**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In re Review of the Power Purchase Agreement Rider of Ohio Power Company. | )  ) | Case No. 18-1003-EL-RDR |

**INITIAL COMMENTS**

**BY**

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

The PUCO ordered a prudence audit of the charges that 1.5 million AEP consumers have paid to subsidize AEP’s interest in two Ohio and Indiana coal power plants. The amount that customers pay is equal to AEP’s share of the costs for the two coal plants minus any revenues that AEP derives from bidding into PJM markets. To minimize charges to consumers, therefore, it is essential that AEP bid into those competitive markets prudently.

But the Auditor found that AEP failed to provide the Auditor with sufficient information to meaningfully evaluate AEP’s bidding strategy. Worse yet for consumers, the PUCO’s Auditor somehow still concluded that AEP’s bidding strategy was prudent.[[1]](#footnote-2) This makes no sense. The regulator (PUCO) needs to be in control of this process, not AEP. And the PUCO should take control for the protection of consumers.

What also doesn’t make sense for consumers, in a different way, is the Auditor’s finding that customers have been making interest-free loans to AEP as a result of AEP’s constant overcollections through the OVEC Rider.[[2]](#footnote-3) Also of concern is the Auditor’s finding that charges to consumers could increase substantially if the OVEC coal plants incur “extremely high” costs to meet environmental regulations.[[3]](#footnote-4)

Customers pay these coal plant charges through AEP’s power purchase agreement rider, also known as the “OVEC rider” because the plants are owned by an entity called the Ohio Valley Electric Corporation, of which AEP is a partial owner. The audit reviewed AEP’s charges to consumers under the OVEC rider for the period June 1, 2016 through December 31, 2017 (the “Audit Period”).[[4]](#footnote-5) The Attorney Examiner allowed parties an opportunity to provide comments on the Audit Report. The Office of the Ohio Consumers’ Counsel (“OCC”) respectfully requests that the PUCO consider the following consumer-protection recommendations regarding the findings of the Audit Report and charges to consumers under the OVEC Rider.

**I. BURDEN OF PROOF**

In the Order approving the OVEC Rider, the PUCO ruled that during these annual prudence reviews, “AEP Ohio will bear the burden of proof in demonstrating the prudency of all costs and sales during the review, as well as that such actions were in the best interest of retail ratepayers.”[[5]](#footnote-6) Likewise, the PUCO ruled that “[r]etail cost recovery may be disallowed as a result of the annual prudency review if the output from the units was not bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues.”[[6]](#footnote-7)

Thus, in evaluating the Audit Report, the PUCO should bear in mind that it is not the Auditor (or anyone else) that bears the burden of proving that AEP acted imprudently. It is AEP’s burden to affirmatively prove prudence.[[7]](#footnote-8)

**II. RECOMMENDATIONS**

**A. The PUCO should require AEP to provide evidence to an Auditor (and to the parties and to the PUCO) sufficient for an Auditor to determine if AEP’s bids into the annual PJM Reliability Pricing Model auctions were prudent and in the best interest of consumers. A fair case process for parties should follow AEP’s provision of the information and an Auditor’s determination based on that information.**

As explained, the charges to customers are directly impacted by the amount of revenue that the OVEC plants generate through PJM markets. AEP bids annually into PJM’s Reliability Pricing Model (“RPM”) Base Residual Auctions, thus generating substantial capacity revenues: nearly $17 million for 2016-2017 and over $20 million for 2017-2018.[[8]](#footnote-9)

The Auditor attempted to determine whether AEP’s bidding strategy was prudent. But the Auditor “was not provided detailed information as to how AEP determines what prices or volumes to bid into each PJM RPM auction.”[[9]](#footnote-10) The Auditor noted that this information is “critical to making sure the plants clear the auction and receive important revenue through the Reliability Pricing Model.”[[10]](#footnote-11) Further, when asked for documentation, AEP provided a document that “was limited in detail and did not provide a full documentation of the numerical calculations involved.”[[11]](#footnote-12) The Auditor thus concluded, “Given the level of information provided, we were unable to conduct a thorough analysis.”[[12]](#footnote-13) This scenario raises two issues. One is that AEP should be required to provide to the Auditor the information that the Auditor sought. The other issue is that the audit process, which exists for the protection of consumers, seems to be dysfunctional. Both issues should be resolved in favor of consumers.

