

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|-----------------------------------------|---|-------------------------|
| In the Matter of the Application of the |) | |
| Fuel Adjustment Clauses for Columbus |) | Case No. 11-5906-EL-FAC |
| Southern Power Company and Ohio |) | |
| Power Company and Related Matters. |) | |

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| In the Matter of the Application of the |) | |
| Fuel Adjustment Clauses for Columbus |) | Case No. 12-3133-EL-FAC |
| Southern Power Company and Ohio |) | |
| Power Company. |) | |

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| In the Matter of the Application of the |) | |
| Fuel Adjustment Clauses Ohio Power |) | Case No. 13-572-EL-FAC |
| Company. |) | |

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| In the Matter of the Application of the |) | |
| Fuel Adjustment Clauses for Ohio Power |) | Case No. 13-1286-EL-FAC |
| Company. |) | |

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

**MOTION TO COMPEL
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC")¹ moves the Public Utilities Commission of Ohio ("PUCO") for an order compelling Ohio Power Company ("AEP Ohio") to answer Interrogatory No. 10, propounded to AEP Ohio in OCC's Fourth Set of Discovery on April 21, 2015 ("OCC-INT-4-010"). Specifically, OCC-INT-4-010 requests AEP Ohio to provide the calculation of the Retail Stability Rider revenues collected from shopping customers, as well as non-shopping customers, from August 2012 to the present. See Attachment 1.

¹ OCC's Motion is made under OAC Rule 4901-1-12 and 4901-1-23.

By response submitted May 12, 2015, AEP Ohio objected to the interrogatory, claiming that it is outside the scope of this proceeding and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. See Attachment 2.

Counsel for OCC, on two occasions attempted to resolve this impasse with counsel for AEP Ohio; however, AEP Ohio refused to answer OCC-INT-4-010, reasserting its original objection, and claiming that OCC's use of the information requested would violate the Ohio Supreme Court's proscription against retroactive ratemaking. See Attachment 4.

AEP Ohio's refusal to respond to OCC-INT-4-010 will significantly compromise OCC's ability to advance its position that AEP Ohio has over-collected certain capacity costs from standard service offer ("SSO") customers. The over-collection has occurred because AEP Ohio has collected capacity costs through the Fuel Adjustment Clause and the Retail Stability Rider. More importantly, AEP Ohio's refusal will prevent OCC from obtaining the relief due AEP Ohio's residential SSO customers.

Having reached an impasse with AEP Ohio on this discovery dispute, OCC respectfully requests the PUCO to grant this Motion to Compel and require AEP Ohio to fully answer OCC-INT-4-010, within 10 days of the issuance of an entry granting this motion.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

By this motion, the Office of the Ohio Consumers' Counsel ("OCC") asks the Commission to compel Ohio Power ("AEP Ohio") to respond fully to Interrogatory No. 10, propounded to AEP Ohio in OCC's Fourth Set of Discovery on April 21, 2015 ("OCC-INT-4-010"). Specifically, OCC-INT-4-010 requests AEP Ohio to provide the calculation of the Retail Stability Rider ("RSR") revenues collected from shopping customers, as well as non-shopping customers, from August 2012 to the present.

Contrary to AEP Ohio's assertions, discussed below, OCC-INT-4-010 is relevant and reasonably calculated to lead to the discovery of admissible evidence in this proceeding (the "FAC Audit Case"). AEP Ohio has over-collected capacity costs of the Lawrenceburg and Ohio Valley Electric Company ("OVEC") generating facilities from standard service offer ("SSO") customers by three separate means:

- (1) By collecting 100% of the Lawrenceburg and OVEC capacity costs from SSO customers through the Fuel Adjustment Clause ("FAC") since August 2012, as identified by the audit report in these proceedings;
- (2) By collecting a portion of these same capacity costs from SSO customers through the Retail Stability Rider ("RSR"), which was not explored in the audit report; and
- (3) By collecting a portion of these same capacity costs from SSO customers through the Generation Cost Rider ("GCR"), which was not explored through the audit report.

OCC has been provided the amount of the Lawrenceburg and OVEC capacity costs collected from SSO customers through the FAC (paragraph 1 above), as well as the amount of GCR charges paid by SSO and shopping customers through the GCR (paragraph 3 above).² However, AEP Ohio refuses to provide the amount of revenues collected from SSO and shopping through the RSR since August 2012.

While AEP Ohio was collecting 100% of the capacity costs at issue from SSO customers through the FAC, it also was collecting a portion of the same costs from the same customers through the RSR. OCC seeks discovery of the RSR revenues collected from shopping and SSO customers since August 2012 to calculate the additional amount of this over-collection not identified by the audit report. AEP Ohio's refusal to respond to OCC's legitimate discovery request will significantly compromise OCC's ability to advance its position in this proceeding and, more importantly, prevent OCC from obtaining the full relief due SSO customers.

² See Attachment 3. AEP Ohio has responded to OCC-INT-4-011, which requests similar information related to capacity costs collected from SSO and shopping customers through the GCR.

II. SCOPE OF STATUTORY RIGHT TO DISCOVERY

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” OCC, a party in this proceeding,³ is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the PUCO to ensure that parties are allowed “full and reasonable discovery” under its rules. Under the PUCO’s rules, “discovery may begin immediately after a proceeding is commenced.”⁴

The PUCO has adopted rules that specifically define the scope of discovery. OAC Rule 4901-1-16(B) provides:

***any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO’s rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Ohio Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.⁵

This scope of discovery is applicable to written interrogatories. Written interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the discovery is served, under OAC Rule 4901-1-19. Each interrogatory must be answered “separately and fully, in writing and under oath, unless objected to, in which case the reasons for the objection shall be stated in lieu of an answer. The answer shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them.”

³ OCC was granted intervention in the FAC Audit Case by entry issued March 28, 2012.

⁴ OAC Rule 4901-1-17(A). Accord Ohio Civ. R. 33(A) (interrogatories may be served by any party without leave on the plaintiff “after commencement of the action.”).

⁵ *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St. 3d 1479.

OCC's right to discovery is assured by law, rule, and Supreme Court precedent.⁶ OCC is entitled to timely and complete responses to its discovery inquiries. OCC seeks a PUCO order requiring AEP Ohio to fully respond to OCC-INT-4-010.

III. BACKGROUND

In AEP Ohio's first electric security plan proceeding ("ESP I"), the PUCO approved the FAC, which permitted AEP Ohio to collect capacity costs associated with the Lawrenceburg and OVEC generating facilities from SSO customers.⁷

In its Capacity Case,⁸ the PUCO approved a state compensation mechanism ("SCM") for the collection of capacity costs from competitive retail electric service ("CRES") providers, setting a cost-based charge of \$188.88/MW-day. However, the PUCO permitted AEP Ohio to charge CRES providers a lower capacity rate, based upon PJM Interconnection LLC's ("PJM") reliability pricing model ("RPM"). The difference between the RPM rate and the SCM charge was deferred on AEP Ohio's books for future collection in its second ESP proceeding ("ESP II").⁹

In a subsequent proceeding to establish AEP Ohio's competitive bid process ("CBP Case"),¹⁰ intervening parties raised the issue that AEP Ohio was over-collecting the Lawrenceburg and OVEC capacity costs. They contended that, because the Lawrenceburg and

⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

⁷ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan, an Amendment to its Corporate Separation Plan, and Sale or Transfer of Certain Generating Plants*, Case No. 08-917-EL-SSO, et al., Opinion and Order (March 18, 2009) at 13-15.

⁸ *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 ("Capacity Case").

⁹ *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.

¹⁰ *In the Matter 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.

OVEC capacity costs were included in the cost-based SCM rate of \$188.88/MW-day, AEP Ohio was “double-recovering” these capacity costs through the SCM and the FAC.

The intervening parties’ allegations in the CBP Case resulted in the PUCO ordering the auditor in the instant FAC Audit Case to determine if AEP Ohio had over-collected the capacity costs for the Lawrenceburg and OVEC facilities. On October 6, 2014, the auditor (Baker Tilly Vichow Kraus LLP) filed its report, which (1) found that SSO customers had paid 100% of the Lawrenceburg and OVEC capacity costs through the FAC since August 8, 2012, (2) confirmed that the cost-based SCM rate also collected Lawrenceburg and OVEC capacity costs, and (3) recommended that the FAC be adjusted prospectively for this over-collection.

