

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Power Company for Authority to	)	
Establish a Standard Service Offer	)	Case No. 23-23-EL-SSO
Pursuant to R.C. 4928.143 in the Form of	)	
an Electric Security Plan.	)	

In the Matter of the Application of Ohio	)	
Power Company for Approval of Certain	)	Case No. 23-24-EL-AAM
Accounting Authority.	)	

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**INTERLOCUTORY APPEAL,  
REQUEST FOR CERTIFICATION TO THE PUCO COMMISSIONERS  
AND  
APPLICATION FOR REVIEW  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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March 27, 2023

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**INTERLOCUTORY APPEAL,  
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OCC appreciates that PUCO Attorney Examiner Greta See has scheduled local hearings for public testimony on AEP's latest filing for higher rates. However, the ruling should be modified for consumer protection and the public convenience. The way to modify the ruling under the PUCO's rules is by interlocutory appeal to the PUCO Commissioners, per O.A.C. 4901-1-15.

The PUCO should certify OCC's interlocutory appeal. And the PUCO Commissioners should reverse or modify the March 21, 2023 ruling that scheduled local public hearings in this case.<sup>1</sup>

Consumers have been invited to participate in the PUCO's electric security plan process through local public hearings. But no virtual local public hearings have been scheduled for online testimony.

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<sup>1</sup> Entry (March 21, 2023), attached.

First, for the convenience of consumers in this modern era (where virtual communications have become a norm for many people), consumers should be allowed virtual local hearings. And in the interest of energy justice including realities of a recent pandemic, accessibility and transportation issues, family and work commitments, etc., consumers should be allowed virtual local hearings to testify about their utility service.

The PUCO has conducted evidentiary hearings remotely during the pandemic, including public hearings in rate cases.<sup>2</sup> Consumers wishing to safely and conveniently appear at local public hearings deserve the same consideration. The PUCO should set two additional virtual public hearings where consumers may remotely testify regarding AEP's proposed electric security plan (via WebEx, Microsoft Teams, Zoom, or a similar platform).

Second, the in-person local hearings should be webcast. Webcasting the in-person local hearings is a separate matter from holding local hearings for virtual testimony. But the reasons for webcasting involve the same or similar reasons as the reasons for allowing virtual public testimony.

Third, the local hearings should be rescheduled till later. This case is in its infancy. That means the asymmetry of information between the utility and other stakeholders is at its apex. Among other things, intervention is occurring, discovery is being conducted, and intervenors have not yet filed testimony.<sup>3</sup> More about AEP's

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<sup>2</sup> See e.g. *In the Matter of the Application of the Dayton Power & Light Company to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR, et al.; and *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR.

<sup>3</sup> See Docket.

proposed electric security plan will be revealed. The PUCO should reschedule local public hearings until later in the case timeline.

The PUCO Examiner should certify this appeal. The PUCO Commissioners should then reverse or modify the Examiner's ruling. The PUCO should add online hearings for virtual public testimony, webcast the in-person local hearings and reschedule the local hearings until later in the process when consumers can know more about the issues that other stakeholders (not just AEP) have in the case.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ William J. Michael  
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**MEMORANDUM IN SUPPORT  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

PUCO Examiner Greta See should certify this appeal. The PUCO Commissioners should then reverse or modify the Examiner's ruling. The PUCO should add online hearings for virtual public testimony, webcast the in-person local hearings and reschedule the local hearings until later in the process when consumers can know more about the issues that other stakeholders (not just AEP) have in the case.

First, for the convenience of consumers in this modern era (where virtual communications have become a norm for many people), consumers should be allowed virtual local hearings. And in the interest of energy justice including realities of a recent pandemic, accessibility and transportation issues, family and work commitments, etc., consumers should be allowed virtual local hearings to testify about their utility service.

The PUCO has conducted evidentiary hearings remotely during the pandemic, including public hearings in rate cases.<sup>4</sup> Consumers wishing to safely and conveniently appear at local public hearings deserve the same consideration.

The PUCO should set two additional virtual public hearings. There, consumers may remotely testify regarding AEP's proposed electric security plan (via WebEx, Microsoft Teams, Zoom, or a similar platform).

Second, the in-person local hearings should be webcast. Webcasting the in-person local hearings is a separate matter from holding local hearings for virtual testimony. But the reasons for webcasting involve the same or similar reasons as the reasons for allowing virtual public testimony.

Third, the local hearings should be rescheduled till later. This case is in its infancy. That means the asymmetry of information between the utility and other stakeholders is at its apex. Among other things, intervention is occurring, discovery is being conducted, and intervenors have not yet filed testimony.<sup>5</sup> More about AEP's proposed electric security plan will be revealed. The PUCO should reschedule local public hearings until later in the case timeline.

