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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders.	)))))	Case No. 10-155-EL-RDR

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COMMENTS
BY
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I. INTRODUCTION

On February 8, 2010, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "AEP" or "Companies") filed with the Public Utilities Commission of Ohio ("PUCO" or "Commission") an Application regarding the establishment of an Environmental Investment Carrying Cost Rider ("EICCR") associated with the alleged environmental investments for each company for 2009. AEP proposes to establish an EICCR as a percentage of the Companies' Non-Fuel Adjustment Clause ("FAC") Generation charges. AEP initially proposes to charge CSP's customers an EICCR that is 4.31451% of Non-FAC Generation charges, and to charge OPC's customers an EICCR that is 4.18938% of Non-FAC Generation charges.[1] The Companies plan to collect the carrying charges (about $28.3 million for CSP and $36.6 million for OPC) from customers over an 18-month period, from July 2010 through December 2011.[2] The proposed rate increases caused by the new riders could adversely

[1] Application at [2].

[2] Id. at [3]. See also id., CSP Schedule 1 and OPC Schedule 1.

affect AEP's approximately 1.2 million residential distribution customers who pay for electric service.

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of residential utility consumers,[3] submits Comments on the Application. OCC's Comments address four issues. First, the Application provides insufficient details regarding the nature of the environmental capital investments made in 2009 and the reasonableness of these investments in meeting environmental regulations. More information is needed concerning the investments that were made and the necessity of the investments.

Second, OCC agrees with the Industrial Energy Users ("IEU") that the Commission, in its Order in the Companies' electric security plan ("ESP") case,[4] did not authorize the use of Weighted Average Cost of Capital ("WACC") for calculating carrying charges on incremental environmental investments made after January 1, 2009.[5] Use of the high WACC-derived cost of financing and other cost items that have resulted in high carrying charge rates – 14.84% for CSP and 13.98% for OPC[6] – is inappropriate for calculating carrying charges over a short period of time, from six months to 18 months. In setting the financing cost component of the annual carrying charge, the Commission should instead apply the actual short-term debt rate in conjunction with the various low-cost special funding sources available for financing environmental or pollution control assets.

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[3] OCC's intervention was granted in an Entry issued on April 8, 2010 (at 4).

[4] *CSP and OPC ESP Applications*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO ("ESP Case"), Order (March 18, 2009) ("ESP Order").

[5] IEU Motion to Intervene and Comments (March 26, 2010) at 8-9.

[6] See Application, CSP Schedule 1 and OPC Schedule 1.

Third, AEP's inappropriate inclusion of general and administrative expenses and property tax as well as the use of a monthly-compounding carrying cost calculation unjustly inflates the carrying charges on incremental environmental investments that customers will be required to pay. An end-of-year carrying cost calculation is more reasonable.

The Companies should also provide justification for the proper amounts, if any, of general and administrative expenses and property taxes being included in the annual carrying charges. Any amount of general and administrative expenses and property tax that has not been found to be prudent and reasonable should be disallowed.

Fourth, the Companies should be directed to revise their Application to properly account for the discrepancy of the 2009 environmental capital investments identified in the Companies' responses to Staff's data requests.

The issues discussed in these Comments demonstrate the need for a formal hearing on the Application. The Commission should schedule such a hearing.

II. COMMENTS

A. The Application Provides Insufficient Details Regarding the Nature of the Environmental Investments Made by the Companies in 2009, and Regarding the Reasonableness of the Investments.

The Companies have not submitted documentation sufficient to determine eligibility for collecting carrying charges for their claimed environmental investments in 2009. A claim for authority to collect the carrying charges should contain some proof of eligibility. AEP's documentation consists of cost numbers with only terse identification of projects. In considering utilities' requests for authority to collect millions of dollars from customers, the Commission should insist on a higher level of transparency with the

ability to verify the reasonableness and prudence of expenditures. The Companies should be required to be more accountable for the dollars they seek to extract from customers' wallets.

The carrying costs associated with environmental investments that were made in 2009 in order to meet already-existing environmental regulations should already be reflected in existing rates. It is impossible to determine from AEP documentation whether the carrying charges that the Company now seeks to collect apply only to costs associated with compliance with new post-Rate Stabilization Plan ("RSP") environmental requirements. The Commission should require the Companies to provide more detailed documentation about the nature of the environmental investments associated with the carrying charges under consideration in this proceeding.

B. The Companies Should Not Fully Recover the Carrying Charges for the Environmental Investments Because the Companies' Claimed Environmental Assets May Not Be Eligible Under the Commission's Opinions and Orders.

In 2007, the Companies' parent corporation, American Electric Power Service Corp. ("AEPSC") entered into a Consent Decree, involving several power units in AEPSC's Ohio service territory.[7] The decree settled various Notices of Violations ("NOVs") filed between November 3, 1999 and September 17, 2004. The NOVs alleged violations of the Prevention of Significant Deterioration and Nonattainment New Source Review provisions of the Clean Air Act and of federally-enforceable State Implementation Plans for Indiana, Ohio, Virginia and West Virginia. EPA claimed that

[7] *U.S. v. American Electric Power Service Corp.*, Civil Action No. C2-99-1250 (S.D. Ohio December 7, 2007). This Consent Decree came shortly after the U.S. Environmental Protection Agency ("EPA") won a major suit at the U.S. Supreme Court against another power company for similar alleged violations. See *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561, 127 S. Ct. 1423, 167 L. Ed. 2d 295 (2007).

various AEPSC power units made major modifications without required New Source Review permits.

In the settlement, AEPSC agreed to system-wide annual limitations on NOx and SO2 emissions, to installation of NOx and SO2 control equipment at specified power units and to restrictions on use and surrender of NOx and SO2 Clean Air Interstate Rule ("CAIR") Allowances. Included in the settlement, AEPSC could use CAIR allowances to pay stipulated penalties.

In response to OCC discovery, AEP identified the following CSP major projects, listed in CSP Schedule 2 to the Application, that involved environmental investments resulting from the Consent Decree: Conesville Unit 4 FGD; Conesville Unit 4 SCR; Conesville Unit 5 FGD; Conesville Unit 6 FGD; and NOx Assoc.[8] The Companies also identified the following OPC major projects, listed in OPC Schedule 2 to the Application, that involved environmental investments resulting from the Consent Decree: Amos Unit 3 FGD; Amos Unit 3 SCR; Cardinal Unit 1 FGD; Kammer Units 1-3 Fuel Switch; Mitchell Unit 1 FGD; Mitchell Unit 2 FGD; NOx Assoc; Other FGD; and Other Environmental.[9]

The Companies should not be allowed to collect from customers any portion of the alleged carrying costs that come from environmental investments required for compliance with the Consent Decree. Consumers should not have to pay for environmental investments that EPA's NOVs allege were required by laws that were in effect long before the RSP. This is true even though the same control equipment would

[8] AEP Response to OCC Interrogatory No. 23.

[9] AEP Response to OCC Interrogatory No. 35.

also be used for compliance with CAIR requirements because this same equipment would generate allowances that would pay stipulated penalties. As a result, consumers would unjustly be forced to help pay the penalties placed upon AEP in the Consent Decree.

C. The Commission's Authorization, in the ESP Order, for the Companies to Use the Weighted Average Cost of Capital for Calculating Carrying Charges for Environmental Investments Was Limited to Expenditures for Environmental Investments Made from 2001 Through 2008.

In calculating the carrying charges for environmental investments made after January 1, 2009, AEP assumes that it would be allowed to use the same carrying charge rate – 14.94% for CSP and 13.98% for OPC[10] – that the Commission approved in the Companies' ESP case.[11] That rate, however, was only specifically approved for "the incremental capital carrying costs that will be incurred after January 1, 2009, *on past environmental investments (2001-2008) that are not presently reflected in the Companies' existing rates*, as contemplated in AEP-Ohio's RSP Case."[12] The carrying charge rate proposed by the Companies is inappropriate for the investments at issue in this proceeding.[13]

In the ESP Order, the Commission was confronted with AEP's proposal to collect from customers carrying charges on eight years' of environmental investments that AEP alleged were not included in rates. Further, the carrying charges were to be collected over the three-year term of AEP's ESP. This is the circumstance under which the

[10] See Application, CSP Schedule 1 and OPC Schedule 1.

[11] See ESP Order at 28.

[12] Id. (emphasis added).

[13] OCC does not concede that the carrying charge rate approved in the ESP Order was appropriate.

Commission applied the WACC for AEP's collection of the carrying charges on past environmental investments from customers.

The circumstances presented in this case are much different from the ESP case. Here, the carrying charges are for one year's incremental environmental investments, and the collection is planned to be made over an 18-month period. This is a much shorter period than was before the Commission in the ESP case. If the Commission approves any further rate increase as a result of this proceeding, the carrying charge rate should be calculated based on the short-term actual cost of debt, excluding equity. The Commission should reject the Companies' proposed carrying charge rate and calculate carrying charges, if any, for incremental environmental investment as OCC suggests in these Comments.

D. The Companies Have Not Met Their Burden of Proof that the Proposed Carrying Charge Rates Are Just and Reasonable; the Companies' Proposed Method of Calculating the Annual Carrying Charges Is Flawed.

As the proponent of the EICCR, AEP has the burden of showing that the proposed carrying charge rates are just and reasonable, in accordance with R.C. 4905.22. The Companies have failed to meet this burden for several reasons.

First, the Companies failed to include the low cost of the various types of special financing available to finance environmental or pollution control investments in the calculation of annual carrying charges for environmental investments. The Companies have the burden of proof that none of the low-cost special financing options was available or used in funding the 2009 environmental investments.

