BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment Clauses for Ohio Power Company.	))	Case No. 13-1892-EL-FAC

OBJECTIONS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Fresh from being allowed to keep $368 million of its customers' money that the Supreme Court of Ohio determined to be otherwise unfair,[1] AEP Ohio has a new proposal that may again allow it to collect money in advance of a prudence ruling and then claim that the Public Utilities Commission of Ohio ("PUCO") is barred from ordering a return to customers of any charges found to be unreasonable.

The Office of the Ohio Consumers' Counsel ("OCC") objects to the quarterly filing by Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio"). AEP Ohio is proposing significant rate increases for those taking generation service on its standard service offer, by proposing they pay a Fixed Cost

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[1] *In re: Application of Columbus S. Power Co*., Slip Opinion No. 2014-Ohio-462 at ¶56 (noting this particular outcome -allowing AEP to keep $368 million without any evidence to justify it—is "unfair"); see also Dissent of Justices Pfeifer and O'Neill at ¶62 (declaring that "[i]t is unconscionable that a public utility should be able to retain $368 million that it collected from consumers based on assumptions that are unjustified.").

Recovery Rider ("FCR") and an Auction Phase-In Rider (APIR).[2] AEP seeks to increase customers' bills by over $30 just within the next three months.[3]

OCC asks that the PUCO reject the filing as proposed by AEP Ohio. Instead, the PUCO should allow for its Staff and other parties to thoroughly examine the filing, in light of the magnitude of the increase in fuel-related costs, the lack of justification for the increase, and the potential for AEP Ohio to double-recover the FCR costs from customers. Additionally, the PUCO should avoid creating an opportunity for AEP to argue that money collected is money kept. It should do this by simply not allowing AEP Ohio to collect the costs in question until they have been fully audited for prudence and double recovery.

I. INTRODUCTION

AEP Ohio's application is its first filing to collect fuel costs since the PUCO's Order in Case No. 12-3254-EL-UNC,[4] which restructured AEP Ohio's fuel adjustment clause. Under the PUCO's Order, AEP Ohio was permitted to split its fuel cost mechanism into two separate components—the energy variable component and the fixed cost component associated with fuel and power purchases. Here, AEP Ohio seeks to collect from customers both the fixed cost component and the variable energy

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[2] The initial rate filing for both the FCR and APIR, as part of AEP Ohio's Fuel Adjustment Clause ("FAC") mechanism was made on March 3, 2014.

[3] The *monthly FAC charges* (the sum of the Fixed Cost Rider and the APIR) for a residential customer receiving standard service from AEP Ohio and using 1,000 kwh will increase by $11.10 per month in the CSP rate zone and by $10.24 per month in the OP rate zone. See OCC Attachment 1.

[4] *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, Opinion and Order (Nov. 13, 2013)(Competitive Bid Process Order or "CBP Order").

component. It proposes to collect the fixed component through a Fixed Cost Rider and the variable component through an Auction Phase-In Rider.

All non-shopping customers will pay the fixed cost recovery rider. The FCR will be charged to customers through May 31, 2015.[5] According to the PUCO, the FCR is a means for AEP to collect non-energy costs related to purchased power agreements it utilized to fulfill its SSO obligations.[6] In its filing of March 3, 2014, AEP Ohio estimated, without any supporting documentation, the fixed cost for the three-month period of April to June 2014 to be $25,700,000.[7] AEP proposes to charge these costs to customers through the FCR and APIR.

II. OBJECTIONS

A. AEP's Proposal May Cause Customers To Pay Twice For Purchased Power Costs.

Notably, in the PUCO's Order authorizing AEP to establish a fixed cost recovery rider, the PUCO acknowledged that an issue of double recovery of costs through the FCR existed.[8] The double-recovery issue was raised by numerous parties in the Competitive Bid Process proceeding.[9] That issue has to do with whether AEP is collecting twice for the very same fixed costs that it seeks to include in the FCR.

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[5] See *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, Supplement to Application at 4 (Feb. 11, 2013).

[6] Id. at 16.

