

6

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company for)	
Approval of its Electric Security Plan; and)	Case No. 08-917-EL-SSO
Amendment to its Corporate Separation)	
Plan; and the Sales or Transfer of Certain)	
Generating Assets.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of its)	
Electric Security Plan; and an Amendment)	Case No. 08-918-EL-SSO
to its Corporate Separation Plan.)	

RECEIVED-DOCKETING DIV
 2011 JUL 15 PM 4:09
 PUCO

**MEMORANDUM CONTRA COLUMBUS SOUTHERN POWER COMPANY'S
 AND OHIO POWER COMPANY'S MOTION TO STRIKE
 BY
 THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") files this Memorandum
 Contra to Columbus Southern Power Company's ("CSP") and Ohio Power Company
 ("OP") (collectively "AEP Ohio" or "Companies") motion to strike a portion of the
 testimonies of OCC witnesses Duann and Thompson. This response is filed in order to
 protect the interests of 1.2 million residential customers--who paid millions of dollars in
 ESP rates that were not justified as determined by the Ohio Supreme Court. The Public
 Utilities Commission of Ohio ("Commission" or "PUCO") should deny the Companies'
 Motion to strike and allow appropriate evidence to be heard in order to render a decision
 that complies with R.C. 4903.09 and the remand of the Ohio Supreme Court.

This is to certify that the images appearing are an
 accurate and complete reproduction of a case file
 document delivered in the regular course of business.
 Technician le Date Processed 7/15/2011

I. INTRODUCTION

On June 30, 2011, OCC filed the testimony of its witnesses, Messrs. Duann and Thompson. On July 11, 2011, AEP Ohio filed its Motion to Strike. AEP Ohio seeks to strike that portion of the OCC testimony that relates to the “flowthrough” effects on customer bills of the Companies’ POLR charges and the 2001-2008 environmental investment carrying charge rate increases. Specifically OCC Witness Duann submitted testimony that recommended that these charges be returned to customers by reducing the phase-in FAC deferral balance to be collected from customers starting in 2012.¹ Witness Thompson endorses this recommendation.² AEP Ohio claims that these portions of OCC’s testimony discuss topics that are outside the limited scope of this remand proceeding and, consequently are irrelevant.³

II. ARGUMENT

This Commission determined in an Entry on Rehearing, that it “*should* consider any flow-through effects on customers’ bills, as may be necessary to comply with the Court’s remand.”⁴ The flow-through effects that must be considered are the remedies that the PUCO may order in the event it determines to reverse its March 19, 2009 Opinion and Order. Thus, it is reasonable and necessary to address these flow-through effects to fulfill the remand obligations of the PUCO.

Incredibly, after reversal by the Court and having collected millions of dollars from Ohioans under an Order reversed on appeal, AEP Ohio claims that the relief IEU-

¹ Direct Testimony of Daniel Duann at 26-28 (June 30, 2011).

² Direct Testimony of Mack Thompson at 6 (June 30, 2011).

³ Company Motion to Strike at 1 (July 12, 2011).

⁴ Entry on Rehearing at ¶(June 22, 2011).

Ohio and OCC are requesting—to protect Ohio customers—is unlawful. Such a claim is not well made. Where there is a mechanism built into the rates that permit future rate adjustments to be made, there is no violation against the proscription against retroactive ratemaking. See *Lucas County Comm'rs. v. Pub. Util. Comm.* (1997), 80 Ohio St.3d 344, 348. Here there is a mechanism that permits future rate adjustments—that mechanism is the continuation of the ESP rates and collection of phase-in deferrals associated with the FAC from customers during 2012 through 2018.

AEP Ohio argues that the Commission limited parties' ability to litigate the flow-through effects when it added qualifying language “as may be necessary to comply with the Court’s remand.”⁵ This argument should be rejected because it misconstrues the scope of the hearing on remand in this proceeding.

While AEP Ohio is correct that the scope of remand is governed by the Supreme Court of Ohio’s remand instructions, it is wrong in describing the scope of the remand. AEP Ohio characterizes the Court’s remand as narrowly requiring the Commission to do only two things.⁶ And yet the exact language of the remand makes it clear that the Court’s remand was otherwise permissive.

