

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Columbus Southern Power Company ) Case No. 11-4920-EL-RDR  
for Approval of a Mechanism to )  
Recover Deferred Fuel Costs Ordered )  
Under Ohio Revised Code 4928.144. )

In the Matter of the Application of )  
Ohio Power Company for Approval of ) Case No. 11-4921-EL-RDR  
a Mechanism to Recover Deferred Fuel )  
Costs Ordered Under Ohio Revised )  
Code 4928.144. )

---

**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Under a Public Utilities Commission of Ohio (“Commission” or “PUCO”) Entry issued in these proceedings on June 29, 2016, some residential customers of Ohio Power Company (“AEP Ohio”)<sup>1</sup> will pay more for electric service. Specifically, typical customers in AEP Ohio’s Ohio Power Rate Zone will pay \$3.33 more per month.<sup>2</sup> In the June 29 Entry, the PUCO allowed AEP Ohio to recalculate carrying charges at the Weighted Average Cost of Capital (“WACC”) rate going back to September 2012.<sup>3</sup> As a result customers in the Ohio Power Rate Zone would pay approximately \$87 million more than if the WACC rate was recalculated to begin in June 2015, when the Supreme

---

<sup>1</sup> Effective at the end of 2011, Ohio Power and Columbus Southern Power (both of which were operating companies of AEP Ohio) merged, with Ohio Power becoming the successor in interest. See *In re: AEP Ohio ESP Cases*, Case No. 11-346-EL-SSO, et al., Ohio Power Application for Rehearing (January 13, 2012) at 2. The Commission approved the merger on March 7, 2012, effective December 31, 2012. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376- EL-UNC, Entry (March 7, 2012).

<sup>2</sup> See Entry (June 29, 2016) at 7.

<sup>3</sup> *Id.*

Court of Ohio overturned the PUCO's Order in this case.<sup>4</sup> Ohio Power Rate Zone customers would pay approximately \$116 million more than if the WACC rate was recalculated to begin in May 2016, when AEP Ohio filed its proposed tariff.<sup>5</sup>

In order to ensure that AEP Ohio's residential consumers receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing of the June 29 Entry. OCC is authorized to file this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The Entry was unjust, unreasonable and/or unlawful in the following respects:

1. The PUCO unlawfully and unreasonably determined that the Ohio Supreme Court's decision allowed AEP Ohio to collect deferrals at the WACC for the entire collection period.
2. By allowing AEP Ohio to recalculate the deferrals at WACC for the entire collection period, the PUCO unlawfully and unreasonably engaged in retroactive ratemaking.

The grounds for this application for rehearing are set forth in the accompanying Memorandum in Support.

---

<sup>4</sup> In 2012, AEP Ohio estimated that it would collect approximately \$70.2 million in carrying charges from customers in its Ohio Power Rate Zone between September 2012 and June 2015. *See* Compliance Tariff (August 8, 2012), Exhibit A at 4. Under the May 23 Tariff (Attachment 1 at 2), customers in the Ohio Power Rate Zone would pay approximately \$157 million for carrying charges during the same time period.

<sup>5</sup> In 2012, AEP Ohio estimated that it would collect approximately \$86 million in carrying charges from customers in its Ohio Power Rate Zone between September 2012 and June 2016. *See* Compliance Tariff (August 8, 2012), Exhibit A at 4. Under the May 23 Tariff (Attachment 1 at 2), customers in the Ohio Power Rate Zone would pay approximately \$202 million for carrying charges during the same time period.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter (0067445), Counsel of Record  
Maureen R. Willis (0020847)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-7964 (Etter)

Telephone: 614-466-9567 (Willis)

[Terry.etter@occ.ohio.gov](mailto:Terry.etter@occ.ohio.gov)

(willing to accept service by e-mail)

[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)

(willing to accept service by e-mail)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Columbus Southern Power Company ) Case No. 11-4920-EL-RDR  
for Approval of a Mechanism to )  
Recover Deferred Fuel Costs Ordered )  
Under Ohio Revised Code 4928.144. )

In the Matter of the Application of )  
Ohio Power Company for Approval of ) Case No. 11-4921-EL-RDR  
a Mechanism to Recover Deferred Fuel )  
Costs Ordered Under Ohio Revised )  
Code 4928.144. )

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

One of the many charges that AEP Ohio's residential customers pay each month is the Phase-In Recovery Rider ("PIRR"). The PUCO authorized the PIRR in AEP Ohio's first Electric Security Plan ("ESP 1")<sup>6</sup> as a means to mitigate the impact of the rate increases caused by the ESP.<sup>7</sup> Through the PIRR, AEP Ohio collects deferred fuel costs that were not collected from customers in rates approved in ESP 1, plus carrying charges on the deferrals. AEP Ohio's collection of charges from customers through the PIRR began in September 2012 and will end in December 2018.<sup>8</sup>

In deciding an appeal of the PIRR Order, in 2015 the Supreme Court of Ohio reversed the PUCO's decision and remanded the case in order to recalculate the carrying

---

<sup>6</sup> Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

<sup>7</sup> See Case No. 11-4920 et al., Order (August 1, 2012) ("PIRR Order") at 1-2.

<sup>8</sup> See Compliance Tariff (August 8, 2012), Exhibit A at 3-4.

charges based on a higher rate – AEP Ohio’s WACC rate.<sup>9</sup> On May 23, 2016, AEP Ohio filed new compliance tariffs that recalculated carrying charges at the WACC rate going back to September 2012.<sup>10</sup> The new tariff would increase the PIRR amount customers pay by approximately 79 percent.<sup>11</sup> This means that residential customers in the Ohio Power Rate Zone who use 1,000 kWh a month would pay \$3.33 per month more than under the tariff the PUCO previously approved.<sup>12</sup> The total bill for such customers would increase by 2.4 percent, from the current \$138.70 to \$142.03 per month.<sup>13</sup>

The Ohio Energy Group (“OEG”) filed a motion to suspend the rates on May 24, 2016. OEG argued that AEP Ohio’s rates appear to violate the Court’s prohibition against retroactive ratemaking.<sup>14</sup> OEG asked that the PUCO suspend the rates and order an investigation into whether AEP Ohio’s proposed tariff rates are unlawful.<sup>15</sup> On May 27, 2016, AEP Ohio filed a memorandum contra OEG’s motion. OCC and OEG filed separate replies to AEP Ohio’s memorandum contra on June 3, 2016. In addition, on June 22, 2016 the PUCO Staff docketed its Review and Recommendations regarding AEP Ohio’s new compliance tariffs.

In the June 29 Entry, consistent with the PUCO Staff’s recommendation the PUCO agreed with AEP Ohio’s calculations. Specifically, the PUCO approved AEP

---

<sup>9</sup> *In re Application of Ohio Power Co.*, 144 Ohio St. 3d 1, 2015-Ohio-2056, 40 N.E.3d 1060 (“*PIRR Appeal*”).

<sup>10</sup> See May 23 Tariff, Attachment 1 at 2.

<sup>11</sup> See *id.*, Attachment 2 at 1, 2.

<sup>12</sup> *Id.*, Attachment 3 at 1. The PIRR rate for customers in the Columbus Southern Rate Zone remains at zero.

<sup>13</sup> *Id.*

<sup>14</sup> OEG Motion, Memorandum in Support at 2.

<sup>15</sup> *Id.*

Ohio's compliance tariffs, effective with the first billing cycle in July 2016.<sup>16</sup> Thus, residential customers in the Ohio Power Rate Zone are now being charged \$3.33 more per month for their electric service. For the reasons discussed below, the PUCO's decision is unjust, unreasonable and unlawful. The PUCO should abrogate the Entry.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding on March 8, 2012, which was granted in the PIRR Order (at 6). OCC also filed comments and reply comments regarding AEP Ohio's application on April 2, 2012 and April 17, 2012, respectively. In addition, OCC filed an Application for Rehearing of the PIRR Order on August 31, 2012, and a reply to AEP Ohio's memorandum contra OEG's motion on June 3, 2016.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute

---

<sup>16</sup> June 29 Entry at 8.

also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for abrogating the Entry is met here.

### **III. REASONS TO GRANT REHEARING**

#### **A. The PUCO unlawfully and unreasonably determined that the Ohio Supreme Court’s decision allowed AEP Ohio to collect deferrals at the Weighted Average Cost of Capital for the entire collection period.**

In approving AEP Ohio’s compliance tariffs, the PUCO referenced the Ohio Supreme Court’s decision in the *PIRR Appeal*. The PUCO noted that in reversing the PIRR Order the Court remanded the proceedings to the PUCO for “reinstatement of the WACC rate.”<sup>17</sup> The PUCO went on to state that although the Court did not specify an effective date for reinstatement of the WACC rate, “we find that the Court’s decision, taken in its entirety, requires that the WACC rate be reinstated in full, such that AEP Ohio is able to recover its PIRR deferral balance, at the WACC rate, for the entire recovery period.”<sup>18</sup> The PUCO pointed to the Court’s determination that “the Commission’s modification, in the PIRR Order, of the carrying charge rate reduced AEP Ohio’s recovery by approximately \$130 million, which represents the difference in the WACC rate and long-term debt rate for the entire recovery period.”<sup>19</sup> Based on this, the PUCO ruled that AEP Ohio should collect the entire \$130 million from customers through the new PIRR tariffs. The PUCO’s determination is flawed, however.

---

<sup>17</sup> June 29 Entry at 7, citing *PIRR Appeal*, ¶ 43.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

AEP Ohio did not seek a stay of the PUCO's Order under R.C. 4903.16.<sup>20</sup> Hence, AEP Ohio should not be allowed to collect from customers the full \$130 million identified in the Court's decision. The Court has noted that the absence of a stay denies an appellant the full remedy available to it.<sup>21</sup> The Court has stated that R.C. 4903.16 "makes 'clear that the General Assembly intended that a public utility shall collect the rates set by the commission's order, giving, however, to any person who feels aggrieved by such order a right to secure a stay of the collection of the new rates after posting a bond.'"<sup>22</sup> AEP Ohio felt aggrieved by the PIRR Order, but did not seek a stay of the Order. The failure of AEP Ohio to seek a stay should bar it from collecting the full amount at issue in the appeal.

The stay requirement of R.C. 4903.16 has worked to the detriment of non-utility parties who have challenged PUCO orders in the past.<sup>23</sup> It should apply with equal force to AEP Ohio in this case. In this regard, the PUCO's decision to allow AEP Ohio to apply the WACC to the entire collection period was unjust, unreasonable and unlawful. The PUCO should abrogate the June 29 Entry.

**B. By allowing AEP Ohio to recalculate the deferrals at WACC for the entire collection period, the PUCO unlawfully and unreasonably engaged in retroactive ratemaking.**

The PUCO should limit the collection of increased on WACC-based carrying charges on deferral amounts in the PIRR dating from either the June 2, 2015 Court decision or May 23, 2016, the date AEP Ohio filed its proposed tariff. However, in the

---

<sup>20</sup> See June 29 Entry at 6.

<sup>21</sup> See *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788.

<sup>22</sup> *Id.*, ¶ 18, citing *Keco Industries v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 3d 254, 257, 141 N.E.2d 465 (1957).

<sup>23</sup> See *id.*, ¶¶ 20-21.



June 29 Entry, the PUCO ruled that allowing AEP Ohio to go back nearly four years to recalculate the carrying charges customers will pay does not constitute retroactive ratemaking.<sup>24</sup> The PUCO stated that “the Court did not find that *Keco* precluded the collection of this \$130 million.”<sup>25</sup> The PUCO’s determination is erroneous.