The PUCO has scheduled five local public hearings in this electric security plan case so that consumers have an opportunity to directly interact with the PUCO and share their opinions regarding the AEP's proposal. Here, the opportunity for consumers to be heard is particularly important. AEP's proposed plan would add five new charges (riders)

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<sup>4</sup> See e.g. *In the Matter of the Application of the Dayton Power & Light Company to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR, et al.; and *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR.

<sup>5</sup> See Docket.

to consumers' bills. (Riders are add-on charges to consumers.) AEP also asks the PUCO to modify existing charges to collect more money from consumers. AEP wants to triple its Distribution Investment Recovery Rider ("DIR Charge") cap from \$54 million to \$144 million in 2024.<sup>6</sup> And AEP wants this cap to increase every subsequent year, peaking at \$617 million in 2029.<sup>7</sup> That's more than 10 times what AEP's current DIR charge will collect from consumers next year.

The PUCO also held virtual public hearings in AEP's and DP&L's most recent rate cases.<sup>8</sup> Consumers should be allowed to provide oral testimony remotely in this case as well.

Consumers do have other ways to express their opinions regarding the case. They can call the PUCO, write the PUCO by mail, or submit comments on the PUCO's website. But, under the PUCO's approach, these interactions are not considered evidence in a case. So for consumers these other options lack the same standing as testimony.

The PUCO should grant this interlocutory appeal. First, the PUCO should set two virtual public hearings where consumers may remotely testify regarding AEP's proposed electric security plan (via WebEx, Microsoft Teams, Zoom, or a similar platform). Second, the PUCO should webcast the local public hearings. Third, the PUCO should reschedule the local public hearings till later in the process when stakeholders such as consumers know more about AEP's proposed electric security plan.

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<sup>6</sup> Direct Testimony of Jaime L. Mayhan at 16.

<sup>7</sup> *Id.*

<sup>8</sup> *See supra* note 2.



## II. STANDARD OF REVIEW

The PUCO will review an attorney examiner's ruling if the attorney examiner (or other authorized PUCO personnel) certifies the appeal.<sup>9</sup> The standard applicable to certifying an appeal is that "the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question."<sup>10</sup> Upon consideration of an appeal, the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.<sup>11</sup>

## III. REQUEST FOR CERTIFICATION

- A. The Attorney Examiner's ruling failed to provide but should have provided for: virtual local public hearings; the webcasting of in-person local hearings; and local hearings after AEP's electric security plan is further understood by stakeholders including consumers. These issues represent a new or novel question of interpretation, law or policy and a departure from past precedent.**

The Attorney Examiner's March 21, 2023 ruling scheduled five local public hearings in this case. But no virtual local public hearings have been scheduled, no webcasting of in-person local hearings was arranged and the hearings are scheduled prematurely before enough is understood by consumers about AEP's filing.

These issues should be certified to the PUCO Commissioners, per O.A.C. 4901-1-15(B). The issues represent a new or novel questions of interpretation, law or policy and departures from past precedent. The PUCO conducted numerous evidentiary hearings

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<sup>9</sup> O.A.C. 4901-1-15(B).

<sup>10</sup> *Id.*

<sup>11</sup> O.A.C. 4901-1-15(E).

remotely during the pandemic (including AEP's and DP&L's rate cases<sup>12</sup>), and consumers wishing to safely appear at local public hearings deserve the same consideration. In AEP's proposed electric security plan case, wherein it is asking to increase charges on consumers dramatically, consumers deserve the same courtesy and consideration for their safety and in the interest of accessibility by the PUCO.

The Attorney Examiner's ruling departs from this precedent by not providing for virtual local public hearings or hearings after AEP's electric security plan proposal is further understood. Accordingly, this appeal "presents a new or novel question of interpretation, law, or policy, . . ." and a departure from past precedent, per O.A.C. 4901-1-15(B). The appeal should be certified for Commissioner review.

**B. An immediate determination is needed to prevent undue prejudice.**

This appeal should be certified to the PUCO. An "immediate determination" by the PUCO is needed to prevent undue prejudice<sup>13</sup> to OCC and Ohio consumers. If the local public hearings are conducted without the benefit of the process recommended by OCC, parties and consumers will be prejudiced. Prejudice will occur by the denial of adequately convenient, safe, accommodating, and meaningful opportunities to participate in local public hearings.

Therefore, an immediate PUCO determination is needed to avoid undue prejudice to the Ohio public and to OCC.

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<sup>12</sup> See *supra* note 2.

<sup>13</sup> O.A.C. 4901-1-15(B).

