

**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.)	

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.)	

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

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

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

**REPLY TO
THE OHIO POWER COMPANY’S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S MOTION TO
COMPEL
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Ohio Power Company’s (“AEP Ohio”) Memorandum Contra the Office of the Ohio Consumers’ Counsel (“OCC”) Motion to Compel filed July 16, 2015, shows that AEP Ohio either (1) does not understand the scope of this proceeding and the issues it presents, or (2) that AEP Ohio merely seeks to confuse the issues to retain capacity

revenues improperly collected from standard service offer (“SSO”) customers. OCC’s position in this discovery dispute is straightforward: AEP Ohio over-collected the capacity costs of the Lawrenceburg and Ohio Valley Electric Company (“OVEC”) generating facilities from 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”) (and subsequent Fixed Cost Rider (“FCR”)) 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.

As discussed below, AEP Ohio’s primary position in its Memorandum Contra is that the scope of this proceeding is limited to paragraph (1) above, *i.e.*, whether the state compensation method (“SCM”), set at \$188.88/MW-day, overlaps recovery of the Lawrenceburg/OVEC capacity charges collected through the FAC/FCR. The audit report in these proceedings found that the FAC/FCR was recovering 100% of the SCM from SSO customers. AEP Ohio’s position begs the question: If SSO customers are paying 100% of the SCM for the Lawrenceburg and OVEC capacity costs through the FAC/FCR, why are they required to pay additional amounts through the RSR and GCR? By its motion to compel, OCC simply seeks discovery of the capacity costs collected under the RSR. Indeed, AEP Ohio already has provided the similar costs collected through the GCR, which belies its unfounded position that the PUCO stringently limited the scope of this proceeding to the overlap between the SCM and FAC/FCR charges.

Despite the arguments¹ that AEP Ohio presents in its Memorandum Contra, this discovery dispute is not difficult to resolve. The PUCO should grant OCC's motion to compel.

II. ARGUMENT

AEP Ohio raises four arguments to support its position that it should not be required to provide OCC the capacity costs recovered from shopping and SSO customers through the RSR: (1) the scope of this proceeding does not include AEP Ohio's over-collection of capacity charges through the RSR; (2) the RSR's capacity deferral balance will be audited in another proceeding; (3) the RSR revenues requested by discovery are not probative of over-collection, and (4) a review or refund of the RSR financial stability component would constitute unlawful retroactive ratemaking. None of the arguments have merit.

A. The scope of this proceeding is not limited to the “overlap” between the FAC/FCR and the SCM, as AEP Ohio suggests; but includes any potential over-collection during the 2012, 2013, and 2014 audit years, including the period from January 1 to through May 31, 2015.

As a threshold matter, the notion that this proceeding is limited to a comparison of the capacity charges collected under the FAC/FCR and the rate determined in the SCM proceeding has absolutely no support in the record of these cases. As OCC established in its Motion to Compel,² the PUCO clearly intended that this proceeding consider “at a minimum” the following proceedings: (1) the cases in this docket (“FAC Audit Cases”), under which the capacity costs were recovered through the FAC/FCR; (2)

¹ AEP Ohio speculates as to ulterior motives for OCC's discovery request. Memorandum Contra at 9. OCC's motive to discover the RSR charges requested by its Motion to Compel is clear: SSO customers have paid 100% of the SCM rate for Lawrenceburg/OVEC capacity. They should not be required to pay more than the SCM rate through the RSR and GCR.

² OCC Motion to Compel at 9-12.

the Capacity Case, which established the cost-based SCM,³ (3) *ESP II, which recovered shopping customers' deferred capacity costs through the RSR*,⁴ and (4) the CBP case, which blended the recovery of capacity costs through the GCR.⁵ As stated above, AEP Ohio concedes that the costs recovered through the GCR are discoverable, but unreasonably seeks to withhold the amount of similar RSR capacity costs recovered. Contrary to AEP Ohio's assertions, the only limitation the PUCO placed on the scope of this proceeding was that the investigation into over-collection was restricted to audit years 2012, 2013, and 2014.⁶

In addition, AEP Ohio is just plain wrong that consideration of the over-collection of capacity costs through the RSR would lead to a "double credit" of the over-collected Lawrenceburg/OVEC capacity charges. It reasons:

***OCC's attempt to count both the SCM and RSR capacity deferrals would amount to double credit against the costs recovered once through the FAC – because capacity deferrals recovered (and to be recovered) through the RSR are the same dollars that were authorized for recovery through the SCM (\$188.88/MW-day) but which were unrecovered through the lower RPM capacity rate collected from CRES providers.⁷

AEP Ohio is technically correct inasmuch as the SCM collects from CRES providers the applicable RPM capacity rate, and the difference is deferred for collection

³ *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").

⁴ *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 ("ESP II").

⁵ *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 ("CBP Case").

⁶ See FAC Audit Cases, Entry on Rehearing (February 13, 2014), at paragraph 9 (restricting only to the 2012, 2013 and 2014 audit years); and Entry (July 22, 2015), at paragraph 8 (extending the audit to include the period from January 1, 2015 through May 31, 2015).

