BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	)))))	Case No. 11-4921-EL-RDR

REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

On April 2, 2012, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 1.2 million residential customers[1] of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "AEP Ohio" or "Company"),[2] filed Comments on AEP Ohio's proposal to significantly increase the rates its customers pay for electric service. The Company seeks approval from the Public Utilities Commission of Ohio ("Commission" or "PUCO") to have customers pay for fuel costs the Company purportedly incurred but did not collect during 2009-2011, plus carrying

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[1] R.C. Chapter 4911.

[2] On March 7, 2012, the Commission approved a merger of OPC and CSP (both of which were operating companies of AEP Ohio), with OPC becoming the successor in interest to CSP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376- EL-UNC, Entry (March 7, 2012).

costs, as a result of “capped” or phased-in rates during the Company’s first electric security plan (“ESP”).[3]

The Company proposes to begin collecting these costs – more than $628 million in deferred fuel costs and more than $279 million in carrying charges – through a Phase-In Recovery Rider (“Rider”) over a seven-year period.[4] Under the Company’s proposed Rider, AEP Ohio’s residential customers would pay an additional $0.51 per month for customers using 100 kWh up to $10.12 per month for customers using 2,000 kWh.[5]

OCC’s Comments pointed out that the Commission must follow Ohio law and its own Order in AEP Ohio’s first ESP case.[6] OCC noted that, under R.C. 4928.143(B)(2)(a), AEP Ohio may collect only the deferred costs it can prove were prudently-incurred costs of fuel used to generate the electricity supplied under the standard service offer (“SSO”). In addition, the PUCO should examine whether the phase-in plan (including the level of deferrals and collection) is “just and reasonable” under R.C. 4928.144.

OCC urged the PUCO to reject the Rider rates because they are based on ESP rates not established in compliance with R.C. 4928.143 and because they are a result of a phase-in plan that is not just and reasonable.[7] Accordingly, either the base level of unamortized deferrals (and carrying costs) to be collected from customers should be reduced before collection begins or the Rider should be collected subject to refund, with

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[3] See Applications (September 1, 2011) (“Applications”), Exhibit A at 6.

[4] Id. at 3.

[5] See id., Exhibit A at 6.

[6] *In the Matter of the Application of Columbus S. Power Co.*, Case No. 08-917-EL-SSO et al., Opinion and Order (March 18, 2009) (“ESP 1 Order”)

[7] OCC Comments at 6-7.

interest accruing at AEP Ohio's long-term cost of debt. This will protect AEP Ohio's customers – who have already paid $63 million in unlawful retroactive rates without refund[8] – if the appeal of the ESP 1 Remand Order[9] is successful.[10]

OCC also pointed out several problems with the Applications themselves.[11] First, AEP Ohio proposes to collect the charges one year longer than the approved timeframe for collecting deferrals allowed by the Commission's ESP 1 Order. Because this would unlawfully add approximately $43 million to the carrying costs that customers would pay, OCC urged the Commission to end collection through the Rider before 2018 as previously ordered.

Second, in order to reduce the carrying charges that customers will pay, OCC recommended that carrying costs be calculated using AEP Ohio's long-term cost of debt instead of the Company's higher weighted average cost of capital ("WACC") and on a net of tax basis. This will save the Company's customers millions of dollars in carrying costs, and would help ensure reasonably priced electricity for Ohio customers.[12]

Third, OCC urged the PUCO to order AEP Ohio to refund $3,896,041 in fuel charges that were over-collected from CSP customers as of December 31, 2011, plus accrued interest, as soon as possible. AEP Ohio's proposal to return the over-collection in its March 2012 fuel adjustment clause ("FAC"), without interest payment, is not fair to

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[8] *Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶¶ 15-21.

[9] *ESP 1*, Order on Remand (October 3, 2011).

[10] Ohio Supreme Court Case No. 12-0187.

[11] OCC Comments at 15-20.

[12] See R.C. 4928.02(A).

CSP's customers, who overpaid for fuel from 2009-2011. Since comments were filed in this proceeding, the Commission issued a ruling that supports OCC's position.

On April 11, 2012, in the Company's first post-ESP fuel audit proceeding, the Commission clarified its previous order in that proceeding requiring offsets to the deferrals and directed the Company to "immediately implement the credit to reduce the FAC deferral balance…."[13] Moreover, the PUCO also ordered the Company to flow through to customers a carrying charge component in applying the credit to the FAC under-collection, meaning the PUCO required AEP Ohio to pay customers for its use of their over-collected funds.[14] The carrying charge component was ordered to be calculated at the weighted average cost of capital, the same carrying charge that was used when the deferrals were authorized to be booked.[15] Thus, OCC's request is consistent with the Commission's recent findings in the Company's fuel proceeding.

The Industrial Energy Users-Ohio ("IEU"), the Ohio Energy Group ("OEG"),[16] Ormet Aluminum Company ("Ormet") and the PUCO Staff also filed comments. Like OCC, all these commenters agreed that the deferrals should be reduced by the relevant accumulated deferred income taxes during the collection period.[17] The PUCO Staff, IEU and Ormet also argued against using the WACC to calculate carrying costs.[18]

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[13] *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC et al., Entry on Rehearing (April 11, 2012) at 10-11.

