

**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)	

INITIAL BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Joseph E. Olikier
Matthew R. Pritchard
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

March 3, 2014

Attorneys for Industrial Energy Users-Ohio

**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)	

INITIAL BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

I. PROCEDURAL HISTORY

As part of its current electric security plan (“ESP”), Ohio Power Company (“AEP-Ohio”) is authorized to defer any incremental distribution expenses above or below \$5 million, per year, associated with major storm expenses.¹ Further, the Public Utilities Commission of Ohio (“Commission”) provided AEP-Ohio authority to file a separate application by December 31 of each year to secure recovery of prudently incurred and reasonable costs related to restoration of the distribution system resulting from major storms.²

AEP-Ohio filed an application commencing this proceeding and seeking major storm related costs associated with storms in 2012.³ In the application, it sought \$62 million in costs.⁴ It subsequently revised its application, reducing the storm related

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, *et al.*, Opinion and Order at 68 (Aug. 8, 2012) (ESP II Order).

² *Id.* at 68-69.

³ Application (Dec. 21, 2012).

⁴ *Id.*, Exhibit E.

costs to \$61 million.⁵ On August 22, 2013, AEP-Ohio filed a motion seeking authority to record a carrying cost at the weighted average cost of capital on the deferred major storm related costs.⁶

The Staff of the Commission (“Staff”) filed initial comments and identified \$2.4 million of deductions from AEP-Ohio’s request on May 29, 2013.⁷ On November 4, 2013, the Staff filed a nonbinding list of issues in which it increased the proposed disallowance to \$4.9 million.⁸ Additionally, the Staff recommended that the amount found recoverable be collected through a fixed charge per month assessed over a recovery period of 12 months and allocated by distribution revenue responsibility of residential and nonresidential customers.⁹

A hearing in this matter was set to commence on December 16, 2013.¹⁰ A Joint Stipulation and Recommendation (“Stipulation”) signed by AEP-Ohio, the Staff, and all intervenors except the Office of the Ohio Consumers’ Counsel (“OCC”) was filed on December 6, 2013.¹¹ On December 16, 2013, the case was called and continued in order to afford the parties additional time to propose a procedural schedule with regard to the Stipulation.¹² A hearing on the Stipulation began on January 22, 2014 and consumed four days. AEP-Ohio presented four witnesses in support of the Stipulation

⁵ Letter from Stephen T. Nourse to Barcy F. McNeil (Mar. 1, 2013).

⁶ Motion and Memorandum in Support of Ohio Power Company to Record a Carrying Cost on the 2012 Storm Recovery Costs Subject to the Amount Determined at the Outcome of the Proceeding (Aug. 22, 2013).

⁷ Comments of the Staff of the Public Utilities Commission of Ohio at 4 (May 29, 2013).

⁸ Non-Binding List of Issues of the Staff of the Public Utilities Commission of Ohio at unnumbered page 5 (Nov. 4, 2013).

⁹ *Id.*

¹⁰ Entry at 2 (Nov. 26, 2013).

¹¹ Joint Stipulation and Recommendation (December 6, 2013).

¹² Entry at 1 (December 19, 2013).

and its application. OCC presented two witnesses. At the conclusion of the hearing, the Attorney Examiner ordered the parties to submit initial and reply briefs.

II. TERMS OF STIPULATION

The Stipulation represents an agreement among the Staff, OMA Energy Group, Ohio Energy Group, the Kroger Company, the Ohio Hospital Association, Industrial Energy Users-Ohio (“IEU-Ohio”), and AEP-Ohio.¹³ Under the terms of the Stipulation, the signatory parties recommend that the Commission set the amount to be recovered at \$54.9 million.¹⁴ The recovery period is recommended to be 12 months.¹⁵ The Stipulation also recommends that carrying charges be limited to the period between April 1, 2013 and the start of collection and that the carrying charge rate be set at 5.34%.¹⁶ The proposed recovery mechanism is a fixed customer charge based on residential and nonresidential distribution revenue.¹⁷ The Stipulation further provides for AEP-Ohio to convene a meeting to discuss storm restoration practices with the intervening signatory parties.¹⁸ Finally, any further cost adjustments from vendors will be factored into the storm balance.¹⁹

III. THE COMMISSION SHOULD APPROVE THE STIPULATION UNDER THE APPLICABLE STANDARD OF REVIEW

The issue before the Commission is whether the Stipulation satisfies a three-pronged test:

¹³ Stipulation at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 4.

