

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of Chapter 4901:1-10, Ohio Administrative)	Case No. 17-1842-EL-ORD
Code, Regarding Electric Companies)	

**INTERSTATE GAS SUPPLY, INC.'S MEMORANDUM CONTRA APPLICATION FOR
REHEARING BY THE DAYTON POWER AND LIGHT COMPANY**

I. INTRODUCTION

On January 27, 2021 the Public Utilities Commission of Ohio ("Commission") issued its Second Entry on Rehearing ("Second Entry on Rehearing") in this proceeding that, among other things, denied all of the applications for rehearing regarding amendments to Ohio Adm.Code 4901:1-10-33(A), including one submitted by The Dayton Power and Light Company ("AES Ohio").¹ Specifically, the Commission affirmed its amendment to the rule which will require "[t]he EDU [to] allow the customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list the newly termed, 'non-jurisdictional services' charges."²

Despite this decision, AES Ohio filed a Second Application for Rehearing which simply resubmits one of its assignments of error proffered in its prior Application for Rehearing.³ In AES Ohio's Initial Application for Rehearing, AES Ohio asserted that the

¹ Second Entry on Rehearing (January 27, 2021) at ¶ 54-57.

² *Id.*

³ AES Ohio Initial Application for Rehearing (March 27, 2020) ("AES Ohio Initial RH App.") at 2; AES Ohio Second Application for Rehearing (Feb. 26, 2021) ("AES Ohio Second RH App.") at 1-4.

Commission's amendments to Ohio Adm.Code 4901:1-10-33 were unreasonable to the extent they forced utilities to bill for non-jurisdictional charges without parameters or limitations.⁴ In its Second Application for Rehearing, AES Ohio has merely repackaged identical arguments, seeking a second bite at an apple already discarded by the Commission in its Second Entry on Rehearing.⁵ As such, AES Ohio's Second Application for Rehearing is procedurally improper and must be denied.

Moreover, in addition to being procedurally improper, AES Ohio's Second Application for Rehearing lacks merit. After full consideration, the Commission developed a rule that properly prohibits undue or unreasonable prejudice or disadvantage, as already required in R.C. 4905.35(A), in a specific context.⁶ Therefore, the Commission should reject AES Ohio's Second Application for Rehearing.

II. ARGUMENT

A. AES Ohio's Second Application for Rehearing is procedurally improper because it is merely raising an argument that has already been considered and rejected by the Commission.

In its Initial Application for Rehearing, AES Ohio submitted an assignment of error that specifically asserted the amendments to Ohio Adm.Code 4901:1-10-33 were unreasonable to the extent they required the utilities to bill for non-jurisdictional services without parameters and/or limitations.⁷ Further, AES Ohio recommended that "[t]he rule

⁴ AES Ohio Initial RH App. at 2

⁵ Second Entry on Rehearing at ¶ 57.

⁶ *Id.* at ¶ 57.

⁷ AES Ohio Initial RH App. at 2.

on its face should align with the Commission's statement that the rule was not intended to force utilities to put non-jurisdictional services on their bills.”⁸

As noted by AES Ohio, in the Second Entry on Rehearing, the Commission acknowledged the assignment of error set forth by AES Ohio but did not incorporate AES Ohio's recommendation into the rule.⁹ In other words, the Commission denied AES Ohio's rehearing request.¹⁰ Instead, the Commission affirmed the rule, stating the language provided the Commission “with adequate latitude in assessing claims of discrimination or unduly restrictive actions.”¹¹ In addition, the Commission renewed its authority over the placement of non-jurisdictional products on utility bills and the lack of any proscription against the inclusion of these charges on Commission-regulated bills.¹²

To the extent that AES Ohio had concerns that the order did not address its request, it should have challenged the order's adherence to R.C. 4903.09, which requires the Commission to address contested issues with findings of fact and conclusions of law. But it did not.