[14] Id. at 9.

[15] Id.

[16] OEG consists of the following businesses: AK Steel Corporation; Aleris International, Inc.; Amsted Rail Company, Inc.; ArcelorMittal, USA; BP-Husky Refining, LLC; E.I. DuPont de Nemours & Company; Ford Motor Company; GE Aviation; Proctor & Gamble; Linde, Inc.; Praxair, Inc.; R-G Steel; The Timken Company; and Worthington Industries. OEG Comments at [1].

[17] IEU Comments at 11-12; OEG Comments at [2]-[6]; Ormet Comments at 7-8; PUCO Staff Comments at 6-10.

[18] PUCO Staff Comments at 4-6; IEU Comments at 10-11; Ormet Comments at 5-7.

IEU, OEG and the PUCO Staff raised issues not addressed in OCC's initial Comments. In these Reply Comments, OCC presents its position regarding some of these issues.[19]

II. DISCUSSION

A. IEU's Suggestion to Use the Rate for Newly-Issued Seven-Year Corporate BBB Bonds for Calculating Carrying Charges on the Deferred Fuel Costs Is Reasonable.

Using a lower rate for calculating carrying charges is reasonable, especially during the time period of actual collection of the charges from customers. When the carrying charges are being collected, the risk of that capital is generally much lower than the risk associated with the time period during which costs are being deferred. A lower risk should lead to a lower cost of capital. Moreover, using a lower cost of debt during the collection period of deferrals is consistent with PUCO policy.

A lower cost of debt, combined with calculating carrying costs based on net of tax values (which is appropriate and necessary in order to charge customers only for the real cost of the deferrals) would significantly decrease the more than $279 million in carrying costs AEP Ohio seeks. This would be an important step toward furthering the intent of R.C. 4928.02(A) by ensuring that customers pay only for reasonably priced electric service.

OCC, the PUCO Staff and Ormet recommended that carrying charges on the deferred fuel costs be calculated using the long-term cost of debt most recently approved

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[19] If OCC does not address an issue raised by the other commenters, that fact should not be construed as OCC's acquiescence regarding that issue.

by the Commission[20] instead of the much-higher 11.15% WACC rate AEP Ohio proposed. IEU, however, suggested that the Company be required to use the rate for newly-issued seven-year corporate BBB bonds, which IEU identified as 3.1%.[21] IEU stated that its proposal would apply "a more contemporary debt cost rate…."[22]

After reviewing IEU's comments, OCC concludes that IEU's position is reasonable and reflects current true market cost of debt for the Company. The Commission should adopt IEU's suggestion. If the Commission decides against IEU's suggestion, however, it should set a rate for calculating the carrying charges that customers will pay that is no more than the long-term cost of debt.

B. The Commission Should Adopt the PUCO Staff's Recommendations That AEP Ohio Calculate the Deferred Fuel Balance Using Annual Compounding and that AEP Ohio Be Required to Submit Annual Informational Filings Regarding Collection of the Rider.

In its comments, the PUCO Staff also made two recommendations that OCC supports. First, the PUCO Staff urged the Commission to require AEP Ohio to calculate the deferred fuel balance "going forward" using annual, not monthly, compounding.[23] The PUCO Staff estimates that using annual compounding would save the Company's customers nearly $24 million dollars over the amortization period.[24]

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[20] OCC specified the rate as 5.27% from the Company's distribution rate case. See OCC Comments at 18. The PUCO Staff stated the rate should be 5.34%. See PUCO Staff Comments at 6. Ormet did not specify a rate.

[21] IEU Comments at 11.

[22] Id. at 11.

[23] PUCO Staff Comments at 11.

[24] Id.

Such an approach is consistent with a policy of the state – to ensure reasonably priced electric service is available to all customers in the State.[25] Moreover, the Company has not shown that monthly compounding of interest is necessary and appropriate. The Commission itself recently noted that any collection of the phase- in deferrals "shall occur as necessary, indicating the Commission would conduct an additional analysis to determine the appropriate recovery of fuel cost expenses incurred plus carrying charges."[26] The Commission should conclude that compounding the carrying costs monthly (and making customers pay for that compounding) is not necessary or appropriate.

Second, the PUCO Staff recommended that the Company provide annual informational filings regarding the collection of the Rider, which would include "a breakdown of where collections stand per rate class and by operating company and the corresponding ending deferral balance."[27] The Commission should adopt this recommendation by the PUCO Staff, and require that the annual informational filings be made in a docketed case.

C. The Commission Should Not Issue the Clarification Requested by OEG Regarding AEP Ohio's Ability to Securitize the Deferred Fuel Charges.

In its comments, OEG asked the Commission to "clarify that AEP Ohio can securitize its deferred fuel expenses as soon as possible."[28] OEG bases its request on the

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[25] See R.C. 4928.02(A).