#### IV. APPLICATION FOR REVIEW

The PUCO has scheduled five local public hearings in this electric security plan case so that consumers have an opportunity to directly interact with the PUCO and share their opinions regarding the utility's proposal. Here, the opportunity for consumers to be heard is particularly important. AEP's proposed plan would add five new charges (riders) to consumers' bills. (Riders are add-on charges to consumers.)

AEP also asks the PUCO to modify existing charges to collect more money from consumers. AEP wants to triple its Distribution Investment Recovery Rider ("DIR Charge") cap from \$54 million to \$144 million in 2024.<sup>14</sup> And AEP wants this cap to increase every subsequent year, peaking at \$617 million in 2029.<sup>15</sup> That's more than 10 times what AEP's current DIR charge will collect from consumers next year.

The PUCO Commissioners should reverse or modify the Examiner's ruling. The PUCO should add online hearings for *virtual* public testimony, *webcast* the in-person local hearings and *reschedule* the local hearings until later in the process when consumers can know about the issues that other stakeholders (not just AEP) have in the case.

First, for the convenience of consumers in this modern era (where virtual communications have become a norm for many people), consumers should be allowed virtual local hearings. And in the interest of energy justice including realities of a recent pandemic, accessibility and transportation issues, family and work commitments, etc., consumers should be allowed virtual local hearings to testify about their utility service.

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<sup>14</sup> Direct Testimony of Jaime L. Mayhan at 16.

<sup>15</sup> *Id.*

The PUCO has conducted evidentiary hearings remotely during the pandemic, including public hearings in rate cases.<sup>16</sup> Consumers wishing to safely and conveniently appear at local public hearings deserve the same consideration.

The PUCO should set two virtual public hearings. There, consumers may remotely testify regarding AEP's proposed electric security plan (via WebEx, Microsoft Teams, Zoom, or a similar platform).

Second, the in-person local hearings should be webcast. Webcasting the in-person local hearings is a separate matter from holding local hearings for virtual testimony. But the reasons for webcasting involve the same or similar reasons as the reasons for allowing virtual public testimony.

Third, the local hearings should be rescheduled till later. This case is in its infancy. That means the asymmetry of information between the utility and other stakeholders is at its apex. Among other things, intervention is occurring, discovery is being conducted, and intervenors have not yet filed testimony.<sup>17</sup> More about AEP's proposed electric security plan will be revealed. The PUCO should reschedule local public hearings until later in the case timeline.

The PUCO held virtual public hearings in AEP's and DP&L's most recent rate cases.<sup>18</sup> Consumers should be allowed to provide oral testimony remotely in this case as well.

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<sup>16</sup> See e.g. *In the Matter of the Application of the Dayton Power & Light Company to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR, et al.; and *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR.

<sup>17</sup> See Docket.

<sup>18</sup> See *supra* note 2.

Consumers do have other ways to express their opinions regarding the case. They can call the PUCO, write the PUCO by mail, or submit comments on the PUCO's website. But, under the PUCO's approach, these interactions are not considered evidence in a case. So for consumers these other options lack the same standing as testimony.

The PUCO should grant this interlocutory appeal and reverse or modify the Examiner's ruling. The PUCO should set two virtual public hearings where consumers may remotely testify regarding AEP's proposed electric security plan (via WebEx, Microsoft Teams, Zoom, or a similar platform). Also, the PUCO should webcast the local public hearings. Further, the PUCO should reschedule the local public hearings till later once AEP's proposed electric security plan is further understood by stakeholders including consumers.

## **V. CONCLUSION**

This interlocutory appeal of the Attorney Examiner's March 21, 2023 ruling meets the legal standards for certification, per O.A.C. 4901-1-15. And the appeal meets the standard for PUCO Commissioners to reverse or modify the Attorney Examiner's ruling, per the rule. Moreover, the issues in the Entry are time-sensitive and are prejudicial to the public, per O.A.C. 4901-1-15.

For the public convenience and public interest of 1.5 million AEP consumers, the PUCO should promptly reverse the Attorney Examiner's ruling. The PUCO should order two online local hearings, webcast the in-person local hearings and reschedule the local hearings until later in the process when consumers have more information for testimony.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ William J. Michael*  
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Angela D. O'Brien (0097579)  
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(willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Interlocutory Appeal, Request for Certification to the PUCO Commissioners and Application for Review was served on the persons stated below via electronic transmission, this 27<sup>th</sup> day of March 2023.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

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## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY FOR AUTHORITY  
TO ESTABLISH A STANDARD SERVICE  
OFFER PURSUANT TO R.C. +4928.143, IN  
THE FORM OF AN ELECTRIC SECURITY  
PLAN.

CASE NO. 23-23-EL-SSO

IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY FOR APPROVAL  
OF CERTAIN ACCOUNTING AUTHORITY.