⁷ AEP Ohio Memo Contra at 5-6.

through the non-bypassable RSR. However, AEP Ohio wrongly assumes that this “unrecovered” difference was not accounted for in the audit report, and is properly collected through the RSR. The audit report clearly finds that SSO customers have paid the entirety (100%) of the \$188.88 SCM charge for Lawrenceburg/OVEC capacity through the FAC/FCR. AEP Ohio must not be permitted to over-collect this amount further by charging SSO customers additional amounts for Lawrenceburg/OVEC capacity through the RSR. It’s that simple. To accept AEP Ohio’s position would be to unlawfully increase the established SCM rate above \$188.88/MW-day.

B. The over-collection of Lawrenceburg/OVEC capacity costs is not a proper issue in the upcoming financial audit of AEP Ohio’s accounting of the RSR.

Ever since the issue of over-collection of the Lawrenceburg/OVEC capacity costs first arose, AEP Ohio has attempted to divert consideration of the issue to other proceedings or a new docket, instead of considering the issue in these FAC Audit Cases. The PUCO consistently has rejected that effort because the over-collection issue is directly related to the FAC/FCR and, *importantly*, the FAC/FCR audit process provides for ready adjustment if an over-collection has been found.⁸ Diversion of the issue to another proceeding would thwart the efficient and expedient remedy the FAC Audit Cases provide.

Despite the PUCO’s findings, AEP Ohio once again asserts that the issue related to the RSR’s over-collection of Lawrenceburg/OVEC capacity costs should be considered in another proceeding, this time the upcoming audit of the RSR’s deferral

⁸ CBP Case, Entry on Rehearing (February 13, 2014) paragraphs 7 and 9.

balance (“RSR Audit”).⁹ AEP Ohio’s interest, as in its prior pleadings in these FAC Audit Cases, is that the SCM and GCR rates (and, now, the RSR rate) not be subject to retroactive reduction. But the PUCO already has found that the remedy for over-collection, if found, would leave the SCM rate and GCR rate (and, by extension, the RSR rate) undisturbed. If an over-collection is found, those rates would remain the same and permissible adjustments would be made only to the FAC/FCR under the approved mechanism.¹⁰ Indeed, AEP Ohio recognizes as much in its Memorandum Contra, going so far as to agree that the FAC/FCR reconciliation process will make customers whole.¹¹

The RSR audit is very different from the over-collections at issue here. The RSR audit proposes to ensure, at the end of the ESP II term, that AEP Ohio has correctly accounted for RSR capacity revenues, already received, against the deferred balance. It does not consider whether SSO customers have fully paid the Lawrenceburg/OVEC capacity costs through the FAC/FCR – and there is no reason to inject that issue into the upcoming accounting audit. As the PUCO already has decided, and AEP Ohio agrees, the over-collection issues – be it from the SCM or GCR, must be addressed in the FAC Audit Cases, and the same is true for the RSR. OCC asks the PUCO to recognize AEP Ohio’s confused argument for what it is – an attempt to bifurcate the SCM/GCR rates from the RSR rates and, in the process, leave Ohio’s SSO customers without a complete remedy.

⁹ See *In the Matter of the Application of Ohio Power Company to Adopt a Final Implementation Plan for the Retail Stability Rider*, Case No. 14-1186-EL-RDR, Finding and Order (April 15, 2015).

¹⁰ CBP Case, Entry on Rehearing (February 13, 2014) paragraph 9.

¹¹ AEP Ohio Memorandum Contra at 5.

C. The RSR revenues are probative of over-collection.

AEP Ohio claims that discovery of the RSR revenues provided by shopping and SSO customers is not probative of over-collection. AEP Ohio reasons that the RSR contains components other than recovery of capacity costs (\$1/MWh) during the ESP II term, including the financial stability charge of \$3.50 or \$4.00/MWh. Thus, it claims that the RSR revenues requested in discovery are not probative of over-collection because they have no direct or exclusive relationship to capacity charges.

Suffice it to say that, through the PUCO's orders and relevant discovery in this proceeding, OCC is confident that it can determine the portion of the RSR that recovered capacity costs, and the portion attributed to the Lawrenceburg/OVEC facilities. If AEP Ohio disagrees with OCC's methodology, it is free to address the methodology at hearing, on the merits. It is improper to attempt to preempt this analysis during the discovery phase of this proceeding. AEP Ohio's argument lacks merit.

D. As the PUCO has found, adjustments to the FAC/FCR do not constitute retroactive ratemaking.

AEP Ohio appears to have modified its position that it would constitute retroactive ratemaking to adjust the FAC/FCR for Lawrenceburg/OVEC capacity charges collected through the RSR. In its Memorandum Contra, it now argues that it would be unlawful only if the financial stability component of the RSR were reviewed or refunded.¹² OCC has not proposed an adjustment to the financial stability component of the RSR. Moreover, as OCC explained in its Motion to Compel, the PUCO already has ruled that an adjustment to the FAC/FCR for capacity cost over-collections through SCM and GCR would not constitute retroactive ratemaking. AEP's argument lacks merit.

¹² AEP Ohio Memorandum Contra at 2.

III. CONCLUSION

For the foregoing reasons, and those provided in its Motion to Compel, OCC respectfully requests that the PUCO grant its Motion to Compel and order AEP Ohio to respond fully to OCC-INT-4-010, within 10 days of the issuance of the entry granting this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 7th day of August, 2015.

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Summary: Reply Reply to the Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Compel by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.