**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Application of )

Ohio Power Company to Establish ) Case No. 12-3255-EL-RDR

Initial Storm Damage Recovery )

Rider Rates )

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**INDUSTRIAL ENERGY USERS-OHIO’S MEMORANDUM CONTRA THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S APPLICATION FOR REHEARING**

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# Introduction

As part of its current electric security plan (“ESP”), Ohio Power Company (“AEP-Ohio”) is authorized to defer any incremental distribution expenses above or below $5 million, per year, associated with major storm expenses.[[1]](#footnote-1) Further, the Public Utilities Commission of Ohio (“Commission”) provided AEP-Ohio authority to file a separate application by December 31 of each year to secure recovery of prudently incurred and reasonable costs related to restoration of the distribution system resulting from major storms.[[2]](#footnote-2)

AEP-Ohio filed an application commencing this proceeding and seeking major storm related costs associated with storms in 2012.[[3]](#footnote-3) In the application, it sought $62 million in costs.[[4]](#footnote-4) It subsequently revised its application, reducing the storm related costs to $61 million.[[5]](#footnote-5) On August 22, 2013, AEP-Ohio filed a motion seeking authority to record a carrying cost at the weighted average cost of capital on the deferred major storm related costs.[[6]](#footnote-6)

The Staff of the Commission (“Staff”) filed initial comments and identified $2.4 million of deductions from AEP-Ohio’s request on May 29, 2013.[[7]](#footnote-7) On November 4, 2013, the Staff filed a nonbinding list of issues in which it increased the proposed disallowance to $4.9 million.[[8]](#footnote-8) Additionally, the Staff recommended that the amount found recoverable be collected through a fixed charge per month assessed over a recovery period of 12 months and allocated by the distribution revenue responsibility of residential and nonresidential customers.[[9]](#footnote-9)

A hearing in this matter was set to commence on December 16, 2013.[[10]](#footnote-10) A Joint Stipulation and Recommendation signed by AEP-Ohio, the Staff, and all intervenors except the Office of the Ohio Consumers’ Counsel (“OCC”) was filed on December 6, 2013.[[11]](#footnote-11) Under the terms of the Stipulation, the signatory parties recommended that the Commission set the amount to be recovered at $54.9 million.[[12]](#footnote-12) The Stipulation also recommended that carrying charges be limited to the period between April 1, 2013 and the start of collection and that the carrying charge rate be set at 5.34%.[[13]](#footnote-13) The Stipulation further recommended that the proposed recovery mechanism be a fixed customer charge based on residential and nonresidential distribution revenue[[14]](#footnote-14) and that AEP-Ohio be required to convene a meeting to discuss storm restoration practices with the intervening signatory parties.[[15]](#footnote-15) Finally, any further cost adjustments from vendors are to be factored into the storm recovery balance.[[16]](#footnote-16)

After a hearing on the Stipulation, the Commission issued an Opinion and Order. In the Opinion and Order, the Commission adopted and approved the Stipulation,[[17]](#footnote-17) concluding that the Stipulation was the product of serious bargaining among capable and knowledgeable parties, that the Stipulation, as a package, benefited ratepayers and the public interest, and that the Stipulation did not violate any important regulatory principle or practice.[[18]](#footnote-18)

On May 2, 2014, OCC filed an Application for Rehearing alleging two assignments of error.[[19]](#footnote-19) The first assignment of error claimed that the Commission’s finding that the Stipulation benefits customers and the public interest because the settlement is more beneficial than the public positions of the parties that signed the Stipulation is unjust and unreasonable and undermines the negotiation process.[[20]](#footnote-20) The second assignment complains that the Commission erred in finding that AEP-Ohio’s use of Storm Services, LLC, a vendor that provided various services to AEP-Ohio during the June-July 2012 major storm restoration, was reasonable and prudent.[[21]](#footnote-21)

Rehearing should be granted only if OCC can demonstrate that the Commission’s order is unlawful or unreasonable.[[22]](#footnote-22) Because OCC has not demonstrated that the Commission’s finding that the Stipulation provides benefits to ratepayers and the public interest is unlawful or unreasonable, the Commission should deny rehearing based on OCC’s first assignment of error.[[23]](#footnote-23)

# OCC fails to demonstrate that the Commission erred when it found that the Stipulation benefits ratepayers and the public interest

In its first assignment of error, OCC asserts that the Commission erred when it found that the Stipulation benefits ratepayers and the public interest. According to OCC, the Commission focused on the reductions the signatory parties quantified in the record and that OCC quantified a greater amount.[[24]](#footnote-24) OCC continues that “[the Commission] unreasonably made the public positions of the parties signing the Stipulation a factor in determining whether the settlement benefits customers.”[[25]](#footnote-25) For two reasons, OCC’s assignment of error should be rejected.

