**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of Alternative Energy Rider & Auction Cost Recovery Rider for Ohio Power Company. | )  )  ) | Case No. 15-1052-EL-RDR |

**RESPONSE TO THE PUCO STAFF’S REVIEW AND RECOMMENDATION ON AEP'S ALTERNATIVE ENERGY AND AUCTION COST RECONCILIATION RIDERS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**I. INTRODUCTION**

In this case, the Public Utilities Commission of Ohio (“PUCO”) should protect customers in two ways. First, it should require Ohio Power Company (“AEP”) to add new language to its Auction Cost Reconciliation Rider (“ACRR”) and Alternative Energy Rider (“AER”) tariffs that would permit refunds to customers if they are overcharged under these riders. Second, it should order AEP to show that its charges to consumers for renewable energy do not exceed the statutory cost cap found in R.C. 4928.64(C)(3).

**II. BACKGROUND**

This case involves the charges that consumers pay to AEP for two riders: Rider AER and Rider ACRR. Through Rider AER, AEP charges customers for the costs it incurs to comply with Ohio’s renewable energy mandates.[[1]](#footnote-2) Through Rider ACRR, AEP charges customers for certain costs it incurs in providing its Standard Service Offer.

AEP filed an application proposing (i) a 24% increase to the amount that it charges customers for renewable energy under Rider AER, (ii) an 8% decrease in the amount that it charges customers for auction costs.[[2]](#footnote-3) Under the 30-day automatic approval process adopted by the PUCO, the new rate and tariff language will go into effect with the first billing cycle in April, unless the PUCO orders otherwise.[[3]](#footnote-4)

For these riders, AEP proposes that language be added to its tariffs regarding potential reconciliation and refunds. For Rider ACRR, AEP proposes the following language: “This Rider is subject to reconciliation, including, but not limited to, refunds to customers, based upon the results of audits ordered by the Commission in accordance with the February 25, 2015 Opinion and Order in Case Nos. 13-2385-EL-SSO, *et al.*”[[4]](#footnote-5) For Rider AER, AEP proposes the same language, but also provides that the rider shall be subject to reconciliation “based upon the impact to the carrying charge rate recovered through this Rider of changes in Federal corporate income taxes due to the Tax Cuts and Jobs Act of 2017.”[[5]](#footnote-6)

The PUCO Staff recommended that the PUCO approve AEP’s proposed language for Riders AER and ACRR.[[6]](#footnote-7)

**III. RECOMMENDATIONS**

**A. The PUCO should slightly modify AEP’s proposed tariff language to remove any potential ambiguity.**

While OCC appreciates AEP’s proactive effort to include refund language in these riders, OCC is concerned with potential ambiguity in the refund language that AEP proposes. Its focus on these riders being subject to “reconciliation” is potentially vague and ambiguous. For example, it is unclear whether “reconciliation” would include the situation where a rider is audited and past charges are found imprudent, unreasonable, or otherwise unlawful.

In the Supreme Court of Ohio’s recent *FirstEnergy* decision, the PUCO audited FirstEnergy’s alternative energy rider (FirstEnergy’s counterpart to AEP’s Rider AER) and found that FirstEnergy overcharged customers about $43 million.[[7]](#footnote-8) On appeal, the Court determined that the PUCO could not order FirstEnergy to return those funds to customers because the tariffs in question did not contain refund language, even though the order approving the rider stated that FirstEnergy could only collect “prudent” costs.[[8]](#footnote-9)

To protect customers from an unjust result like the one in *FirstEnergy*, OCC proposes one addition to remove any ambiguity in AEP’s proposed tariff language. These riders should also state: “Any charge collected from customers under this rider later determined to be unlawful, imprudent, or unreasonable by the PUCO or the Supreme Court of Ohio is refundable to customers.” This modification would make clearer the PUCO’s intent to protect consumers from potential future rulings that utility charges under these riders were imprudent or otherwise unlawful or unreasonable.