The Court in defining the remand areas repeatedly used the term “may.” For instance on POLR the Court said “the commission *may* revisit this issue” and “*may* consider on remand whether a non-cost based POLR charge is reasonable and lawful.”⁷ It also determined that the Commission “*may* consider whether it is appropriate to allow

⁵ Company Motion to Strike at 5-6.

⁶ Motion to Strike at 6 (July 12, 2011).

⁷ *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St. 3d 512; 2011 Ohio 1788 at ¶30.

AEP to present evidence of its actual POLR costs.”⁸ Similarly, on the issue of the environmental carrying charges, the Court found that the Commission “*may*” determine whether any of the listed categories of (B)(2) authorize recovery of environmental carrying charges.⁹ With the scope of the remand being permissive in part, the Commission can and should exercise its discretion to allow parties to litigate the flow-through effects that result from collecting POLR and environmental investment carrying charges —charges the Ohio Supreme Court determined were not justified in light of the evidence presented. Prescribing remedies, in the form of adjusting rates being collected subject to refund, as well as prospectively adjusting phase in deferrals, are matters the Commission necessarily must address to fulfill the Court’s remand.

III. CONCLUSION

The Companies’ motion to strike should be denied. Remedies that the PUCO has available to it are relevant to the scope of the remand. Indeed remedies must be part of the remand in order to fulfill the Court’s directive. It is reasonable and necessary to address these flow-through effects to fulfill the remand obligations of the PUCO. The remedies include flow-through adjustments which, under *Lucas County Comm’rs. v. Pub. Util. Comm.*, can include adjustments to the deferrals created as a result of the ESP rates. Adjusting the FAC deferrals to compensate customers for the unjustified POLR and environmental investment carrying charges that they have paid beginning in April 2009 is reasonable and necessary. The Commission should permit parties, including OCC, to

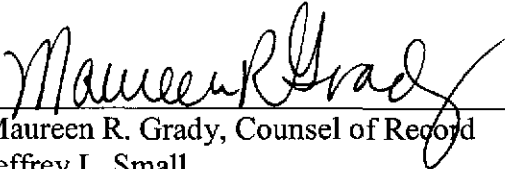
⁸ Id.

⁹ Id. at ¶35.

present testimony on this issue, to enable the Commission to take consider appropriate evidence and then take appropriate action in deciding this case.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Maureen R. Grady, Counsel of Record
Jeffrey L. Small
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
grady@occ.state.oh.us
small@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing the Memorandum Contra Motion to Strike was served electronically to the persons listed below, on this 15th day of July, 2011.


Maureen R. Grady
Assistant Consumers' Counsel

PARTIES SERVED

sbaron@jkenn.com
lkollen@jkenn.com
charlieking@snavely-king.com
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
stnourse@aep.com
mjsatterwhite@aep.com
dconway@porterwright.com
jbentine@cswlaw.com
myurick@cswlaw.com
khiggins@energystrat.com
barthroyer@aol.com
gary.a.jeffries@dom.com
nmoser@theOEC.org
trent@theOEC.org
henryeckhart@aol.com
ned.ford@fuse.net
rstanfield@nrdc.org
dsullivan@nrdc.org
thomas.lindgren@puc.state.oh.us
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
drinebolt@aol.com
cmooney2@columbus.rr.com
msmalz@oslsa.org
jmaskovyak@oslsa.org

Greta.See@puc.state.oh.us

ricks@ohanet.org
tobrien@bricker.com
todonnell@bricker.com
cvince@sonnenschein.com
preed@sonnenschein.com
ehand@sonnenschein.com
tommy.temple@ormet.com
steven.huhman@morganstanley.com
glawrence@mwe.com
gwung@mwe.com
stephen.chriss@wal-mart.com
lgearhardt@offb.org
cmiller@szd.com
gdunn@szd.com
agamarra@wrassoc.com
kschmidt@ohiomfg.com
sbloomfield@bricker.com
cynthia.a.fonner@constellation.com
david.fein@constellation.com
mhpetricoff@vssp.com
smhoward@vssp.com
cgoodman@energymarketers.com
lbell33@aol.com
haydenm@firstenergycorp.com
jlang@calfee.com
lmcbride@calfee.com
tallexander@calfee.com
Dan.johnson@puc.state.oh.us
Timothy.Benedict@puc.state.oh.us
Rodney.Windle@puc.state.oh.us