[7] See the Quarterly filing, Case No. 13-1892-EL-FAC, Schedule 8, Line 1 (March 3, 2014).

[8] *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, Opinion and Order at 16; Concurring Opinions of Commissioners Lesser and Trombold.

[9] Id.

The PUCO deferred ruling on the double-recovery issue[10] and subsequently ordered a supplemental audit that will allow for review and investigation of the double-recovery allegations.[11] It appears that the supplemental audit process is not yet underway for the FCR, and yet AEP Ohio has filed to collect those potentially double-recovered fixed costs associated with fuel and power purchases.

The PUCO should not permit the FCR and APIR to be implemented without first resolving the double recovery issue. Otherwise it will have identified a problem but will have taken no steps to protect customers from the double payments. OCC supports Ohio Energy Group's proposal to eliminate the FCR charge prior to the resolution of both the annual and supplemental audit in Case No. 11-5906-EL-FAC, subject to the auditor's ultimate findings on the double recovery issue.[12]

B. AEP Seeks To Significantly Increase Rates To Customers In A Single-Issue Ratemaking Action That Lacks Adequate Scrutiny.

Aside from the issue of double collection of costs through the FCR, there is an issue with the magnitude of the proposed increase in fuel costs. AEP asks to charge customers $25.7 million in fixed-costs over a short three-month period. The resulting increase is too high. Under the proposed FCR and the APIR, customers would be charged 27.64% to 30.2% more than the existing FAC.[13] Specifically, the *monthly FAC charges* (the sum of the Fixed Cost Rider and the APIR) for a residential customer receiving standard service from AEP Ohio and using 1,000 kwh will increase by $11.10

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[10] Id.

[11] See *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-5906-EL-FAC, Entry at 3-4 (Dec. 4, 2013) (FAC Audit Case).

[12] OEG Objections at 3.

[13] See OCC Attachment 1.

per month in the CSP rate zone and by $10.24 per month in the OP rate zone.[14] These rates will be charged to customers for April, May, and June of 2014.

An increase of this magnitude ought to require a thorough examination,[15] especially in a state where customers (on average) pay higher electric rates than their counterparts in thirty-two other states.[16] AEP Ohio's standard service offer is also the highest in Ohio for customers ($114.98 monthly for a residential customer using 750 kwh per month) as of February 2014, approximately 12% higher than the state average of $102.64, and 27% higher than the lowest monthly bill of $90.39%.[17]

But here AEP presses to put the FCR into effect before it can be thoroughly examined. Under the PUCO's Order in Case No. 11-5906-EL-FAC, the proposed FAC rates automatically become effective unless *the Staff* raises issues prior to the billing cycle during which the quarterly adjustments are to become effective."[18]

It's unfortunate for Ohioans that they are being placed at risk with a deregulatory approach that provides for automatic approval of rate increases, unless only the PUCO Staff (and no other party such as OCC) objects. The PUCO Staff has yet to raise the necessary concerns to protect Ohioans from AEP Ohio's rate proposals becoming automatically approved.

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[14] Id. The increase in FAC costs can be offset in part by the changes (increase or decrease) of the Alternative Energy Rider ("AER") and the proposed reduction in capacity-related costs, under another proceeding (PUCO Case No. 13-1530-EL-UNC). However, the proposed reductions of AER and capacity-related costs are much smaller in comparison to the $10 to $11 monthly increase in FAC costs.

[15] See PUCO Staff Motion for Extension (three weeks) on the due dates for the draft audit in this case to complete a thorough examination and provide the PUCO with the information needed to adequately review the issues in the case. PUCO Staff Motion at 2 (Mar. 14, 2014).

[16] U.S. Energy Information Administration, Table 5.6B (October 2013).

[17] See PUCO, *Ohio Utility Rate Survey* (February 14, 2014).

[18] See *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-5906-EL-FAC, Entry at 3-4 (Dec. 4, 2013) (FAC Audit Case).

The PUCO's approach--which utilizes single-issue ratemaking to replace traditional rate cases--contributes to a regulatory system that is out of balance in favor of utilities. The utilities' ability to charge customers is for the typical, reasonable and prudent costs of providing current utility service to current customers of that service. In a number of instances, single-issue ratemaking, like that proposed in this proceeding, is allowing utilities to charge customers before the PUCO determines the reasonableness and prudence of expenses. If utilities (such as AEP Ohio) continue to be "successful" in avoiding refunds to customers in circumstances where they have charged customers for costs that are later found to be unreasonable or unlawful[19] then single-issue ratemaking becomes an even worse problem for Ohio's utility customers. This unfair result further demonstrates that single-issue ratemaking favors utilities over customers. Single-issue ratemaking should have very limited use as a regulatory model. It should not be approved here to facilitate later anti-consumer arguments by AEP Ohio that money collected is money kept.

The PUCO Staff should act immediately to prevent the automatic approval of this rate increase to AEP's customers. The PUCO Staff should raise issues with respect to the reasonableness of AEP's fixed costs estimates, the impact of these substantial rate increases on standard service offer customers, and the double recovery of fixed costs through the FCR. Additionally, the Staff should consider the issues raised by Ohio Energy Group and now OCC, including the freezing of the FCR charge, or eliminating

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[19] See, e.g., *In re: Columbus S. Power Co.,* 128 Ohio St.3d 512 at ¶9-21; *In re: Application of Columbus S. Power Co*., Slip Opinion No. 2014-Ohio-462.

the FCR charge prior to the double-recovery issue being resolved in the supplemental audit in Case No. 11-5906-EL-FAC.[20]

C. AEP Has Not Adequately Justified The Rate Increases It Seeks To Impose.

Despite the double-recovery issue being unresolved, AEP Ohio presses forward with its filing to collect FCR charges. And in this proceeding, even with knowledge that the double-recovery issue will be investigated, AEP Ohio offers no proof that its proposed FCR does not collect costs already being collected elsewhere.

Moreover, the proposed FCR is based on AEP Ohio's estimates of its non-energy costs, but these estimates have not been explained or justified. And as pointed out by Ohio Energy Group in its Objections, the estimates have substantially increased in just a short period of time.[21] With no explanation given as to why the non-energy costs have skyrocketed under AEP Ohio's own estimates, AEP Ohio has failed to justify charging customers for the FCR based on those questionable estimates.

This startling increase for the FCR component is even more of a concern given that, under AEP Ohio's approach, it can charge customers for the same amount of fixed costs (in this request $25 million in total, considering total rate zones) regardless of the amount of non-shopping standard offer customers remaining on its system. This is because AEP Ohio is permitted to true up the FCR, rather than freeze the FCR. And as more shopping occurs, the FCR will continue to increase and be collected from a customer base that is shrinking with each customer who shops.

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[20] See OEG Objections at 3.

[21] See OEG Objections at 1 (Mar. 12, 2014).

AEP's failure to adequately justify its application is another reason that the PUCO should decline to put the FCR and the APIR into effect. AEP should be required to meet its burden of proving that the rider and its costs are reasonable. It has not done so. The automatic approval AEP seeks should be denied.

D. AEP's Proposed Riders Should Be Rejected; Otherwise, The PUCO May Be Facilitating AEP's Efforts To Challenge The Refund Of Moneys Collected If The PUCO Later Determines The Charges Were Imprudently Incurred Or Double Collected.

Under the proposed riders, AEP would be able to place into effect significant rate increases. But the PUCO has not determined whether the costs passed onto customers were prudently incurred. That review is to occur in the annual fuel audit case, to take place in Case No. 11-5906-EL-FAC. There both a management/performance audit and a financial audit are expected. Additionally, in that same case there is an audit expected of the double recovery issue, though no auditor has been selected for that audit.[22]

Although the PUCO practice has been to use the audit case to examine the costs and adjust the riders accordingly, utilities have begun their assault on this process, arguing that such adjustments amount to retroactive ratemaking. Ironically, single-issue ratemaking and allowing utilities to charge customers in advance of PUCO review of the charges were mechanisms sought by utilities and allowed to them as a benefit to expedite their cost recovery. But that regulatory concession turns out to be far from enough, given the recent utility objections to later returning money to customers when the PUCO finds some charges to be unreasonable. Both AEP and FirstEnergy have filed appeals to the

[22] See *In re: Ohio Power Company*, Case No. 12-3254-EL-UNC, Entry on Rehearing at 10 (Jan. 22,2014) (directing Staff to issue a supplemental request for proposal for an audit solely with respect to investigating the double-recovery allegations).