**B. The PUCO should require AEP to demonstrate that it is not charging customers in excess of the statutory three percent cost cap.**

Under R.C. 4928.64(B), AEP is required to meet annual renewable energy mandates. The statute also provides, however, that consumers will not pay an amount for renewable energy that is more than three percent of the cost of otherwise producing or acquiring electricity.[[9]](#footnote-10) In this case, OCC has expressed its concern that AEP’s charges to consumers under Rider AER may exceed this three percent cost cap.[[10]](#footnote-11) AEP, however, has not responded to OCC’s requests for discovery on this issue.[[11]](#footnote-12) OCC filed a motion to compel discovery regarding the three percent cost cap in July 2017; that motion remains pending.[[12]](#footnote-13)

OCC therefore respectfully requests that the PUCO require AEP to demonstrate, with each of its quarterly Rider AER filings, that the charges to consumers under Rider AER do not exceed the statutory cap. This will ensure that consumers are not overcharged for renewable energy.

**C. Customers should receive the benefits of the Tax Cuts and Jobs Act of 2017 effective January 1, 2018.**

The Tax Cuts and Jobs Act of 2017[[13]](#footnote-14) (“Tax Cut Act”) went into effect January 1, 2018. Under this law, the federal corporate income tax rate was reduced from 35% to 21%. Thus, AEP has been subject to the new rate since the beginning of this year.

AEP collects carrying costs from customers under Rider AER to the extent it makes capital expenditures that result in renewable energy credits that are used to meet

its mandate.[[14]](#footnote-15) These carrying costs may include a tax component.[[15]](#footnote-16) Thus, the PUCO should ensure that the revenue requirement calculation for Rider AER includes all tax savings on and after January 1, 2018.

**IV. CONCLUSION**

The PUCO should protect Ohio’s residential utility consumers by (a) modifying the refund language that AEP proposed for Riders AER and ACRR, (b) requiring AEP to demonstrate that its charges to consumers under Rider AER do not exceed the statutory three percent cap, and (c) ensuring that customers receive the benefits of the Tax Cut Act effective January 1, 2018.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Response was served on the persons stated below via electronic transmission, this 21st day of March 2018.

*/s/ Christopher Healey*

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1. R.C. 4928.64. [↑](#footnote-ref-2)
2. *See In re Alternative Energy Rider & Auction Cost Recovery Rider for Ohio Power Company*, Case No. 15-1052-EL-RDR (Feb. 28, 2018) (the "Application"). [↑](#footnote-ref-3)
3. *In Application of Ohio Power Co. for Authority to Establish a Standard Serv. Offer*, Case No. 13-2385, Opinion & Order (Feb. 25, 2015). [↑](#footnote-ref-4)
4. Application at Schedule 5. [↑](#footnote-ref-5)
5. *Id.* at Schedule 6. [↑](#footnote-ref-6)
6. Staff Review & Recommendation at 2 (Mar. 12, 2018). [↑](#footnote-ref-7)
7. *In re Rev. of Alt. Energy Rider Contained in the Tariffs of Ohio Edison Co.*, Slip Op. No. 2018-Ohio-229 (Jan. 24, 2018). [↑](#footnote-ref-8)
8. *Id.* ¶ 20. [↑](#footnote-ref-9)
9. R.C. 4928.64(C)(3). [↑](#footnote-ref-10)
10. *See* Motion to Compel AEP Ohio to Respond to Discovery about its Charges to Consumers for Renewable Energy by the Office of the Ohio Consumers’ Counsel (July 12, 2017). [↑](#footnote-ref-11)
11. *Id.* [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. H.R. 1, 115th Cong. (2017). [↑](#footnote-ref-14)
14. *See In re Application of [AEP Ohio] for Authority to Establish a Standard Serv. Offer*, Case No. 11-346-EL-SSO, Direct Testimony of Philip J. Nelson at 15 (Jan. 27, 2011) (“The Company’s position is that if it makes capital expenditures that result in RECs that are used to meet the Ohio renewable statute, and the capital expenditures are directly related to production of the RECs, then the capital carrying costs associated with the investment should be included in the AER.”); Opinion & Order (Aug. 8, 2012). [↑](#footnote-ref-15)
15. *See* Application at Schedule 6. [↑](#footnote-ref-16)