

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of Fuel Adjustment Clause)	Case No. 10-479-EL-UNC
Guidelines)	

REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

On June 23, 2010, the Public Utilities Commission of Ohio ("Commission") issued an Entry requesting comments on proposed guidelines to provide uniform standards and specifications for fuel adjustment clause ("FAC") audits.¹ The Commission asked interested persons to submit initial comments by July 14, 2010 and reply comments by July 28, 2010. While Industrial Energy Users-Ohio ("IEU-Ohio") did not file initial comments, it reserved the right to file reply comments that are supplied below for the Commission's consideration.

IEU-Ohio's failure to address a position taken or recommendation in the initial comments, in whole or in part, should not be construed as an indication that IEU-Ohio agrees with such position or recommendation.

¹ The ability to develop and apply uniform guidelines depends significantly on the existence of a uniform FAC. And, current Ohio law, as well as the Commission's implementation of the law, has not provided a good foundation for this type of uniformity. For example, the current Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively, American Electric Power – Ohio or "AEP-Ohio") FAC allows unprecedented recovery of fuel and non-fuel costs as well as fixed and variable costs. And, at least initially, Ohio law allows an electric distribution company to propose cost recovery mechanisms as part of an electric security plan that are not restricted by uniform requirements.

II. REPLY COMMENTS

A. Dayton Power and Light (“DP&L”) and Duke Energy Ohio (“DE-Ohio”)

In their initial comments, DP&L and DE-Ohio observe that the Commission is relying upon the previous electric fuel component (“EFC”) rules as a template for the proposed guidelines and suggest that the Commission update the guidelines to take into account the current regulatory environment that exists, including the formation of regional transmission organizations (“RTO”).² IEU-Ohio generally concurs that the Commission should ensure the rules reflect the current regulatory environment, but this objective is a necessary part of implementing Amended Substitute Senate Bill 221 (“SB 221”) and more specifically the electric security plan (“ESP”) option provided by SB 221.

Under the ESP option, electric distribution utilities have broad discretion to design and include cost recovery mechanisms in their proposed ESP. Self-reconciling cost recovery mechanisms tend to shift business and financial risks to customers who may have no ability to manage such risks. It is, of course, possible to recognize the risk-shifting effects of cost recovery mechanisms by making adjustments in other pricing components such as the interest rate allowed on deferred expenses. But where the structure and risk-shifting effects of a cost recovery mechanism as significant as an FAC are not embedded in the audit framework, the audit will yield information that is unfit for use by a regulator that is charged with the larger responsibility of fairly balancing the interests of customers and utility owners.

An ESP package or proposal, including cost recovery mechanisms such as an FAC, must be more favorable in the aggregate as compared to the results that would

² Initial Comments of The Dayton Power & Light Company at 1-2; Comments of Duke Energy Ohio at 2.

otherwise apply under section 4928.142, Revised Code.³ Ohio law requires the Commission to ensure that cost recovery mechanisms (including any FAC) that are included in an ESP are designed and implemented to serve the purposes of an ESP and advance the policy set out in Section 4928.02, Revised Code.

Thus, guidelines associated with an FAC audit process must not mechanically constrain the role of the audit in ways that may have been appropriate in the context of traditional regulation. The auditor's role must be specified to ensure that the audit examines the FAC in the context of the customer-driven objectives that Ohio law requires the Commission to apply to its review of proposed ESPs as well as its review of the administration of approved ESPs. For example, and for illustration purposes only, the guidelines should encourage the auditor to address: (1) how the cost recovery mechanism is working to provide customers with predictable, reasonable, and stable rates; (2) how the design of the FAC might be working within a current ESP to unreasonably increase rates relative to a utility's actual cost through things like the use of excessive cost of capital charges or the utility's failure to properly match costs and benefits; and, (3) how the design and administration of the cost recovery mechanism might be improved in a subsequent ESP. Guidelines should encourage auditors to suggest how a cost recovery mechanism, including an FAC, might be modified to restore balance between customers' and utilities' interests in the ESP construct.⁴

³ Section 4928.143(C)(1), Revised Code.

⁴ See Initial Comments of Eagle Energy, LLC at 4.