OCC agrees with the auditor’s report, inasmuch as it determined that AEP Ohio has over-collected the Lawrenceburg and OVEC capacity costs through the FAC and SCM since August 8, 2012 when ESP II became effective. However, OCC disagrees with the report to the extent that it failed to address AEP Ohio’s additional over-collection of the capacity costs.

Specifically, the FAC (and subsequent Fixed Cost Rider (“FCR”)) also should be adjusted to reconcile the portion of the Lawrenceburg and OVEC capacity costs that AEP Ohio over-collected through two other mechanisms: the Retail Stability Rider (“RSR”) approved in ESP II and the Generation Cost Recovery Rider (“GCR”) approved in the CBP Case. The information necessary to ascertain the extent of this alleged over-collection would be provided by the Utility’s response to OCC-INT-4-010.

IV. ARGUMENT

As stated above, the discovery dispute in this proceeding centers on OCC-INT-4-010, which requests AEP Ohio to disclose the RSR revenues paid by SSO and shopping customers since August 2012. The interrogatory specifically requests, as follows:

Please identify (in electronic spreadsheet format with all formulas intact) the calculation of the Retail Stability Rider revenues provided by shopping customers and non-shopping customers for each month starting with August 2012 up through the present. Please update this response as actual information becomes known or existent while this case is pending.¹¹

Although AEP provided information to OCC regarding the GCR revenues provided by SSO and shopping customers (OCC-INT-4-011),¹² it objected, and refused to respond to the interrogatory requesting the RSR revenues, stating in written response:

The Company objects to the extent that the request seeks information which is outside the scope of this case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.¹³

Subsequently, in oral and written communications of June 2 and 9, counsel for AEP Ohio reiterated that the RSR revenues were beyond the scope of this proceeding and that the rule prohibiting retroactive ratemaking prohibited their consideration.¹⁴

A. The PUCO specifically left the scope of this proceeding open to “any concerns” regarding over-recovery of the Lawrenceburg and OVEC capacity costs. OCC-INT-4-010, which seeks information related to capacity cost over-recovery through the RSR, is relevant to this proceeding and is likely to lead to the discovery of admissible evidence. OAC Rule 4901-1-16(B).

On rehearing of the PUCO’s December 4, 2013 entry issued initiating the FAC Audit Cases, AEP Ohio argued that it was unreasonable for the scope of the audit in this proceeding to extend to general allegations of over-recovery.¹⁵ The PUCO declined to limit the proceeding’s scope, thus placing at issue the capacity costs AEP Ohio could have potentially over-collected during the 2012, 2013 and 2014 audit periods, with no restrictions.¹⁶ In addition, in its January

¹¹ See Attachment 1.

¹² See Attachment 3 and 4.

¹³ See Attachment 2.

¹⁴ See Attachment 4.

¹⁵ FAC Audit Cases, (February 13, 2014) Entry on Rehearing at 3.

¹⁶ FAC Audit Cases, (February 13, 2014) Entry on Rehearing at 5.

22, 2014, Entry on Rehearing in the CBP Case, the PUCO made clear that Staff and intervenors could “raise *any* concerns regarding double recovery.”¹⁷ As a threshold matter, AEP Ohio’s refusal to respond to OCC-INT-4-010 on the basis that the request is outside the scope of these proceedings is nothing more than a collateral attack on the PUCO’s entries on rehearing. Having addressed and denied AEP Ohio’s arguments, the PUCO should compel the response to the interrogatory at issue on this basis alone.

Moreover, in its subsequent issuance of the RFP in this proceeding on April 16, 2014, the PUCO reiterated the broad scope of the auditor’s investigation in this proceeding:¹⁸

III. SCOPE OF INVESTIGATION

The auditor's investigation shall determine whether Ohio Power is double-recovering capacity costs, as it relates to power purchased from OVEC and the Lawrenceburg Generating Station. Pursuant to the Entry on Rehearing in the FAC Audit Case, the Commission determined the capacity double-recovery review should take place within the context of the FAC audit case. The Commission also determined that the scope of the review cover the same years as the FAC audits, namely 2012, 2013, and 2014. Thus, the auditor would be required to investigate historical cost recovery as well current cost recovery. The audit shall include but not be limited to:

A. General Project Requirements

The auditor selected shall, *at a minimum*:

- *Review the Orders and relevant documents in [the Capacity Case] Case No. 10-2929-EL-UNC where AEP's state compensation mechanism for capacity was established.*
- *Review the Orders and relevant documents in [the FAC Audit Cases] Case No. 11-5906-EL-FAC, et al, where quarterly FAC rates and supporting workpapers for the*

¹⁷ CBP Case, (January 22, 2014) Entry on Rehearing at 12 (emphasis added).

¹⁸ FAC Audit Case, Entry (April 16, 2014), RFP at 2.

FAC are filed and where the Commission ordered the capacity double recovery review take place.

- ***Review the orders and relevant documents in [the CBP Case] Case No. 12-3254-EL-UNC*** where the double recovery issue was first broached and where the FAC was unbundled into fixed (capacity-related) and variable (fuel and fuel-related) energy components.
- ***Review the Orders and relevant documents in Case No. 11-346-EL-SSO, et al, [ESP II] where Ohio Power's Electric Security Plan was established***
- Issue data requests and interview company personnel, as necessary, to establish a factual basis upon which findings may be based.
- Be familiar with capacity costs, utility accounting, utility auditing, the regulatory process, and utility rate development concepts.
- Prepare a report describing its investigation, findings, conclusions and recommendations. The report should be supported by documented discovery or analysis.

Clearly, the scope of this proceeding broadly relates to whether AEP Ohio over-collected the Lawrenceburg and OVEC capacity costs during the 2012, 2013 and 2014 audit periods, without restriction. The auditor's investigation into the overcharges was not limited like AEP Ohio suggests. Instead, the scope of the audit, as set forth in the request for proposal identified "at a minimum" the proceedings and documentation that would assist the auditor's investigation. Those proceedings included (1) the FAC Audit Cases, under which the capacity costs were collected through the FAC/FCR; (2) the Capacity Case, which established the cost-based SCM, (3) ESP II, which collected shopping customers' deferred capacity costs through the RSR, and (4) the CBP case, which blended the recovery of capacity costs through the GCR.

AEP Ohio has collected 100% of the Lawrenceburg and OVEC capacity costs through the FAC/FCR since August 2012 and the FAC/FCR should be adjusted accordingly. In addition,

and on top of that overcharge, AEP Ohio also overcharged SSO customers for a portion of shopping customers' capacity costs that were deferred under the SCM and collected through the RSR. Thus, OCC-INT-4-010 is relevant and likely to lead to the discovery of admissible evidence in these proceedings as to the amount of overcharges for Lawrenceburg and OVEC capacity costs recovered through the RSR. Indeed, a full response to the interrogatory likely will contain admissible evidence that is essential to assuring customers are not overcharged.

B. The proscription against retroactive ratemaking is not applicable to these FAC audit cases.

On rehearing of the PUCO's December 4, 2013 entry initiating the FAC Audit Cases, AEP Ohio also claimed that the broad scope of this proceeding would violate the Ohio Supreme Court's proscription against retroactive ratemaking. As with AEP Ohio's attempt to limit the scope of this proceeding, the PUCO also rejected AEP Ohio's retroactivity argument.¹⁹ Nevertheless, in refusing to respond to OCC-INT-4-010, AEP Ohio again raises this same argument. By refusing to respond on the basis of retroactivity, AEP Ohio is collaterally attacking the PUCO's February 13, 2014 Entry on Rehearing in this proceeding. Having already addressed and denied AEP Ohio's arguments, the PUCO should compel the response to the interrogatory at issue.

