

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of Customer Rate Impacts from Ohio)	Case No. 13-1530-EL-UNC
Power Company's Transition to Market)	
Based Rates.)	

COMMENTS OF THE INDUSTRIAL ENERGY USERS-OHIO

I. BACKGROUND

This proceeding was opened on June 27, 2013. The *Second Transition Entry*¹ issued on the same day states:

By Opinion and Order issued August 8, 2012, the Commission modified and approved an application for an electric security plan (ESP) filed by Ohio Power Company (AEP-Ohio) in *In the Matter of the Application of 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 (ESP Case),² et al. The Opinion and Order as approved, directed the attorney examiners to establish a new docket within 90 days from the order and issue an entry establishing a procedural schedule to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts from the shift to market based rates.³

As evident from the above quote, the *Second Transition Entry* references the Opinion and Order in the *ESP II Case* which states:

The Commission finds that AEP-Ohio's proposed base generation rates are reasonable. We note that AEP-Ohio's base generation rate design was generally unopposed, as most parties supported AEP-Ohio's proposal

¹ *In the Matter of the Commission's Review of Customer Rate Impacts from Ohio Power Company's Transition to Market Based Rates*, Case No. 13-1530-EL-UNC, Entry (June 27, 2013) (herein cited as the "*Second Transition Entry*").

² Hereinafter cited as the "*ESP II Case*".

³ *Second Transition Entry* at 1.

to keep base generation rates frozen. Although OCC and APJN conclude that the base generation rate plan does not benefit customers, OCC and APJN failed to justify their assertion and offer no evidence within the record other than the fact that the modified ESP contains several riders. Accordingly, the modified ESP's base generation rates should be approved. In addition, as AEP-Ohio raised the possibility of disproportionate rate impacts on customers when class rates are set by auction, we direct the attorney examiners to establish a new docket within 90 days from the date of this opinion and order and issue an entry establishing a procedural schedule to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts for customers upon rates being set by auction. Further, the Commission reserves the right to implement a new base generation rate design on a revenue neutral basis for all customer classes at any time during the term of the modified ESP.⁴

Neither the *Second Transition Entry* nor the Public Utilities Commission of Ohio's ("Commission") decision in the *ESP II Case* identified any legal authority that may allow the Commission to mitigate adverse rate impacts of Ohio Power Company's second transition to market-based rates. Since a transition to market-based rates necessarily means that a competitive retail electric service is involved and the General Assembly has removed the Commission's supervisory and regulatory authority over such service (except in very limited circumstances), questions about the Commission's legal authority should not be taken lightly.⁵ Section 4928.142(E), Revised Code, gives the Commission circumstance-specific authority to modify the proportionate blending of the competitive bid price and the prior default generation supply price to "... mitigate any effect of an abrupt or significant change ..." in the standard service offer ("SSO") price. Anything that the Commission might do pursuant to Section 4928.143, Revised Code, is subject to rejection by the electric distribution utility ("EDU") and to the "benefit in the aggregate" test. The authority provided in Section 4928.144, Revised Code, is limited

⁴ *ESP II Case*, Opinion and Order at 15-16 (August 8, 2012).

⁵ Section 4928.05, Revised Code.

to a rate or price established under Sections 4928.141 to 4928.143, Revised Code, and, if used, may increase (not mitigate) the total burden imposed on customers.

The *Second Transition Entry* also established a schedule for filing comments and invited the Commission's Staff and any interested party to file comments and reply comments to "... assist the Commission in its review of potential adverse rate impacts for customers during the transition to market based rates ...".⁶

The current Ohio Power Company electric security plan ("ESP") is scheduled to end on May 31, 2015 at which time a different method of establishing default generation supply prices may control.⁷

In a separate ongoing proceeding,⁸ the Commission is presently wrestling with the predictable (and predicted) consequences of the "energy-only" auction that was approved in the *ESP II Case*. According to the Opinion and Order in the *ESP II Case*, the energy-only auction is supposed to "... facilitate a smoother transition to a full energy auction".⁹

⁶ *Second Transition Entry* at 1. On July 26, 2013 and in response to a motion for extension of the deadlines for filing comments filed by the Commission's Staff on the same day, the Attorney Examiner reset the dates for comments and reply comments to August 12, 2013 and September 3, 2013, respectively.

⁷ While the Commission has been proceeding as though a competitive bid process ("CBP") will completely control the pricing of default generation supply beginning June 1, 2015, it is unclear whether Ohio Power Company shares this vision. For example, at page 2 of the application filed in *In the Matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support Its Standard Service Offer*, Case No. 12-3254-EL-UNC (hereinafter referred to as the "*Contested Bid Process Case*"), Ohio Power Company stated: "After termination of the ESP II term, the Commission agreed that the Company should competitively procure both energy and capacity effective June 1, 2015." (emphasis added).

⁸ *Contested Bid Process Case*. This contested proceeding was initiated on December 21, 2012 by Ohio Power Company's filing of an application.

⁹ *ESP II Case*, Opinion and Order at 39 (August 8, 2012). Beginning at page 39, the Opinion and Order rejects proposals to slow the movement to competitive auctions because of the importance of customers being able to take advantage of market-based rates. Nonetheless, the Commission put the responsibility for developing the CBP in the hands of Ohio Power Company. Notwithstanding the "... importance of

In another separate proceeding,¹⁰ the Commission is conducting an investigation (initiated in December 2012) regarding the health, strength and vitality of the competitive retail electric service market and actions that the Commission may take to enhance the health, safety and vitality of that market.

And in numerous other separate proceedings,¹¹ the Commission is or will be considering how and when to permit Ohio Power Company to further adjust electric bills through the operation of the numerous riders.

Additionally, many of the Commission's Ohio Power Company-related rate increase decisions are being contested through appeals that are presently before the Ohio Supreme Court.

