

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Legacy Generation) Case No. 20-1118-EL-RDR
Resource Rider for Ohio Power Company.)

**APPLICATION FOR REHEARING
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Since its creation in 2019 by the tainted House Bill 6 (HB 6), the Ohio Power Company's (AEP) Legacy Generation Resource Rider (Rider LGR) has collected millions of dollars from Ohio customers to subsidize a pair of outdated and uneconomical dirty coal plants located in Ohio and Indiana. In 2020 alone, AEP was charged \$67,897,706¹ for costs associated with their ownership share of the Ohio Valley Electric Corporation (OVEC) coal plants, and those charges were in turn recovered from customers through Rider LGR. But while R.C. 4928.148 authorized the non-bypassable Rider LGR recovery mechanism, it *did not* create a blank check for the OVEC-owning electric distribution utilities. Among the customer protections offered by R.C. 4928.148 are mandatory, monthly rate caps.² Specifically, R.C. 4928.148(A)(2) requires the Public Utilities Commission of Ohio (Commission) to establish monthly caps of \$1,500 for non-residential customers and \$1.50 for residential customers.³

¹ See *In the Matter of the OVEC Generation Purchase Rider Audits Required by R.C. 4928.148 for Duke Energy Ohio, Inc., the Dayton Power and Light Company d/b/a AES Ohio, and Ohio Power Company d/b/a AEP Ohio*, Case No. 21-477-EL-RDR, AEP Motion for Protective Order, Attachment A at 28–29, Figure 9, Column H (January 4, 2024).

² R.C. 4928.148(A)(2).

³ R.C. 4928.148(A)(2). See also *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry (November 21, 2019) (hereinafter, LGR Entry).

AEP's recent semi-annual update filing reveals that it incorrectly applied the statutory monthly caps to only Part A of Rider LGR when calculating the new rates, in violation of both R.C. 4928.148(A)(2) and the Commission's Entry in Case No. 19-1808-EL-UNC, which established the Rider LGR rate design.⁴ The Commission's LGR Entry specifically states: "The *combination* of Part A and Part B rates will be capped at \$1.50 per month for residential customers and \$1,500 per month for non-residential customers on a per account basis."⁵ Therefore, pursuant to R.C. 4903.10⁶ and Ohio Adm.Code 4901-1-35, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby respectfully requests rehearing of the automatic approval of AEP's updated Rider LGR rates and calculations in the above-captioned proceeding.⁷

Specifically, OMAEG requests that the Commission find that AEP's rate calculation methodology was unlawful, unjust, and unreasonable in the following respect:

ASSIGNMENT OF ERROR NO. 1: The Commission's automatic approval of AEP's updated Rider LGR rates and calculations were unjust, unreasonable, and unlawful because AEP failed to apply the statutorily required rate caps to *both* Part A and Part B of the rider.

⁴ LGR Entry at ¶ 33.

⁵ *Id.* (emphasis added).

⁶ While OMAEG did not enter an appearance in this case, because this is "an[] uncontested proceeding," R.C. 4903.10 allows any affected person to "make an application for a rehearing within thirty days" of the tariffs becoming effective. OMAEG and its members are and will be adversely affected by AEP's misapplication of the monthly rate caps and any related calculations that do not comport with Ohio law or the Commission's orders.

⁷ See Revised Tariff Pages, PUCO No. 21, Legacy Generation Resource Rider Update (November 30, 2023).

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The Commission should grant rehearing, investigate, and order AEP to modify its Rider LGR calculations and/or rates to be in compliance with the monthly caps imposed by R.C. 4928.148(A)(2).

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Emma Y. Easley (0102144)

Carpenter Lipps LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

bojko@carpenterlipps.com

easley@carpenterlipps.com

(willing to accept service by e-mail)

*Counsel for Ohio Manufacturers' Association
Energy Group*

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to R.C. 4928.148, which was passed as part of HB 6, the Commission issued an Entry on November 21, 2019 (LGR Entry) creating and establishing a non-bypassable rate mechanism, Rider LGR, to recover the costs related to AEP's ownership interest in a pair of uneconomic, aging coal plants operated by OVEC. Rider LGR is divided into two rate components: a statewide rate (Part A) and a specific AEP true-up or reconciliation rate (Part B). Part A is designed to collect the forecasted net costs incurred by the continued operation of the OVEC plants and the over/under-recovered amount from the prior collection period. Part B reconciles the over/under amounts associated with the forecasted billing detriments versus the actual billing detriments (i.e., projected collections versus actual collections).

On November 30, 2023, AEP filed revised Rider LGR tariff pages that included the proposed new rates, as well as workpapers to support its calculations. The workpapers seem to reveal that the statutory rate caps were only applied to Part A of the LGR Rider. Pursuant to the LGR Entry, which provides for automatic approval upon the proposed effective date unless the Commission directed otherwise, these new rates automatically went into effect on January 1, 2024. However, this automatic approval was in error because AEP incorrectly calculated Rider LGR by not properly applying the statutory monthly cap.

When implementing R.C. 4928.148(A)(2), the Commission's LGR Entry could not have been clearer when it stated that "[t]he *combination* of Part A and Part B rates will be capped at \$1.50 per month for residential customers and \$1,500 per month for non-residential customers on a per account basis."⁸ Therefore, the Commission's automatic approval of AEP's updated Rider LGR rates was unjust, unreasonable, and unlawful because AEP only applied the statutory monthly rate caps to Part A of its Rider LGR. As such, the Commission should issue an order directing AEP to revise its Rider LGR rate calculations and application of the monthly rate caps so that both parts of Rider LGR are subject to the statutory caps.