Second, the Companies' inclusion of WACC-based cost of financing (that is the item "Return" in the Companies' proposed carrying charges) in the carrying charges is

unreasonable. The average financing cost of short-term debt actually incurred by the Companies should be used if there are no low-cost special financing sources available to the Companies for the 2009 environmental investments. The Companies have not justified using the WACC in setting the financing cost. The proposed EICCRs will allow the Companies to fully recover the annual financing cost of all their 2009 environmental investments within a very short period of time. There is no deferral on the recovery of the annual carrying costs associated with any environmental investments made in 2009 and later years in the ESP period.

Third, the Companies also failed to justify the inclusion of the "Property Taxes, General & Admin Expenses" in the annual carrying charges for environmental investments. There is no support or explanation provided in the Application and discovery responses for the Companies' proposed cost rates for "Property Taxes, General & Admin Expenses" to be included in the annual carrying charges. The Companies have not shown that these types of general and administrative expenses are associated with environmental investments and were not already being recovered through the annual adjustment of fuel-related costs. The proposed cost rates for "Property Taxes, General & Admin Expenses" are 2.95% for CSP and 2.00% for OPC, and both are significant portions of the total carrying charges.

Fourth, the Companies failed to justify the use of a monthly-compounding carrying charge calculation. This monthly-compounding carrying cost calculation unjustly inflates the carrying charges on incremental environmental investments that customers will be required to pay. This monthly-compounding carrying charge calculation is a departure from the end-of-year (or "One-Half Year Convention" as

characterized by AEP in the ESP case[14]) carrying cost calculation, as well as the carrying charge calculation in the proposed Update of Enhanced Service Reliability Riders currently being considered by the Commission.[15] The annual carrying cost rates proposed in AEP's ESP case, which are exactly the same carrying cost rates proposed in this Application, are calculated assuming the environmental capital additions are spread evenly over each year.[16] The Companies' monthly-compounding methodology proposed in the Application cannot be justified and should be rejected by the Commission.

The Companies have failed to meet their burden of showing that the proposed EICCR rates are just and reasonable. The Commission should deny the Application.

E. The Commission Should Direct the Companies to Revise Their Application to Properly Account for the Discrepancy of the 2009 Environmental Capital Investments Identified in the Companies' Responses to Staff's Data Requests.

The Companies should adjust their 2009 Environmental Capital Additions in the Application and attached schedules to reflect the one CSP work order that should be included but has not been included in the EICCR filing and the one OPC work order that should not be included but has been included in the EICCR filing.[17] Specifically, the 2009 Environmental Capital Addition for OPC should be reduced by $2,097,060 and the 2009 Environmental Capital Addition for CSP should be increased by $12,000.

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[14] See ESP Case, AEP Exhibit 7 (Nelson) at 16-17.

[15] See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Update Their Enhanced Service Reliability Riders*, Case No. 10-163-EL-RDR, Application (February 11, 2010), CSP Schedule 1 and OPC Schedule 1.

[16] ESP Case, AEP Exhibit 7 (Nelson) at 16-17.

[17] See AEP discovery response OCCrpd03.pdf, which contains Environmental Filing Work Order Backup provided to Staff on March 19, 2010.

F. The Commission Should Hold a Hearing on the Application.

The above discussion points out the need for a hearing on the Application. The Companies' Application and responses to discovery requests do not provide sufficient detail for the Commission to make a reasoned determination regarding the Application. The Commission should also examine whether the environmental investments are justified and may lawfully be collected from consumers. Further, the Commission must also determine the appropriate rate for the collection of carrying charges, if any.

The Commission should not make the determinations in this case based solely on the insufficient information contained in the documents filed in the docket, especially when CSP customers may be required to pay about $28.3 million and OPC customers may be required to pay approximately $36.6 million. A hearing is needed for the Commission to make the necessary determinations. The Commission should hold a hearing in this case.

III. CONCLUSION

The Companies have offered insufficient detail regarding the environmental investments it allegedly made in 2009 for the Commission to approve the Application as filed. Further, there are many questions surrounding the nature of the environmental investments alleged by AEP and the amount of carrying charges, if any, that the Companies should be allowed to collect from customers. The carrying charge rate is also at issue. The Commission should hold a hearing on the Application.

Respectfully submitted,

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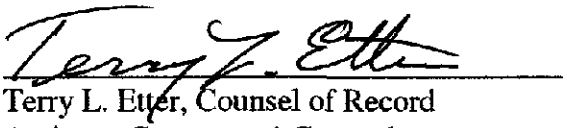

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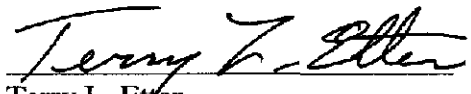
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served upon the persons listed below via first class U.S. Mail, postage prepaid, on this 30th day of April 2010.



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