Despite the lack of information provided to the Auditor, the Auditor somehow determined, “we conclude that the company is acting prudently.”[[13]](#footnote-14) Quite frankly, this makes no sense. The auditor admitted that it was unable to verify what AEP Ohio was doing or how AEP Ohio was making its decision, but the Auditor nonetheless drew the conclusion that AEP Ohio was acting prudently. The best the Auditor can say (which is really one of the worst things the Auditor can say) is that “there is no evidence that the actions taken by AEP Ohio with relation to the PJM Reliability Pricing Model were improper.”[[14]](#footnote-15) So the PUCO’s Auditor complains that AEP denied it needed evidence, and then concludes that AEP’s competitive bidding practices are OK because there is “no evidence.” This is a PUCO ordered audit, and the PUCO should take control for the protection of consumers.

The point of the audit is for the Auditor to review the evidence and render an affirmative opinion on prudence. If AEP Ohio fails to provide enough information for the Auditor to do its job, the Auditor cannot simply give up on its audit duties and assume, without evidence, that the utility was doing things correctly.

The PUCO should require AEP to provide evidence to an Auditor (and to the parties and to the PUCO) sufficient for an Auditor to determine if AEP’s bids into the annual PJM Reliability Pricing Model auctions were prudent and in the best interest of consumers. A fair case process for parties should follow AEP’s provision of the information and an Auditor’s determination based on that information. Otherwise, there should be a finding that AEP Ohio failed to meet its burden of providing that its bidding strategy was prudent, thus resulting in full disallowance of charges to customers.

**B. The PUCO should require AEP Ohio to provide a credit to customers for carrying charges on AEP’s constant overcollections (which are resulting, in effect, in consumers making a “loan” to AEP).**

During the Audit Period, AEP Ohio consistently collected from customers more than the actual net OVEC charges.[[15]](#footnote-16) In three of the four quarters in 2017, AEP Ohio over-collected anywhere from $354,000 to $1.6 million from customers, compared to one quarter when AEP Ohio under-collected $272,000.[[16]](#footnote-17) Altogether, customers paid an extra $2.5 million for 2017. This means that until the next quarterly update in 2018, AEP Ohio was holding $2.5 million of customers’ money, interest free. (The situation got worse immediately after the audit period, where AEP over-collected by $5.6 million in the first quarter of 2018 alone, thus increasing the amount of customer money held by AEP to more than $8 million.)

To address this harm to customers, the Auditor suggested that AEP be required to assess a carrying charge at a rate of 4.5% in favor of customers whenever AEP’s over-collection balance is greater than 15% of the actual OVEC Rider charges.[[17]](#footnote-18) The Auditor is correct that customers should receive carrying charges. But the PUCO should order that all AEP over-collections from consumers should be subject to such a carrying charge, without the Auditor’s proposed 15% threshold. Accordingly, customers should be entitled to a carrying charges credit in the amount of $342,413 during the audit period.[[18]](#footnote-19)

**C. Charges to consumers under AEP’s OVEC Rider should be reduced by $110,445 to account for AEP’s failure to adequately consider the potential for ancillary services revenues.**

Customers were charged under AEP’s OVEC rider based on the amount of net revenue the OVEC plants generated. The OVEC plants generate revenue through the PJM wholesale markets. The OVEC plants incur costs (as do all power plants). The charges to consumers are the revenues minus the costs (where costs exceed revenues, in the uneconomic situation of the OVEC coal plants). Thus, to minimize charges to consumers, AEP should be required to act prudently by maximizing the revenues that it obtains from offering OVEC into PJM’s markets.

AEP failed to do this. As the Auditor found, OVEC is not participating in PJM’s ancillary services market. In fact, during the entire audit period (June 1, 2016 through December 31, 2017), “ancillary services were not a significant topic of conversation or analysis” by the OVEC Operating Committee.[[19]](#footnote-20) It was not until much later (May 9, 2018), that the committee finally discussed participating in the ancillary services market, and “[a]n estimate was made that OVEC could achieve up to $350,000 in annual revenue by participating in [PJM’s] ancillary services market, although the plants could see negative physical and financial impacts from providing this service.”[[20]](#footnote-21) This would mitigate, at least in some small part, the more than $70 million that customers have paid to date in OVEC subsidies to AEP.

