

In the Matter of Application of )  
Ohio Power Company for a Waiver ) Case No. 19-1389-EL-WVR  
of Rule 4901:1-10-33(C)(13), Ohio )  
Administrative Code. )

When the Public Utilities Commission of Ohio (“PUCO”) approved AEP’s request to shorten the time that customers have to pay their bills (going from 21 days to 14 days), the PUCO failed to consider how its decision impacted other consumer protections, including disconnection notice requirements. And the PUCO brushed aside OCC Comments that AEP could modify its purchase agreements with the marketers based on the additional delay that is associated with out-of-state billing, ultimately impacting consumers.<sup>1</sup>

**Assignment of Error 1:** The PUCO's Order is unlawful because it fails to address delivery delays involving AEP bills mailed from out-of-state that include disconnection notices thus may not provide customers with the full 14-day advance notice required by R.C. 4933.122. The PUCO's Order also does not set forth reasons for the PUCO's decision, thereby violating R.C. 4903.09 and Ohio Supreme Court precedent.

<sup>1</sup> Comments Opposing AEP’s Waiver Shortening the Time Customers Have to Pay Their Electric Bill by the Office of the Ohio Consumers’ Counsel (“OCC Comments”) at 5-7 (Sept. 25, 2020); *In the Matter of the Application of Ohio Power Company for a Waiver of Ohio Adm.Code 4901:1-10-33(C)(13)*, Case No. 19-1389-EL-WVR, Second Finding and Order (“Order”) at 5 (Oct. 7, 2020).

**Assignment of Error No. 2:** The PUCO's Order is unlawful because it failed to address alternatives to the waiver that were proposed by OCC involving AEP modifying its purchase agreements related to payment of marketer receivables to account for the additional delay associated with out-of-state billing. This violates R.C. 4903.09 and Ohio Supreme Court precedent.

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 or modify its Order as proposed by OCC.

Respectfully submitted,

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of	)	
Ohio Power Company for a Waiver	)	Case No. 19-1389-EL-WVR
of Rule 4901:1-10-33(C)(13), Ohio	)	
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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

AEP sought a waiver of the PUCO rule requiring that bills mailed from out-of-state (in this case, Nebraska) be afforded 21 days for customer payment.<sup>2</sup> The PUCO allowed AEP to shorten the allotted time for consumers to pay their bill under the PUCO’s rules by seven days due to AEP’s billing operations move to Omaha, Nebraska. Both the Office of the Ohio Consumers’ Counsel (“OCC”) and the PUCO Staff opposed AEP’s waiver request, for similar reasons.

OCC and the PUCO Staff individually recommended that residential customers be afforded the full 21 days to pay their bills mailed from out-of-state. Given well-documented concerns about delayed mail delivery associated with AEP’s bill processing move to Nebraska,<sup>3</sup> and the financial crisis consumers find themselves in as a result of the global pandemic,<sup>4</sup> now is

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<sup>2</sup> Ohio Adm.Code 4901:1-10-22(B)(10) and 4901:1-10-33(C)(13).

<sup>3</sup> [https://www.ttnews.com/articles/usps-grapples-financial-crisis-mail-delays-continue;](https://www.ttnews.com/articles/usps-grapples-financial-crisis-mail-delays-continue)  
<https://www.cincinnati.com/story/news/2020/09/25/mail-delivery-across-ohio-lags-post-offices-standards-data-shows/3522456001/>

<sup>4</sup> [https://www.nytimes.com/2020/04/15/opinion/coronavirus-stimulus-check-payment.html;](https://www.nytimes.com/2020/04/15/opinion/coronavirus-stimulus-check-payment.html)  
<https://www.dispatch.com/story/news/2020/09/25/hunger-among-ohio-families-increasing-covid-19-pandemic-persists/3519850001/>

not the time to abandon this important consumer protection regulation that constitutes a minimum billing standard in the State. The PUCO should have denied the waiver, but did not. This rehearing request is made because in granting the waiver the PUCO failed to address arguments OCC made against the waiver.

## II. MATTERS FOR RECONSIDERATION FOR CONSUMER PROTECTION

**Assignment of Error 1: The PUCO's Order is unlawful because it fails to address delivery delays involving AEP bills mailed from out-of-state that include disconnection notices thus may not provide customers with the full 14-day advance notice required by R.C. 4933.122. The PUCO's Order also does not set forth reasons for the PUCO's decision thereby violating R.C. 4903.09 and Ohio Supreme Court precedent.**

OCC argued that AEP Ohio may need to adjust the disconnection timeline to account for potential mail delivery delay or mail the 14-day notice separately from the electric bill in order to comply with Ohio law.<sup>5</sup> But the PUCO did not listen and failed to address OCC's arguments. That's unlawful under R.C. 4903.09 and Ohio Supreme Court precedent.

By law, the PUCO is required to file a written opinion "setting forth the reasons prompting the decisions arrived at."<sup>6</sup> As interpreted by the Ohio Supreme Court ("Court"), this means that PUCO orders must be sufficiently detailed "to enable the court to make its review as to lawfulness and reasonableness."<sup>7</sup>

In *In re Application of Columbus Southern Power Co.*,<sup>8</sup> the utility argued that the PUCO failed to address its arguments regarding the proper application of the significantly excessive earnings test. There, the Court held that the PUCO is required to respond to parties' arguments

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<sup>5</sup> OCC Comments at 5-6; *see* R.C. 4933.122.

<sup>6</sup> R.C. 4903.09 (emphasis added).

<sup>7</sup> *MCI Telecom. Corp. v. PUCO*, 32 Ohio St. 3d 306, 312 (1987).

