

**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.)

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

On August 12, 2013, several parties submitted comments regarding how the Public Utilities Commission of Ohio (“PUCO”) should determine the rates that Ohio Power Company (“AEP Ohio” or “Utility”) will charge to customers as payment for the Utility’s cost of acquiring the electricity that it offers to those customers. In its Comments, AEP Ohio contends that the scope of this proceeding is limited to the design of customers’ rates for AEP Ohio’s energy-only auctions during the current ESP period – through May 31, 2015.¹ According to AEP Ohio, the PUCO cannot address adverse rate impacts for customers that may result from the 100% combined energy and capacity auctions for service commencing on June 1, 2015.² AEP Ohio also argues that the 12% cap on rate increases to any customer, that the PUCO established in AEP Ohio’s Electric Security Plan (“ESP”) proceeding, adequately protects customers from adverse rate impacts through the current ESP period.³

¹ AEP Ohio Comments at 1-2.

² *Id.*

³ AEP Ohio Comments at 4-6.

While AEP Ohio seeks to limit the scope of this proceeding, Interstate Gas Supply (“IGS”) would have the PUCO dramatically expand the scope of the proceeding to revisit how the Standard Service Offer is determined. IGS contends that the PUCO should implement a retail auction.⁴

As discussed below, the PUCO is not limited in this proceeding to the design of customers’ rates for the energy-only auctions or to addressing adverse rate impacts entirely through the 12% cap on rate increases to customers. However, this proceeding is not an appropriate forum for revisiting how the Standard Offer is provided to customers. The PUCO should reject both AEP Ohio’s and IGS’s recommendations.

In keeping with the true scope of this case, the PUCO should order AEP Ohio to submit a specific proposal, with supporting testimony, for review by parties and the PUCO. In that proposal, AEP Ohio should be required to address the potential adverse rate impacts on customers that may result from AEP Ohio’s energy-only and energy-and-capacity auctions, including adverse impacts on residential customers.

FirstEnergy Solutions (“FES”) has offered its own rate design proposals. Those proposals should not be considered until after AEP Ohio has put forth its proposal in this proceeding.

There should be a procedural schedule established for this case. That schedule should include: the testimony to be filed by AEP Ohio; followed by ample opportunities for discovery; filing of testimony by the PUCO Staff and intervenors; hearings; and briefs for the PUCO’s consideration.

⁴ IGS Comments at 3-10.

II. REPLY COMMENTS

A. The PUCO Should Consider Rate Design Proposals For Protecting Customers As Appropriate For The Scope Of This Case And Reject AEP Ohio's Position That These Important Customer Issues Should Be Excluded.

In AEP Ohio's ESP proceeding, the PUCO approved a modified ESP effective through May 31, 2015. The ESP plan includes both a "commitment to conduct an energy auction for 100 percent of the SSO load for delivery in January 2015" and a commitment to "conduct a competitive bid procurement (CBP) process to commit to an energy and capacity auction to service its entire SSO load" by June 1, 2015.⁵ In its Opinion and Order, the PUCO specifically adopted this plan and stated, with respect to the June 1, 2015 energy and capacity auction, that the "dates are appropriate and should be maintained."⁶

AEP Ohio, however, contends that the scope of this proceeding is limited to the design of rates for AEP Ohio's energy-only auctions during the current ESP period – through May 31, 2015. According to AEP Ohio, the PUCO cannot act to protect customers by addressing the design of rates for the 100% combined energy and capacity auctions for service commencing on June 1, 2015.

In its Comments, AEP Ohio states that "the inquiry here can only relate to the current ESP term and cannot relate to the SSO plan that will commence in June of 2015, which itself will establish rates going forward from that date."⁷ AEP Ohio thus argues

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. 11-0346-EL-SSO, Opinion and Order at 38 (PUC Ohio August 8, 2012) ("AEP ESP Order"), citing AEP-Ohio Exh. 101 at 19-21.

⁶ *Id.* at 40.

