

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

**MEMORANDUM CONTRA THE APPLICATION FOR REHEARING OF OHIO POWER
COMPANY BY INTERSTATE GAS SUPPLY, INC. AND IGS SOLAR, LLC**

I. INTRODUCTION

On December 23, 2019, the Ohio Power Company (“AEP Ohio”) filed its Application for Rehearing (“Application”) of the Commission’s November 21, 2019 Opinion and Order (“Order”) in these proceedings. In its Application, AEP Ohio states that it is not challenging the Order on the merits. Instead, AEP Ohio alleges it was unreasonable for the Order, in rejecting the requested finding of need in this proceeding, not to provide that the Company can nonetheless file reasonable arrangement applications contained in the ESP IV Stipulation. Thus, AEP Ohio requests that the Commission render an advisory opinion concluding that it may still file these applications. AEP Ohio further requests that it be permitted to pursue a Green Tariff.

Because AEP Ohio’s Application fails to present any reasonable grounds for rehearing, it must be dismissed. Further, IGS respectfully requests that any clarifications

made on rehearing should enhance and preserve the prohibition on nonbypassable surcharges.

II. ARGUMENT

R.C. 4903.10 states, “After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to ***any matters determined in the proceeding.***”¹ Because AEP Ohio requests rehearing, in the form a “clarification,” regarding matters not determined in this proceeding, AEP Ohio's Application must be denied.

A. The issues raised by AEP Ohio are outside the scope of the proceeding.

The scope of this proceeding was explicitly defined by the Commission: “determining the need for the generating facility is the issue to be addressed in the first phase of these proceedings.”² Despite this clearly defined scope, AEP Ohio requests that the Commission opine on matters outside of the proceeding – namely, the appropriateness of an entirely different application.

Most telling, AEP Ohio's Application includes not a single citation to the record in this proceeding in support of its request. This is because the “clarifications” sought by AEP Ohio are not regarding any issues that were raised or discussed in this proceeding. Again, the determination of need was the only issue to be addressed. Although the Commission may clarify its orders on rehearing, the clarifications must also be based on

¹ R.C. 4903.10 (emphasis added).

² Order at ¶ 26, citing Entry (Oct. 22, 2018) at ¶ 32; see also Order at ¶ 134 (“R.C. 4928.143(B)(2)(c) requires that the Commission first determine that there is a need for the generation facility based on resource planning projections submitted by the EDU before any costs may be authorized by the Commission. That is indeed the purpose of phase I of these proceedings.”)(emphasis added).

the record. Anything to the contrary would violate R.C. 4903.09. AEP Ohio's attempt to link a different application to this proceeding should be rejected.

Further, addressing the issues raised by AEP would unfairly prejudice the other parties. In its Application, AEP Ohio “asks that the Commission 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 in pursuit of the 900 MW renewable commitment, and that such filings will be considered as subsidiary/parallel filings linked to the reasonable arrangement option approved by the Commission in the ESP IV decision.”³

However, any determination from the Commission regarding “the reasonable arrangement option” in this proceeding would deprive the parties of their ability to challenge it, which was previously provided to them. Indeed, the Stipulation in AEP Ohio’s ESP IV states: “All parties reserve their right to contest individual renewable projects being proposed by AEP Ohio under Sections III.D.2 and III.D.3 of the Stipulation, ***including the right to challenge the Company's statutory authority to propose such projects***, or other projects using the RGR for collection.”⁴ Thus, the parties contemplated that even the ability to propose these renewable projects would be contested. By requesting this “clarification,” AEP Ohio is attempting to circumvent this right of the parties. Therefore, the Commission should deny the request.

³ App. for Rehearing at 6.

⁴ *In re Ohio Power Co.*, Case Nos. 16-1852-EL-SSO, et al., Joint Stipulation and Recommendation (Aug. 25, 2017) (“ESP IV Stipulation”) at 7-8.

B. Any clarifications provided by the Commission should maintain and enhance the prohibition on the implementation of nonbypassable surcharges.

In the Application, AEP Ohio “asks that the Commission clarify the regulatory framework for developing the renewable projects through means other than a nonbypassable charge, as referenced in the decision.”⁵ Should the Commission wish to make clarifications on rehearing, IGS suggests the Commission incorporate the following to preserve the prohibition on nonbypassable surcharges.⁶

Initially, to the extent that AEP Ohio has a desire to invest in the Willowbrook and Highland facilities, there is a bypassable path forward. R.C. 4928.64 establishes annual benchmarks for electric distribution utilities to provide renewable generation to customers. But R.C. 4928.64(B)(1), provides that “nothing in this section precludes a utility or company from providing a greater percentage.” In its next ESP, AEP Ohio is free to propose—on a bypassable basis—to utilize output from the Willowbrook and Highland facilities to meet the requirements of the SSO.⁷

Additionally, read in context with the surrounding sentences, another proper path for AEP Ohio to invest in renewable generation contemplated by the Commission emerges. Just like “its affiliates, supporting intervenors, and interested stakeholders”⁸ -

⁵ App. for Rehearing at 5.