[26] See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Entry on Rehearing (April 11, 2012) at 4.

[27] Id. at 12.

[28] OEG Comments at [6].

notion that "AEP Ohio can now initiate the process to securitize the deferred fuel expenses at issue in this proceeding pursuant to R.C. 4928.231."[29] The statute became effective on March 22, 2012. An examination of R.C. 4928.231, however, shows that OEG's request is premature.

R.C. 4928.231(A)(2) authorizes electric distribution utilities to apply to the Commission for a financing order that authorizes "[t]he imposition, charging, and collection of phase-in-recovery charges, in accordance with the adjustment mechanism approved by the commission under section 4928.232 of the Revised Code, and consistent with the commission's authority regarding governmental aggregation as provided in division (I) of section 4928.20 of the Revised Code" to collect uncollected phase-in costs and financing costs. R.C. 4928.231(B) lists the requirements for an application for such a financing order:

> (1) A description of the uncollected phase-in costs that the electric distribution utility seeks to recover through the issuance of phase-in-recovery bonds;
>
> (2) An estimate of the date each series of phase-in-recovery bonds are expected to be issued;
>
> (3) The expected term during which the phase-in costs associated with the issuance of each series of phase-in-recovery bonds are expected to be recovered;
>
> (4) An estimate of the financing costs, as described in section 4928.23 of the Revised Code, associated with the issuance of each series of phase-in-recovery bonds;
>
> (5) An estimate of the amount of phase-in-recovery charges necessary to recover the phase-in costs and financing costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of phase-in-recovery bonds;

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[29] Id.

(6) For phase-in-recovery charges not subject to allocation according to an existing order, a proposed methodology for allocating phase-in-recovery charges among customer classes, including a proposed methodology for allocating such charges to governmental aggregation customers based upon the proportionate benefit determination made under division (I) of section 4928.20 of the Revised Code;

(7) A description of a proposed adjustment mechanism for use as described in division (A)(2) of this section;

(8) A description and valuation of how the issuance of the phase-in-recovery bonds, including financing costs, will both result in cost savings to customers and mitigate rate impacts to customers when compared to the use of other financing mechanisms or cost-recovery methods available to the electric distribution utility;

(9) Any other information required by the commission.

AEP Ohio cannot comply with at least R.C. 4928.231(B)(4), (5) and (8) at this time. The Commission has not determined the amount of deferred fuel charges the Company prudently incurred during 2009 through 2011, or the amount of the carrying costs for those charges.[30] OCC and other commenters have raised several issues regarding the Commission's determination in these proceedings, such as: the flow-through effects of the provider of last resort charges and associated carrying charges collected between 2009 and 2011; the other two FAC audit proceedings that are still pending; the reduction of the deferral balance to account for accumulated deferred income taxes; and the appropriate rate for calculating carrying charges during the amortization period.

Until the Commission rules on these issues, AEP Ohio will not know how much it must finance, or the financing costs associated with the issuance of each series of phase-

[30] And depending on what is meant by "[a] description of the uncollected phase-in costs that the electric distribution utility seeks to recover through the issuance of phase-in-recovery bonds," the Company might not be able to comply with R.C. 4928.231(B)(1).

in-recovery bonds, or the amount of phase-in-recovery charges necessary to collect the phase-in costs and financing costs, or how the issuance of the phase-in-recovery bonds will both result in cost savings to customers and mitigate rate impacts to customers when compared to the use of other financing mechanisms or cost-recovery methods. OEG's request is thus premature, and the Commission should not issue the clarification sought by OEG at this time.

III. CONCLUSION

The parties' comments contain broad support for the Commission to protect consumers. Consumers can be protected in many ways. First, the Commission should determine that it is not appropriate to allow the Company to collect the overstated deferrals since the deferrals contain embedded provider of last resort charges that AEP Ohio failed to justify under R.C. 4928.143(B)(2). Consequently, $368 million of the unamortized balance (plus the carrying charges accrued on that balance since 2009) should be deducted off the top, before any collection begins. Alternatively, the PUCO could allow the collection subject to refund in order to protect customers' interests during the appeal process and during the pendency of further fuel audits for 2010 and 2011.

The Commission should further reduce the rate increases by limiting the increases to only those shown to be necessary and appropriate. This means that the deferred fuel costs should be reduced by the relevant accumulated deferred income taxes during the collection period, and carrying charges should be calculated using a much lower rate than the WACC rate AEP Ohio proposed.

The Commission should also protect consumers by adopting the PUCO Staff's recommendations that AEP Ohio be required to calculate the deferred fuel balance "going forward" using annual compounding and to provide annual informational filings regarding the collection of the Rider. In addition, the Company cannot at this time comply with the new securitization statute because, among other things, there are dollar amounts at issue that the PUCO should exclude from AEP Ohio's collection from customers. Thus the Commission should **not** state that AEP Ohio may move forward with securitization.

In order to protect consumers, the Commission should take the actions discussed in OCC's Comments and Reply Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 17th day of April 2012.

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