⁷ AEP Comments at 1-2.

that the PUCO should not discuss rate impacts on its 1.46 million customers, for their service commencing on June 1, 2015.⁸

AEP Ohio's position against customer protection is wrong. Although the rates established in the ESP proceeding are rates that will be effective through May 31, 2015, they represent a transition to 100% competitive bid auction rates that will commence the day after this ESP period ends. In its ESP Order, the PUCO stated that this proceeding was being opened to "consider means to mitigate any potential adverse rate impacts for customers upon rates being set by auction."⁹ The PUCO did not indicate that this proceeding was intended to address adverse rate impacts from the energy-only auctions. Consequently, it must be presumed the PUCO meant to address both energy-only and energy and capacity auctions in this proceeding. Moreover, it is essential in evaluating the best means to moderate customer impacts during this transition period to consider the end-point of the transition. Thus, AEP Ohio's contention--that the PUCO should not evaluate customer rate impacts that will occur the day after this ESP plan is completed - is contrary to the PUCO's Order and would undermine the goal of this proceeding to transition to rates that will be effective June 1, 2015.

Finally, AEP Ohio's commitment to establish fully competitive energy and capacity auction rates effective June 1, 2015, makes the end-point of this transition one which is certain.¹⁰ While the precise design of the energy and capacity auction will not be known until the PUCO approves such an auction, the PUCO can moderate the customer impacts that will occur at that time by considering in this proceeding the likely

⁸ *Id.*

⁹ AEP ESP Order at 16.

¹⁰ AEP ESP Order at 5.

design of customer SSO rates resulting from the 100% capacity and energy auction rates. With AEP Ohio's input, rates in the energy-only auctions can be established which moderate rate impacts that will take effect on June 1, 2015.

B. The PUCO Should Reject AEP Ohio's Position That The 12% Cap On Rate Increases To Individual Customers (As Established In The ESP Order) Is Sufficient To Mitigate Potential Adverse Rate Impacts On Customers In This Case.

AEP Ohio has also taken the position that its proposal for a 12% rate cap in AEP Ohio's Competitive Bidding Process ("CBP") case¹¹ could be satisfactorily applied in this case to address the rate concerns raised by the parties.¹² Under AEP Ohio's proposal, if the auction results in increased customer rates by more than the 12% rate cap, the increased amounts over the rate cap would be deferred and collected from all customers, with carrying charges.¹³ AEP Ohio states that this would be accomplished by measuring the auction phase-in rider and fixed cost rider relative to the June 2013 fuel adjustment clause rates.¹⁴

AEP Ohio's recommendation that the PUCO extend the 12% rate cap to the auction rates should be rejected. AEP's proposal may create substantial deferrals. Those deferrals could significantly increase the total costs to customers, especially given the inclusion of carrying charges for customers to pay. Moreover, AEP Ohio's proposed deferral may amount to an unreasonable subsidy by future customers to current

¹¹ *In the matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its SSO*, Case No.12-3254-EL-UNC (Filed December 21, 2012).

¹² AEP Ohio Comments at 4-6.

¹³ *Id.* at 4.

¹⁴ *Id.*

customers.¹⁵ The purpose of a fuel clause is to allow the utility to charge customers for all fuel-related costs at the time period when these costs occur. AEP Ohio's proposal, to have its future customers pay potentially large subsidies to the benefit of its current customers, is inappropriate when regular fuel clause adjustment can avoid substantial subsidies. And there is no reason that rates should be implemented which require such deferrals if rates can be designed to avoid them. As OCC stated in its initial comments, it may well be that a revenue-neutral transition could be implemented through a proportionate adjustment to all rates.¹⁶

Instead, the 12% rate cap applicable to FAC costs and other costs is at best temporary relief from adverse rate impacts. It may be used to hide real and serious rate design issues or to delay a more appropriate resolution of these rate design issues. In any event, it will impose additional costs (and likely unnecessary costs) on customers who are not responsible for them.

AEP Ohio claims its proposal offers simplicity, practicality and efficiency. Whether or not its claims are true, those claims do not outweigh the unfairness of AEP Ohio's proposal¹⁷ for Ohio customers who potentially would pay significant costs if it were adopted. As OCC has recommended, the PUCO should commence its evaluation of

¹⁵ Although the PUCO has found in a previous case that a "well-considered and approved regulatory asset accrual authorization" will shift costs from current customers to future customers, the magnitude of the deferral and the burdens to current and future customers must be balanced. *See In the Matter of the Joint Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Generation Charge Adjustment Rider; In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 05-704-EL-ATA; Case No. 05-1125-EL-ATA; Case No. 05-1126-EL-AAM; Case No. 05-1127-EL-UNC, 2006 Ohio PUC LEXIS 6, Opinion and Order at 27-28 (PUC Ohio January 4, 2006), *aff'd in part, reversed in part, and remanded Elyria Foundry Co. v. Public Utilities Commission Of Ohio*, 114 Ohio St. 3d 305, 317; 2007 Ohio 4164; 871 N.E.2d 1176, 1189; 2007 Ohio LEXIS 1950 (Sup. Ct. Ohio August 29, 2007).

