

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
INTERVENORS’ APPLICATIONS FOR REHEARING**

I. Introduction

On July 29, 2016, the Ohio Energy Group (OEG), the Office of the Ohio Consumers’ Counsel (OCC), and the Ohio Manufacturers’ Association Energy Group (OMAEG) (collectively, “Intervenors”) filed applications for rehearing of the Commission’s June 29, 2016 Entry in this case. Intervenors’ applications for rehearing largely repeat (in many instances verbatim) retroactive ratemaking claims that Intervenors advanced in support of OEG’s Motion to Suspend Rates that was a subject of the Commission’s Entry. But as the Commission correctly recognized in its Entry, the Ohio Supreme Court’s bar against retroactive ratemaking is not contradicted by the Court’s directive that the Commission reinstate the WACC rate to the PIRR deferral balance for the rider’s entire recovery period when it is still subject to recovery, and it does not preclude Ohio Power Company’s (AEP Ohio or the Company) collection of the full deferral balance, with carrying charges, approved in AEP Ohio’s *ESP I* case.

The Commission's Entry was lawful and reasonable, and correctly followed the Ohio Supreme Court's order in *In re Ohio Power Company*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060 ("PIRR Appeal Decision"). As set forth in greater detail below, the Commission should deny Intervenor's applications for rehearing in their entirety.

II. Argument

As the Commission correctly found, the Court, in remanding this case for "reinstatement of the WACC rate," was clear that it 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." Entry at 7. Indeed, the Court made clear throughout its decision that it was ordering the Commission to approve AEP Ohio's collection of the entire balance of carrying charges, which the Court found to equal an additional approximately \$130 million. *In re Ohio Power Company*, 2015-Ohio-2056, at ¶ 2, 10, 26. Applying the WACC rate to the entire 2012-2018 deferral recovery period fairly and reasonably permits AEP Ohio to recover the full impact of the Commission's decision under R.C. 4928.144 to phase in the *ESP I* rates. That approach also allows the correct amount of carrying costs to be incorporated into the regulatory asset that the Commission authorized in *ESP I* to accomplish the phase-in of rates.

Intervenor's nonetheless argue, as they did in support of OEG's Motion to Suspend Rates, that the Commission's compliance with the Court's directive in *PIRR Appeal Decision* violates the rule against retroactive ratemaking first set forth in *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957). Intervenor's applications for rehearing merely repeat the arguments that OEG and OCC already made on this issue, and that

the Commission already considered and rejected in its Entry. *See* Entry at 3-6. That intervenors simply disagree with the Commission's decision does not justify rehearing.¹

Moreover, as the Court implicitly recognized in its decision in *PIRR Appeal Decision*, that *Keco* and its progeny have no application here. The Commission did not engage in retroactive ratemaking in its June 29, 2016 Entry when it corrected on remand the error it previously had made in its 2012 Finding and Order regarding the amount of carrying charges to include in the deferrals during the 2012-2018 recovery period. While the deferral balance has been corrected to reflect the appropriate and lawful amount of carrying charges, no change, let alone a retroactive change, to the PIRR mechanism has occurred. The ratemaking that occurred with respect to the deferrals occurred in the Company's *ESP I* case, when the Commission ordered AEP Ohio to defer certain actual fuel expenses and carrying charges that the Commission ordered would be recovered via an unavoidable surcharge from 2012 to 2018. *See* Entry at 3, 7-8; *ESP I*,² Opinion and Order at 23 (Mar. 18, 2009). The PIRR mechanism was established to ensure that the Company recovered the full amount of that decision by the conclusion of the deferral in 2018. Therefore the total amount of recovery has been collected subject to reconciliation from its inception. The expectation was not that there would be a specific rate for a specific period over time that if changed would run afoul of a retroactive ratemaking argument. The expectation was only that the Company had until the end of 2018 to recover the full amount it was entitled to collect and nothing in that approval tied recovery of

¹ To the extent the Commission considers Intervenors' repetitive arguments yet again on rehearing, AEP Ohio incorporates by reference its memorandum contra OEG's motion, filed May 27, 2016, as if fully restated herein.

² *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of an Electric Security Plan*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

some portion of that amount to a solely to a specific time in that time period. Now, the deferral balance has been properly established and the PIRR is able to recover those deferrals, as it was originally intended to do.

From a ratemaking perspective, the reconciliation of the deferral balance to include the lawful and appropriate amounts of carrying charges and the recovery of those amounts through the PIRR during the remainder of its life is not different from the reconciliation of other errors in the calculation of deferred costs (whether computational or otherwise, such as corrections to projected kWh consumption) that must be made to ensure that the total amount of deferred costs are recovered through the PIRR by the end of the deferral recovery period. Since the PIRR was created and implemented from its inception as a reconcilable rider, the subsequent correction of such errors or modifications and recovery of the corrected or modified amounts through the remainder of the PIRR amount to retroactive ratemaking.

