

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Establish)	Case No. 12-3255-EL-RDR
Initial Storm Damage Recovery Rider)	
Rates.)	

**MEMORANDUM CONTRA OHIO POWER COMPANY'S MOTION TO
RECORD A CARRYING COST ON THE 2012 STORM RECOVERY COSTS
SUBJECT TO THE AMOUNT DETERMINED AT THE OUTCOME OF THE
PROCEEDING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-7964 (Etter direct)
etter@occ.state.oh.us

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, Ohio 43215
Telephone: (614) 365-4124
bojko@carpenterlipps.com

Outside Counsel for the
Office of the Ohio Consumers' Counsel

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	3
A. AEP Ohio’s Motion Is Procedurally Defective Because It Seeks Accounting Authority That Should Be the Subject of an Application, Not a Motion.	4
B. AEP Ohio Misconstrues the Facts in This Case and in the <i>ESP 2</i> Case Which Established the Storm Cost Collection Mechanism.	5
C. AEP Ohio’s Motion Seeks to Change the Process That Was Approved in the <i>ESP 2 Order</i> , and Thus Amounts to an Untimely Application for Rehearing of the Order.	9
D. If the PUCO Authorizes Carrying Charges, Then those Charges Should Not Be Calculated Using AEP Ohio’s Weighted Average Cost of Capital.	10
III. CONCLUSION	11

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Establish) Case No. 12-3255-EL-RDR
Initial Storm Damage Recovery Rider)
Rates.)

**MEMORANDUM CONTRA OHIO POWER COMPANY’S MOTION TO
RECORD A CARRYING COST ON THE 2012 STORM RECOVERY COSTS
SUBJECT TO THE AMOUNT DETERMINED AT THE OUTCOME OF THE
PROCEEDING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In its revised second Electric Security Plan (“ESP”) application, AEP Ohio proposed that its base rates include \$5 million in operation and maintenance (“O&M”) storm expenses.¹ AEP Ohio also proposed to create a storm damage recovery mechanism to collect any incremental distribution O&M expenses incurred due to major storm events.² In its *ESP 2 Order*, the Public Utilities Commission of Ohio (“PUCO”) approved a mechanism for AEP Ohio to collect distribution O&M storm costs above the \$5 million threshold, but modified AEP Ohio’s proposal because it was “open-ended.”³

¹ *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 (“*ESP 2*”), AEP Ohio Ex. No. 110 at 20. At the time, AEP Ohio was comprised of two operating companies – Columbus Southern Power and Ohio Power Company. Since then, the two operating companies merged and the surviving entity operates as Ohio Power Company d/b/a AEP Ohio.

² *Id.*

³ *Id.*, Opinion and Order (August 8, 2012) (“*ESP 2 Order*”) at 68.

The PUCO also determined that the issue of carrying charges on the incremental storm damage costs was “premature.”⁴

On December 21, 2012, AEP Ohio filed an Application seeking to collect from customers approximately \$61 million in O&M costs purportedly related to three storms that occurred in June and July 2012. On August 22, 2013, AEP Ohio filed a motion seeking authority to record carrying costs at the Weighted Average Cost of Capital (“WACC”) on the entire amount at issue in this proceeding. AEP Ohio bases its motion on the assumption that it will probably collect the entire \$61 million at issue in this proceeding.⁵ The Office of the Ohio Consumers’ Counsel (“OCC”) opposes AEP Ohio’s motion.⁶ The PUCO should not permit AEP Ohio to collect carrying costs on the storm expenses.

There are several reasons why the PUCO should deny the motion. First, AEP Ohio’s attempt to establish carrying charges through a motion in this proceeding is procedurally defective. AEP Ohio should have filed an application for accounting authority under 4905.13.

Second, AEP Ohio’s argument is based on the erroneous assumption that it is entitled to collect the full amount at issue in this proceeding. AEP Ohio ignores the fact that the mechanism established in the *ESP 2 Order* allows collection of only those incremental distribution storm costs that are determined to be reasonable and prudent.⁷

⁴ Id. at 69.