¹⁶ *Id.* IEU-Ohio takes no position regarding the proposed carrying charges. *Id.* at 4 n.2.

¹⁷ *Id.* at 4 and Stipulation Exhibit 2.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 4-5.

1. Is the Stipulation a product of serious bargaining among capable knowledgeable parties representing diverse interests?
2. Does the Stipulation violate any important regulatory principle or practice?
3. Is the Stipulation, as a whole, a benefit to customers and the public interest?²⁰

Based on the evidence presented at the hearing, the Commission should find that the Stipulation satisfies the three-prong test and adopt the Stipulation.

A. The Stipulation is a product of serious bargaining among capable and knowledgeable parties representing diverse interests

As noted above, the Stipulation was the result of extended negotiations among the intervenors, the Staff, and AEP-Ohio. As demonstrated by the testimony of AEP-Ohio and confirmed by a witness for OCC, the negotiating parties were capable and knowledgeable of the issues presented in this case.²¹ Further, as demonstrated by the Stipulation and testimony, the Stipulation resulted in a substantial reduction of the total revenue requested by AEP-Ohio and additional beneficial terms sought by Staff and customers.²² Thus, it is evident that the Stipulation is a product of serious bargaining among capable and knowledgeable parties.

Further, the bargaining took place among parties representing diverse interests. In addition to AEP-Ohio, Staff and intervening parties were invited and participated in the negotiations.²³ The intervening parties collectively represented large and small

²⁰ *Consumers' Counsel v. Pub. Util. Comm'n of Ohio*, 64 Ohio St.3d 123, 125 (1992).

²¹ AEP-Ohio Ex. 2 at 9; Tr. Vol. V at 897.

²² *Compare* Application at 15 to Stipulation at 3.

²³ Tr. Vol. V at 897.

commercial customers as well as residential customers.²⁴ Further, there is no evidence that any party was excluded from participating in the negotiations leading to the Stipulation.²⁵

Despite broad agreement that the negotiations were open and conducted among knowledgeable parties representing diverse interests, OCC argues that the first prong was not satisfied because OCC did not sign the Stipulation.²⁶ The first prong, however, does not require that all parties sign the Stipulation.²⁷

As discussed above, the evidence demonstrated that the Stipulation is the product of serious bargaining among capable and knowledgeable parties representing diverse interests. As a result, the first prong of the three-prong test for approval of the Stipulation is satisfied.

B. The Stipulation does not violate any important regulatory principles

The second prong of the three prong test requires a demonstration that the Stipulation does not violate any important regulatory principles. The signatory parties support a finding that the Stipulation does not violate any important regulatory principles²⁸ and such a finding is supported by the record.

²⁴ AEP-Ohio Ex. 2 at 10.

²⁵ *Time Warner AXS v. Pub. Util. Comm'n of Ohio*, 75 Ohio St.3d 229, 233 n.2 (1996).

²⁶ OCC Ex. 2A at 9-10.

²⁷ The Commission has rejected OCC's argument that the first prong is not satisfied if OCC fails to sign a stipulation when it has participated in the negotiations leading to a stipulation. *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for Continuation of its Distribution Replacement Rider*, Case No. 13-1571-GA-ALT, Opinion and Order at 10 (Feb. 19, 2014).

²⁸ Stipulation at 5.

As demonstrated by the record, the Stipulation promotes important regulatory practices and principles such as furthering the state policies set out in R.C. 4928.02.²⁹ Further, the Commission has previously approved recovery of major storm expenses in excess of \$5 million in a calendar year.³⁰ This Stipulation addresses the implementation of the Commission's decision to permit more immediate recovery of incremental costs associated with major storms that the Commission previously established.

Additionally, the Stipulation satisfies cost causation principles in the manner in which it recovers costs. As provided by the Stipulation, the approved revenue is allocated based on residential and nonresidential base distribution revenue.³¹ Because the storm repair costs relate to maintenance expenses associated with the restoration of the distribution system, the allocation is consistent with the revenue responsibility of the distribution system customers. Thus, the Stipulation's proposed allocation of revenue responsibility is aligned with cost causation principles.³²

Accordingly, the record supports a finding that the Stipulation does not violate any important regulatory principles.