If the PUCO were to consider the merits of AEP Ohio's legal argument, it must conclude that the retroactive ratemaking proscription does not apply to the FAC/FCR. As it found in the February 13, 2014 Entry on Rehearing issued in these proceedings:

As IEU-Ohio and OCC note, if a double recovery is established following the investigation, the FAC rates may be adjusted, consistent with our orders in the *ESP [III] Case*, with no impact on the \$188.88/MW-day capacity charge or base generation rates.***Because the FAC is subject to adjustment, consistent with

¹⁹ FAC Audit Cases, (February 13, 2014) Entry on Rehearing at 3-5.

our orders in the ESP [III] Case, the Commission disagrees that there is a significant potential for retroactive ratemaking.²⁰

In this proceeding, OCC is not seeking to change the SCM or the RSR rate set by the PUCO, or to seek a refund of that rate. OCC's position simply is that, if AEP Ohio has received revenues through the RSR that it also received from the FAC/FCR, then the FAC/FCR must be prospectively adjusted, as permitted by the FAC mechanism approved in ESP I and ESP II.²¹

In the February 13, 2014 Entry on Rehearing in this proceeding, the PUCO properly found that an adjustment to the FAC does not constitute retroactive ratemaking. The PUCO's rationale, based upon the arguments advanced by OCC and IEU-Ohio, is based upon the Ohio Supreme Court's decision in *River Gas Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 509, 512-513. In that case, the Court found that the PUCO's initial authorization of a variable rate, such as the FAC, was not ratemaking. And without ratemaking, there can be no retroactive ratemaking. Unlike traditional ratemaking, under which the PUCO renders a decision on the reasonableness and lawfulness of charges before they go into effect, a variable charge such as the FAC allows a utility to assess a charge before the PUCO determines its reasonableness and lawfulness.²² This mechanism, approved in the ESP I and ESP II proceedings, permits the PUCO to adjust the charge prospectively to reconcile actual costs and past charges.²³

The Court subsequently has upheld the PUCO's reconciliation of past charges and actual costs in FAC proceedings, stating:

We perceive that the requirement of fairness which compels adjustments in rates to compensate utilities for escalating fuel costs also compels

²⁰ FAC Audit Cases, (February 13, 2014) Entry on Rehearing at 5.

²¹ See ESP I at 13-15; ESP II at 17.

²² *Id.*

²³ ESP I at 13-15; ESP II, at 17..

retrospective reconciliation to exclude charges identifiably resulting from unreasonable computations or inclusions.²⁴

In addition, in the 2009 FAC Audit Case, the PUCO also rejected AEP-Ohio's argument that the PUCO could not make a prospective adjustment based upon the FAC rates being overstated due to the inclusion of unreasonable costs.²⁵ AEP Ohio's retroactivity argument is without merit.

V. CONCLUSION

For the reasons set forth above, OCC respectfully requests that the Commission grant this Motion to Compel and order AEP Ohio to respond fully to OCC-INT-4-010, within 10 days of an entry granting this motion.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady
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²⁴ *Ohio Power Co. v. Pub. Util. Comm.*, 54 Ohio St.2d 342, 344 (1978).

²⁵ *2009 FAC Audit Case*, (January 23, 2012)(Opinion and Order) at 12-14.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel was served on the persons stated below *via* electronic transmission, this 16th day of July 2015.

/s/ Dane Stinson

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ATTACHMENT 1
OCC FOURTH SET OF INTERROGATORIES

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Fuel Adjustment |) | Case No. 12-3133-EL-FAC |
| Clauses for Columbus Southern Power |) | |
| Company and Ohio Power Company. |) | |

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| Clauses for Ohio Power Company. |) | |

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

**INTERROGATORIES PROPOUNDED UPON COLUMBUS SOUTHERN
POWER COMPANY AND OHIO POWER COMPANY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**FOURTH SET
(APRIL 21, 2015)**

The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio ("Commission"), submits the following Interrogatories pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from The Columbus Southern Company ("CSP") and Ohio Power Company ("OPC") within the time periods for discovery or a shortened period provided by Commission (including any of its authorized

INT-8. Please identify (in electronic spreadsheet format with all formulas intact) the calculation of the CRES capacity revenues based on the RPM for each month starting with August 2012 times the CRES load up through the present. Please update this response as actual information becomes known or existent while this case is pending.

RESPONSE:

INT-9. Please identify (in electronic spreadsheet format with all formulas intact) the calculation of the total CRES capacity revenues based on the \$188.88/MW-day capacity charge times the CRES load and the deferrals based on the difference between the capacity revenues based on the \$188.88/MW-day and the RPM for each month starting with August 2012 up through the present. Please update this response as actual information becomes known or existent while this case is pending.

RESPONSE:

INT-10. Please identify (in electronic spreadsheet format with all formulas intact) the calculation of the Retail Stability Rider revenues provided by shopping customers and non-shopping customers for each month starting with August 2012 up through the present. Please update this response as actual information becomes known or existent while this case is pending.

RESPONSE:

ATTACHMENT 2
OCC-INT-4-010 RESPONSE

**OHIO POWER COMPANY'S RESPONSES
TO THE OFFICE OF OHIO CONSUMERS' COUNSEL'S DISCOVERY REQUEST
PUCO CASE 11-5906-EL-FAC
FOURTH SET**

INTERROGATORY

OCC-INT-4-010 Please identify (in electronic spreadsheet format with all formulas intact) the calculation of the Retail Stability Rider revenues provided by shopping customers and non-shopping customers for each month starting with August 2012 up through the present. Please update this response as actual information becomes known or existent while this case is pending.

RESPONSE

The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

ATTACHMENT 3
OCC-4-011 SUPPLEMENTAL RESPONSE

**OHIO POWER COMPANY'S RESPONSES
TO THE OFFICE OF OHIO CONSUMERS' COUNSEL'S DISCOVERY REQUEST
PUCO CASE 11-5906-EL-FAC
FOURTH SET**

INTERROGATORY

OCC-INT-4-011 Please identify (in electronic spreadsheet format with all formulas intact) the calculation of the Generation Capacity Cost rider revenues for both the portion based on the \$188.88/MW-day and the portion based on the base generation rate for each month starting with August 2012 up through the present. Please update this response as actual information becomes known or existent while this case is pending.

RESPONSE

The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

JUNE 16, 2015 SUPPLEMENTAL RESPONSE:

Without waiving the foregoing objections, the Company states as follows.

| <u>Year-Month</u> | <u>Billed Revenue</u> | |
|--------------------------|------------------------------|-----------------------|
| | | |
| 201404 | \$ | 1,614,934.80 |
| 201405 | \$ | 1,511,422.56 |
| 201406 | \$ | 1,653,172.71 |
| 201407 | \$ | 1,909,983.11 |
| 201408 | \$ | 1,754,897.78 |
| 201409 | \$ | 1,798,170.60 |
| 201410 | \$ | 1,454,442.64 |
| 201411 | \$ | 7,758,615.35 |
| 201412 | \$ | 12,205,366.20 |
| 201501 | \$ | 21,863,177.03 |
| 201502 | \$ | 21,119,313.18 |
| 201503 | \$ | 20,505,567.59 |
| 201504 | \$ | 16,038,497.88 |
| 201505 | \$ | 14,333,735.45 |
| Total | \$ | 125,521,296.88 |

ATTACHMENT 4
AFFIDAVIT

AFFIDAVIT OF DANE STINSON


State of Ohio:

S.S.

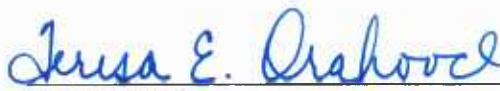
County of Franklin :

I, Dane Stinson, counsel for the Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned proceedings, being first duly sworn, depose and say:

1. By response submitted May 12, 2015, Ohio Power Company ("AEP-Ohio") objected and refused to respond to OCC-INT-4-010 and OCC-INT-011, claiming that each request was outside the scope of this proceeding and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
2. On June 2, 2015, I orally requested counsel for AEP Ohio to reconsider this position. Counsel indicated that AEP Ohio would respond to OCC-INT-4-011, but reiterated its objection as to OCC-INT-4-010, further claiming that the position OCC was pursuing would violate the rules against retroactive ratemaking.
3. By electronic mail of June 9, 2015 (attached at Exhibit 1), counsel for OCC provided counsel for AEP Ohio a detailed description of OCC's position on this discovery dispute and, again, asked that AEP Ohio reconsider its position. AEP Ohio maintained its objections and refused to respond.
4. Considering AEP Ohio's responses, it is apparent that AEP Ohio will not fully respond to OCC-INT-4-010 absent an order from the Public Utilities Commission of Ohio compelling it to do so.


Dane Stinson

Sworn before me and subscribed in my presence this 16th day of July, 2015.


