

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2018 Long-Term Forecast Report of Ohio Power Company and Related Matters.) Case No. 18-501-EL-FOR

In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into Renewable Energy Purchase Power Agreements for Inclusion in the Renewable Generation Rider.) Case No. 18-1392-EL-RDR

In the Matter of the Application of Ohio Power Company to Amend its Tariffs.) Case No. 18-1393-EL-ATA

**MEMORANDUM CONTRA OF INDUSTRIAL ENERGY USERS-OHIO
TO OHIO POWER COMPANY'S APPLICATION FOR REHEARING**

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Ohio Power Company ("AEP-Ohio") seeks rehearing of the Public Utilities Commission of Ohio's ("Commission") Opinion and Order in this matter but fails to demonstrate that any aspect of the decision is unlawful and unreasonable. The relief AEP-Ohio seeks, clarification on AEP-Ohio's legal right to file future reasonable arrangement applications in separate proceedings, is also not an appropriate matter for decision on rehearing in this proceeding. Having failed to demonstrate that it is either the Commission's decision is unlawful or unreasonable or that its relief could properly be granted, the Commission should deny the request for rehearing.

I. LEGAL STANDARD FOR REHEARING

R.C. 4903.10 provides that after any order, a party “may apply for rehearing in respect to any matters determined in the proceeding.”¹ “Such application shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” *Id.* “When [a party] fail[s] to specifically allege in what respect the [Commission’s] order [is] unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met.” *Disc. Cellular v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 2007-Ohio-53 ¶¶ 59. The “specificity” required by R.C. 4903.10 is “strictly construed.” *Id.*

II. ARGUMENT

A. AEP-Ohio fails to demonstrate that any matter determined in this proceeding is unlawful and unreasonable

As a threshold matter, AEP-Ohio concedes that it is not “challenging [the] decision on the merits.”² AEP-Ohio’s memorandum in support confirms this point because the memorandum in support does not contain the words unlawful or unreasonable, let alone demonstrate that any aspect of the Opinion and Order was unlawful and unreasonable.³ As such, AEP-Ohio has not carried its burden of “specifically” demonstrating that the Commission should find in AEP-Ohio’s favor, individually or collectively, on its three propositions of law.

¹ The right to rehearing also applies to matters at issue in the case that the Commission fails to rule upon. See *In re Application of Duke Energy Ohio Inc., for Approval of its Fourth Amended Corporate Separation Plan*, 148 Ohio St.3d 510, 2016-Ohio-7535 at ¶ 19.

² AEP-Ohio Application for Rehearing at 5 (Dec. 23, 2019).

³ *Id.* at 3.

B. AEP-Ohio's Requested Relief is Improper

Instead of demonstrating that any aspect of the Opinion and Order is unlawful or unreasonable, in its memorandum in support AEP-Ohio recounts the procedural history that culminated in the Opinion and Order and then briefly asks for the Commission to “clarify” what course of action AEP-Ohio may take in the future that would result in AEP-Ohio obtaining a ruling in its favor. More specifically, AEP-Ohio asks the Commission to “confirm that, despite a negative finding of need, the Company can nonetheless file applications under R.C. 4905.31 (such as the preliminary filing in Case No 19-2037-EL-AEC) to seek bypassable approval of retail contracts that support renewable projects”⁴ The relief AEP-Ohio seeks is improper.

Initially, an application for rehearing must address a “matter determined in a proceeding,” and the Commission must base its decisions on the record before it. R.C. 4903.10 & R.C. 4903.09. At issue in this case was AEP-Ohio's long term forecast plan, and specifically whether AEP-Ohio had demonstrated “need” for additional renewable generation projects. A proposal for a reasonable arrangement was not part of this case, and to-date, AEP-Ohio has not set forth in any proceeding the specific details of what it may file in a future reasonable arrangement application. Cost-recovery issues were also explicitly held in abeyance and were not part of the record to-date in the proceeding.⁵ The case and the record do not address the lawfulness and reasonableness of any reasonable arrangement application or cost recovery mechanism. AEP-Ohio's requested relief is not supported by either R.C. 4903.09 or 4903.10.

⁴ AEP-Ohio application for Rehearing at 6.

⁵ See Entry at 7-8 (Jan. 14, 2019); Opinion and Order at 70-71 (Nov. 21, 2019).

Furthermore, R.C. 4905.31 is clear in that AEP-Ohio can file an application for approval of a reasonable arrangement. But, until an application has been filed and the details of such a proposal known, the lawfulness and reasonableness of the specific request cannot be determined. It would be inappropriate to provide an advisory opinion on the legality of unknown and undescribed reasonable arrangement applications and potential cost recovery for these unknown and undescribed arrangements. See R.C. 4903.09 (Commission cannot rule without record support). No further “clarification” is needed or warranted at this time.

III. CONCLUSION

AEP-Ohio has filed an improper application for rehearing that should be denied. AEP-Ohio has not alleged that any aspect of the Opinion and Order is unlawful or unreasonable, a prerequisite for finding in AEP-Ohio’s favor on rehearing. Moreover, the relief AEP-Ohio seeks is also improper because it goes beyond what was actually at issue in this case and asks the Commission to weigh in on yet-to-be-filed and yet-to-be-described reasonable arrangement applications and associated cost-recovery. The Commission should deny AEP-Ohio’s application for rehearing.

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 of Industrial Energy Users-Ohio to Ohio Power Company's Application for Rehearing* was sent by, or on behalf of, the undersigned counsel for Industrial Energy Users-Ohio, to the following parties of record on this 2nd day of January 2020, via electronic transmission, hand-delivery or U.S. mail, postage prepaid.

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Summary: Memorandum Contra of Industrial Energy Users-Ohio to Ohio Power Company's Application for Rehearing electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio