

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Ohio Power Company to)
Update Its Transmission Cost Recovery) Case No. 12-1046-EL-RDR
Rider.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In order to ensure that the 1.2 million residential customers of the Ohio Power Company ("AEP Ohio" or "Company") receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing of the Finding and Order ("F&O") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding on October 24, 2012. OCC is authorized to file this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The F&O modified and approved the application filed by AEP Ohio in this proceeding on June 15, 2012, as subsequently corrected by the Company.¹ In the F&O, the Commission authorized AEP Ohio to collect from its customers approximately \$139 million in anticipated transmission costs and related expenses for 2012.² In addition, the Commission authorized AEP Ohio to collect from customers approximately \$36.4 million in transmission-related costs (including carrying charges) that were not collected during the previous period because the actual costs were greater than the costs forecasted

¹ F&O at 8.

² See Application, Schedule B-1.

for that period.³ The Commission authorized this under-collection to be collected from customers evenly over three years, plus additional carrying charges, on a non-bypassable basis.⁴ The collection will occur through the Company's Transmission Cost Recovery Rider ("TCRR").

The F&O was unjust, unreasonable and/or unlawful in the following respects:

1. The Commission acted unlawfully and unreasonably by allowing the over-collected amount to be deferred over a three-year period.
2. The Commission acted unlawfully and unreasonably by allowing AEP Ohio to collect interest on the entire \$36 million, which already includes carrying charges.
3. The Commission acted unlawfully and unreasonably in determining that the TCRR would not be factored into the 12 percent rate cap on customers' bills imposed in the August 8, 2012 Opinion and Order in AEP Ohio's Electric Security Plan ("ESP") case.⁵

The grounds for this application for rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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³ See F&O at 1.

⁴ Id. at 7-8.

⁵ *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 §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO ("ESP 2").

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Ohio Power Company)
to Update Its Transmission Cost) Case No. 12-1046-EL-RDR
Recovery Rider.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In its application in this proceeding, AEP Ohio sought to collect from customers approximately \$139 million in transmission costs the Company expects to incur during the twelve-month period beginning with the September 2012 billing month.⁶ In addition, AEP Ohio sought to collect transmission-related expenses that were under-collected through its prior TCRR period, plus carrying charges. The under-collected costs and carrying charges total \$36,421,033.⁷ The Company stated that the under-collection was due to the difference between the level of forecasted costs in AEP Ohio's most recent TCRR update and the actual costs the Company incurred over the prior period.⁸ AEP Ohio proposed to collect the \$36.4 million, plus additional carrying charges, over a three-year period.⁹

On October 15, 2012, the PUCO Staff docketed its Review and Recommendation regarding the Application. The PUCO Staff recommended that the Commission approve AEP Ohio's Application, with modifications. The PUCO Staff recommended that the

⁶ See Application at 4.

⁷ Id.

⁸ Id.

⁹ Id. at 4-5.

under-collection be charged to customers as a separate, non-bypassable part of the TCRR, which would terminate once the \$36 million has been collected.¹⁰ The PUCO Staff reasoned that the costs should be non-bypassable because most of the under-collection resulted from customer shopping, and thus customers who shop also should help bear the burden of collecting the costs.¹¹

The PUCO Staff also recommended a change to the methodology for allocating Net Marginal Loss (“NML”) costs for the TCRR.¹² The PUCO Staff recommended that instead of allocating the costs based on revenues, the projected NML costs should be allocated on a projected kWh basis.¹³ According to the PUCO Staff, this change “would better assign the costs to those who are creating the costs.”¹⁴ Because this change in methodology may shift costs among customer classes, the PUCO Staff recommended a transition to the new allocation methodology to occur over this TCRR update and the one in 2013.¹⁵ The PUCO Staff did not provide a calculation of the effect of its recommendation on the TCRR rates.

In separate comments, both OCC and the Industrial Energy Users-Ohio (“IEU”) objected to the application. OCC noted that because the TCRR as a unified rate for the Company’s two rate zones was first approved in AEP Ohio’s second ESP proceeding,

¹⁰ Staff Review and Recommendation at 2.

¹¹ Id. at 1.

¹² Id. at 2.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

rate increases approved in this proceeding would be included in the 12 percent cap on customers' total bills established in the ESP proceeding.¹⁶

OCC also urged the Commission to collect the under-collected amount in one year instead of three. Although doing so would raise customers' rates more than the first year of AEP Ohio's proposal, collecting the amount in a single year would save customers nearly \$6 million in carrying charges.¹⁷

IEU asserted that because the current TCRR was not approved in an ESP, it would be unlawful to make the TCRR non-bypassable under R.C. 4928.144.¹⁸ IEU also argued that AEP Ohio had not identified its incurred costs as required by R.C. 4928.144.¹⁹ IEU also opposed the PUCO Staff's NML proposal.²⁰

In the F&O, the PUCO approved the TCRR, and allowed the Company to collect the \$36.4 million evenly over a three-year period, "in order to avoid the significant rate impact that would otherwise result from collecting the under-recovery over just one year, in combination with the other projected cost increases."²¹ The PUCO determined that the deferral could be phased-in under R.C. 4928.144 on a non-bypassable basis.²² Interest for this deferral will be charged at the Company's cost of long-term debt rate.²³ These carrying charges are in addition to those already included in the under-collected amount.

¹⁶ OCC Comments (October 22, 2012) at 4-5.

¹⁷ Id. at 5-6.

¹⁸ See IEU Comments (July 25, 2012) at 2-3; IEU Supplemental Comments (October 19, 2012) at 3-6.

¹⁹ IEU Comments at 3.

²⁰ IEU Supplemental Comments at 7-8.

²¹ F&O at 7.

²² Id.

²³ Id.

The Commission's F&O is unlawful and unreasonable. The Commission should abrogate and/or modify the F&O as discussed herein.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding on June 29, 2012, which was granted in an Entry issued on August 15, 2012 (at 2). OCC also filed comments regarding AEP Ohio's application on October 22, 2012.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed." As shown herein, the statutory standard for modifying the Order is met here.

III. ARGUMENT

A. The Commission Acted Unlawfully And Unreasonably By Allowing The Over-Collected Amount To Be Deferred Over A Three-Year Period.

R.C. 4905.22 requires that every public utility charge rates that are just and reasonable. In addition, R.C. 4928.02(A) makes it state policy to ensure that consumers have reasonably priced retail electric service. The Commission's Order in this proceeding violates both of these statutes.

Both the Company and the PUCO Staff proposed that the under-collection should be phased-in over a three-year period, with carrying charges. The reason for doing this is to have a smaller increase during the first year than would occur if the under-collection from 2011 were collected from customers in a single year. Despite OCC's objections to this proposal, the Commission agreed with AEP Ohio and the PUCO Staff: "We agree with Staff and OP that the three-year collection period is necessary in order to avoid the significant rate impact that would otherwise result from collecting the under-recovery over just one year, in combination with the other projected cost increases."²⁴ The Commission, however, ignored the total impact the phase-in will have on customers.

Because of the Commission's F&O, customers will pay an additional \$6 million in carrying charges over the three-year phase-in period. This additional \$6 million will not be used to benefit customers by improving the service they receive from AEP Ohio, or in any other way. Instead, the additional \$6 million does nothing more than enrich AEP Ohio at the expense of its customers.

²⁴ Id.

The phase-in the Commission approved was not necessitated by customer actions. Rather, the phase-in is the result of a desire by AEP Ohio to make the rate increase more palatable to consumers. It is unreasonable to charge customers an additional \$6 million in order for the Company to avoid potential criticism about the rate increase.

As the Commission recognized in the F&O, AEP Ohio's customers already will pay numerous rate increases recently authorized by the Commission.²⁵ The deferrals approved in the Order would exacerbate any additional increases to the TCRR that may occur in 2013 and 2014. Customers' bills could thus increase even more.

Although the Commission has stated that it is generally opposed to the creation of deferrals,²⁶ the Commission once again has created a deferral whose only result is to improve the coffers of AEP Ohio at the expense of customers. The Commission has ignored the additional costs for customers that these deferrals will create, for the purpose of making customers believe their rates will not increase as much as they actually will.²⁷

The deferral created in the Order is unreasonable and unlawful under R.C. 4905.22 and 4928.02(A). The Commission should modify the Order by eliminating the phase-in of the under-collected amount, thus saving consumers \$6 million in carrying charges.

B. The Commission Acted Unlawfully And Unreasonably By Allowing AEP Ohio To Collect Three Years' Interest On The Entire \$36.4 Million, Which Already Includes Carrying Charges.

The Commission's approval of the three-year collection period is exacerbated by the fact that the \$36,421,033 under-collection amount already includes carrying charges

²⁵ Id.

²⁶ See ESP 2, Opinion and Order (August 8, 2012) ("ESP 2 Order") at 36.

²⁷ Application at 4.

imposed by AEP Ohio.²⁸ The F&O thus allows AEP Ohio to collect from customers three years' interest on the entire amount, including the interest that the Company had already factored into the under-collection amount. Customers should not have to pay interest on interest, especially under a rate scheme designed "to avoid the significant rate impact that would otherwise result from collecting the under-recovery over just one year, in combination with the other projected cost increases."²⁹

The F&O unreasonably and unlawfully raised the rates customers pay by allowing AEP Ohio to charge customers three years' interest on top of the interest already included in the under-collection amount. The F&O thus violates R.C. 4905.22 and 4928.02(A). The Commission should abrogate the F&O, or modify it so that the under-collected amount is collected without additional carrying charges.