Ohio Supreme Court arguing that money received is money kept; otherwise, the PUCO is engaging in retroactive ratemaking.[23]

OCC is aware that the PUCO has ruled[24] that if a double recovery is established following its investigation, the FAC rates may be adjusted, consistent with its orders[25] in the ESP case.[26] But, the potential to appeal that PUCO finding exists. Given the several appeals presently before the Court (including an AEP fuel issue) where utilities argue that refunds of prior collections are barred as retroactive ratemaking, the PUCO should take steps to avoid similar challenges here. One solution is to reject AEP's proposal to charge customers before the charges are found to be prudent and reasonable.

III. CONCLUSION

The PUCO should reject the FAC quarterly filing, pending a full investigation of these issues. Otherwise, SSO customers will be charged FCR rates which appear to be excessive, could result in double recovery of costs, and are not justified by AEP Ohio and for which AEP Ohio may claim, as it is making a habit of, that the rule against retroactive ratemaking protects it from any future order to return money to its Ohio customers.

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[23] See *In the Matter of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company* et al, Sup. Ct. No. 2013-2026, Notice (Dec. 24, 2013); *In the Matter of the Application of Columbus S. Power Co.,* Sup. Ct. No.12-1484, Notice (Aug.30, 2012)

[24] *In the Matter of the Application of Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case No. 11-5906-EL-FAC, Entry on Rehearing at ¶9 (Feb. 13, 2014).

[25] *In re: Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO, Opinion and Order at 18 (Aug. 8, 2012).

[26] *In re: Columbus S. Power Co.,* Case No. 11-346-EL-SSO, Opinion and Order (Aug. 8, 2012).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Objections* was served on the persons stated below via electronic transmission, this 17th day of March 2014.

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	A	B	C	D	E	F	G	H	I	J	K
1	**Attachment 1 - Comparison of Proposed and Current Fuel-related Rates**										
2											
3		**Proposed Increases in Fuel-related Rates and AER**				**Proposed Increases in Fuel Rates and AER (Alternative)**			**Current Monthly Total Bill for 1,000 kwh usage**	**Percentage of Increase in Monthly Total Bill due to Fuel Costs and AER**	**Percentage of Increase in Monthly Total Bill due to Fuel Costs and AER (Alternative)**
4		dollar per 1,000 kwh				dollar per 1,000 kwh			dollar	percentage	percentage
5		**(1)**	**(2)**	**B + C**		**(3)**	**(2)**	**F + G**	**(4)**	**D / I**	**H / I**
6	**CSP**										
7		**Fuel-related Rates**	**AER**	**Total Increase**		**Fuel rate**	**AER**	**Total Increase**			
8	**Secondary**	$11.10	-$0.34	$10.76		$8.02	-$0.34	$7.68	$139.51	7.71%	5.50%
9	**Primary**	$10.71	-$2.53	$8.18		$7.74	-$2.53	$5.21			
10	**Sub/Transmission**	$10.50	-$2.48	$8.02		$7.59	-$2.48	$5.11			
11											
12	**OP**										
13	**Secondary**	$10.24	-$0.51	$9.73		$7.16	-$0.51	$6.65	$138.58	7.02%	4.80%
14	**Primary**	$9.88	-$0.50	$9.38		$6.91	-$0.50	$6.41			
15	**Sub/Transmission**	$9.69	-$0.49	$9.20		$6.77	-$0.49	$6.28			
16											
17	(1) Table 1, Column J.										
18	(2) Table 3, Column I.										
19	(3) Table 2, Column J.										
20	(4) Based on the on-line monthly charge spreadsheets at Ohio Power's website on 3/14/2014.										