CASE NO. 23-24-EL-AAM

### ENTRY

Entered in the Journal on March 21, 2023

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility, as defined in R.C. 4928.01(A)(6), and a public utility, as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4928.141 mandates that an electric distribution utility shall provide to all consumers within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation service. The SSO may be either a market rate offer, in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with R.C. 4928.143.

{¶ 3} On January 6, 2023, AEP Ohio filed an application that, if approved, would establish the Company's fifth ESP for a period to commence on June 1, 2024, and continue through May 31, 2030. AEP Ohio also filed an application for approval of certain accounting authority to implement aspects of the proposed ESP. In its application, AEP Ohio proposes a procedural schedule including that the hearing commence on July 10, 2023.

{¶ 4} A technical conference on AEP Ohio's ESP application was held on February 7, 2023.

{¶ 5} By Entry issued March 2, 2023, the attorney examiner set the procedural schedule for consideration of AEP Ohio's ESP application and related matters.



{¶ 6} In order to provide customers of AEP Ohio a reasonable opportunity to provide public testimony in these proceedings, local public hearings will be conducted as set forth below on the following dates. AEP Ohio is directed to publish notice of the local public hearings one time in a newspaper of general circulation in each county in its certified territory. The notice should not appear in the legal notices section of the newspaper and should read as follows:

LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled local hearings in Case No. 23-23-EL-SSO, *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, and Case No. 23-24-EL-AAM, *In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority*. In the application, Ohio Power Company d/b/a AEP Ohio seeks Commission approval of an electric security plan filed on January 6, 2023, and matters related to the Company's procurement of power for the period of June 1, 2024, through May 31, 2030.

The local hearings are scheduled for the purpose of providing an opportunity for interested members of the public to testify in these proceedings. The local hearings will be held as follows:

- (a) April 13, 2023, at 6:00 p.m., Owens Community College, Community Education and Wellness Center Building, 3200 Bright Road, Room FCE 111, Findlay, Ohio 45840.
- (b) April 26, 2023, at 6:00 p.m., Zanesville-Muskingum County Conference & Welcome Center, Heritage Hall, 205 North Fifth Street, Zanesville, Ohio 43701.

- (c) May 1, 2023, at 6:00 p.m., Washington State Community College, Arts & Science Building, Graham Auditorium, 710 Colegate Drive, Marietta, Ohio 45750.
- (d) May 22, 2023, at 12:30 p.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-B, Columbus, Ohio 43215.
- (e) May 23, 2023, at 5:00 p.m., at Ohio History Connection, 800 East 17th Avenue, Cardinal Classroom, Columbus, Ohio 43211.

An evidentiary hearing regarding the provisions of the Company's electric security plan will commence on July 10, 2023, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio 43215.

Further information regarding this case may be obtained by: contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793; viewing the case docket on the Commission's web page at <http://www.puco.ohio.gov>, Docketing Information System and entering the case number, Case No. 23-23-EL-SSO in the Case Lookup box; or contacting the Commission's hotline at 1-800-686-7826.

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That local public hearings in these matters be held as set forth in Paragraph 6. It is, further,

{¶ 9} ORDERED, That AEP Ohio publish notice of the hearings as set forth in Paragraph 6. It is, further,

{¶ 10} ORDERED, That a copy of this Entry be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*/s/ Greta See*

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By: Greta See  
Attorney Examiner

MJA/dr

**This foregoing document was electronically filed with the Public Utilities  
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3/21/2023 8:36:19 AM  
in**

**Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM**

Summary: Attorney Examiner Entry scheduling local public hearings as follows: April 13, 2023, at 6:00 p.m., at Owens Community College, Community Education and Wellness Center Building, 3200 Bright Road, Room FCE 111, Findlay, Ohio 45840; April 26, 2023, at 6:00 p.m., at the Zanesville-Muskingum County Conference & Welcome Center, Heritage Hall, 205 North Fifth Street, Zanesville, Ohio 43701; May 1, 2023, at 6:00 p.m., at Washington State Community College, Arts & Science Building, Graham Auditorium, 710 Colegate Drive, Marietta, Ohio 45750; May 22, 2023, at 12:30 p.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-B, Columbus, Ohio 43215; and May 23, 2023, at 5:00 p.m., at the Ohio History Connection, 800 East 17th Avenue, Cardinal Classroom, Columbus, Ohio 43211 and ordering that AEP Ohio publish notice of the hearings as set forth in Paragraph 6 electronically filed by Debbie S. Ryan on behalf of Greta N. See, Attorney Examiner, Public Utilities Commission of Ohio.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**3/27/2023 5:00:23 PM**

**in**

**Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM**

Summary: Application Interlocutory Appeal, Request for Certification to the PUCO Commissioners and Application for Review by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Michael, William J..