II. ARGUMENT

ASSIGNMENT OF ERROR NO. 1: The Commission's automatic approval of AEP's updated Rider LGR rates and calculations were unjust, unreasonable, and unlawful because AEP failed to apply the statutorily required rate caps to *both* Part A and Part B of the rider.

The text of R.C. 4928.148(A)(2) is clear and unambiguous:

[T]he monthly charge or credit for those costs, including any deferrals or credits, shall not exceed one dollar and fifty cents per customer per month for residential customers. For all other customer classes, the commission shall establish comparable monthly caps for each class at or below one thousand five hundred dollars per customer.

R.C. 4928.148(A)(2) (emphasis added). The *total* monthly charge, including any deferrals or credits, cannot exceed \$1.50 per customer for residential customers or \$1,500 per customer for non-residential customers. That is the plain language of the statute. There is nothing in the text indicating that this cap only applies to part of Rider LGR (e.g., Part A) or that the legislature intended for the cap to only apply in part when it passed R.C. 4928.148(A)(2). Additionally, even taking into account the *potential* ambiguity that might have been created by Rider LGR having

⁸ LGR Entry at ¶ 33 (emphasis added).

two rate components, the Commission’s LGR Entry effectively put such potential ambiguity to rest when it stated that “[t]he *combination of Part A and Part B* rates will be capped at \$1.50 per month for residential customers and \$1,500 per month for non-residential customers on a per account basis.”⁹ The *combination* of both parts. Not just Part A, not just Part B, *both* parts are jointly subject to the statutory caps.

The language of the statute and LGR Entry is clear, but AEP seemingly only applied the statutory monthly rate cap to Part A of Rider LGR. This disregard for the statute and the Commission’s own LGR Entry should not have been permitted, and AEP should have been ordered to revise its tariffs and properly calculate the Rider LGR rates subject to the monthly rate caps. However, AEP’s revised tariffs, with the supporting workpapers, were automatically approved and became effective on January 1, 2024.

As stated in the LGR Entry, the Commission has the power to suspend the automatic approval of AEP’s proposed rates and ensure that the rates and monthly caps are being calculated and implemented properly. By not suspending the automatic approval, the Commission unjustly, unreasonably, and unlawfully authorized charges to customers that were calculated inconsistently than what is allowed by law. The Commission should correct this oversight by reversing the automatic approval of the rates that became effective on January 1, 2024 and direct AEP to revise its rate calculations so that the combination of both parts of the rider are subject to the caps. AEP should then file revised tariffs that properly adhere to the letter of the law.

The Commission is a creature of statute and it must give effect to the plain meaning of R.C. 4928.148.¹⁰ R.C. 4928.148(A)(2) clearly establishes the maximum monthly rates that may be

⁹ LGR Entry at ¶ 33 (emphasis added).

¹⁰ *Penn Central Transportation Co. v. Pub. Util. Comm.*, 35 Ohio St.2d 97, 298 N.E.2d 97 (1973) (“The Public Utilities Commission of Ohio is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute.”) (Citations omitted). Additionally, the Supreme Court of Ohio has long held that the Commission “is a

charged to customers as well as how those caps should be calculated (i.e. to the entire rider, not simply one part of it). The Commission itself recognized this in its LGR Entry stating that the monthly caps would apply to a combination of Part A and Part B. Therefore, as required by law, the Commission should find FirstEnergy incorrectly calculated its Rider LGR rates by not properly applying the statutory caps.

III. CONCLUSION

The Commission erred in allowing the automatic approval of AEP's updated Rider LGR rates to go into effect because the calculations do not conform to the LGR statute or the Commission's LGR Entry that established the riders in violation of R.C. 4928.148(A)(2) and the Commission LGR Entry. AEP should have followed the plain language of the law and applied the monthly statutory caps to both Part A and Part B of Rider LGR. Its failure to do so should have caused the Commission to suspend the automatic approval pending an investigation as to whether the rate calculations and monthly caps were properly implemented in order to protect customers. Accordingly, AEP's rider calculations and/or rates that went into effect on January 1, 2024 violate R.C. 4928.148(A)(2).

creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute.” *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88, 706 N.E.2d 1255 (1999).

For all the aforementioned reasons, OMAEG respectfully requests that the Commission grant this application for rehearing and issue an order as set forth herein.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Emma Y. Easley (0102144)

Carpenter Lipps LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

bojko@carpenterlipps.com

easley@carpenterlipps.com

(willing to accept service by e-mail)

*Counsel for Ohio Manufacturers' Association
Energy Group*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on January 31, 2024 upon the parties listed below.

/s/ Kimberly W. Bojko

Kimberly W. Bojko

*Counsel for the Ohio Manufacturers'
Association Energy Group*

stnourse@aep.com

Attorney Examiner:

sarah.parrot@puco.ohio.gov

greta.see@puco.ohio.gov

michael.williams@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities
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1/30/2024 4:46:54 PM

in

Case No(s). 20-1118-EL-RDR

Summary: Application Application for Rehearing for AEP LGR Update (Case No. 20-1118-EL-RDR) electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Manufacturers' Association Energy Group.