⁵ AEP Ohio Motion at 5 (“Financial Accounting Standards Board (FASB) Accounting Standards Codification 980 requires a probability of recovery to record such a regulatory asset”).

⁶ OCC files this Memorandum Contra pursuant to Ohio Adm. Code 4901-1-12(B)(1).

⁷ *ESP 2 Order* at 69.

Despite AEP Ohio's desires, determining the reasonableness and prudence of its O&M storm expenses requires more than a cursory review.

Third, AEP Ohio's motion seeks to change the process that was approved in the *ESP 2 Order*. This amounts to an untimely application for rehearing of the *ESP 2 Order*.

Fourth, if the PUCO requires customers to pay carrying charges (which OCC does not recommend) on any costs that it determines are reasonable and prudent, then the amount of carrying charges should not be calculated using AEP Ohio's WACC. The storm expenses are O&M expenses, not capital expenses, and thus using the WACC – which would increase the amounts ultimately collected from customers – to calculate carrying charges is inappropriate. Instead, any carrying charges should be calculated at a rate such as AEP Ohio's long term cost of debt.

II. ARGUMENT

At the outset, OCC notes that AEP Ohio cites Ohio Adm. Code 4901-1-15 as the authority for its filing.⁸ That rule governs interlocutory appeals of rulings made by the PUCO's legal director, deputy legal director or an attorney examiner. Under the PUCO's rule, interlocutory appeals must be filed within five days of the ruling being appealed.⁹ But, AEP Ohio filed its motion on August 22, 2013 – sixteen days after the August 6, 2013 Entry (“August 6 Entry”) about which AEP Ohio complains in its motion. AEP Ohio should have filed its appeal by August 12, 2013,¹⁰ but it did not.

⁸ AEP Ohio Motion at 1.

⁹ Ohio Adm. Code 4901-1-15(C). An extension of time for filing an interlocutory appeal may be granted for extraordinary circumstances, but AEP Ohio did not seek such an extension.

¹⁰ August 11 was a Sunday, and under Ohio Adm. Code 4901-1-07(A) any interlocutory appeal of the August 6 Entry should have been filed by August 12, 2013 (as was OCC's interlocutory appeal on another issue).

If the reference to Ohio Adm. Code 4901-1-15 in AEP Ohio's motion was merely a typographical error, however, then AEP Ohio cites no law, rule or order that provides a basis for the motion. AEP Ohio also does not point to a standard for determining whether the motion should be granted, and makes no claim that it has given the PUCO any basis – even good cause – for granting the motion. As discussed herein, AEP Ohio has presented no valid reason for the PUCO to grant the motion, and the motion should be denied.

A. AEP Ohio's Motion Is Procedurally Defective Because It Seeks Accounting Authority That Should Be the Subject of an Application, Not a Motion.

In the *ESP 2 Order*, the PUCO approved the deferral of AEP Ohio's incremental storm expenses above the \$5 million threshold.¹¹ The PUCO did not, however, authorize AEP Ohio to record or collect carrying charges on those deferrals.¹² Through its motion, AEP Ohio is seeking accounting authority to establish a carrying charge on the storm costs at issue in this proceeding and to record the carrying charge as a regulatory asset.¹³ Making this request through a motion is improper.

If AEP Ohio had wanted to address the issue of carrying charges in this proceeding, it should have made its request through an application for accounting authority under 4905.13. AEP Ohio's request to establish the carrying charge through a motion in this proceeding is procedurally defective, and the PUCO should deny AEP Ohio's request.

¹¹ *ESP 2 Order* at 68.

¹² See *id.* at 68-69.

¹³ See AEP Ohio Motion at 5.

B. AEP Ohio Misconstrues the Facts in This Case and in the *ESP 2* Case Which Established the Storm Cost Collection Mechanism.

