

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power)
Company to Update Its Enhanced Service) Case No. 17-1914-EL-RDR
Reliability Rider.)

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

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Consumers have paid AEP hundreds of millions of dollars for reliability. In fact, AEP even convinced the PUCO to enable it to charge consumers for so-called “enhanced” reliability. However, AEP’s reliability statistics tell another story. Unfortunately for consumers, they have experienced more outages for longer periods of time.

Under Ohio law, the charges that consumers pay for their utility service must be “adequate and in all respects just and reasonable.”¹ Additionally, it is a policy of this state that the PUCO must ensure that there is “adequate” and “reliable” electric retail service to Ohioans.²

To protect consumers, the PUCO should grant rehearing in the following respect:

Assignment of Error No. 1: The PUCO’s approval of collecting tree trimming expenses from customers without considering whether electric service to those customers was reliable, adequate, and in all respects just and reasonable during 2016 was unlawful under R.C. 4905.22 and 4928.02(A).

¹ R.C. 4905.22.

² R.C. 4928.02.

Assignment of Error No. 2: The PUCO's holding requiring OCC's claims about inadequate and unreliable service to be raised in other proceedings was unreasonable and inconsistent with prior PUCO orders requiring AEP to show that expenses collected from customers under the tree trimming rider were prudently incurred.

The reasons in support of this application for rehearing are set forth in the accompanying memorandum in support. The PUCO should grant rehearing and abrogate its Opinion and Order as requested by OCC. The PUCO should consider AEP's reliability (or lack thereof) when evaluating the prudence of AEP's 2016 tree trimming expenses. Further, the PUCO should require that AEP show that its tree trimming spending actually increases reliability before approving any charges under the tree trimming rider. Because AEP did not do so here (and, based on the facts, cannot do so here), the PUCO should not permit AEP to charge consumers any money under the tree trimming rider until such analysis is performed.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") files this Application for Rehearing to protect consumers from paying their electric utility, Ohio Power Company ("AEP"), charges for imprudent tree-trimming expenses. The expenses were intended to enhance AEP's reliability.³ They did not. AEP's reliability got worse. In its Opinion and Order of December 4, 2019 ("Opinion"), the Public Utilities Commission of Ohio ("PUCO") made unlawful and unreasonable decisions that will enable AEP to continue passing imprudent, ineffective, and unreasonable charges onto customers for unreliable service.

To protect consumers from overpaying for tree-trimming expenses to allegedly increase reliability, the PUCO should grant rehearing on OCC's Assignments of Error. The PUCO should consider AEP's reliability (or lack thereof) when evaluating the prudence of AEP's tree trimming expenses. Further, the PUCO should require that AEP show that its tree trimming spending actually increases reliability before approving any charges under the tree trimming rider. Because AEP did not do so here (and, based on the

³ Ironically, the name of AEP's rider for collecting tree trimming expenses from customers is the enhanced service reliability rider.

facts, cannot do so here), the PUCO should not permit AEP to charge consumers any money under the tree trimming rider until such analysis is performed.

II. BACKGROUND

A. **Unfortunately for consumers, AEP's tree trimming charge is supposed to be approved, subject to a prudence review, to increase reliability, but that has not occurred here.**

The PUCO initially approved the tree-trimming rider in AEP's first electric security plan in 2009.⁴ The PUCO explained that the tree-trimming rider would be subject to a prudence review, explaining:

Consistent with prior decisions, the [PUCO] also believes that, pursuant to the sound policy goals of Section 4928.02, Revised Code, a distribution rider established pursuant to Section 4928.143(B)(2)(h), Revised Code, should be based upon the electric utility's prudently incurred costs. Therefore, the [tree trimming rider] will be subject to [PUCO] review and reconciliation on an annual basis.⁵

The tree trimming rider was supposed to support a proactive four-year cycle-based tree-trimming program combined with performance-based incentive mechanisms authorized under R.C. 4928.143(B)(2)(h). The program is funded through collections from customers in base rates - \$10,401,813 for 2009-2011 and \$24,200,000 for 2012-2016.⁶ The tree-trimming rider was intended to collect from customers the yearly incremental tree trimming expenditure –those expenses above and beyond the amounts already included in customers' base rates.