C. The Stipulation, as a whole, is a benefit to customers and the public interest

The parties agreed to a "black box" settlement that reduced AEP-Ohio's request by over \$6 million. (In addition to a \$6 million reduction in the total storm expenses it requested, AEP-Ohio identified another \$129,549 in bill changes that reduced the

²⁹ AEP-Ohio Ex. 2 at 10-11.

³⁰ ESP II Order at 68.

³¹ Stipulation at 4.

³² Tr. Vol. V at 898. Without objection, the Commission has previously authorized the allocation of gridSMART costs under a similar approach that is endorsed by Staff. Comments of the Staff of the Public Utilities Commission of Ohio at 4 (May 29, 2013). See Ohio Power Company, PUCO No. 20, 2d Revised Sheet No. 484-1.

recoverable costs and committed that any further adjustments from vendors will be factored into the remaining balance due from customers.³³ The \$129,549 amount has been included in the Stipulation as a reduction in the amount to be recovered.)

Because it is a black box settlement, the Stipulation does not identify particular cost disallowances. The comments and nonbinding list of issues filed by the Staff, however, identify \$4.9 million in costs as necessary reductions to the total recoverable costs sought by AEP-Ohio.³⁴ Thus, the settlement meets and exceeds the Staff's recommended disallowance of costs identified in the application.

The parties and public also will benefit from other terms contained in the Stipulation. The recovery mechanism, a flat customer charge,³⁵ conforms with an approach similar to that used by the Commission to recover other distribution related costs arising from the gridSMART program. Further, the allocation methodology, as noted above, assigns revenue responsibility in a manner consistent with base distribution revenue responsibility. Finally, AEP-Ohio has committed to discuss storm restoration processes with the parties; this provision will provide parties an opportunity to address the restoration process.³⁶

As a result of the agreed reductions in recoverable costs, revenue allocation, and future commitments, the Stipulation, as a whole, is a benefit to customers and the public interest.

³³ Stipulation at 4-5. IEU-Oho takes no position regarding the Stipulation's treatment of carrying costs.

³⁴ Comments of the Staff of the Public Utilities Commission of Ohio at 4 (May 29, 2013); Non-Binding List of issues of the Staff of the Public Utilities Commission of Ohio at unnumbered page 5 (November 4, 2013).

³⁵ Stipulation at 4.

³⁶ *Id.*

IV. CONCLUSION

The issue before the Commission is whether the evidence supports a finding that the Stipulation satisfies the three-prong test for approval of a Stipulation. Based on the record in this case, the Commission should find that the Stipulation satisfies the three-prong test and approve it.

Respectfully submitted,

/s/ Frank P. Darr

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Matthew R. Pritchard

Joseph E. Olier

MCNEES WALLACE & NURICK LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Brief of Industrial Energy Users-Ohio* was served upon the following parties of record this 3rd day of March 2014, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

/s/ Frank P. Darr

Frank P. Darr

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

ON BEHALF OF OHIO POWER COMPANY

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com

ON BEHALF OF THE OHIO ENERGY GROUP

Robert A. Brundrett
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215
rbrundrett@ohiomfg.com

ON BEHALF OF THE OMA ENERGY GROUP

Terry L. Etter, Counsel of Record
Associate Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, OH 43215-3485
etter@occ.state.oh.us

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215
bojko@carpenterlipps.com

**ON BEHALF OF THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister
65 East State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

ON BEHALF OF THE KROGER Co.

Richard L. Sites
General Counsel & Senior Director of
Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

**ON BEHALF OF THE OHIO HOSPITAL
ASSOCIATION**

Werner Margard
Ryan O'Rourke
Assistant Attorneys General
Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215-3793
werner.margard@puc.state.oh.us
ryan.o'rourke@puc.state.oh.us

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

Sarah Parrott
Jonathan Tauber
Attorney Examiners
Public Utilities Commission of Ohio
180 E. Broad Street, 12th Floor
Columbus, OH 43215-3793
Sarah.Parrot@puc.state.oh.us
jonathan.tauber@puc.state.oh.us

ATTORNEY EXAMINERS

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/3/2014 10:49:27 AM

in

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

Summary: Brief Initial Brief of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio