

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

<sup>2</sup> In addition to OCC, comments were filed by the Staff of the Public Utilities Commission of Ohio (“PUCO Staff”), Industrial Energy Users-Ohio (“IEU-Ohio”), The Kroger Co. (“Kroger”), Ohio Energy Group (“OEG”), Ohio Hospital Association (“OHA”), and Ohio Manufacturers’ Association Energy Group (“OMA”).

collections and deferrals.”<sup>3</sup> The PUCO Staff’s review was hence only an accounting examination and did not consider the broader issues that must be addressed in this proceeding.

The other commenting parties raised numerous issues that include the PUCO’s jurisdiction over Ohio Power’s proposal,<sup>4</sup> the untimeliness of PUCO consideration of the proposal,<sup>5</sup> rate design,<sup>6</sup> and the proper amortization period for collecting the deferrals.<sup>7</sup> Another issue addressed was that Ohio Power had not met its burden of proof in the Application.<sup>8</sup> And still others discussed the need to provide a remedy for customers should the Supreme Court of Ohio reduce the amount of the capacity deferrals permitted, by reversing the PUCO in the appeal pending before the Court.<sup>9</sup>

Based on the filed comments, the PUCO should dismiss this case and have Ohio Power refile at the appropriate time (when actual shopping statistics for the entire ESP period are known). At the very least, this case should not go forward without an evidentiary hearing that will provide parties the opportunity to present testimony on the appropriate mechanism for collecting from customers deferred capacity charges established in the Capacity Charge Case.<sup>10</sup>

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<sup>3</sup> PUCO Staff Comments at [2].

<sup>4</sup> IEU-Ohio Comments at 6-29; OMA Comments at 3-4.

<sup>5</sup> OMA Comments at 2; OHA Comments at 2-3; RESA Comments at 5-6.

<sup>6</sup> See generally OEG Comments. See also Kroger Comments at 2-5; OCC Comments at 11.

<sup>7</sup> OMA Comments at 3.

<sup>8</sup> OCC Comments at 12-13.

<sup>9</sup> RESA Comments at 6-7; OHA Comments at 2. See also OCC Comments at 15.

<sup>10</sup> *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).

## II. DISCUSSION

**A. Ohio Power's Application is premature and incomplete, and should either be dismissed or held in abeyance until cases affecting the amount of capacity costs consumers may be expected to pay are concluded.**

Ohio Power's Application in this case is premature. In the ESP II Order the PUCO stated that determinations regarding any future collection of the capacity deferral balance by Ohio Power would not occur until after Ohio Power files its actual shopping statistics at the end of the current ESP term.<sup>11</sup> Without the actual shopping statistics the correct amount of deferred capacity costs cannot be known. This is because the deferrals are linked to the amount of capacity provided to shoppers and to the collection of the Retail Stability Rider. But the current ESP term does not end until May 31, 2015.<sup>12</sup> Thus, based on the statement in the ESP II Order, the PUCO will not make a determination of the total deferred costs to be collected for at least another seven months. The PUCO should dismiss the Application and order Ohio Power to refile when the shopping statistics are filed and the actual costs are known.

Further, several other pending proceedings may have a direct effect on this case. Like OCC, RESA and OHA noted that the pending appeal of the Capacity Charge Case may result in reductions in or denial of the deferral amount.<sup>13</sup> In addition, the double-collection issue raised in Ohio Power's most recent Fuel Adjustment Clause case may

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<sup>11</sup> OMA Comments at 2, citing *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 (Aug. 8, 2012) ("ESP II Order") at 36. See also OCC Comments at 13-14.

<sup>12</sup> See ESP II Order at 65.

<sup>13</sup> OCC Comments at 15; RESA Comments at 5; OHA Comments at 2.

also result in the deferral amount being reduced,<sup>14</sup> and the proceeding regarding Ohio Power's proposed Power Purchase Agreement Rider could have a bearing on the amount of Ohio Power's deferred capacity costs.<sup>15</sup> Because these other pending proceedings may affect the amounts that are to be collected, the PUCO should dismiss the Application.<sup>16</sup>

In addition, Ohio Power has not met its burden of proof. OCC pointed out that Ohio Power did not submit documentation to support its claimed deferrals or its proposed continuation of the current retail stability rider charge.<sup>17</sup> The record in this proceeding provides no basis for the PUCO to approve the Application, and thus the Application should be dismissed.

**B. If the PUCO does not dismiss the Application, it should hold an evidentiary hearing to fully examine the issues raised in the comments that may affect the amount of capacity costs consumers will be expected to pay through their electric bills.**

If the PUCO, despite several parties' recommendation, does not dismiss the Application, it should hold an evidentiary hearing as suggested by OCC and OHA.<sup>18</sup> IEU-Ohio and OMA raised jurisdictional questions as to whether the PUCO has the authority to allow collection of the deferrals to continue through the rider.<sup>19</sup> These issues are essential to this case and the PUCO should examine them fully.

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<sup>14</sup> RESA Comments at 5-6.

<sup>15</sup> Id. at 9-10.

<sup>16</sup> If the PUCO moves forward with this case before the other proceedings have concluded, it should make any collection of the deferrals subject to refund. See OCC Comments at 15; OHA Comments at 2; RESA Comments at 5-6.

<sup>17</sup> OCC Comments at 12-13.

<sup>18</sup> OCC Comments at 3; OHA Comments at 2.

<sup>19</sup> See IEU-Ohio Comments at 6-29; OMA Comments at 3-4.

In addition, there are cost allocation and rate design issues that need to be addressed. OEG argued for a reallocation within the business classes and for treatment of special arrangements as its own class if Retail Stability Rider costs are allocated among classes based on shopping.<sup>20</sup> OCC stated that deferred capacity costs should be collected from the cost causers (i.e., CRES providers)<sup>21</sup> and should be allocated to customers based on demand.<sup>22</sup> Kroger also proposed to reallocate costs, based on demand, within one of the business classes in order to eliminate “unwarranted subsidies” among customers within that class.<sup>23</sup> To protect consumers, resolution of these issues requires a hearing.

The Application contained little information, and the PUCO should immediately dismiss the Application. But if the PUCO does not, an evidentiary hearing would be necessary to enable the PUCO to render a fully informed decision in this case. To date, there has been no evidence in the record of any case that specifically addressed either the rates for capacity or the appropriate mechanism to collect the deferrals. After Ohio Power has filed the shopping data and other information necessary to support its Application, the PUCO should hold a hearing on the Application.

### **III. CONCLUSION**

The PUCO should dismiss Ohio Power’s Application or hold it in abeyance. Ohio Power’s proposal is premature and unjustified. Other proceedings will likely affect the amount of Ohio Power’s deferred capacity costs, and thus acting on the Application now is ill-advised.

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<sup>20</sup> See OEG Comments at 1-3, 3-5.

<sup>21</sup> OCC Comments at 3-11.

<sup>22</sup> Id. at 11.

<sup>23</sup> Kroger Comments at 2-5.

In addition, the PUCO's examination of Ohio Power's deferred capacity costs should be done through an evidentiary hearing. There are many issues to be resolved before Ohio Power may be allowed to collect deferred capacity costs from customers. And to protect customers, any collection of deferred capacity costs from customers should be subject to refund.

Respectfully submitted,

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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 16<sup>th</sup> day of December 2014.

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Summary: Reply Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.