⁴ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.*, Case 08-917-EL-SSO (March 18, 2009), pages 31-34.

⁵ *See id.* at 34.

⁶ From the Schedule 1 provided with AEP Ohio's yearly ESRR applications.

The transition to the proactive four-year cycle vegetation management was expected to take five years to complete.⁷ In approving the initial tree-trimming rider, the PUCO found that AEP had demonstrated that the tree-trimming rider would improve the customer's overall electric service experience by reducing or eliminating momentary interruptions and sustained outages caused by vegetation.⁸ The tree-trimming rider was not limited to tree-trimming within the right-of-way. It also included removal of dangerous trees outside the right-of-way.⁹

After the initial five years, AEP requested in its second electric security plan to extend the tree-trimming rider for an additional three years.¹⁰ The PUCO granted AEP's request, subject to same review and reconciliation established in AEP's first electric security plan case.¹¹ Then, in AEP's most recent electric security plan, the tree-trimming rider was extended yet again by another three years.¹² As it did in AEP's first and second electric security plan cases, the PUCO reiterated: "the [tree trimming rider] is based on AEP Ohio's prudently incurred costs and is subject to the [PUCO's] review and reconciliation on an annual basis."¹³

⁷ Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order (March 18, 2009) at 33.

⁸ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.*, Case 08-917-EL-SSO (March 18, 2009), pages 31-34.

⁹ *Id.*

¹⁰ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4921.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO (August 8, 2012), pages 64-65.

¹¹ *Id.*

¹² *See In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO (February 25, 2015), pages 47-49.

¹³ *See id.* at 49.

The tree-trimming rider that was intended to support a five-year transition to a four-year trim cycle has morphed into an 11-year charge that has become a permanent source of revenue for AEP. From 2009 to 2016, AEP has collected \$231.2 million¹⁴ in vegetation management costs in addition to the yearly amount customers already pay for tree trimming in base rates. AEP's base rates in 2016 include approximately \$20.6 million in Operating and Maintenance ("O&M") charges and about \$3.6 million in capital related costs for vegetation management.¹⁵ In its third electric security plan, AEP was approved to collect annually through the tree-trimming rider up to \$25 million for O&M expenses and no more than \$1 million for capital investment, above the amount in base rates.¹⁶

B. AEP's reliability has decreased notwithstanding its tree trimming spending, harming consumers.

AEP has not complied with the minimum reliability performance standards under O.A.C. 4901:1-10-10 due to its failure to comply with its tree-trimming requirements. AEP is required to meet the minimum reliability performance standards established under Ohio Adm. Code 4901:1-10-10.¹⁷ The two minimum performance standards in Ohio are the System Average Interruption Frequency Index and Customer Average Interruption Duration Index.¹⁸ Mr. Williams explained that SAIFI measures the average number of

¹⁴ From the sum of the Schedule 1 amounts in AEP's yearly ESRR applications.

¹⁵ *In re the Application of the Ohio Power Company to Update its Enhanced Service Reliability Rider*, Case 17-1914-EL-RDR, Direct Testimony of Jeffrey P. Hecker on Behalf of the Ohio Consumers' Counsel at 4:13-15 ("Hecker Direct").

¹⁶ *In re matter of the application of Ohio Power Company for authority to establish a standard service*, Case No. 13-2385-EL-SSO Opinion and Order at 47 (February 25, 2015).

¹⁷ *Id.*

¹⁸ *Id.*

outages that customers will experience in a year.¹⁹ He further explained that CAIDI measures the average duration of outages or the average duration of time to restore service.²⁰ A lower SAIFI value indicates better reliability performance and service quality for customers, while a higher CAIDI value indicates consumers are receiving less reliable service.²¹

AEP did not meet these minimum performance standards for 2018.²² As OCC witness Williams testified, for 2018, AEP was required to maintain minimum performance standards for SAIFI of 1.19 and for CAIDI of 149.00 minutes.²³ But AEP's actual performance for 2018 was a SAIFI of 1.3 and a CAIDI of 150.32 minutes.²⁴ Therefore, Mr. Williams concluded, AEP failed to maintain minimum reliability performance for 2018.²⁵ He explained that this means customers experienced more outages and for much longer periods of time than permitted by the PUCO minimum distribution reliability performance standards.²⁶

Mr. Williams further testified²⁷ that as a result of tree caused outages, there were 7,503 outage events across the AEP service territory resulting in 416,672 customers being

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *In the Matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C)*, Case No. 19-0992-EL-ESS (March 29, 2019) at 2.