AEP has provided no justification for failing to even consider pursuing ancillary services revenues until after the audit period had ended (and even then, it was only discussed because of a suggestion made by Duke Energy, not AEP).[[21]](#footnote-22) The Auditor found that a “technical study would need to be conducted to determine if bidding into this market would be prudent.”[[22]](#footnote-23) AEP (and OVEC) should have performed such a study years ago, in advance of charges to consumers under the OVEC rider, to ensure that the OVEC plants were maximizing their net revenues (and therefore minimizing the costs to consumers under AEP’s OVEC Rider).

As a result of the imprudent decision to ignore the revenues that can be generated by entering the ancillary services market, the PUCO should use the estimated $350,000 in ancillary services revenue as a proxy for disallowance. AEP Ohio holds a 19.93% power participation interest in OVEC.[[23]](#footnote-24) Thus, charges to consumers under the OVEC Rider should be reduced by $110,445.[[24]](#footnote-25)

**III. CONCLUSION**

Especially given the lack of market discipline for these coal plants whose losses are subsidized by Ohioans, the PUCO should closely scrutinize all charges to Ohio consumers for the plants. AEP Ohio had to prove in this case that the charges were prudent, that its actions were in the best interests of customers, and that all charges comply with the various limitations set forth in the OVEC Order. As explained above, AEP did not meet its burden of proof in several respects, and customers deserve a bill credit.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 17th day of January 2020.

/s/ *Christopher Healey*

Christopher Healey

Assistant Consumers’ Counsel

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

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1. Audit Report at 21 (filed Aug. 9, 2019). [↑](#footnote-ref-2)
2. Audit Report at 37-38. [↑](#footnote-ref-3)
3. Audit Report at 5. But the Auditor filed the related figures in secret, under seal. [↑](#footnote-ref-4)
4. *See* Audit Report at 1. [↑](#footnote-ref-5)
5. Case No. 14-1693-EL-RDR, Opinion & Order at 89 (Mar. 31, 2016) (the “OVEC Order”) (also stating, “AEP Ohio will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail ratepayers.”). This March 31, 2016 Order related to AEP’s PPA Rider, which, at the time, included more than just OVEC. The rider was subsequently modified to be for OVEC only. *See* Case No. 14-1693-EL-RDR, Second Entry on Rehearing (Nov. 3, 2016). This modification does not impact the burden of proof in this audit proceeding. [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. *See* OVEC Order at 90 (“The PPA rider, however, remains subject to adjustment during the annual audit and reconciliation, through which Staff, or another auditor selected by the Commission, will review the accuracy and appropriateness of the rider’s accounting and the prudency of AEP Ohio’s decisions and actions as set forth in the stipulation.”). *See also In re Duke Energy Ohio, Inc.*, 131 Ohio St.3d 487, 488 (2012) (it is the utility that must “prove a positive point: that its expenses had been prudently incurred”). [↑](#footnote-ref-8)
8. Audit Report at 21. [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. *Id.* [↑](#footnote-ref-11)
11. *Id.* [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. *Id.* [↑](#footnote-ref-14)
14. *Id.* [↑](#footnote-ref-15)
15. Audit Report at 37-38. [↑](#footnote-ref-16)
16. Audit Report at 37, Exhibit III-8. [↑](#footnote-ref-17)
17. Audit Report at 39. [↑](#footnote-ref-18)
18. Calculated as 4.5% of the over-recovery balances for Q1 2017 through Q4 2017 as found on Exhibit II-8, page 37 of the Audit Report. Note that the 15% threshold is met in each quarter of 2017, so even if the PUCO adopts the auditor’s 15% threshold, the carrying charge credit would be the same. [↑](#footnote-ref-19)
19. Audit Report at 25. [↑](#footnote-ref-20)
20. Audit Report at 25. [↑](#footnote-ref-21)
21. Audit Report at 25. [↑](#footnote-ref-22)
22. Audit Report at 25. [↑](#footnote-ref-23)
23. Audit Report at 9. [↑](#footnote-ref-24)
24. $350,000 per year \* 1 year and 7-month audit period \* 19.93% [↑](#footnote-ref-25)