In its memorandum in support of its motion, AEP Ohio sets out what it perceives to be the facts regarding the establishment of the storm rider mechanism in the *ESP 2 Order*. But AEP Ohio’s description of the storm rider mechanism process is overly simplistic and self-serving.

First, AEP Ohio assumes that it should receive carrying charges on the entire amount – \$61 million – it is claiming as storm restoration expenses.¹⁴ This assumption is based on the PUCO’s approval of the storm rider mechanism in the *ESP 2 Order*.¹⁵ But the *ESP 2 Order* places the burden of proof in this proceeding on AEP Ohio to show that all storm restoration costs were prudently incurred and reasonable.¹⁶ Thus, AEP Ohio is not automatically entitled to collect the full amount of money it seeks in this proceeding. It will only be allowed to collect prudently incurred and reasonable expenses.

In a case decided last year, the Supreme Court of Ohio examined the burden of proof for a utility to show that its expenses to repair storm damage were prudently incurred and reasonable.¹⁷ The Court emphasized that in order to reduce or disallow the collection of storm costs from customers, “[t]he Commission did not have to find the negative: that the expenses were imprudent.”¹⁸ Instead, *the utility* has to prove a positive point – that its expenses had been prudently incurred – in order to collect those costs from

¹⁴ AEP Ohio Motion at 5.

¹⁵ *Id.*

¹⁶ *ESP 2 Order* at 69.

¹⁷ *In Re Application of Duke Energy Ohio, Inc., to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, 131 Ohio St.3d 487, 2012-Ohio-1509, 967 N.E.2d 201, ¶ 8.

¹⁸ *Id.*

customers.¹⁹ Accordingly, if the evidence is “inconclusive or questionable,” the PUCO should reduce or disallow the collection of those costs from the utility’s customers.²⁰

AEP Ohio has not demonstrated that the expenses were reasonable and prudently incurred. Yet AEP Ohio asks the PUCO to determine for accounting purposes that collection of the \$61 million from customers is probable.²¹ The record does not support such a determination.

Instead of providing evidence to meet its burden, AEP Ohio chose to make a superficial showing of the costs it is claiming for collection through the storm rider. Specifically, the Application contains no testimony, workpapers or documentation to support AEP Ohio’s claims regarding the costs it incurred in restoring service as a result of storm damage. Nothing in the record shows that AEP Ohio has met, or will meet, its burden of proof. Thus it is premature for the PUCO to allow AEP Ohio to record carrying charges for any of the O&M storm costs at issue in this proceeding based on the probability of success in this case.

Second, AEP Ohio states that it expected timely recovery of the storm expenses “because the Commission had already approved the storm rider mechanism that would provide relief at the end of the calendar year and included a process that had comments due within 60 days for Commission action.”²² The *ESP 2 Order*, however, did not require the PUCO to act within a specified time period on the Staff’s and intervenors’ comments regarding an application to collect incremental O&M storm costs.

¹⁹ Id.

²⁰ Id.

²¹ AEP Ohio Motion at 5.

²² Id. at 3.

Instead, after the initial comment phase, the next step is to try to resolve the issues raised in the comments.²³ If not all the issues can be resolved through this phase of the process, “an evidentiary hearing will be scheduled, and parties will have the opportunity to conduct discovery and present testimony before the Commission.”²⁴ Simply, the *ESP 2 Order* does not mandate a timeframe within which the PUCO must act. This reinforces the need for a thorough review of the documentation supporting an application – not the cursory process that AEP Ohio suggests is a part of the *ESP 2 Order*.

Third, AEP Ohio complains that “[a] prolonged debate on whether the Company was entitled to even receive recovery of costs for major storm responses was not expected to be a topic when the Commission established the mechanism.”²⁵ But AEP Ohio mischaracterizes the “debate” that has been going on in this proceeding. Parties have not challenged whether AEP Ohio should collect *some* of the expenses it incurred during restoration efforts from storm damage to its distribution system. Rather, the “debate” centers on the level of AEP Ohio’s incremental expenses above the \$5 million threshold imbedded in base rates.

