

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company to Update its</b>	)	<b>Case No. 17-1914-EL-RDR</b>
<b>Enhanced Service Reliability Rider</b>	)	

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**OHIO POWER COMPANY’S MEMORANDUM CONTRA  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S  
APPLICATION FOR REHEARING**

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**I. INTRODUCTION**

In its December 4, 2019 Opinion and Order (“Order”), the Public Utilities Commission of Ohio (“Commission”) correctly approved Ohio Power Company’s (“AEP Ohio” or the “Company”) Application to reconcile the Company’s Enhanced Service Reliability Rider (“ESRR”) rates for 2016. Order at ¶ 6. The Company’s 2016 ESRR expenditures occurred during the term of AEP Ohio’s ESP III, and they are subject to an annual review and reconciliation for prudence and accuracy. *Id.* at ¶ 28. The primary focus of the parties’ disagreement in testimony and at hearing was whether the Company’s ESRR investment was subject to a cap in 2016. The Commission correctly determined it was not. *Id.* at ¶ 29.

On rehearing, OCC does not challenge the Commission’s correct determination that the ESRR was not capped in 2016. Rather, OCC now avers that the Commission’s Order was unreasonable and unlawful because, OCC claims, the Commission approved AEP Ohio’s ESRR investment without requiring AEP Ohio to prove that its ESRR investment improved reliability. OCC’s arguments are without merit in numerous respects, and the Commission should disregard them and deny OCC’s application for rehearing in its entirety.

## **II. ARGUMENT**

The Commission's Order was neither unreasonable nor unlawful. In approving the prudence of AEP Ohio's 2016 ESRR investment, the Commission reasonably and properly relied upon Staff's audit reports (Staff Ex. 2, 3, 4), which summarized the results of Staff's financial audit, consisting of a prudency review of the Company's incurred costs, including O&M expenses and capitalized vegetation management costs, and verified the accuracy of the Company's revenue requirement calculation. (Staff Ex. 2 at 2; Tr. at 92.) As the Commission correctly found significant, Staff did not determine that any of the Company's incurred O&M or capital expenses were imprudent. Order at ¶ 29.

OCC did not challenge Staff's prudency findings, and it presented no evidence contradicting them at hearing or in its post-hearing briefs. OCC nonetheless now contends, without support or citation to any record evidence, precedent, or other authority, that it was unreasonable and unlawful for the Commission to confirm the prudence of AEP Ohio's expenditures based upon Staff's unchallenged findings without also expressly addressing OCC's arguments regarding AEP Ohio's nonattainment of its annual reliability performance standards in 2018 – two years after the audit period. OCC is wrong. It was reasonable and proper for the Commission to base its decision finding that AEP Ohio's 2016 ESRR expenditures were prudent on the only, unrefuted evidence of record addressing that issue. *Accord* R.C. 4903.09.

It also was reasonable and lawful for the Commission to defer addressing OCC's claims regarding AEP Ohio's compliance with its 2018 reliability performance standards<sup>1</sup> to other proceedings. Order at ¶ 31. The Commission's holding in paragraph 31 of the Order was made in response to OCC's specific request that the Commission enforce AEP Ohio's reliability performance standards in this 2016 rider review proceeding, based upon AEP Ohio's nonattainment of those standards for 2018. *Id.* at ¶ 26. As an initial matter, a single-year nonattainment of reliability performance standards is not a violation of the Commission's rules warranting enforcement. *See* Ohio Adm. Code 4901:1-10-10(E). Moreover, as AEP Ohio explained in its post-hearing briefs, the 2018 performance period is outside of the audit period at issue in this case, and the Company's reliability performance generally is not a part of this annual rider prudence and accuracy audit. (*See* AEP Ohio Br. at 6.) The Commission has broad discretion to manage its dockets. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). It is reasonable and appropriate for the Commission to choose to address the Company's reliability performance in a docket(s) dedicated to that issue, where a full record can be developed regarding, among other things, the numerous factors affecting AEP Ohio's reliability metrics, many of which are not related to the Company's enhanced vegetation activities whose costs are recovered through the ESRR. OCC will be free to seek intervention in those proceedings and can advance the arguments it seeks to shoehorn into this limited rider reconciliation case there.

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<sup>1</sup> OCC misleadingly quotes and mischaracterizes this portion of the Commission's order as discussing AEP Ohio's "reliability." (OCC AFR at 8, n.36.)

The factual predicate upon which OCC bases its application for rehearing – that the ESRR has not improved reliability – is also faulty. The record established in this proceeding refutes that claim. Indeed, both OCC witnesses agreed at hearing that vegetation spending has a positive impact on reliability. (Tr. at 68, 81.) And OCC did not contest that tree caused outages from inside the right-of-way (ROW) have significantly decreased since the ESRR’s inception. (Tr. at 59; OCC Ex. 1B (JDW-3) at 2.) More specifically, Customers Interrupted and Customer Minutes of Interruption caused by trees inside of the ROW have decreased by 88% and 91%, respectively, when comparing 2008 (pre-ESRR) to 2016 data. (AEP Ohio Ex. 1 at 12-13.) Thus, despite the narrow focus of this proceeding on the Company’s 2016 enhanced vegetation management activities, the record makes manifestly evident, contrary to OCC’s claims, that the ESRR has improved the Company’s reliability and benefitted its customers. It was reasonable and lawful for the Commission to weigh the evidence presented in this proceeding and approve the Company’s Application on that record, despite OCC’s reliability performance assertions.

Finally, the relief that OCC seeks on rehearing – that AEP Ohio not be permitted to “charge consumers any money” under the ESRR until it provides an analysis “showing that its tree trimming spending actually increases reliability” is inappropriate and outside the scope of rehearing. (OCC AFR at 8, 11.) An application for rehearing must address a “matter[ ] determined in the proceeding.” R.C. 4903.10. In its post-hearing briefs, OCC argued only that amounts AEP Ohio spend above the cap OCC claimed to exist should be disallowed on this basis. OCC never argued that the Company be prevented from recovering any amount through the ESRR. (OCC Br. at 8, 18.) OCC’s requested relief is inconsistent with R.C. 4903.10’s requirements.

### III. CONCLUSION

OCC's application for rehearing fails to demonstrate that the Commission's Order is in any respect unreasonable or unlawful. For the reasons set forth above, the Commission should deny OCC's application for rehearing in its entirety and affirm its December 4, 2019 Opinion and Order.

Respectfully submitted,

/s/ Christen M. Blend

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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 all parties of record. In addition, I hereby certify that a service copy of *Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Rehearing* was sent by, or on behalf of, the undersigned counsel to the following parties of record and attorney examiners this 13th day of January, 2020, via electronic transmission.

/s/ Christen M. Blend

Christen M. Blend

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Summary: Memorandum - Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Hearing electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company