²³ *In the Matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C)*, Case No. 19-0992-EL-ESS (March 29, 2019) at 2.

²⁴ Williams Direct at 5:3.

²⁵ *Id.* at 5:3-4.

²⁶ Williams Direct at 5:5.

²⁷ Williams Direct at 5:11.

interrupted for over 98.4 million minutes.²⁸ Importantly, Mr. Williams explained that tree caused outages are having a significant negative impact on distribution reliability performance.²⁹ This is despite the hundreds of millions of dollars were charged to consumers through the tree-trimming rider (and other single-issue ratemaking riders) that are intended to improve reliability performance.³⁰

As Mr. Williams explained, failure to meet the same reliability performance standard for two years in a row constitutes a violation of Ohio Adm. Code 4901:1-10-10(E).³¹ Therefore, if AEP fails to meet either the CAIDI or SAIFI standard in 2019, OCC urges the PUCO to protect consumers by enforcing the rules as provided in Ohio Adm. Code 4901:1-10-30.³²

III. 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 entered an appearance and filed testimony regarding AEP’s Application. It also participated in the evidentiary hearing held for this case.

²⁸ Moore Direct at 25 (The data excludes outages that are associated with major events and transmission outages).

²⁹ Williams Direct at 5:11-12.

³⁰ Moore Direct at 10-13.

³¹ Moore Direct at 10-13.

³² Williams Direct at 6:4.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” Additionally, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

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 application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “[i]f, 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.”

The statutory standard for abrogating some portions of the Opinion and Order and modifying other portions are met here. To protect consumers, the PUCO should grant and hold rehearing on the matters specified in this Application for Rehearing, and subsequently abrogate or modify its Opinion and Order.

IV. RECOMMENDATIONS

Assignment of Error No. 1: The PUCO’s approval of collecting tree trimming expenses from customers without considering whether electric service to those customers was reliable, adequate, and in all respects just and reasonable during 2016 was unlawful under R.C. 4905.22 and 4928.02(A).

In this case involving the prudency review of AEP’s tree-trimming expenses, OCC advocated that AEP’s reliability should be considered as part of the PUCO’s

prudency review.³³ After all, the whole purpose of AEP's spending on tree trimming is to enhance reliability.³⁴ And in fact AEP has *failed to meet the reliability standards* set forth in the PUCO's rules: Ohio Adm. Code 4901:1-10-10.³⁵ In response, the PUCO said that AEP's reliability is "more appropriately raised in other proceedings,"³⁶ but failed to identify what other proceedings are appropriate to pursue the reliability issues. The PUCO should revisit this conclusion.

Under R.C. 4905.22, AEP must provide necessary and adequate service. Under 4928.02(A), AEP must provide adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. The PUCO's failure to consider AEP's reliability performance as part of its prudency review of AEP's tree-trimming costs results in AEP's customers paying for inadequate, unreliable, and unsafe service. Notwithstanding the hundreds of millions of dollars spent on tree trimming meant to increase reliability,³⁷ AEP has failed to meet its reliability performance standards.³⁸ Yet AEP's customers are continuing to foot the ever-increasing bill of AEP's ineffective and imprudent tree-trimming spending.

Further, AEP sold its tree trimming program on its claim that continuing the tree trimming charge would reduce tree related outages and service interruptions.³⁹ The

³³ See, e.g., OCC's Initial Brief at 6-11.

³⁴ See OCC's Initial Brief at 2-4; Case No. 08-917-EL-SSO, Opinion and Order at 30 (March 18, 2009) ("While noting that they are providing adequate and reliable electric service, the Companies justify the need for the ESRP by stating that customers' service reliability expectations are increasing, and in order to maintain and enhance reliability, the ESRP is required.").

³⁵ See, e.g., *id.*

³⁶ Opinion and Order at ¶ 31.

³⁷ See, e.g., Williams Direct at 5-6.

³⁸ See, e.g., OCC's Initial Brief at 11-18.