⁶ See Order at ¶ 127.

⁷ AEP Ohio did not propose to use the output of the renewable resources for its standard service offer in its ESP, nor in the Applications in this proceeding. See Order at ¶ 52.

⁸ Order at ¶ 127.

all entities *without* captive customers - AEP Ohio itself is free to invest in renewables. AEP Ohio and its customers are not synonymous.

Moreover, the Commission should clarify its Order by explicitly prohibiting the collection of delta revenue, or its equivalent, with any reasonable arrangements proposed under the section option.⁹ Regarding the “reasonable arrangement option,” the ESP IV Stipulation states “[i]f approved, the resulting revenues from such reasonable arrangement(s) will be credited against the cost for recovery.”¹⁰ Further, “the Commission shall determine whether there is any delta revenue to be included in the Economic Development Rider and/or what revenues received under the reasonable arrangement should be credited against the RGR.”¹¹

Thus, the ESP IV Stipulation established the Economic Development Rider and/or the Renewable Generation Rider as the cost recovery mechanisms for reasonable arrangement proposals. However, both riders are nonbypassable. The Order, however, has foreclosed AEP Ohio from utilizing nonbypassable rate recovery mechanism to subsidize its preferred renewable projects. Therefore, any clarification on AEP Ohio’s request should affirm that AEP Ohio may not recover delta revenue, or its equivalent, associated with a renewable projects at issue in this proceeding.

Further, on December 19, 2019, the Federal Energy Regulatory Commission (“FERC”) directed PJM Interconnection, LLC (“PJM”) to expand its current Minimum Offer

⁹ “Delta revenue” means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the commission. Ohio Adm.Code 4901:1-38-01(C).

¹⁰ *Id.* at 9.

¹¹ *Id.*

Price Rule (“MOPR”) to address state-subsidized electric generation resources.¹² Going forward, state-subsidized resources will be required to bid a certain minimum price for their capacity into the PJM capacity market. Given this fact, the Commission should carefully consider any request for state subsidies that could result in the construction of generation capacity that has little hope of contributing to wholesale resource adequacy requirements.

C. The Commission should decline to allow AEP Ohio to continue to pursue its proposed Green Tariff.

In its Application to include Willowbrook and Highland in the RGR, AEP Ohio also proposed a Green Tariff, which would allow AEP Ohio’s customers to purchase renewable energy credits from these facilities.¹³ “Customers’ participation in the Green Tariff will produce revenues that will offset a portion of the net cost of the Highland Solar and Willowbrook Solar REPA’s (i.e., the net cost after liquidating the output of the facilities into the PJM markets).”¹⁴ As determined by the Commission, the Green Tariff was to be addressed in the second phase of this proceeding, *if necessary*.¹⁵

However, because the Order determined no need, Willowbrook and Highland projects will not be developed through the RGR. This means the purpose of the Green

¹² See *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 F.E.R.C. ¶ 61,239 (December 19, 2019) (“FERC Order”). State subsidies includes payments which support the construction, development, and operation of new generation resources. See FERC Order at ¶ 67, 71.

¹³ RGR App. (Sept. 27, 2018) at 1; Test. of Williams at 12.

¹⁴ RGR App. at 3.

¹⁵ Order at ¶ 11; see also AEP Reply Brief at 74-75 (“If the Commission concludes AEP Ohio has shown a generic “need” in Phase I, the Commission will determine in Phase Two whether to include the Highland Solar and Willowbrook Solar energy projects in the RGR, whether to allow AEP Ohio to create a new Green Power Tariff, and the other issues raised in the Tariff Cases.”)(emphasis added).

Tariff – to “access to Ohio renewable electricity resources proposed in this filing” – no longer exists and is no longer necessary.¹⁶

Moreover, AEP Ohio’s proposed Green Tariff was not proposed as part of AEP Ohio’s ESP application; rather, it was bootstrapped to the RGR application. Yet, the Green Tariff relates to marketing renewable competitive generation service. With the rejection of AEP Ohio’s proposed finding of need, any connection to the ESP—which was already tenuous at best—has been completely severed. At this juncture, the Green Tariff represents an untimely proposal to modify to AEP Ohio’s current ESP case. Therefore, AEP Ohio’s request to pursue the Green Tariff should be rejected.

III. CONCLUSION

Therefore, IGS recommends that the Commission deny AEP Ohio’s Application and maintain its prohibition on the implementation of nonbypassable surcharges for generation resources.

Respectfully submitted,

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¹⁶ Test. of Williams at 12.

CERTIFICATE OF SERVICE

In accordance with Ohio Adm.Code 4901-1-05, 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 was sent by, or on behalf of, the undersigned counsel to the following parties of record via electronic transmission on January 2, 2020.

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Summary: Memorandum Memorandum Contra the Application for Rehearing of Ohio Power Company by Interstate Gas Supply, Inc. and IGS Solar, LLC electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc. and IGS Solar, LLC