Initially, OCC’s assignment of error does not reflect the scope of the evidence supporting the Commission’s determination. The Commission did note that the proposed disallowance contained in Stipulation reflected an amount in excess of the amount identified by Staff in its prehearing comments. The Staff provided a baseline that “was based on a lengthy and exhaustive audit of AEP Ohio’s invoices and related documentation for the storm expenses in question.”[[26]](#footnote-26) The Stipulation proposed an disallowance in excess of the baseline. The Commission, however, did not base its decision on only this factor. As noted by the Commission, the Stipulation also provided for additional potential reductions if AEP-Ohio receives additional refunds from vendors that will be flowed to customers through additional reductions in the customer charges.[[27]](#footnote-27) The Commission further noted the revenue requirement was reflective of storm-related costs that were reasonably and prudently incurred.[[28]](#footnote-28)

In addition to the factors noted by the Commission, the parties and public also will benefit from other terms contained in the Stipulation. The recovery mechanism, a flat customer charge,[[29]](#footnote-29) conforms with an approach similar to that used by the Commission to recover other distribution related costs arising from the gridSMART program. Further, the allocation methodology, as noted above, assigns revenue responsibility in a manner consistent with base distribution revenue responsibility. Finally, AEP-Ohio has committed to discuss storm restoration processes with the parties; this provision will provide parties an opportunity to address the restoration process.[[30]](#footnote-30) As a result of the agreed reductions in recoverable costs, revenue allocation, and future commitments, the Stipulation, as a whole, is a benefit to customers and the public interest.

Apart from the fact that the Commission adequately demonstrated the basis for its decision that the Stipulation provided benefits to ratepayers and the public, OCC fails to provide any legal support to demonstrate that the Commission erred in its reliance on the fact that the disallowance exceeded that urged by the Staff. Even if OCC could point to some authority for such a rule, the “rule” would not apply because the relative size of disallowance to Staff’s recommendation was only one of several factors relied upon by the Commission.

Additionally, OCC is not presenting any new argument to the Commission. In briefs to the Commission, OCC made the same claim that the Commission should not find the Stipulation benefited customers because it proposed a disallowance greater than what Staff had urged.[[31]](#footnote-31) As noted above, the Commission addressed OCC’s concerns and based its determination that the Stipulation satisfied the second prong of the test on more than just the pre-settlement positions of the parties. Accordingly, OCC’s assignment of error has been fully addressed by the Opinion and Order and raises no new issue.[[32]](#footnote-32)

# Conclusion

For the reasons discussed above, the Commission should reject OCC’s first assignment of error because OCC has not demonstrated that the Commission’s determination that the Stipulation benefits ratepayers and the public interest is unlawful or unreasonable.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio’s Memorandum Contra the Office of the Ohio Consumers’ Counsel’s Application for Rehearing* was served upon the following parties of record this 12th day of May 2014, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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1. *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 Nos. 11-346-EL-SSO, *et al.,* Opinion and Order at 68 (Aug. 8, 2012) (“ESP II Order”). [↑](#footnote-ref-1)
2. *Id.* at 68-69. [↑](#footnote-ref-2)
3. Application (Dec. 21, 2012). [↑](#footnote-ref-3)
4. *Id*., Exhibit E. [↑](#footnote-ref-4)
5. Letter from Stephen T. Nourse to Barcy F. McNeil (Mar. 1, 2013). [↑](#footnote-ref-5)
6. Motion and Memorandum in Support of Ohio Power Company to Record a Carrying Cost on the 2012 Storm Recovery Costs Subject to the Amount Determined at the Outcome of the Proceeding (Aug. 22, 2013). [↑](#footnote-ref-6)
7. Comments of the Staff of the Public Utilities Commission of Ohio at 4 (May 29, 2013). [↑](#footnote-ref-7)
8. Non-Binding List of Issues of the Staff of the Public Utilities Commission of Ohio at unnumbered page 5 (Nov. 4, 2013). [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. Entry at 2 (Nov. 26, 2013). [↑](#footnote-ref-10)
11. Joint Stipulation and Recommendation (December 6, 2013) (“Stipulation”). [↑](#footnote-ref-11)
12. *Id*. at 3. [↑](#footnote-ref-12)
13. *Id*. IEU-Ohio takes no position regarding the proposed carrying charges. *Id*. at 4 n.2. [↑](#footnote-ref-13)
14. *Id*. at 4 and Stipulation Exhibit 2. [↑](#footnote-ref-14)
15. *Id.* at 4. [↑](#footnote-ref-15)
16. *Id*. at 4-5. [↑](#footnote-ref-16)
17. Opinion and Order at 33 (Apr. 2, 2014). [↑](#footnote-ref-17)
18. *Id*., *passim*. [↑](#footnote-ref-18)
19. Application for Rehearing by the Office of the Ohio Consumers’ Counsel (May 2, 2014) (“OCC Application for Rehearing”). [↑](#footnote-ref-19)
20. *Id*. [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. R.C. 4905.10(B). [↑](#footnote-ref-22)
23. This reply does not address the merits of OCC’s second assignment of error. [↑](#footnote-ref-23)
24. OCC Application for Rehearing at 5-6. [↑](#footnote-ref-24)
25. *Id*. at 6. [↑](#footnote-ref-25)
26. Opinion and Order at 14. [↑](#footnote-ref-26)
27. *Id*. [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. Stipulation at 4. [↑](#footnote-ref-29)
30. *Id*. [↑](#footnote-ref-30)
31. Initial Post-Hearing Brief by the Office of the Ohio Consumers’ Counsel at 10-12 (Mar. 3, 2014); Post Hearing Reply Brief by the Office of the Ohio Consumers’ Counsel at 7 (Mar. 17, 2014). [↑](#footnote-ref-31)
32. *See 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 Nos. 11-346-EL-SSO, *et al.*, Second Entry on Rehearing at 3 (Mar. 27, 2013). [↑](#footnote-ref-32)