Instead, AES Ohio filed a Second Application for Rehearing raising the exact same argument. Indeed, AES Ohio uses nearly identical language for its request: “The rule on its face should align with the Commission's statement in its Opinion and Order – that the

⁸ *Id.* at 2.

⁹ AES Ohio Second RH App. at 3.

¹⁰ See *also* Second Entry on Rehearing at ¶ 61.

¹¹ *Id.* at 54.

¹² *Id.*, citing Finding and Order at ¶ 20.

rule was not intended to force utilities to put non-jurisdictional services on their bills.”¹³ Again, AES Ohio’s assignment of error claims the amendments to Ohio Adm.Code 4901:1-10-33 were unreasonable without parameters and limitations, but this time adds three specific parameters and limitations for consideration and proposed amended rule language to implement its renewed request.¹⁴

“It is well established that it is improper to seek rehearing of a denial of rehearing on the same issue.”¹⁵ R.C. 4903.10 does not allow persons who enter appearances to have "two bites at the apple," or repeating, in a second application for rehearing, arguments that have already been considered and rejected by the Commission.¹⁶

As admitted by AES Ohio itself, this is exactly what its Second Application for Rehearing is seeking.¹⁷ AES Ohio’s Second Application for Rehearing is not a response to any new findings brought forward in the Commission’s Second Entry on Rehearing. Instead, simply put, AES Ohio is attempting a “do-over.” The Commission thoroughly considered the arguments raised by stakeholders, including AES Ohio, regarding the amendments to Ohio Adm.Code 4901:1-10-33(A) and properly rejected them.¹⁸ Therefore, AES Ohio’s Second Application for Rehearing must be denied.

¹³ AES Ohio Second RH App. at 3.

¹⁴ *Id.* at 1-4.

¹⁵ *In re FirstEnergy Ohio*, Case No. 14-1297-EL-SSO, Ninth Entry on Rehearing (Oct. 11, 2017) at ¶ 23.

¹⁶ *Id.* at ¶ 24, citing *Ormet Primary Aluminum Corp. v. South Central Power Co. and Ohio Power Co.*, Case No. 05-1057-EL-CSS, Second Entry on Rehearing (September 13, 2006) at 3-4; *In re The East Ohio Gas Co. and Columbia Gas Co.*, Case Nos. 05-1421-GA-PIP, et al., Second Entry on Rehearing (May 3, 2006) at 3; *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2929-EL-UNC, Entry on Rehearing (January 30, 2013) at 4-5.

¹⁷ AES Ohio Second RH App. at 2-3.

¹⁸ See Second Entry on Rehearing at ¶ 54-57.

B. AES Ohio's Second Application for Rehearing also lacks merit.

In addition to being procedurally improper, AES Ohio's Second Application for Rehearing lacks merit. In support of its Application, AES Ohio asserts the rule is unreasonable because it does not take into consideration parameters and limitations – specifically, the necessary consumer protections, length of the bill, and complexity of services offered.¹⁹ Additionally, AES Ohio submitted proposed language that it believes captures the intent of the Commission regarding the rule. Both should be rejected.

Initially, AES Ohio fails to acknowledge that the Commission has thoroughly considered the consumer protections associated with these charges and determined their sufficiency. Notably, the Commission recognized that a utility is prohibited from a disconnecting a customer's electric service for failure to pay these non-jurisdictional charges.²⁰ Additionally, the Commission noted that customers are protected from potential subsidization of these charges when provided by a CRES provider because they are excluded from the EDUs' purchase of receivables programs.²¹ Further, the Commission acknowledged that the rules require the name and toll-free phone number of each non-jurisdictional service provider be listed on the consolidated bills.²² If a customer needs further assistance in understanding or disputing a non-jurisdictional service charge, the Commission stated that the customer may reach out to the

¹⁹ AES Ohio Second RH App. at 3.

²⁰ Finding and Order at ¶ 114, *citing* Ohio Adm.Code 4901:1-18-10(D).

²¹ Second Entry on Rehearing at ¶ 54; Finding and Order at ¶ 135.