C. The Commission Acted Unlawfully And Unreasonably In Determining That The TCRR Would Not Be Factored Into The 12 Percent Rate Cap On Customers' Bills Imposed In The ESP 2 Order.

In its Comments, OCC stated that the Commission's decision in this proceeding will have an impact on the Company's second ESP.³⁰ The ESP 2 Order caps rate increases at 12 percent over the Company's first ESP rates for the entire term of the second ESP, on an individual customer basis.³¹ OCC noted that the TCRR was included in the Company's application in that proceeding,³² and the Commission combined the

²⁸ See id.

²⁹ F&O at 7.

³⁰ OCC Comments at 4.

³¹ ESP 2 Order at 70.

³² See ESP 2, Modified Application (March 30, 2012) at 12.

collection mechanisms for the OP and CSP Rate Zones in that proceeding.³³ OCC concluded that the Commission's decision here – includes the proposed deferrals and carrying charges from the under-collection – will affect the rates customers pay through the Company's ESP, and will thus affect the calculations regarding the total bill impact for each customer that the ESP will have.³⁴

In addition, OCC noted that the Staff has not provided information regarding the effect of its NML proposal on the various customer classes. Thus, OCC noted, if the Commission were to adopt the Staff's proposal, the Commission would not have the specifics regarding how the Staff's proposal would affect the various customer classes. The effect on individual customers' bills – and thus the effect of the PUCO Staff's NML proposal – would also be unknown.

The Commission rejected OCC's argument. The Commission reasoned that because the F&O approving the TCRR rate was issued after the ESP 2 Order, the TCRR rate does not affect the 12 percent cap: “[W]e note that rate changes that occur in proceedings subsequent to the ESP proceedings are not factored into the cap.”³⁵ The Commission, however, erred in this assumption.

In establishing the 12 percent rate cap, the Commission limited the application of the rate cap “to items approved within this modified ESP. Any rate changes that arise as a result of past proceedings, including any distribution proceedings, or in subsequent

³³ ESP 2 Order at 63.

³⁴ Id. at 70.

³⁵ F&O at 8.

proceedings are not factored into the 12 percent cap.”³⁶ The TCRR in its present form was an item approved in the ESP 2 Order.

As AEP Ohio explained in its reply to IEU’s supplemental comments in this proceeding, the TCRR began with the Commission’s approval of the Company’s first ESP.³⁷ From 2009 through much of 2012, AEP Ohio had separate TCRR charges for its Ohio Power and CSP territories. Because of the merger of Ohio Power and CSP into one entity, the Commission, in the ESP 2 Order, approved combining the separate rate zones into one TCRR.³⁸ The TCRR approved as an item in the ESP 2 Order is the subject of this proceeding, and thus the rate approved in the F&O in this proceeding arose from the ESP 2 Order, not from a subsequent proceeding as the Commission stated.

Further, in the ESP 2 Order, the Commission ordered AEP Ohio to address specific elements of the Company’s TCRR: “The Commission directs that any over-recovery of transmission or transmission-related costs, as a result of combining the TCRR mechanisms, be reconciled in the over and under-recovery component of the Company’s next TCRR rider update.”³⁹ This specific direction to AEP Ohio by the Commission is a further verification that the TCRR rate approved in this proceeding arose from the ESP 2 Order.

As OCC noted, the effect of the PUCO Staff’s NML proposal on the amount customers pay through the TCRR is unknown, and thus the Commission has no way of knowing how the TCRR will affect the 12 percent cap on rates established in the ESP 2

³⁶ ESP 2 Order at 70.

³⁷ AEP Ohio Reply to IEU’s Supplemental Comments (October 22, 2012) at 2-3.

³⁸ ESP 2 Order at 63-64.

³⁹ Id. at 64.

Order. As a result, the Commission failed to determine whether the rate customers pay as a result of the TCRR would be just and reasonable, in violation of R.C. 4905.22 and 4928.02(A). The Commission should abrogate the F&O and should determine the effect of the PUCO Staff's NML proposal on the 12 percent cap on individual customers' rates.

IV. CONCLUSION

In approving the rate customers will pay through the TCRR, the Commission acted unreasonably and unlawfully in allowing the over-collected amount to be collected from customers over a three-year period. In addition, it was unlawful and unreasonable for the Commission to ignore the impact of the TCRR on the 12 percent cap on rate increases established in the ESP 2 Order and approve the TCRR without knowing the effect of the PUCO Staff's NML proposal on the rates customers pay. To protect consumers, the Commission should (1) modify the F&O by eliminating the phase-in of the under-collected amount, thus saving consumers \$6 million in carrying charges and avoiding the payment of interest on interest, and (2) abrogate the F&O and determine the effect of the PUCO Staff's NML proposal on customers' rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission this 21st day of November 2012.

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Summary: Application Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.