<sup>8</sup> 147 Ohio St. 3d 439 (2016).

and explain why it agrees or disagrees with them: "The commission never offered a response to AEP's claims and thus failed to explain its decision. This was error."<sup>9</sup>

A similar error occurred in this Order where the PUCO noted but never addressed OCC's arguments. OCC argued in Comments that AEP Ohio, under R.C. 4933.122 and Ohio Adm.Code 4901:1-18-06(A), must provide customers with a minimum 14-day notice prior to disconnecting electric service for non-payment.<sup>10</sup> AEP mails the 14-day notice along with the customer bill, so if there is a delay in receiving the out-of-state bill, customers may be denied the 14-day notice protection required under Ohio law and the PUCO's rules. The delay may adversely affect the amount of time that consumers have to respond to the disconnection notice prior to their service being terminated.<sup>11</sup> The Order noted but never addressed OCC's argument.<sup>12</sup>

After all, it only makes sense that Ohioans should not suffer the consequences of delay in receiving important notices because of an AEP expense-saving decision (that financially benefits only itself) to relocate its bill processing and distribution center to Nebraska.

The PUCO approved AEP's waiver request without considering OCC's Comments. The PUCO erred by not addressing this issue. Simply noting the argument in the Order provides no insight into the PUCO's decision-making and does not comply with R.C. 4903.09 or Ohio Supreme Court precedent. The PUCO should grant rehearing and consider the impact that the waiver has on Ohio law ensuring that residential customers have no less than 14 days advance notice prior to services being disconnected.<sup>13</sup>

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<sup>9</sup> *Id.* ¶ 66.

<sup>10</sup> OCC Comments at 5-6.

<sup>11</sup> *Id.*

<sup>12</sup> Order at 5.

<sup>13</sup> R.C. 4933.122.

**Assignment of Error No. 2: The PUCO's Order is unlawful because it failed to address alternatives to the waiver that were proposed by OCC involving AEP modifying its purchase agreements related to payment of marketer receivables to account for the additional delay associated with out-of-state billing. This violates R.C. 4903.09 and Ohio Supreme Court precedent.**

The PUCO granted AEP's waiver without consideration of OCC's recommendations explaining why the waiver was unnecessary. AEP bolstered its waiver request saying that changes to the 21-day due date will impact the timing for when AEP will pay marketers for the charges it collects on their behalf. AEP claimed that if the waiver is not approved, the payment of marketer receivables will also be delayed when the utility provides consolidated billing.<sup>14</sup> But AEP did not quantify this financial impact on marketers. Nor did AEP provide any information on the costs that it expects to save by waiving the minimum billing standards when mailing bills from out-of-state. AEP provided no cost benefit analysis to evaluate if the move to Nebraska is worth the costs.

Rather than seek the waiver, AEP could and should modify the purchase arrangements if the relocation has an impact on the marketers. The responsibility for any associated costs and risks should be on AEP and not its customers. AEP should have anticipated this marketer issue and planned for it with the Nebraska billing relocation instead of seeking a waiver of the PUCO's rules.

OCC's Comments explained that AEP could modify these agreements as necessary to coincide with its decision to process and mail bills from Nebraska.<sup>15</sup> After all, the 21-day due date for bills that are rendered from out-of-state is required by the PUCO's minimum electric service standards.<sup>16</sup>

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<sup>14</sup> AEP Nebraska Waiver Motion at 3; AEP Reply Comments at 3.

<sup>15</sup> OCC Comments at 6-7.

<sup>16</sup> Ohio Adm. Code 4901:1-10-22(B)(10) and 4901:1-10-33(C)(13).

In approving the AEP waiver, the PUCO unlawfully failed to consider recommendations made by OCC that AEP could modify its purchase agreements with marketers to account for the expected payment delay when bills are rendered from out-of-state.<sup>17</sup> OCC pointed out that while AEP may be able to reduce its own expenses, the out-of-state billing shifts costs onto others.<sup>18</sup> For example, any delay by AEP in paying marketers for their receivables will have a financial impact on the marketer. And this financial impact will likely be ultimately passed along to residential consumers in the form of higher supplier rates.<sup>19</sup>

The PUCO noted but never addressed OCC's arguments on this issue. The Order fails to explain the PUCO's reasons for disregarding OCC's argument that AEP can modify its purchase agreements with the marketers based on the additional delay that is associated with out-of-state billing.<sup>20</sup> This lack of explanation was unlawful and violates R.C. 4903.09 and Ohio Supreme Court precedent.

The Court has held that under R.C. 4903.09, the PUCO is required to respond to parties' arguments and explain why it agrees or disagrees with them.<sup>21</sup> That was not done here. The PUCO should grant rehearing for the purpose of considering the alternatives to the waiver that OCC recommended such as having AEP modify its marketer agreements to account for the 21-day due date, consistent with the PUCO's minimum electric service standards.

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<sup>17</sup> See, R.C. 4903.09; OCC Comments at 6-7; Order at 5-6.

<sup>18</sup> OCC Comments at 6-7.

<sup>19</sup> *Id.*

<sup>20</sup> Order at 5; OCC Comments at 6-7.

<sup>21</sup> See, *In re Application of Columbus Southern Power Co.*, 147 Ohio St. 3d 439 (2016).

### III. CONCLUSION

OCC raised additional concerns, explained in this application for rehearing, that were not addressed by the PUCO. The Order is unlawful because it does not address these additional concerns, as required by R.C. 4903.09 and Ohio Supreme Court precedent. The PUCO should grant rehearing and abrogate its Finding and Order.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 6<sup>th</sup> day of November 2020.

s/ Amy Botschner O'Brien  
Amy Botschner O'Brien  
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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 Botschner-O'Brien, Amy