**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Cost Rider. | )  )  ) | Case No. 24-42-EL-RDR |

**APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

Donald J. Kral (0042091)

Counsel of Record

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Kral]: (614) 466-9571

Telephone [Brodbeck]: (614) 466-9565

[donald.kral@occ.ohio.gov](mailto:donald.kral@occ.ohio.gov)

[thomas.brodbeck@occ.ohio.gov](mailto:thomas.brodbeck@occ.ohio.gov)

April 19, 2024 (willing to accept service by e-mail)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Cost Rider. | )  )  ) | Case No. 24-42-EL-RDR |

**APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The PUCO issued an order on March 20, 2024 that approved, without comment, a $154 million transmission rate increase to residential consumers while decreasing transmission charges to commercial and industrial consumers. The PUCO’s Order harms residential consumers by adding another $10.00 per month to their utility bills.

The Office of the Ohio Consumers’ Counsel (“OCC”) files this Application for Rehearing to stop the unfair and unreasonable transmission rate increase to residential consumers. The PUCO’s Finding and Order is unlawful and unreasonable n the following respects:

**ASSIGNMENT OF ERROR 1:** The PUCO’s Finding and Order is unlawful and unreasonable because it approved a $154 million increase in transmission charges to residential consumers without identifying any record evidence, or making findings of fact, or providing a written opinion setting forth its rationale, all in violation of R.C. 4903.09.

**ASSIGNMENT OF ERROR 2:** The PUCO’s Finding and Order is unlawful and unreasonable because it allowed AEP to collect carrying charges when AEP failed to comply with O.A.C. 4901:1-36-03(D).

**ASSIGNMENT OF ERROR 3:** The PUCO’s Finding and Order is unlawful and unreasonable because it failed to protect consumers from misallocating the $32 million under-recovery from the prior period thereby violating R.C. 4905.22.

**ASSIGNMENT OF ERROR 4:** The PUCO’s Finding and Order is unlawful and unreasonable because the PUCO should have protected consumers by ordering the BTCR be collected subject to refund if FERC rules favorably on OCC’s complaint related to paying for supplemental transmission projects.

The reasons in support of this Application for Rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate its Finding and Order as requested by OCC.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

Donald J. Kral (0042091)

Counsel of Record

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Kral]: (614) 466-9571

Telephone [Brodbeck]: (614) 466-9565

[donald.kral@occ.ohio.gov](mailto:donald.kral@occ.ohio.gov)

[thomas.brodbeck@occ.ohio.gov](mailto:thomas.brodbeck@occ.ohio.gov)

(willing to accept service by e-mail)

**TABLE OF CONTENTS**

**PAGE**

[I. INTRODUCTION 1](#_Toc164437300)

[II. ASSIGNMENTS OF ERRORS 2](#_Toc164437301)

[ASSIGNMENT OF ERROR 1: The PUCO’s Finding and Order is unlawful and unreasonable because it approved a $154 million increase in transmission charges to residential consumers without identifying any record evidence, or making findings of fact, or providing a written opinion setting forth its rationale, all in violation of R.C. 4903.09. 2](#_Toc164437302)

[ASSIGNMENT OF ERROR 2: The PUCO’s Finding and Order is unlawful and unreasonable because it allowed AEP to collect carrying charges when AEP failed to comply with O.A.C. 4901:1-36-03(D). 6](#_Toc164437303)

[ASSIGNMENT OF ERROR 3: The PUCO’s Finding and Order is unlawful and unreasonable because it failed to protect consumers from misallocating the $32 million under-recovery from the prior period thereby violating R.C. 4905.22. 7](#_Toc164437304)

[ASSIGNMENT OF ERROR 4: The PUCO’s Finding and Order is unlawful and unreasonable because the PUCO should have protected consumers by ordering the BTCR be collected subject to refund if FERC rules favorably on OCC’s complaint related to paying for supplemental transmission projects. 8](#_Toc164437305)

[III. CONCLUSION 12](#_Toc164437306)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Cost Rider. | )  )  ) | Case No. 24-42-EL-RDR |

**MEMORANDUM IN SUPPORT**

# INTRODUCTION

The PUCO has approved AEP’s most recent request to increase transmission charges to consumers under its Basic Transmission Cost Rider (“BTCR”). The PUCO’s order permits AEP to increase what it charges residential consumers by $154 million and decrease charges to most commercial and industrial consumers by $114 million. This results in an over 32% increase in transmission charges to AEP’s residential consumers. The PUCO’s order approving the increase for the BTCR unfairly burdens AEP’s 1.5 million residential consumers.[[1]](#footnote-2)

The PUCO’s order requires residential consumers to pay more than 53% of AEP’s transmission charges; previously residential consumers paid only 42% of AEP’s transmission charges. This will increase residential consumers’ charges under the transmission rider by $120.00 per year. This is on top of AEP’s recent increase in charges to consumers under its latest electric security plan (“ESP”) that will allow AEP to increase charges an extra $8 a month by 2028. The PUCO approved this massive re-allocation of costs to residential consumers without explanation.[[2]](#footnote-3)

These are the very same transmission charges that OCC has been challenging at the federal level. In September of 2023, OCC filed a complaint before the Federal Energy Regulatory Commission (“FERC”) regarding supplemental transmission project costs that Ohio distribution utilities charge consumers. PUCO Commissioner Conway publicly noted the “lack of sufficient oversight with respect to local planning and the impacts it might be having on costs that our ratepayers ultimately bear.”[[3]](#footnote-4) And the Ohio Federal Advocate, in commenting on proposed reform on transmission planning, pled for more reform -- “[i]t is not the best we can do, and the work needs to continue.”[[4]](#footnote-5) We agree.

But these words ring hollow for AEP residential consumers who received a $154 million transmission increase in this proceeding without the PUCO identifying evidence to support that increase, providing findings of fact related to that increase, and explaining its rationale for approved such a global shift in costs. The PUCO should, as explained below, grant rehearing to reconsider the transmission charges allocated to residential consumers under the PUCO’s Order.

# II. ASSIGNMENTS OF ERRORS

## ASSIGNMENT OF ERROR 1: The PUCO’s Finding and Order is unlawful and unreasonable because it approved a $154 million increase in transmission charges to residential consumers without identifying any record evidence, or making findings of fact, or providing a written opinion setting forth its rationale, all in violation of R.C. 4903.09.

The PUCO approved an enormous increase in AEP’s transmission charges to residential consumers effective April 1, 2024. Part of the increase comes from increasing the amount of AEP’s transmission costs allocated to residential consumers. But the PUCO fails to cite evidence supporting the reallocation of additional transmission costs to residential consumers.

The PUCO cannot rely upon its Staff report as rationale for allocating more transmission costs to residential consumers since the Staff Report does not even discuss the increased allocation of transmission costs to residential consumers. Instead of addressing the cost allocation issues, the PUCO summarily concludes that “AEP’s application, as amended, does not appear to be unjust or unreasonable.”[[5]](#footnote-6) In this regard, the PUCO failed to address the significant cost-shifting to residential consumers as well as OCC’s comments regarding AEP’s unreasonable proposal to increase transmission charges to residential consumers by $154 million, while decreasing charges to most commercial and industrial consumers by $114 million

The PUCO’s decision violates R.C. 4903.09 because it does not provide sufficient evidence, findings of fact, or written opinions for approving the enormous cost-shifting to residential consumers.

R.C. 4903.09 provides that “(i)n all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.” The Supreme Court of Ohio has confirmed that the PUCO must follow the statutory mandate of 4903.09:

The purposes behind [R.C. 4903.09](https://plus.lexis.com/document/teaserdocument/?pdmfid=1530671&crid=81315e8f-0640-404d-a01f-cf0226fe2463&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pddocid=urn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pdcontentcomponentid=9249&pdislparesultsdocument=false&pdteaserkey=h&pdteaserid=teaser-dXJuOmNvbnRlbnRJdGVtOjYzVkItNjVWMS1KRjc1LU0yNzktMDAwMDAtMDA%3D-1-PATH-b3RoZXItMTU4&pdsearchterms=what%20makes%20a%20record%20for%20the%20public%20utilities%20commission%20of%20ohio&pdisdocsliderrequired=true&pdpeersearchid=781a5146-aa01-4f59-aadb-c23f2b69f382-1&ecomp=57ttk&earg=pdsf&prid=67bed393-d3d3-4615-9be6-4cb3e5be9a4d)’s requirements are straightforward. For a reviewing court to do its job, it needs to have enough information to know how the commission reached its result. [*Allnet Communications Servs., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 1994-Ohio-460, 638 N.E.2d 516 (1994)](https://plus.lexis.com/document/teaserdocument/?pdmfid=1530671&crid=81315e8f-0640-404d-a01f-cf0226fe2463&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pddocid=urn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pdcontentcomponentid=9249&pdislparesultsdocument=false&pdteaserkey=h&pdteaserid=teaser-dXJuOmNvbnRlbnRJdGVtOjYzVkItNjVWMS1KRjc1LU0yNzktMDAwMDAtMDA%3D-1-PATH-b3RoZXItMTU4&pdsearchterms=what%20makes%20a%20record%20for%20the%20public%20utilities%20commission%20of%20ohio&pdisdocsliderrequired=true&pdpeersearchid=781a5146-aa01-4f59-aadb-c23f2b69f382-1&ecomp=57ttk&earg=pdsf&prid=67bed393-d3d3-4615-9be6-4cb3e5be9a4d). The “statute requires the commission to set forth the reasons for its decisions and prohibits summary rulings and conclusions that do not develop the supporting rationale or record.” [*In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698, 121 N.E.3d 320, ¶ 24](https://plus.lexis.com/document/teaserdocument/?pdmfid=1530671&crid=81315e8f-0640-404d-a01f-cf0226fe2463&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pddocid=urn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pdcontentcomponentid=9249&pdislparesultsdocument=false&pdteaserkey=h&pdteaserid=teaser-dXJuOmNvbnRlbnRJdGVtOjYzVkItNjVWMS1KRjc1LU0yNzktMDAwMDAtMDA%3D-1-PATH-b3RoZXItMTU4&pdsearchterms=what%20makes%20a%20record%20for%20the%20public%20utilities%20commission%20of%20ohio&pdisdocsliderrequired=true&pdpeersearchid=781a5146-aa01-4f59-aadb-c23f2b69f382-1&ecomp=57ttk&earg=pdsf&prid=67bed393-d3d3-4615-9be6-4cb3e5be9a4d).

*In re Suvon, L.L.C.* (2021), 166 Ohio St.3d 519, 524-525. The Supreme Court further explained:

We also have held that “[i]n order to meet the requirements of [R.C. 4903.09](https://plus.lexis.com/document/documentlink/?pdmfid=1530671&crid=7970a091-20ab-4e38-ad10-ca3f4250a7cf&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4S21-6TP0-TXFV-Y3DB-00000-00&pdcontentcomponentid=9249&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&pdpinpoint=&prid=3459a1e8-96f8-4ab2-bb57-f59e12e909cc&ecomp=2gntk), \* \* \* the PUCO’s order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.” [*MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337](https://plus.lexis.com/document/documentlink/?pdmfid=1530671&crid=7970a091-20ab-4e38-ad10-ca3f4250a7cf&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4S21-6TP0-TXFV-Y3DB-00000-00&pdcontentcomponentid=9249&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&pdpinpoint=&prid=3459a1e8-96f8-4ab2-bb57-f59e12e909cc&ecomp=2gntk). Although strict compliance with the terms of [R.C. 4903.09](https://plus.lexis.com/document/documentlink/?pdmfid=1530671&crid=7970a091-20ab-4e38-ad10-ca3f4250a7cf&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4S21-6TP0-TXFV-Y3DB-00000-00&pdcontentcomponentid=9249&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&pdpinpoint=&prid=3459a1e8-96f8-4ab2-bb57-f59e12e909cc&ecomp=2gntk), which requires the commission to file a written opinion setting forth its reasons for its decision, is not required, **“ ‘[a] legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support**.’ “ [*Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255](https://plus.lexis.com/document/documentlink/?pdmfid=1530671&crid=7970a091-20ab-4e38-ad10-ca3f4250a7cf&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4S21-6TP0-TXFV-Y3DB-00000-00&pdcontentcomponentid=9249&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&pdpinpoint=&prid=3459a1e8-96f8-4ab2-bb57-f59e12e909cc&ecomp=2gntk), quoting [*Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St.3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372](https://plus.lexis.com/document/documentlink/?pdmfid=1530671&crid=7970a091-20ab-4e38-ad10-ca3f4250a7cf&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4S21-6TP0-TXFV-Y3DB-00000-00&pdcontentcomponentid=9249&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&pdpinpoint=&prid=3459a1e8-96f8-4ab2-bb57-f59e12e909cc&ecomp=2gntk).

*Indus. Energy Users-Ohio v. PUC* (2008), 117 Ohio St.3d 486, 493 (emphasis added).[[6]](#footnote-7)

The PUCO’s failure to state specific findings of fact, supported by the record, and its failure to state reasons upon which its conclusions were based violated R.C. 4903.09.

In *Tongren v. PUC* (1999), 85 Ohio St.3d 87, 93 the Supreme Court of Ohio reversed and remanded two cases that were consolidated for appeal where the Court found that the Public Utilities Commission failed to provide record evidence explaining the basis for its decision. The Court recognized that the record in case one included the companies’ joint application for approval, comments filed by interested parties, responses filed by the companies to those comments, and certain correspondence from the companies to the Commission’s staff.[[7]](#footnote-8) With respect to case one the Court stated that “there is nothing in the record below to evince the bases for the commission’s acceptance of (the staff’s) recommendations and adoption of such findings.”[[8]](#footnote-9)

With respect to the second case, the Court found that there was “no support in the record for any of the conclusions or findings of the commission’s staff set forth in the GCR findings.”[[9]](#footnote-10) The Court went on to state that “(s)ince the commission adopted the staff’s determination of reasonableness as its own, it is impossible to determine what record evidence was considered by the commission other than the conclusion of its staff and the assertion of factually unsupported conclusions by the companies in their joint application for merger approval.”[[10]](#footnote-11)

As set forth above, neither the PUCO staff nor the PUCO provided any factual findings regarding the enormous cost-shifting that resulted in the unfair and unreasonable burden placed on AEP’s residential consumers. Instead, the PUCO simply made the generalized, unsupported statement that “(t)he Commission finds that AEP Ohio’s application to update the BTCR, as amended, is consistent with Ohio Adm. Code 4901:1-36, does not appear to be unjust or unreasonable, and should be approved.”[[11]](#footnote-12) There is no explanation or reasoning at all in either the staff report or the PUCO’s decision for its finding that the application did not “appear” to be unjust or unreasonable.[[12]](#footnote-13)

Moreover, as a result of the PUCO’s failure to provide the factual support and reasoning used to arrive at its decision in this case, OCC is foreclosed from demonstrating the prejudicial effect of the order. The PUCO should grant OCC’s AFR and set this matter for rehearing for the development and examination of an appropriate record.

## ASSIGNMENT OF ERROR 2: The PUCO’s Finding and Order is unlawful and unreasonable because it allowed AEP to collect carrying charges when AEP failed to comply with O.A.C. 4901:1-36-03(D).

The PUCO approved transmission rates to residential consumers that had excessive carrying charges that would have been avoided if AEP had it met its legal obligation under O.A.C. 4901:1-36-03(D). That provision of the PUCO rules provides that a utility should file an interim application to adjust its transmission charges if the costs will be substantially different then the amounts authorized under the electric utility’s previous application.[[13]](#footnote-14) The purpose of this PUCO Rule is to “avoid excessive carrying costs and to minimize the rate impacts for the following update filing.”[[14]](#footnote-15) In this case as of June 2023 AEP was already running an $49,818,665 under-recovery.[[15]](#footnote-16) AEP did not file an interim application. The result – at the end of the period there still was a $32 million under-recovery that AEP carried forward into the current rates.

Under the PUCO order, $32 million of the $70 million increase in the BTCR revenue requirement is a result of this under-recovery.[[16]](#footnote-17) 46% of this year’s increase in the revenue requirement is a result of carrying forward last year’s under-recovery. This is an unfair and unreasonable result. The PUCO should have protected residential consumers from the rate shock that was attributable to AEP’s failure to file an interim application pursuant to O.A.C. 4901:1-36-03(D).

## ASSIGNMENT OF ERROR 3: The PUCO’s Finding and Order is unlawful and unreasonable because it failed to protect consumers from misallocating the $32 million under-recovery from the prior period thereby violating R.C. 4905.22.

The PUCO’s Finding and Order violated R.C. 4905.22 by failing to protect consumers from the misallocation of the $32 million under-recovery that AEP carried forward into the present BTCR rates. R.C. 4905.22 requires:

All charges made or demanded for any service rendered, or to be rendered, shall be **just, reasonable**, and not more than the charges allowed by law or by order of the public utilities commission, and **no unjust or unreasonable charge shall be made or demanded** for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.” (Emphasis added.)

Not only did the $32 million under-recovery add to residential rate shock but the PUCO’s Finding and Order unfairly and unreasonably allocated far too much of the $32 million to residential consumers. This $32 million under-recovery occurred during the prior year ending March 31, 2024. In the prior year residential consumers were allocated 43% of the BTCR revenue requirement. However, the PUCO Finding and Order allocated to residential consumers last year’s $32 million under-recovery at this year’s allocation rate of 53%. It is unjust and unreasonable to allocate charges to residential consumers based on an allocation factor that was not the allocation factor in effect at the time of the under-recovery. The PUCO’s failure to protect residential consumers from the unjust and unreasonable cost-shifting misallocated approximately $3.3 million to residential consumers. This violates R.C. 4905.22.[[17]](#footnote-18)

## ASSIGNMENT OF ERROR 4: The PUCO’s Finding and Order is unlawful and unreasonable because the PUCO should have protected consumers by ordering the BTCR be collected subject to refund if FERC rules favorably on OCC’s complaint related to paying for supplemental transmission projects.

Ohio utility consumers face an immediate risk of substantial harm. OCC has long warned of the harm to consumers from utility charges for costly and unnecessary supplemental transmission projects.[[18]](#footnote-19) There is little to no regulatory oversight of the necessity or prudence of supplemental transmission project costs at the state or federal level. The PUCO recently acknowledged this “regulatory gap” in First Energy’s annual Rider NMB update case.[[19]](#footnote-20) Consistent with the PUCO’s recognition of this “regulatory gap” and to protect consumers by addressing these supplemental transmission cost issues, OCC in September 2023 filed a complaint regarding supplemental transmission projects at FERC.[[20]](#footnote-21)

PUCO Chair French, in remarks before the General Assembly, testified that to the extent the law allows, the PUCO can and has allowed for consumer refunds.[[21]](#footnote-22) And she testified she intends to continue that practice.

Consistent with Chair French’s remarks, and to prevent injury to the public and avoid irreparable harm to consumers, the PUCO should exercise its discretionary power under Ohio law to protect AEP consumers.[[22]](#footnote-23) The PUCO should require that AEP include in its tariffs language providing for refunds to consumers if FERC determines, as a result of OCC’s Complaint, that supplemental transmission project costs charged to consumers are improper and unreasonable.

The PUCO’s authority can be found under various statutes (including R.C. 4905.04 and R.C. 4905.06) and case precedent.[[23]](#footnote-24) Indeed, the Ohio Supreme Court recognized there is an apparent unfairness when a decision is determined to be unlawful, yet consumers get no refund of charges that were unlawful from the get-go.[[24]](#footnote-25)

The PUCO has acted to prevent harm from occurring to consumers by ordering utilities, on an ongoing basis, to collect an existing rate increase subject to refund and subject to appropriate interest charges. The PUCO has used this approach to permit it to explore the reasonableness of rates in light of events that occurred after the issuance of its orders. For instance, the PUCO granted rehearing and ordered rates to be collected subject to refund in a rate case filed by the Columbus & Southern Ohio Electric Company.[[25]](#footnote-26) In that rate case, one week after the issuance of the PUCO’s rate order, the Nuclear Regulatory Commission issued an Order that suspended construction at the Zimmer Nuclear Power Plant (“Zimmer”). The original Opinion and Order included a rate base allowance for construction work in progress (“CWIP”) for Zimmer.[[26]](#footnote-27)

In its order setting the rehearing, the PUCO approved the utility’s filed tariffs but expressly found the portion of the increase granted attributable to Zimmer CWIP “should be made subject to refund, pending a rehearing on the CWIP issue.”[[27]](#footnote-28) A rehearing was held, and the PUCO ordered that all of the Zimmer costs should be excluded from CWIP. The PUCO ordered the utility to file tariffs reducing the total revenue requirements by approximately $13 million.[[28]](#footnote-29) The utility appealed and sought a stay of the PUCO’s Order on Rehearing from the Supreme Court of Ohio. The Court granted the stay but subsequently affirmed the PUCO’s denial of a CWIP allowance.[[29]](#footnote-30) After the PUCO’s action was upheld on appeal,[[30]](#footnote-31) the PUCO ordered the utility to refund approximately $4.5 million to its customers.[[31]](#footnote-32) The PUCO ordered the collection, subject to refund to protect customers in the event of a later decision that the utility was collecting more from customers than warranted by law, rule, or reason.

Another example where the PUCO has collected rates subject to refund involved the Ohio Utilities Company.[[32]](#footnote-33) After a rate order was issued,[[33]](#footnote-34) legislation was enacted that changed Ohio’s ratemaking formula. The PUCO opened an investigation to determine if the previously-established rates were still reasonable in light of the new law.[[34]](#footnote-35) The PUCO determined that the rates were excessive, taking into account the new law, and ordered the utility to withdraw its tariffs and file new lower rates consistent with the PUCO’s findings.[[35]](#footnote-36) The utility sought a stay of the PUCO’s order, pending further review, which was granted with the condition that the utility was required to collect rates subject to refund.[[36]](#footnote-37)

And in a case involving AEP’s Rate Stability Rider (“RSR”), the PUCO ordered that the RSR be collected subject to refund after the case was remanded by the Court.[[37]](#footnote-38) The PUCO “direct[ed] AEP Ohio to file revised tariffs that provide that the RSR is being collected subject to refund” in order to protect consumers from irreparable harm – continuing to pay the RSR without the potential of getting a refund.[[38]](#footnote-39)

As set forth above, the PUCO should require that AEP include in its tariffs language providing for refunds to consumers if FERC determines, as a result of OCC’s Complaint, that supplemental transmission project costs charged to consumers are improper and unreasonable.

# III. CONCLUSION

The PUCO can act now to stop the unfair and unreasonable transmission rate increase to residential consumers. The PUCO should grant OCC’s Application for Rehearing and provide an opportunity for the development of a full record with factual findings and a written rationale supporting its decision. The PUCO should deny AEP’s carrying charges under the BTCR due to AEP’s failure to file for an interim application pursuant to O.A.C. 4901:1-36-03(D).

Further, the PUCO should eliminate the misallocation of the $32 million under-recovery by using the allocation factors in effect when the misallocation occurred and not the allocation factors for the present year. Finally, to prevent harm to consumers from supplemental transmission projects the PUCO should order that the BTCR be collected subject to refund if FERC determines as a result of the OCC Complaint that consumers are improperly paying for supplemental transmission projects.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

Donald J. Kral (0042091)

Counsel of Record

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Kral]: (614) 466-9571

Telephone [Brodbeck]: (614) 466-9565

[donald.kral@occ.ohio.gov](mailto:donald.kral@occ.ohio.gov)

[thomas.brodbeck@occ.ohio.gov](mailto:thomas.brodbeck@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 was served on the persons stated below via electronic transmission, this 19th day of April 2024.

*/s/ Donald J. Kral*

Donald J. Kral

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |  |
| --- | --- | --- |
|  |  | |
| amy.botschnerobrien@ohioago.gov  Attorney Examiners:  [david.hicks@puco.ohio.gov](mailto:david.hicks@puco.ohio.gov)  [greta.see@puco.ohio.gov](mailto:greta.see@puco.ohio.gov) | | [stnourse@aep.com](mailto:stnourse@aep.com)  [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)  [jkylercohn@BKLlawfirm.com](mailto:jkylercohn@BKLlawfirm.com)  [dproano@bakerlaw.com](mailto:dproano@bakerlaw.com)  [pwillison@bakerlaw.com](mailto:pwillison@bakerlaw.com)  [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  [easley@carpenterlipps.com](mailto:easley@carpenterlipps.com) | |

1. *In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Rider,* Case No. 24-42-EL-RDR, Application (Jan. 17, 2024), Schedules B-1 through B-4. [↑](#footnote-ref-2)
2. Case No. 24-42-EL-RDR, Finding and Order (March 20, 2024). [↑](#footnote-ref-3)
3. *In the Matter of the Establishment of a Commission Docket to Archive Commission Documents Submitted to Federal Administrative Agencies on Electric Policy Related Matters*, Case No. 23-7000-EL-FAD, Comments of Commissioner Dan Conway (Oct. 5, 2022) (FERC Docket AD22-8-000). [↑](#footnote-ref-4)
4. *Id*., Federal Energy Advocate comments at 21 (Aug. 17, 2022) (FERC Docket RM21-17-000). [↑](#footnote-ref-5)
5. Finding and Order at 6. [↑](#footnote-ref-6)
6. *See also Ohio Consumers’ Counsel v. Pub. Util. Comm*. (2006), 111 Ohio St.3d 300, 306 (stating that “(w)e have held that ‘in order to meet the requirements of R.C. 4903.09, therefore, the PUCO’s order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.’ *MCI Telecommunications Corp. v. Pub.Util.Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337”). [↑](#footnote-ref-7)
7. *Tongren v. PUC* (1999), 85 Ohio St.3d 87, 90. [↑](#footnote-ref-8)
8. *Id.* at 90. [↑](#footnote-ref-9)
9. *Id.* at 91. [↑](#footnote-ref-10)
10. *Id.* at 91. [↑](#footnote-ref-11)
11. Finding and Order (March 20, 2024) at ¶ 16. [↑](#footnote-ref-12)
12. *Tongren*, 85 Ohio St.3d at 92-93. [↑](#footnote-ref-13)
13. *See* O.A.C. 4901:1-36-03(D) stating that “(i)f at anytime during the period between annual update filings, the electric utility or staff determines **that costs are or will be substantially different than the amounts authorized as the result of the electric utility’s previous application**, the electric utility should file, on its own initiative or by order of the commission, an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing” (emphasis added). [↑](#footnote-ref-14)
14. O.A.C. 4901:1-36-03(D). [↑](#footnote-ref-15)
15. Application, Schedule D-1 and D-3. [↑](#footnote-ref-16)
16. Finding and Order (March 20, 2024) at ¶ 6. [↑](#footnote-ref-17)
17. *Id.* at fn. 10 (difference between .53295 (approved residential cost allocation for this year) x $32,012,725 and .42878 (prior year residential cost allocation) x $32,012,725 = $3,334,765.60). [↑](#footnote-ref-18)
18. *See, e.g., In the Matter of The Ohio Power Company Application to Update Its Basic Transmission Cost Rider,* Case No. 23-57-EL-RDR, OCC’s Consumer Protection Comments (Feb. 27, 2023). [↑](#footnote-ref-19)
19. *See In the Matter of the Review of the Non-Market Based Services Rider Contained in the Tariffs of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co*., Case No. 23-51-EL-RDR, Finding and Order ¶ 14 (March 22, 2023). [↑](#footnote-ref-20)
20. *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023) (“OCC Complaint Action”). [↑](#footnote-ref-21)
21. Confirmation Hearing, Ohio Senate Energy and Public Utilities Committee (April 9, 2024), <https://ohiochannel.org/video/ohio-senate-energy-and-public-utilities-committee-4-9-2024>. [↑](#footnote-ref-22)
22. The reconciliation/refund language contained in the BTCR Tariff should expressly reference and include the availability of refunds pending FERC’s decision in *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023). [↑](#footnote-ref-23)
23. *See, e.g.*, *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (Nov. 17, 1982); *Cinnamon Lake Utility Co. v. Public. Util. Comm*. (1975), 42 Ohio St.2d 259 (where the Ohio Supreme Court noted that R.C. 4909.16 exists to protect the public interest as well as the interests of the public utility). [↑](#footnote-ref-24)
24. *See* *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶ 17. [↑](#footnote-ref-25)
25. *In re Columbus & Southern Ohio Electric Co*., Case No. 83-1058-EL-AIR, Entry (Nov. 17, 1982). [↑](#footnote-ref-26)
26. *Id*., Opinion and Order at 8-14 (Nov. 5, 1982). [↑](#footnote-ref-27)
27. *Id*., Entry at 1 (Nov. 17, 1982). [↑](#footnote-ref-28)
28. *Id*., Order on Rehearing (March 16, 1983). [↑](#footnote-ref-29)
29. *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm*. (1984), 10 Ohio St.3d 12. [↑](#footnote-ref-30)
30. *Id.* [↑](#footnote-ref-31)
31. *In re Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984). [↑](#footnote-ref-32)
32. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry at 2 (June 7, 1978). [↑](#footnote-ref-33)
33. *In the Matter of the Ohio Utilities Co. Application for an Increase in Rates*, Case No. 79-529-WS-AIR, Opinion and Order (Jan. 18, 1977). [↑](#footnote-ref-34)
34. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (Sept. 7, 1977). [↑](#footnote-ref-35)
35. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Opinion and Order (May 18, 1978). [↑](#footnote-ref-36)
36. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (June 7, 1978). The utility was also required to file an “undertaking” consisting of a promise to refund any amount collected for service rendered after the date of the Entry by a method later determined by the Commission (either cash refund or as a credit to future bills). The undertaking was required to be under oath by an officer of the company and was to include a promise to include interest. The amount ordered for refund was the amount collected for service in excess of those rates ultimately determined to be lawful. *Id*. [↑](#footnote-ref-37)
37. *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, et al. (May 18, 2016). [↑](#footnote-ref-38)
38. *Id.* at 4. [↑](#footnote-ref-39)