

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 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)	

MEMORANDUM IN OPPOSITION TO APPLICATION FOR REHEARING

The Office of the Ohio Consumers' Counsel (OCC) filed an Application for Rehearing challenging the October 7, 2020 Second Finding and Order issued by the Public Utilities Commission of Ohio (Commission), because OCC disagrees with the limited and temporary waiver granted in the Second Finding and Order. Neither of the two arguments advanced presents new information or any basis for the Commission to modify the limited waiver. The Commission should deny the rehearing request.

Ohio Power Company (AEP Ohio) will not repeat all of the facts and legal arguments previously made in this docket but hereby incorporates its August 5, 2020 Motion and its September 18, 2020 reply comments. The salient facts are that AEP Ohio's vendor to produce and mail paper bills relocated which triggered the need to waive limited aspects of OAC 4901:1-10-22 and 4901:1-10-33. The Commission modified the waiver requested by AEP Ohio and adopted a limited waiver to implement the variation on a six-month trial basis and consider any additional information or concerns that have developed during that period of time. Second Finding and Order at ¶ 16. Contrary to OCC's rehearing argument, there is no conflict between the limited waiver and the requirement under RC 4922.122 and OAC 4901:1-18-06 to provide 14-day notice prior to disconnection and the Commission's explanation was sufficient under RC 4903.09.

Mailing the bill outside of the State of Ohio will not delay the customer's ability to receive a disconnection notice at least 14 days prior to the disconnection. As an example, if a customer did not make a payment on their September bill, a disconnection notice will be included on their October bill that states the September amount that must be paid by a date more than 14 days out before the account is eligible for disconnection. In this example, for a cycle 10 customer, the October bill will be mailed on October 9th. Included in that bill will be a disconnect notice stating that the prior September balance needs to be paid by November 11th to avoid disconnection. If the bill is not paid by November 11th, the account will be disconnected on or after November 12th. The timing of this notification will provide ample advanced notice of the disconnection as well as additional time prior to the due date of the next bill to make payment. The 14-day notification will not be compromised.

Contrary to OCC's position that the Commission was required to consider and address in detail how it considered each of the alternatives presented by OCC in its comments, that is not required by RC 4909.03. The Supreme Court of Ohio has held that, as long as there is a basic rationale and record supporting the Order, no violation of §4903.09, Ohio Rev. Code, exists. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St. 3d 486, 493 (Ohio 2008 990 ¶ 30) quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337; *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St. 3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372. OCC (at 2, 6) incorrectly relies on *In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439 (2016) to argue that RC 4909.03 violation is triggered

here, but that case involved the Commission's failure to address a dispositive statutory claim, whereas OCC simply second guesses the Commission's discretion and judgment here. Upon examination, it is clear that the Commission order satisfies this simple requirement.

The Second Finding and Order (at ¶ 16) stated that it considered each of the points made and decided to limit the requested waiver in order "to monitor customer complaints related to issues emerging from AEP Ohio transitioning its bill print and mailing function to Nebraska." Indeed, the Commission specifically disagreed with OCC and found that "at this point, there is no data to support that AEP Ohio customers will indeed suffer from delays associated with the move and alleged USPS issues noted by OCC and Staff." *Id.* Nonetheless, the Commission provided OCC an opportunity to file comments if it identifies specific concerns and directed its Staff to do so by April 7, 2021. These components of the Commission's decision explicitly consider and directly respond to OCC's concerns. Finally, the Commission admonished the Company to comply with all other requirements imposed by Title 49 of the Revised Code and the Commission's rules and made the waiver contingent upon that directive while also reserving the right to revoke it. *Id.* Among other things, this final condition covers the 14-day notice issue being raised by OCC on rehearing.

Thus, the Second Finding and Order's explanation easily satisfies the requirement of RC 4909.03 in this context. But the Commission is not required to entertain, address or justify rejection of each and every idea OCC comes up with in comments. This is especially true given the nature of OCC's arguments are to second guess how the

Company generally manages its billing system and CRES settlement process, which is not the domain of the Commission, let alone OCC.

For example, OCC submits (at 5) that it offered an “alternative” to the waiver for the Company to “modify its purchase agreements with the marketers based on the additional delay that is associated with out-of-state billing.” Again, OCC concludes that the Commission violated RC 4909.03 by failing to explicitly address or reject that idea. But the reality is that OCC has no standing or basis to raise this issue on behalf of CRES providers and offered no basis to support the claim that it is an issue at all. It is also completely unclear how this would serve as an alternative to the waiver to begin with. In short, the claim was utterly lacking in any legal or factual basis whatsoever. Again, the Commission in Paragraph 16 of the Second Finding and Order found that “there is no data to support” OCC’s claims. Of course, if the Commission wants to expound on the many reasons why OCC’s claims were rejected, it can do so – but it is not required and nothing more needs to be said regarding such misguided claims.

CONCLUSION

The Company respectfully requests that the Commission deny OCC’s Application for Rehearing.

Respectfully submitted,

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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 the following parties.

/s/ Steven T. Nourse

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Summary: Memorandum - Memorandum in Opposition to Application for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company