As the Commission knows, it is the position of the Industrial Energy Users-Ohio ("IEU-Ohio") that the unique and *ultra vires* authorization of a second transition to market-based rates for Ohio Power Company, through the *ESP II Case*, was unreasonable and unlawful. More specifically, the Commission authorized the imposition of above-market and non-bypassable generation-related charges on Ohio Power Company's customers. The above-market and non-bypassable charges make customers responsible for the business and financial risks of Ohio Power Company's competitive generation business and erect economic barriers between customers and the lower electric bills that are otherwise available. The rate increase consequences landed on customers served by competitive retail electric service ("CRES") providers, as

customers being able to take advantage of market-based rates ...", the numerous contested issues raised by Ohio Power Company's application in the *Contested Bid Process Case* have not been resolved. *Id.*

¹⁰ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI.

¹¹ The Commission's present layered and disconnected case-by-case approach to resolving dynamically interrelated issues increases the risk of adverse rate and total bill impacts.

well as customers not obtaining such supply from a CRES provider and will, if not terminated by the Ohio Supreme Court, continue to negatively affect such customers well beyond the term of the ESP approved in the *ESP II Case*.

II. COMMENTS

At the time of the decision in the *ESP II Case*, Ohio law said (and still says) that the transition to market for the generation function of Ohio Power Company's business had to be complete by the end of 2005 if not sooner¹² and that Ohio Power Company's generation business had to be fully on its own in the competitive market.¹³ In other words, the Commission's decision in the *ESP II Case* ignored fundamental commands from the General Assembly. And, as a consequence, Ohio Power Company's shopping and non-shopping customers are paying a heavy price in the form of above-market and non-bypassable generation-related charges.¹⁴ Thus, this proceeding essentially invites interested parties to assist the Commission in identifying means of mitigating the adverse rate impacts created by the decision in the *ESP II Case*. In any event, the nature and extent of any future lawful¹⁵ mitigation of the unnecessary damage caused

¹² Section 4928.40, Revised Code.

¹³ Section 4928.38, Revised Code.

¹⁴ The consequences extend to customers obtaining electric service pursuant to reasonable arrangements. For example, Ormet Corporation recently asserted that the base cost of electricity under Ohio Power Company's GS-4 rate schedule (before the reasonable arrangement discounts) was \$39.66 per megawatt-hour ("MWh") in 2009 and that the base cost increased to an average of \$57.99 per MWh in the first quarter of 2013, an increase of 46% over the 2009 base cost. *In Re Ormet Corporation, et al.*, Emergency Motion of Debtors for Entry of an Order Authorizing Debtors to Curtail Operations and Granting Related Relief at page 4, United States Bankruptcy Court for the District of Delaware, Case No. 13-10334 (MFW) (July 15, 2013). But for the non-bypassable generation-related charges approved by the Commission in the *ESP II Case*, much of this significant increase would be avoidable by obtaining generation supply from a CRES provider or by Ormet acting as its own load serving entity.

¹⁵ The Commission has not identified any legal authority that may allow the Commission to mitigate adverse rate impacts of Ohio Power Company's second transition to market based-rates. Since a transition to market-based rates necessarily means that a competitive retail electric service is involved and the General Assembly has removed the Commission's supervisory and regulatory authority over such

by the *ESP II Case* cannot be determined until issues in other current and future cases are resolved.

The total bill outcomes produced by all the moving parts of the current and past Ohio Power Company ESPs, including the effect of non-bypassable charges to collect delayed rate increases, are presently unknown. Beginning June 1, 2015, Ohio Power Company's next SSO [which may be proposed in the form of an ESP or the alternative market rate offer ("MRO")] will, as things presently stand, likely affect the electric bills of shopping and non-shopping customers and it is presently unknown. It is not currently possible to identify any means which might be lawfully applied to "... mitigate any potential adverse rate impacts from the shift to market based rates ..." ¹⁶ because the extent and nature of adverse rate impacts are presently unknown.

From a qualitative perspective, IEU-Ohio also suggests that the Commission's interest in means to "... mitigate any potential adverse rate impacts from the shift to market based rates ..." ¹⁷ should include an explicit bias for market-based means. For example, aggregation and competitive sourcing of generation supply could work to mitigate the adverse rate impacts of Ohio Power Company's current and next SSO on residential customers receiving assistance from the Universal Service Fund ("USF"). Common sense and Ohio's pro-competitive policies suggest that market-based

service (except in very limited circumstances), questions about the Commission's legal authority should not be taken lightly. Section 4928.142(E), Revised Code, gives the Commission circumstance-specific authority to modify the proportionate blending of the competitive bid price and the prior default generation supply price to "... mitigate any effect of an abrupt or significant change ..." in the SSO price. Anything that the Commission might do pursuant to Section 4928.143, Revised Code, is subject to an EDU's rejection and the "benefit in the aggregate" test. The authority provided in Section 4928.144, Revised Code, is limited to a rate or price established under Sections 4928.141 to 4928.143, Revised Code, and, if used, may increase the total burden imposed on customers.

¹⁶ *Second Transition Entry* at 1.

¹⁷ *Id.*

approaches must be applied when they can effectively and lawfully serve the public interest while ensuring the effectuation¹⁸ of the policies in Section 4928.02, Revised Code.

Respectfully submitted,

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¹⁸ Section 4928.06, Revised Code.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 12th day of August 2013, *via* electronic transmission, hand-delivery or first class mail, postage prepaid.

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**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/12/2013 12:30:33 PM

in

Case No(s). 13-1530-EL-UNC

Summary: Comments of the Industrial Energy Users-Ohio electronically filed by Mr. Samuel C. Randazzo on behalf of INDUSTRIAL ENERGY USERS-OHIO