Notary Public



TERESA E. GRAHOOD
Notary Public, State of Ohio
My Commission Expires October 19, 2015

[SEAL]

Exhibit 1

Electronic Mail of June 9, 2015

From: Steven T Nourse [stnourse@aep.com]
Sent: Tuesday, June 09, 2015 07:36 PM Eastern Standard Time
To: Grady, Maureen
Cc: Stinson, Dane; Lane Kollen; Matthew J Satterwhite
Subject: Re: Discovery objections 4-010, 4-011 Case No. 11-5906

Maureen:

I had a discussion with Dane last week about these two requests -- I guess you guys are tag teaming me. As part of my discussion with Dane, AEP Ohio agreed to prepare a response to the Base G revenue request and that should be ready next week. As for the RSR revenues, I indicated to Dane that we are not going to comply with that request -- that is still the case. Your flow through theory was rejected by the Supreme Court and it is out of bounds in this case. So if you want to check the box that says we discussed and reached an impasse, feel free to do so.

Thanks,
Steve

On Jun 9, 2015, at 2:45 PM, Grady, Maureen <Maureen.Grady@occ.ohio.gov> wrote:

This is an EXTERNAL email. STOP. THINK before you CLICK links or OPEN attachments.

Steve, I write to you to discuss your objections to OCC discovery in 11-5906, Int. 4-010 and 4-011.

In 4-10 we asked for information showing RSR revenues collected from August 2012 forward. In 4-11 we asked for that same information for Generation capacity cost rider revenues. We believe that these two rate mechanisms have allowed you to collect capacity costs that were already being collected in the FAC and FCR and is part of the double recovery issues parties raised (and the PUCO acknowledged) in Case No. 12-3254. Thus, discovery aimed at quantifying the collections under these riders is reasonably calculated to lead to the discovery of admissible evidence. We believe it is appropriate and relevant despite your objections to the contrary.

We acknowledge that the Auditor did not identify these overcharges as part of the double recovery investigation. Instead he focused on double collections occurring where the Company included the entirety of the capacity costs for Lawrenceburg and OVEC purchases in the FAC and FCR charges to SSO customers and failed to reduce the amounts collected through the FAC and FCR for capacity used to supply non-SSO customers. However, the auditor's findings do not limit the scope of this proceeding.

Specifically, in the Entry on Rehearing in 12-3254 (where the double recovery issue was identified) the PUCO noted the double recovery allegations by parties—allegations that included that the capacity costs were being collected through base generation rates and the state compensation mechanism, which is linked to the RSR. These arguments were made by OCC, IEU, and FES. The PUCO found specifically in paragraph 36 of its Jan. 22, 2014 Entry on Rehearing, that “we find the FAC audit Case will provide ample opportunity for Staff and intervenors in those proceedings to raise *any concerns* regarding double recovery.” (emphasis added). This PUCO finding was immediately preceded by a discussion of parties’ allegations of double recovery of capacity costs and in particular, FES’ allegation of double recovery of capacity costs through base generation rates. Included within the “any concerns” of double recovery are concerns (raised by intervenors and acknowledged by the PUCO) that double recovery is occurring through the Generation Rate and RSR rate mechanisms. Given the PUCO’s explicit ruling allowing intervenors to raise *any concerns* on double recovery in this audit case, your objections are meritless.

We are very determined to obtain the information we requested. We ask that you reexamine your objections and reconsider your position that withholds relevant information from OCC. We will move to compel on this issue, but wanted to explore this issue with you before going forward with such a motion, given parties' obligations to pursue reasonable means to resolve discovery differences. We would appreciate a response as soon as possible; in any event, if you do not respond before Friday (three days) we will go forward with filing a motion to compel. Thank you.

Maureen R. Grady

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad St., 18th Floor

Columbus, Ohio 43215

Direct Dial: (614) 466-9567

Maureen.grady@occ.ohio.gov

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Case No(s). 11-5906-EL-FAC, 12-3133-EL-FAC, 13-0572-EL-FAC, 13-1286-EL-FAC, 13-1892-EL-FAC

Summary: Motion to Compel electronically filed by Dane Stinson on behalf of Office of the Ohio Consumers' Counsel