²² Second Entry on Rehearing at ¶ 54.

Commission or the Office of the Ohio Consumers' Counsel, the contact information for which is listed on every utility bill.²³

Moreover, AES Ohio's assertion that consumer protections were not considered is especially faulty because the Commission rejected IGS's recommendations for additional consumer protections.²⁴ This is clear evidence that the Commission has thoughtfully considered this issue.

The Commission should also reject AES Ohio's claims that the rule is unreasonable because it does not take into consideration "the length of the bill" and the "complexity of service."²⁵ AES Ohio fails to provide an explanation as to why these are items that should be of concern to the Commission.

Finally, AES Ohio's suggested rule revision actually demonstrates the necessity for the new rule. AES Ohio suggests that billing for non-jurisdictional services "should be made on a non-discriminatory ad-hoc basis for each utility, supplier, and non-jurisdictional service a supplier seeks to charge."²⁶ In other words, AES Ohio believes it should be determined on an individual case-by-case basis for each utility, supplier, and specific charge. This in itself is a discriminatory process, allowing the utility to pick winners and losers, making the inclusion of the word "non-discriminatory" meaningless.

The Commission plainly stated that "[t]he rule does nothing more than prohibit undue or unreasonable prejudice or disadvantage, as already required in R.C.

²³ *Id.* at ¶ 54.

²⁴ Finding and Order at ¶ 135.

²⁵ AES Ohio Second RH App. at 3.

²⁶ *Id.* at 3-4.

4905.35(A), in a specific context.”²⁷ AES Ohio’s proposed amendment and its application are not consistent with the Commission’s stated intent. The Commission determined that no further modifications to the rule are necessary, and this continues to hold true. Thus, AES Ohio’s Second Application should be denied.

C. AES Ohio’s proposed new billing system should include functionality to implement non-jurisdictional charges and thus need to be administrated non-discriminately.

AES Ohio also notes that in accordance with a signed Stipulation and Recommendation filed in Case Nos. 18-1875-EL-GRD et al., it intends to implement a new Customer Information System (“CIS”) to handle billing and other customer facing functions.²⁸ AES Ohio states that “[m]andating consolidated billing of non-jurisdictional services upon request by CRES could require DP&L to duplicate efforts and costs – simultaneously implementing the CIS while also having to update the current Customer Service System to accommodate this billing practice in the meantime.”²⁹ Thus, AES Ohio believes the “clarity” it again seeks in its assignment of error is necessary.³⁰

Ensuring that AES Ohio’s new CIS has the functionality to bill for non-jurisdictional charges in accordance with the new Ohio Adm.Code 4901:1-10-33 should be a priority for AES Ohio. However, this proceeding is not the appropriate venue to address the details surrounding the implementation of these capabilities. Indeed, AES Ohio currently has an application pending before the Commission for approval of a non-commodity

²⁷ Second Entry on Rehearing at ¶ 57.

²⁸ AES Ohio Second RH App. at 4.

²⁹ *Id.*

³⁰ *Id.*

billing process that will allow CRES providers to include non-jurisdictional products and services on AES Ohio's consolidated utility bill.³¹ Therefore, IGS recommends that AES Ohio and the Commission utilize that docket to address any implementation concerns.

III. CONCLUSION

For the reasons stated herein, IGS requests that the Commission deny AES Ohio's Second Application for Rehearing.

Respectfully submitted,

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³¹ See *In the Matter of the Application of The Dayton Power and Light Company for Approval of a Non-Commodity Billing Process*, Case Nos. 19-860-EL-UNC et al., Application (Apr. 19, 2019).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Interstate Gas Supply, Inc.'s Memorandum Contra Application for Rehearing of The Dayton Power and Light Company* was served this 8th day of March 2021 via electronic mail upon the following:

/s/ Bethany Allen
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Summary: Memorandum Contra the Dayton Power and Light Company's Second Application for Rehearing electronically filed by Mr. Evan F Betterton on behalf of Interstate Gas Supply, Inc.