Specifically, the discussion has focused on the reasonableness and prudence of some of the incremental O&M expenses AEP Ohio claims to have incurred for storm restoration. That is exactly what the PUCO directed in the *ESP 2 Order*: “In the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating all the costs were prudently incurred and reasonable.”²⁶

²³ See *ESP 2 Order* at 69.

²⁴ *Id.*

²⁵ AEP Ohio Motion at 5.

²⁶ *ESP 2 Order* at 69.

AEP Ohio misrepresents the facts in an effort to portray itself as a victim in this proceeding. The PUCO should not be swayed by AEP Ohio's ploy.

Fourth, AEP Ohio states that "[t]he Commission recently granted a second lengthy extension in the procedural schedule without establishing a corresponding carrying charge on the 2012 costs to account for the delay. Specifically, on August 6, 2013, the Commission granted OCC's motion to extend the procedural schedule even further delaying a hearing date until December 2013, almost a year after the filing of the application."²⁷ This statement is interesting given that before the August 6 Entry (cited to by AEP Ohio), there was no hearing date for this proceeding. Thus, AEP Ohio's presumption that OCC's motion seeking a procedural schedule, and the August 6 Entry, somehow "delayed" this proceeding is misplaced.

Although AEP Ohio may disagree with the hearing date established in the August 6 Entry,²⁸ nothing in this proceeding indicates that holding a hearing on the matter and affording parties their due process rights, as contemplated by the *ESP 2 Order*, has somehow delayed any part of the process. If AEP Ohio felt strongly that the December 9, 2013 hearing date is detrimental to AEP Ohio, it should have taken an interlocutory appeal of the August 6 Entry establishing that date.²⁹ But AEP Ohio filed no such appeal within the timeframe required by the PUCO's rules.

In addition, AEP Ohio wrongly presumes that the August 6 Entry should have authorized AEP Ohio to record a carrying charge. In fact, no such presumption exists.

²⁷ AEP Ohio Motion at 3.

²⁸ In its first letter regarding the status of discussions to resolve the issues in this proceeding, AEP Ohio suggested a late August hearing date. Correspondence – Status Letter (July 1, 2013) at 2. That letter prompted OCC to file its July 19 Motion asking the PUCO to establish a procedural schedule.

The PUCO specifically avoided the issue of carrying charges in the *ESP 2 Order*. Thus, the PUCO was not obligated to authorize AEP Ohio to record a carrying charge when the hearing date was set.

AEP Ohio's motion is based on false information and revisionist history. The PUCO should deny the motion.

C. AEP Ohio's Motion Seeks to Change the Process That Was Approved in the *ESP 2 Order*, and Thus Amounts to an Untimely Application for Rehearing of the Order.

In the *ESP 2* proceeding, AEP Ohio did not specify the carrying charge rate for the storm expense mechanism. OCC raised this issue in that proceeding,³⁰ but the PUCO declined to address the appropriate carrying charge for storm expense deferrals.³¹ Instead, referring to the process established for the storm rider mechanism, the PUCO stated that OCC's concerns were "premature."³²

The authority to record carrying charges before the PUCO's final determination of the amount of reasonable and prudent incremental storm restoration costs was not part of the storm rider process adopted in the *ESP 2 Order*. If AEP Ohio wanted to include such a provision in the storm rider process, it should have proposed carrying charges on storm costs as part of its *ESP 2* application, but it did not. AEP Ohio also did not seek rehearing of the *ESP 2 Order* on the issue. AEP Ohio failed to make such filings and is

²⁹ OCC filed an interlocutory appeal of the Entry, not because of the hearing date but because of other issues concerning the procedural schedule.

³⁰ *ESP 2*, Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel and the Appalachian Peace and Justice Network (June 29, 2011) at 97-98.

³¹ *ESP 2 Order* at 69.

³² *Id.*

precluded from doing so now.³³ AEP Ohio is essentially seeking rehearing of the process established in the *ESP 2 Order* – long past the time for rehearing of that process.

AEP Ohio should not be allowed to change the storm rider process, simply because the process is not acceptable to AEP Ohio. The PUCO should deny AEP Ohio's motion.

D. If the PUCO Authorizes Carrying Charges, Then those Charges Should Not Be Calculated Using AEP Ohio's Weighted Average Cost of Capital.

In its motion, AEP Ohio asks the PUCO to approve the recording of a carrying charge for storm expenses based on AEP Ohio's WACC. As discussed above, AEP Ohio has not provided a basis for the PUCO to authorize the recording of carrying charges in this proceeding. Nevertheless, if the PUCO authorizes carrying charges (which OCC does not recommend) in its Order in this proceeding, then such charges should not be calculated using AEP Ohio's WACC. The storm damage mechanism is not meant to collect capital costs incurred as a result of a major storm.³⁴ Instead, such capital costs would become a component of the Distribution Investment Rider or would be included in rate base in the next distribution rate case.³⁵

The storm rider is designed to collect O&M costs. AEP Ohio initiated this proceeding to collect from its customers additional O&M expenses (above the \$5 million threshold approved in the *ESP 2 Order*) allegedly incurred because of the three storms.³⁶ Thus, it would be more appropriate to use a lower rate – such as AEP Ohio's cost of

³³ Under R.C. 4903.10, an application for rehearing must be filed "within thirty days after the entry of the order upon the journal of the commission."

³⁴ See *ESP 2*, AEP Ohio Ex. No. 110 at 21.

³⁵ *Id.*

³⁶ See AEP Ohio Motion at 5.

long-term debt – to calculate carrying charges on the costs at issue in this proceeding. Given that AEP Ohio is not seeking to collect capital costs in this proceeding, it should not be allowed to record carrying charges at the WACC rate on the amount of storm expenditures the PUCO ultimately determines in this proceeding to be reasonable and prudent.

III. CONCLUSION

AEP Ohio's motion is replete with false assumptions, mischaracterizations of the storm rider process approved in the *ESP 2 Order* and misrepresentations about the positions of parties to this proceeding. AEP Ohio has not presented the PUCO with a sound reason to grant the motion. The PUCO should deny it.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-7964 (Etter direct)
etter@occ.state.oh.us

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, Ohio 43215
Telephone: (614) 365-4124
bojko@carpenterlipps.com

Outside Counsel for the
Office of the Ohio Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum Contra was served electronically and by first class United States mail, postage prepaid, to the persons listed below on this 6th day of September 2013.

/s/ Terry L. Etter

Terry L. Etter
Assistant Consumers' Counsel

SERVICE LIST

Werner Margard
Ryan O'Rourke
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, Ohio 43215

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

J. Thomas Siwo
Frank L. Merrill
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

Werner.margard@puc.state.oh.us
Ryan.orourke@puc.state.oh.us
stnourse@aep.com
mjsatterwhite@aep.com
tsiwo@bricker.com
fmerrill@bricker.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com

Steven T. Nourse
Matthew J. Satterwhite
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Mark S. Yurick
Zachary D. Kravitz
Taft, Stettinius & Hollister, LLP
65 E. State Street, Suite 1000
Columbus, Ohio 43215

Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
Joseph E. Olier
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215-4228

jkylercohn@BKLawfirm.com
myurick@taftlaw.com
zkravitz@taftlaw.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/6/2013 4:22:46 PM

in

Case No(s). 12-3255-EL-RDR

Summary: Memorandum Memorandum Contra Ohio Power Company's Motion to Record a Carrying Cost on the 2012 Storm Recovery Costs Subject to the Amount Determined at the Outcome of the Proceeding by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.