

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Approval of its)	
Energy Efficiency and Peak Demand)	Case No. 16-574-EL-POR
Reduction Program Portfolio Plan)	
For 2017 through 2020)	

**OHIO POWER COMPANY’S REPLY MEMORANDUM IN SUPPORT OF ITS
MOTION FOR APPROVAL OF THE WIND-DOWN PLAN**

On February 26, 2020 the Commission ordered that a wind-down of the statutorily required energy programs shall commence on September 30, 2020, and those programs shall terminate on December 31, 2020. *See* February 26, 202 Finding and Order, Case Nos. 16-574-EL-POR, 16-576-EL-POR, 16-743-EL-POR and 17-1398-EL-POR (Finding and Order). Rehearing applications for filed and in late April, the Commission granted the applications for further consideration, which presently remains pending. Ohio Power Company (AEP Ohio) has implemented the Finding and Order directives to date but additional wind-down details remain unresolved and the proposed solutions herein should be adopted. Accordingly, AEP Ohio moved for approval of its remaining wind-down plan components on August 10, 2020.

The Office of the Ohio Consumers’ Counsel (OCC) filed a memorandum in partial opposition to AEP Ohio’s wind-down plan. OCC argues that the IYP deferral request should be denied because the Company did not show the request passes the six-part test for deferrals. OCC Memo Contra at 2-3. OCC also requests that the Commission ensure that residential customers do not pay for the Company’s combined heat and power and automated benchmark programs. *Id.* at 4. OCC’s first argument misses the mark and the second one is superfluous.

Initially, OCC claims that the deferral request is procedurally flawed as it should have been a new application. This argument is not only “form over substance” but is also incorrect. A motion was an appropriate procedural vehicle to seek approval of the wind-down plan and seek related relief because this docket controls the Company’s existing portfolio plan and the Commission’s directive to wind-down the plan is within the scope of this proceeding. As a related matter, because the Commission’s directive (Paragraph 44 of the Finding and Order) was issued to AEP Ohio in this docket, it is appropriate to request approval and seek necessary relief as part of a motion in this docket. Moreover, the circumstances of HB 6 and the potential repeal are highly unique and support continuation of the IYP program to bridge the gap between the portfolio compliance plan and the pending gridSMART Phase 3 case.

In sum, the Commission has considerable discretion and flexibility in conducting its proceedings and there is no basis under either R.C. 4901.13 or 4905.13 to support the conclusion that the Commission could only entertain the requested relief as part of a new application. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982) (it is well-settled that pursuant to R.C. 4901.13 the commission has the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort). Such expediency is particularly appropriate here given the minor expenses involved in order to extend the important IYP program. Thus, OCC’s position that a new application should have been filed is without merit.

OCC is also wrong in claiming that the Commission’s deferral authority is strictly limited to the six-factor test and that the factors do not support the Company’s proposed IYP deferral. A simple Westlaw search for deferrals granted under R.C. 4905.13 yields a plethora of examples

where the Commission granted accounting deferrals to utilities without any explicit discussion of the six-factor test – including many cases with accounting deferrals that are financially much more significant than the one involved with the wind-down plan here – especially (like here) where the deferral is incidental to implementing another statute. *See e.g., In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, July 2, 2012 Opinion and Order at 23; *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures*, Case No. 07-1287-EL-AAM, August 20, 2008 Finding and Order; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Modify Their Accounting Procedures*, Case No. 04-1931-EL-AAM, May 18, 2005 Finding and Order.

Even where the Commission considers the factors, it does not require a utility to demonstrate that all of the factors are met. Similarly, where the answers to the six questions are unknown or unique circumstances are presented, the Commission has set aside the factors in favor of a reasonable approach under the circumstances presented. *See e.g., In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, May 6, 2020 Finding and Order at ¶ 61. And contrary to OCC's position that a mandatory or prescribed formula applies, the Supreme Court has consistently confirmed the Commission's broad authority and flexibility under the accounting statute:

R.C. 4905.13 grants the commission authority to establish a system of accounts for public utilities and to prescribe the manner in which the accounts must be kept. We have recognized the commission's discretion under R.C. 4905.13 and have held that we “generally will not interfere with the accounting practices set by the commission.” *Consumers' Counsel v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 263, 271, 513 N.E.2d 243. Moreover, we have stated that where, as here, “a statute does not prescribe a particular formula, the PUCO is vested with broad discretion.” *Payphone Assn. of Ohio v. Pub. Util. Comm.*, 109 Ohio St.3d 453,

2006-Ohio-2988, 849 N.E.2d 4, at ¶ 25, citing *Columbus v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 23, 24, 10 OBR 175, 460 N.E.2d 1117.

Elyria Foundry Co. v. Pub. Util. Comm., 2007-Ohio-4164, 114 Ohio St. 3d 305, 871 N.E.2d 1176. OCC's position that the Commission is strictly limited to the six-factor test lacks any support.

OCC is also wrong in claiming that the factors do not support the Company's request in this case. OCC Memo Contra at 3. OCC argues (at 3) that the deferral is for "such a small amount" but also claims that the Company has not shown that the IYP program provides benefits to customers – even though the IYP program and expenses have been approved by the Commission as part of the portfolio compliance plan. Similarly, OCC argues that terminating the program is entirely within AEP Ohio's control. That the program could be eliminated and that the deferral dollars are not material misses the point and ignores the best interests of the current pool of participating customers; when approving a wind-down plan, the Commission should avoid prejudice to customers and the Company even if it is not material harm or major inconvenience. Since the program would at least have to be temporarily suspended and participating customers would suffer a negative experience with IYP, denying the deferral would also serve as a severe impediment to the Company's IYP proposal in the pending gridSMART Phase 3 case.

While OCC says (at 3) that energy efficiency "is a good thing that is available to consumers in the competitive market," that statement does not apply to the IYP app and does nothing to help address the interests or experience of the current participants. With callous indifference to the interests of the 36,000 customers participating in the IYP program, OCC concludes that "there is no reason for the PUCO to encourage AEP to continue offering the It's Your Power app." The Commission has abundant authority and basis to grant the relief

requested by the Company to help avoid an interruption in the IYP functionality for participating customers.

Separately, as referenced above, OCC also requests that the Commission ensure that residential customers do not pay for the Company's combined heat and power and automated benchmark programs. *Id.* at 4. OCC initially indicated that it "takes no position" on the Company's proposal for this part of the wind-down plan, then OCC inexplicably asks that the Commission ensure that residential customers do not pay for it. To the extent any clarification of this issue is needed, the CHP options presented by the Company are both for recovery exclusively from non-residential customers.

CONCLUSION

AEP Ohio requests that the Commission grant the Company's motion and requested relief.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
Fax: (614) 716-2950
Email: stnourse@aep.com

(willing to accept service by email)

Counsel for Ohio Power Company

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 *Reply* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 1st day of September 2020, via electronic transmission.

/s/ Steven T. Nourse

Steven T. Nourse

EMAIL SERVICE LIST

amilam@ofbf.org;
cendsley@ofbf.org;
christopher.healey@occ.ohio.gov;
callwein@keglerbrown.com;
cox@elpc.org;
cmooney@ohiopartners.org;
daniel.sawmiller@sierraclub.org;
ghiloni@carpenterlipps.com;
dborchers@bricker.com;
perko@carpenterlipps.com;
jkylercohn@BKLawfirm.com;
jfinnigan@edf.org;
jkylercohn@BKLawfirm.com;
john.jones@ohioattorneygeneral.gov;
joliker@igsenergy.com;
kboehm@BKLawfirm.com;
Bojko@carpenterlipps.com;
lcurtis@ofbf.org;
mfleisher@elpc.org;
Larisa.vaysman@duke-energy.com;
mleppla@theoec.org;
mpritchard@mwncmh.com;
MWarnock@bricker.com;

mkurtz@BKLawfirm.com;
mdortch@kravitzllc.com;
paul@carpenterlipps.com;
rdove@attorneydove.com;
rkelter@elpc.org;
Rocco.dascenzo@duke-energy.com;
swilliams@nrdc.org;
tony.mendoza@sierraclub.org;
tdougherty@theOEC.org;
abrink@nhtinc.org;
natalia.messenger@ohioattorneygeneral.gov;
john.jones@ohioattorneygeneral.gov;

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/1/2020 2:51:35 PM

in

Case No(s). 16-0574-EL-POR

Summary: Reply - Ohio Power Company's Reply Memorandum in Support of its Motion for Approval of the Wind-Down Plan electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company