¹⁶ OCC Comments at 5.

¹⁷ AEP Ohio Comments at 5-6

this issue by having AEP Ohio submit a rate design proposal, with supporting testimony.¹⁸ Discovery, PUCO Staff and intervenor testimony and evidentiary hearings should follow.¹⁹

C. The PUCO Should Reject IGS' Proposal To Change The Auction To A Retail Auction (Where Customers Would Be Arbitrarily Assigned to Marketers) As Far Beyond The Scope Of This Proceeding.

In initiating this proceeding, the PUCO identified the scope -- to address adverse rate impacts on customers from the CBP auctions. Despite this scope and the ESP Order's plain adoption of an auction to set the price of the standard offer,²⁰ IGS argues for a "retail auction" in this proceeding. IGS claims that "...consistent with its Order issued in the AEP ESP Case, the Commission should implement a retail auction to serve AEP's remaining SSO customers . . ."²¹

But the PUCO declined to even address IGS's retail auction proposal in AEP Ohio's ESP case and thus implicitly declined to adopt it. IGS's recourse, under R.C. 4903.10, was to seek rehearing in the ESP case to try to change the type of auction to one that more favors marketers. That recourse has long passed for purposes here.

IGS's attempt to have the PUCO review its retail auction proposal in this proceeding is inappropriate and beyond the scope of this proceeding. IGS's proposal is not a 'rate design' proposal directed at adverse rate impacts. While IGS claims that a retail auction will help AEP Ohio's customers avoid significant rate impacts, that claim is unsubstantiated. Moreover, IGS's proposal assumes an entirely different market structure

¹⁸ OCC Comments at 6-8

¹⁹ *Id.*

²⁰ *AEP ESP Order at 38-40.*

²¹ IGS Comments at 2.

than the PUCO adopted in its Opinion and Order in AEP Ohio's ESP case. The PUCO should reject IGS's Comments as unrelated to the issues presented in this case.

D. FES's Proposed Methodology For Addressing Adverse Rate Impacts Is Premature In The Absence Of A Proposal From AEP Ohio.

FES recognizes that AEP Ohio has "provided little information as to how the auction results would be translated to retail rates." FES then makes a number of proposals for the design of auction-based rates.²² For energy costs, FES suggests alignment with actual costs, payment of auction-based market prices adjusted for losses, gross-ups for CAT and uncollectibles, and blending with the total FAC.²³ For capacity costs, FES suggests allocation based on coincident peak demand and blending with current generation rates during the transition period.²⁴ FES also proposes eliminating intra-class and intra-zonal subsidies which it says "serve to mask price signals and distort customer shopping decisions."

While some aspects of FES's proposal may warrant consideration, its proposal is premature in the absence of a rate design proposal from AEP Ohio. A proposal from AEP Ohio would provide a needed reference point for judging the merits of FES's proposed methodologies. This proceeding cannot adequately allow for addressing the concerns raised by FES until AEP Ohio files its proposed rate design and transitional methodology. The PUCO should entertain FES's proposals only in the context of a specific rate design advanced by AEP Ohio as put forth in this proceeding and subjected to scrutiny through discovery and hearings.

²² FES Comments at 8-9.

²³ FES Comments at 9.

²⁴ *Id.*

III. CONCLUSION

The PUCO should reject AEP Ohio's position to limit this proceeding to consideration of rate impacts on customers from energy-only auctions in light of the PUCO's Order in the ESP proceeding to consider mitigation of adverse rate impacts upon rates being set by auction, without limitation. The PUCO should address in this case potential adverse rate impacts on customers for the transition to 100% capacity and energy auctions to commence with service on June 1, 2015.

Further, AEP Ohio's proposal to incorporate its 12% rate cap into the energy-only auctions as the means of addressing adverse rate impacts should be rejected. AEP Ohio should be directed to come forth with a rate design proposal that addresses the transition to a 100% capacity and energy competitive bid auction, followed by discovery, testimony and hearings in this proceeding. The PUCO should deny IGS's efforts to revisit a retail auction design that the PUCO did not adopt when IGS made the recommendation in the AEP ESP proceeding.

Finally, consideration of FES's specific rate design proposals should be deferred until AEP puts forth a specific proposal in this proceeding.

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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 electronic transmission to the persons listed below, this 6th day of September, 2013.

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