A reason why the Court did not find that *Keco* precluded collection of the \$130 million is that retroactive ratemaking was not an issue in the case. The issues identified by the Court were (1) AEP Ohio’s challenge to the PUCO’s decision to reduce collection of carrying charges from customers and (2) IEU-Ohio’s argument that the PUCO should have reduced carrying charges by accumulated deferred income taxes.<sup>26</sup> The Court did not render an opinion on the application of *Keco* to the \$130 million because the issue was not before it. The Court generally does not opine on issues not raised on appeal.<sup>27</sup>

It was unlawful for the PUCO to allow AEP Ohio to reach back before the Court’s June 2015 decision and seek WACC-based carrying charges on deferral amounts in the PIRR dating back to September 2012. The June 23 Entry violates the prohibition against retroactive ratemaking in *Keco*. The *Keco* Court ruled that any utility’s rates set by the PUCO are lawful until such time as the Court sets them aside as unlawful and unreasonable.<sup>28</sup>

The Court has found that even if there is a mechanism to adjust rates prospectively (such as the PIRR) that does not alter the nature of the remedy requested.<sup>29</sup> Contrary to the

---

<sup>24</sup> See June 29 Entry at 7.

<sup>25</sup> *Id.*

<sup>26</sup> *PIRR Appeal*, ¶¶ 3-4.

<sup>27</sup> See *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608, ¶ 38, n. 3.

<sup>28</sup> *Keco*, 128 Ohio St. 3d at 515-517.

<sup>29</sup> *In re Columbus Southern Power Co.*, 138 Ohio St. 3d 448, 461, 2014-Ohio-462, 8 N.E.3d 863.

PUCO's determination, *Keco* applies to the calculation of carrying charges under the Court's decision in the *PIRR Appeal*.

#### **IV. CONCLUSION**

The PUCO's decision harms customers by allowing AEP Ohio to reach back to 2012 to reset PIRR rates to be collected from customers going forward. The PUCO's decision was unjust, unreasonable, and unlawful. For the reasons stated herein, the PUCO should grant OCC rehearing and abrogate the June 29 Entry as requested by OCC.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter (0067445), Counsel of Record  
Maureen R. Willis (0020847)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-7964 (Etter)

Telephone: 614-466-9567 (Willis)

[Terry.etter@occ.ohio.gov](mailto:Terry.etter@occ.ohio.gov)

(willing to accept service by e-mail)

[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)

(willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was served electronically to the persons listed below, on this 29<sup>th</sup> day of July 2016.

/s/ Terry L. Etter

Terry L. Etter  
Assistant Consumers' Counsel

## **SERVICE LIST**

[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[thompson@whitt-sturtevant.com](mailto:thompson@whitt-sturtevant.com)  
[Dane.stinson@baileycavalieri.com](mailto:Dane.stinson@baileycavalieri.com)  
[cendsley@ofbf.org](mailto:cendsley@ofbf.org)  
[emma.hand@dentons.com](mailto:emma.hand@dentons.com)  
[Mwarnock@bricker.com](mailto:Mwarnock@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[Thomas.lindgren@ohioattorneygeneral.gov](mailto:Thomas.lindgren@ohioattorneygeneral.gov)  
[Greta.see@puc.state.oh.us](mailto:Greta.see@puc.state.oh.us)  
[Jonathan.tauber@puc.state.oh.us](mailto:Jonathan.tauber@puc.state.oh.us)

[mswhite@igsenergy.com](mailto:mswhite@igsenergy.com)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkyler@BKLawfirm.com](mailto:jkyler@BKLawfirm.com)  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)  
[zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/29/2016 4:22:49 PM**

**in**

**Case No(s). 11-4920-EL-RDR, 11-4921-EL-RDR**

Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.