

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Adopt a Final) Case No. 14-1186-EL-RDR
Implementation Plan for the Retail)
Stability Rider.)

**REPLY TO OHIO POWER’S MEMORANDUM IN OPPOSITION TO
MOTION FOR PROCEDURAL SCHEDULE THAT PROVIDES ADEQUATE
TIME FOR DISCOVERY AND HEARING PREPARATION
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In this case, Ohio Power Company (“AEP Ohio”) has proposed to collect from customers \$418.4 million in capacity costs (plus carrying charges) resulting from AEP Ohio providing discounted capacity to competitive retail electric service (“CRES”) providers during the term of AEP Ohio’s second electric security plan (“ESP”).¹ The Public Utilities Commission of Ohio (“PUCO”) authorized that discount in AEP Ohio’s Capacity Charge Case.² In that proceeding, the PUCO permitted AEP Ohio to defer the difference between the market-based rate it would charge the CRES providers and AEP Ohio’s fully embedded cost.³

¹ See Application (July 8, 2014), Exhibit A.

² *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012) (“Capacity Charge Order”).

³ The PUCO subsequently ordered that AEP Ohio could collect the deferred capacity costs from all customers, though a non-bypassable charge. *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. 11-346-EL-SSO, Opinion and Order (August 8, 2012) (“ESP 2 Order”) at 37.

AEP Ohio now proposes to collect the deferred cost – an estimated \$418.4 million – from customers in this case by continuing its current Retail Stability Rider Charge (“RSR”).⁴ AEP Ohio has proposed that customers will start paying these costs June 1, 2015 and will continue to pay them through January 2018.⁵ This proceeding will establish how the costs are to be collected, and what portion of those costs will be charged to the residential customer class.

The PUCO has before it a motion to dismiss this case,⁶ which the Office of the Ohio Consumers’ Counsel (“OCC”) supports. On September 2, 2014, OCC filed a Motion asking the PUCO, if it does not dismiss the case, to set a procedural schedule that, in part, provides adequate time for discovery (including the taking of depositions) and hearing preparation. OCC requests a procedural schedule with the following timeframes:

- AEP Ohio’s testimony in support of the Application to be filed by November 12, 2014;
- PUCO Staff and Intervenor testimony to be filed by December 12, 2014; and
- Hearing to commence on January 12, 2015.

On September 17, 2014, AEP Ohio filed a Memorandum in Opposition to OCC’s Motion. AEP Ohio makes three arguments opposing OCC’s Motion. First, AEP Ohio claims that OCC is attempting to relitigate determinations made in the ESP 2 decision.⁷

⁴ The RSR is due to expire at the end of AEP Ohio’s current electric security plan on May 31, 2015. See *id.* at 36.

⁵ See Application, Exhibit A.

⁶ Industrial Energy Users-Ohio’s Motion to Dismiss (August 19, 2014).

⁷ AEP Ohio Memorandum in Opposition at 2-6.

Second, AEP Ohio contends that an evidentiary hearing on the RSR is unjustified and would cause undue delay.⁸ Third, AEP Ohio argues that the scope of any hearing should be narrow, with limited discovery.⁹ This argument is linked to AEP Ohio's first claim. Thus, if its first claim fails, this argument should also fail.

AEP Ohio's arguments are flawed. If the PUCO does not dismiss the case, it should grant OCC's Motion.

II. DISCUSSION

A. The Issues Presented in OCC's Motion Were Not Litigated in the ESP 2 Case.

In arguing that OCC is attempting to relitigate issues from the ESP 2 case, AEP Ohio makes two assertions. First, AEP Ohio claims that "OCC is simply wrong in claiming – as a premise for its procedural request – that the *ESP II* decision did not already determine that the RSR would be utilized after the ESP term to collect the then-remaining deferral balance."¹⁰ Second, AEP Ohio contends that OCC's request that the PUCO make the collection under the RSR subject to refund "is tantamount to a stay request under R.C. 4903.16."¹¹ AEP Ohio is wrong on both assertions.

AEP Ohio's claim that the ESP 2 decision settled all issues concerning the RSR is false. As OCC noted in its Motion,¹² the mechanism for collecting deferrals through the RSR was never examined in the ESP 2 case. The decision in the Capacity Charge case

⁸ Id. at 6-7.

⁹ Id. at 7-8.

¹⁰ Id. at 2.

¹¹ Id. at 3.

¹² OCC Motion at 2-4.

was not issued until after the evidentiary hearings in the ESP 2 case had concluded and the initial briefs were filed. The PUCO did not hold hearings in either the Capacity Charge Case or the ESP 2 case concerning the mechanism for collecting deferrals through the RSR. The PUCO even refused to take administrative notice of relevant portions of the Capacity Charge Case's record in the ESP 2 case.¹³

Further, several portions of the ESP 2 Order indicated that a further examination of the RSR at the end of the ESP term would be in order. For example, the PUCO stated that it would be necessary to re-examine the RSR in light of actual shopping in AEP Ohio's service territory:

Any remaining balance of this deferral that remains at the conclusion of this modified ESP shall be amortized over a three year period unless otherwise ordered by the Commission. In order to ensure this order does not create a disincentive to shopping, at the end of the term of the ESP, AEP-Ohio shall file its actual shopping statistics in this docket. To provide complete transparency as well as to allow for accurate deferral calculations, AEP-Ohio should maintain its actual monthly shopping percentages on a month-by-month basis throughout the term of this modified ESP, as well as the months of June and July of 2012. *All determinations for future recovery of the deferral shall be made following AEP-Ohio's filing of its actual shopping statistics.*¹⁴

In its most recent ESP case, AEP Ohio recognized that its application to collect the RSR post-ESP may be more than just an auditing exercise. In that ESP proceeding, several parties had filed testimony addressing rate design aspects of the RSR. AEP Ohio filed a motion to strike the testimony on the basis that it was outside the scope of that proceeding. AEP Ohio's position was as follows:

¹³ ESP 2 Order at 12-13.

¹⁴ Id. at 36 (emphasis added).

[T]he Company's ESP Application and supporting testimony make clear that AEP Ohio will request authority to "collect revenues sufficient to amortize capacity costs deferrals through continuation of the * * * RSR," which is "a function of the ESP II," in a separate proceeding that will address the issue "in parallel to [the Company's ESP III] Application." Mr. Baron's and Mr. Higgins' proposals regarding the how the future RSR charge should be designed or applied to them should be considered, if at all, in that separate proceeding, not in this one.¹⁵

AEP Ohio concluded that:

Referencing the anticipated RSR impacts in accordance with the SSO filing requirement does not mean that the RSR should be litigated here – any more than referencing other statutory riders or rates that have been created in other cases. This is especially true given that the RSR relates to and is authorized by the *ESP II* decision (the subject of pending appeals) and will be the subject of a separate proceeding once the Company files its separate RSR application.¹⁶

The Attorney Examiner in that proceeding granted the motion, stating that "the company has made it clear that it is the company's intention to file through a separate proceeding an application addressing the RSR."¹⁷

Thus, collection of the deferral after the ESP term is still an open question. In addition, the PUCO expressed concern that customers should not pay excessive costs through the RSR.¹⁸ This issue would be appropriate for examination now, before AEP Ohio is allowed to collect any more money from customers through the RSR.

¹⁵ *AEP Ohio ESP 3*, Case No. 13-2385-EL-SSO, Ohio Power Company's Motion to Strike Testimony and Request for Expedited Ruling (May 23, 2014) at 5-6 (citations omitted).

¹⁶ *Id.* at 6.

¹⁷ *Id.*, Tr. Vol. VIII at 1882.

¹⁸ See ESP 2 Order at 31, 37.

AEP Ohio also claims that OCC's position in its Motion is contradicted by passages from OCC's brief in the pending ESP 2 appeal at the Ohio Supreme Court.

Specifically, AEP Ohio included the following quote from OCC's brief:

As part of its electric security plan, Ohio Power received approval to collect, inter alia, a "retail stability rider" charge ("RSR") and a capacity charge. Together these charges permit Ohio Power to collect over \$1 billion from all of its customers over the next several years.¹⁹

But OCC's brief was limited to collection of the RSR through the ESP term. OCC's brief stated:

The PUCO determined that Ohio Power will be permitted to collect its \$508 million retail stability charge from its customers through a \$3.50/MWh monthly charge, until May 31, 2014. That charge will increase to \$4/MWh from June 1, 2014 to May 31, 2015.²⁰

Thus, the immediate issue in the ESP 2 appeal is collection of the RSR through the ESP term. (Nevertheless, should the Ohio Supreme Court vacate the PUCO's decision, collection of the deferrals through the RSR after the ESP term would also be affected.) AEP Ohio is wrong on this point.

AEP Ohio is also wrong in its assertions regarding making collection of the RSR subject to refund. AEP Ohio claims that making collection of deferrals under the RSR subject to refund "is tantamount to a stay request under R.C. 4903.16," and that only the Ohio Supreme Court "can grant a stay over the RSR at this point in time."²¹ But, as noted above, the primary issue on appeal regarding the RSR is collection through the ESP

¹⁹ AEP Ohio Memorandum Contra at 4, citing Ohio Supreme Court Case No. 2013-521, OCC First Merit Brief (August 12, 2013) at 2.

²⁰ OCC First Merit Brief at 6.

²¹ Id. at 3.

period. At issue in this case is collection of deferrals through the RSR *after* the ESP period. The PUCO still has jurisdiction over that issue, and can make collection of the RSR post-ESP subject to refund, as it has done regarding other charges in other cases.²²

AEP Ohio's claims that OCC is relitigating issues decided in the ESP 2 case are baseless. If the PUCO does not dismiss the case, it should grant OCC's Motion for a procedural schedule.

B. The Hearing Schedule Proposed by OCC Is Justified and Will Not Cause Undue Delay.

AEP Ohio claims that that there is no compelling reason to conduct an evidentiary hearing in this case and that OCC has not demonstrated "any basis to contest the Company's accounting in support of the capacity deferral balance."²³ AEP Ohio contends that the PUCO "could simply approve (subject to a financial audit) the continuation of the \$4/MWh charge based on the current deferral balance and adopt a comment cycle for soliciting input about the final rate design of the post-ESP RSR."²⁴ But again AEP Ohio is wrong.

As OCC noted in its Motion, the PUCO has not had an evidentiary hearing to examine the proper mechanism to collect the deferred capacity charges from customers. In the Capacity Charge Case, the PUCO established AEP Ohio's capacity pricing, and

²² See *AEP Ohio ESP I*, Case No. 08-917-EL-SSO, Entry (May 25, 2011); *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (November 17, 1982); *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (June 7, 1978) at 2.

²³ AEP Ohio Memorandum in Opposition at 6-7.

²⁴ *Id.* at 7.

stated that it would establish an appropriate collection mechanism for any deferred costs and address any additional financial considerations in the ESP 2 proceeding.²⁵

But at the time the Capacity Charge Order was issued, the ESP 2 case was in its final stages. Briefs had already been filed, and reply briefs were due just one week after the Capacity Charge Order came out. Thus, there was no evidence in the record of the ESP 2 case that specifically addressed the rates for capacity established in the Capacity Charge Order. Indeed, OCC and the Appalachian Peace and Justice Network moved for the PUCO to take administrative notice of certain portions of the record in the Capacity Charge Case, but the PUCO denied that motion.²⁶ The appropriate mechanism for collecting any deferrals established in the Capacity Charge Case also was never discussed or analyzed in the ESP 2 proceeding.

The primary capacity-related issue in the ESP 2 proceeding was AEP Ohio's discounts for capacity, i.e., the two-tiered pricing scheme for capacity and the alternative \$10/MWh shopping credit from AEP Ohio's proposed \$355/MW-day capacity price. There was no evidence presented in ESP 2 case for the appropriate mechanism for collecting deferrals established in the Capacity Charge Case.

As to undue delay of this proceeding, although AEP Ohio makes the claim in a heading in its memorandum in opposition,²⁷ it offers no support for the claim. In fact, there is none. As noted above, the PUCO has stated: "All determinations for future recovery of the deferral shall be made following AEP-Ohio's filing of its actual shopping

²⁵ Capacity Charge Order at 23.

²⁶ See ESP 2 Order at 12-13.

²⁷ See AEP Ohio Memorandum in Opposition at 6.

statistics.”²⁸ AEP Ohio will file its shopping data at the end of the ESP term.²⁹ Thus, post-ESP collection of deferrals through RSR cannot occur until after the PUCO has reviewed the shopping data “[i]n order to ensure this order does not create a disincentive to shopping....”³⁰ There will be a lag between the end of the ESP term and the beginning of post-ESP collection of deferrals through the RSR.

An evidentiary hearing in this proceeding would not cause undue delay. Given the enormous amount of money that AEP Ohio seeks to collect from customers in this case (\$418.4 million), a hearing and the submission of testimony would be necessary, if this case is not dismissed.

C. The PUCO Should Neither Limit the Scope of Discovery Nor Expedite the Hearing Process.

AEP Ohio argues that any hearing process should have a limited scope of discovery and an expedited schedule.³¹ It bases its position on its claims that OCC is relitigating the ESP 2 case and that an evidentiary hearing is unnecessary.³² As discussed above,³³ both of AEP Ohio’s assertions are unfounded. Hence its arguments regarding the scope of discovery and an expedited schedule are also without basis. The PUCO should grant OCC’s Motion.

²⁸ ESP 2 Order at 36.

²⁹ Id.

³⁰ Id.

³¹ AEP Ohio Memorandum in Opposition at 7.

³² Id.

³³ See pages 3-7, *supra*.

III. CONCLUSION

AEP Ohio's arguments against OCC's Motion are faulty. If this case is not dismissed, the PUCO should grant OCC's Motion by establishing a procedural schedule that incorporates the timeframes indicated in OCC's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Memorandum in Opposition was served on the persons stated below via electronic service this 24th day of September 2014.

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Summary: Reply Reply to Ohio Power's Memorandum in Opposition to Motion for Procedural Schedule that Provides Adequate Time for Discovery and Hearing Preparation by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.