, Public Utilities Commission Staff and Industrial Energy Users – Ohio, listed below:

*Ohio Valley Electric Corporation:*

Brian E. Chisling, Counsel ([bchisling@stblaw.com](mailto:bchisling@stblaw.com))  
Trevor Alexander, Counsel ([talexander@calfee.com](mailto:talexander@calfee.com))

*Ohio Power Company*

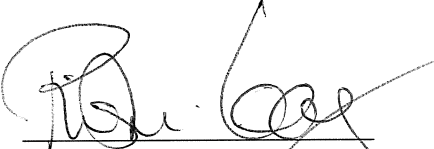
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Vesta R. Miller, Counsel ([Vesta.Miller@puc.state.oh.us](mailto:Vesta.Miller@puc.state.oh.us))  
Mary E. Fischer, Counsel ([mary.fischer@puco.ohio.gov](mailto:mary.fischer@puco.ohio.gov))

*Industrial Energy Users – Ohio*

Frank P. Darr, Counsel ([fdarr@mwncmh.com](mailto:fdarr@mwncmh.com))

  
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Rishi Garg  
U.S. Department of Energy

Date: July 25, 2018



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 15-0892-EL-AEC**

Summary: Motion United States Department of Energy Unopposed Motion to Amend Final Order Nunc Pro Tunc or, in the alternative, Unopposed Application for Rehearing electronically filed by Mr. Rishi Garg on behalf of United States Department of Energy