The ESP case of AEP-Ohio provides a good example of how the Commission and all parties could benefit from an auditor's evaluation of the FAC in the ESP context.⁵ AEP-Ohio's approved ESP includes a phase-in of rate increases for customers, including authority for AEP-Ohio to defer for future collection any revenue increases beyond the percentage increases allowed during the ESP period.⁶ To recognize the limits of the increases authorized by the Commission, AEP-Ohio has been authorized to defer those costs eligible for recovery through the FAC (which includes much more than fuel) and to collect or amortize such deferred costs in the future through a non-bypassable rider.

If an auditor was empowered to report on the FAC as it works within the construct of AEP-Ohio's approved ESP, the auditor's findings might include recommendations as to how the Commission could improve AEP-Ohio's FAC mechanism to minimize the amounts that will be pushed off for future collection (as escalated by an interest allowance that reflects a weighted cost of capital that is significantly above AEP-Ohio's actual cost) from all AEP-Ohio customers for several years.⁷ The auditor's overarching review of the FAC, as it fits in the ESP, might also include suggestions for how the Commission could improve the FAC mechanism when

⁵ It is important to note that the cost recovery mechanisms in AEP-Ohio's ESP were not presented to the Commission as part of a settlement proposal. They were approved by the Commission over the objections of parties representing consumers. AEP-Ohio has yet to accept the Commission's modifications to its proposed ESP and has asserted that it has reserved the right to terminate its ESP. IEU-Ohio asserts that the context associated with any audit of AEP-Ohio's cost recovery mechanisms is very different than exists in the case of Ohio's other electric distribution utilities.

⁶ Section 4928.144, Revised Code.

⁷ Under its approved ESP, AEP-Ohio will recover the deferrals from 2012 through 2018.

reviewing subsequent AEP-Ohio ESP plans to maximize the value of the FAC to customers.

In sum, as DP&L and DE-Ohio suggest, the Commission should modify the guidelines in a manner that reflects the current regulatory environment. However, respecting the current regulatory environment requires more than just a consideration of RTOs.⁸ The Commission should also modify the guidelines to include provisions that give the auditor the flexibility to comment on the FAC mechanism as part of the ESP package approved by the Commission, Ohio's energy policy, and traditional regulatory principles. The regulatory process has changed and the Commission's outside consultants should be permitted to suggest creative solutions to the many challenges the new environment has created.

B. AEP-Ohio

AEP-Ohio's comments largely consist of suggestions that would mistakenly narrow and restrict auditors' discretion and fact finding role. While AEP-Ohio claims these changes would clarify vague areas of the proposed guidelines, AEP-Ohio's proposed clarifications would only constrict both the scope of the audits as well as the

⁸ It is important to note that SB 221 specifically recognized the role of RTOs. It added Section 4928.24, Revised Code, to Ohio law which states:

The public utilities commission shall employ a federal energy advocate to monitor the activities of the federal energy regulatory commission and other federal agencies and to advocate on behalf of the interests of retail electric service consumers in this state. The attorney general shall represent the advocate before the federal energy regulatory commission and other federal agencies. Among other duties assigned to the advocate by the commission, the advocate shall examine the value of the participation of this state's electric utilities in regional transmission organizations and submit a report to the public utilities commission on whether continued participation of those utilities is in the interest of those consumers.

Thus, the Commission has a larger responsibility to ensure that utility participation in RTOs is serving the interests of Ohio's electric consumers.

auditor's judgment in conducting a thorough audit.⁹ As outlined above, IEU-Ohio encourages the Commission to adopt guidelines that also allow the auditor to undertake a review of how the FAC, as part of the approved ESP, is consistent with Sections 4928.143 and 4928.02, Revised Code, as well as traditional regulatory principles that have been used to evaluate proposed self-reconciling cost recovery mechanisms. AEP-Ohio's suggestions would hinder the review suggested by IEU-Ohio and should not be adopted.

Respectfully submitted,

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⁹ AEP-Ohio Initial Comments at 1.

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Summary: Reply Comments of Industrial Energy Users-Ohio electronically filed by Mr. Joe Clark on behalf of INDUSTRIAL ENERGY USERS OF OHIO