That the Commission's Entry does not constitute retroactive ratemaking is further confirmed by other recent Ohio Supreme Court precedent. Indeed, in the Company's recent *ESP II* case, the Court, finding that certain capacity costs should not be collected, ordered the Commission to adjust the deferral balance to be collected through the Company's Retail Stability Rider (RSR), which – like the PIRR – had not yet been fully collected and reconciled:

As to the question of remedy, we note that AEP is currently collecting the deferred capacity costs with carrying charges through the RSR. *In re Application of Ohio Power Co. to Adopt a Final Implementation Plan for the Retail Stability Rider*, Pub. Util. Comm. No. 14-1186-EL-RDR, at 11-12 (Apr. 2, 2015). * * *

Because AEP is entitled to recover only its actual capacity costs, we order the commission to adjust the balance of its deferred capacity costs to eliminate the overcompensation of capacity revenue recovered through the nondeferral part of the RSR during the ESP.

In re Application of Columbus S. Power Co., 2016-Ohio-1608, ¶ 39-40. The rationale for the Court's *ESP II* ruling was that the continuing nature of the RSR (which is to be fully reconciled to reflect recovery of the deferral) presented the opportunity to remedy the unlawful transition revenue that related wholly to a period of time in the past when the non-deferral RSR revenue was recovered (2012-2015). Further, in the companion order concerning the capacity charge, the Court also reversed certain energy credit issues to be litigated on remand, which also related wholly to a period of time in the past (2012-2015). *In re Comm. Review of the Capacity Charges of Ohio Power Co.*, 2016-Ohio-1607, ¶ 57. These rulings were made in the face of concerns by AEP Ohio that taking such action could violate Ohio's retroactive ratemaking prohibition. (AEP Ohio August 15, 2014 Memorandum Opposing Stay Request at 13-15.) Yet, the Court did order full reconciliation under the active rider.

Thus, it is manifestly evident from the Court's viewpoint that the *Keco* doctrine is consistent with a remand proceeding involving an active rider that can be reconciled to fully implement the Court's decision. And if it is acceptable in the RSR/Capacity remand to prospectively adjust historical rates that no longer apply (*i.e.*, the non-deferral component of the RSR and the energy credit component of the capacity charge) through the RSR, then it is equally acceptable to prospectively adjust the carrying charge through the ongoing PIRR for the entire period of error. If anything, it is more appropriate to do so here – where the Commission was found to have violated the Company's statutory right to consent to an ESP that had already run its course. Restoring the original deal through adjustment to an active rider and a current regulatory asset is more compelling under those circumstances.

The Commission also should disregard OMAEG's attempt to cast AEP Ohio's tariff filing as an attempt to "mak[e] up for revenues lost due to regulatory delay" and OCC's

argument that AEP Ohio should be barred “from collecting the full amount at issue in the appeal” because it did not seek a stay of the Commission’s PIRR order on appeal. (See OMAEG AFR at 7-9, 13; OCC AFR at 5.) Both arguments reflect a fundamental misunderstanding of the nature, design, and collection of the PIRR, the nature of the Court’s decision in *In re Ohio Power Co.* and the Commission’s Entry on remand. Contrary to OMAEG’s characterization, the Commission’s Entry did not authorize AEP Ohio to make up for any lost revenues due to regulatory delay. There has been no regulatory delay, as the PIRR is still being collected and will continue to be collected through the end of 2018. Moreover, the Commission’s Entry merely corrects the carrying charges applicable to the costs that AEP Ohio is indisputably entitled to recover through the rider; in this regard, it is similar to the correction and reconciliation of amounts initially collected based upon estimates and later trued up to correct costs. The Entry does not authorize AEP Ohio to collect new or additional revenues or rates, it simply corrects the carrying charges applicable to the costs whose recovery in rates the Commission already approved. Intervenors’ arguments thus are misplaced.

III. Conclusion

The Commission acted reasonably and lawfully in approving AEP Ohio’s proposed PIRR tariffs and following the Ohio Supreme Court’s clear directive that a WACC carrying charge should apply to the PIRR deferral balance for the entire recovery period. Accordingly, for the reasons set forth above, the Commission should deny Intervenors’ applications for rehearing in their entirety.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Ohio Power Company's Memorandum Contra* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 8th day of August 2016, via electronic transmission.

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Summary: Memorandum -Ohio Power Company's Memorandum Contra Intervenors'
Applications for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power
Company