³⁹ See Section II, *supra*.

prudence of AEP's expenditures should be inherently linked to AEP's reliability performance. If (as is the case here) AEP's tree-trimming expenditures are not achieving the purpose for which they were authorized (reliability) they cannot be prudent. It was unreasonable for the PUCO to not even consider AEP's reliability when performing its prudence review.

The PUCO should grant rehearing on OCC's assignment of error number one. The PUCO should consider AEP's reliability (or lack thereof) when evaluating the prudence of AEP's tree trimming expenses. Further, the PUCO should require that AEP show that its tree trimming spending actually increases reliability before approving any charges under the tree trimming rider. Because AEP did not do so here (and, based on the facts, cannot do so here), the PUCO should not permit AEP to charge consumers any money under the tree trimming rider until such analysis is performed.

Assignment of Error No. 2: The PUCO's holding requiring OCC's claims about inadequate and unreliable service to be raised in other proceedings was unreasonable and inconsistent with prior PUCO orders requiring AEP to show that expenses collected from customers under the tree trimming rider were prudently incurred.

In declining to consider AEP's reliability in this case involving a prudence review of AEP's tree trimming spending, the PUCO said that AEP's reliability is more appropriately addressed in "other proceedings."⁴⁰ The PUCO does not identify the other proceedings. And it is unclear that any of these unmentioned opportunities for OCC to raise reliability concerns would allow for a remedy that is available now, in this forum. As explained above, the PUCO has approved AEP's tree trimming charge on three

⁴⁰ See Opinion and Order at 11.

occasions based on promises that the charge would enhance AEP's reliability.⁴¹ On each occasion, the PUCO has said that AEP's tree trimming expenses would be subject to an annual prudency review.⁴² This case is that annual prudency review. AEP's reliability should be considered here when determining if AEP can charge consumers under the tree trimming rider.

AEP's reliability has not increased, despite collecting hundreds of millions of dollars from consumers for tree trimming, including under the tree trimming rider.⁴³ And although the PUCO has performed a "prudency review" in this case, it has been little more than perfunctory. That is because the PUCO has not considered AEP's reliability when performing its prudency review. The PUCO's failure to consider AEP's reliability is unreasonable and inconsistent with its prior orders. In them, the PUCO on three occasions said that *only* AEP's prudently incurred costs could be charged under the tree trimming rider.⁴⁴ AEP's tree trimming expenses that it seeks to charge consumers here could not conceivably have been prudently incurred when they failed of their own purpose – to enhance reliability. But unfortunately for consumers, the PUCO approved the charges anyway, contrary to its own previous orders.

⁴¹ See Section II, *supra*.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.*, Case 08-917-EL-SSO (March 18, 2009), pages 31-34; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4921.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO (August 8, 2012), pages 64-65; See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO (February 25, 2015), pages 47-49.

The PUCO should grant rehearing on OCC's assignment of error number two. The PUCO should consider AEP's reliability (or lack thereof) when evaluating the prudence of AEP's tree trimming expenses. Further, the PUCO should require that AEP show that its tree trimming spending actually increases reliability before approving any charges under the tree trimming rider. Because AEP did not do so here (and, based on the facts, cannot do so here), the PUCO should not permit AEP to charge consumers any money under the tree trimming rider until such analysis is performed.

V. CONCLUSION

AEP's spending on tree trimming has continued to increase while reliability has continued to decrease. Spending that results in worse reliability is imprudent and the PUCO should not permit such spending to continue, especially when customers must pay for it. Because the PUCO did not consider AEP's reliability performance as part of its prudence review, its Opinion and Order is unreasonable and unlawful. Accordingly, the PUCO should grant rehearing on OCC's assignments of error. On rehearing, the PUCO should consider the prudence of AEP's tree-trimming spending. The PUCO should decide in this case (and in all future prudence review cases involving AEP's tree trimming charge) that AEP must show that its tree trimming spending actually increased reliability before approving any charges under the tree trimming rider. Because AEP did not do so here (and, based on the facts, cannot do so here), the PUCO should not permit AEP to charge consumers any money spent in 2016 under the tree trimming rider until such analysis is performed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 3rd day of January 2020.

/s/ Ambrosia E. Logsdon
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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Logsdon, Ambrosia E.