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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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APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

In order to ensure that residential consumers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "AEP" or "Companies") receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing in response to the Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding on August 25, 2010. OCC is authorized to file this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35. The Order authorized CSP to establish an Environmental Investment Carrying Cost Rider ("EICCR") associated with the alleged environmental investments for each company for 2009.

The Order was unjust, unreasonable and/or unlawful in the following respects:

1. The Commission allowed AEP to calculate the environmental carrying charges using the carrying charge rate approved in AEP's ESP case instead of the rates for short-term debt and low-cost financing for pollution control facilities, thus permitting AEP to collect unreasonable carrying charges from customers in violation of R.C. 4905.22 and R.C. 4928.02(A).

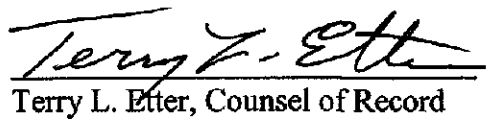
2. By allowing AEP to calculate environmental carrying charges on a monthly accrual basis rather than on a single-year basis, the Commission permitted AEP to collect unreasonable carrying charges from customers in violation of R.C. 4905.22 and R.C. 4928.02(A).

3. The Commission refused to conduct a hearing on the application to determine whether the carrying charges AEP proposed to collect from customers were reasonable, even though there were material questions of fact and law regarding the application.

The grounds for this application for rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On February 8, 2010, AEP filed with the PUCO an Application to establish an EICCR associated with the alleged environmental investments for each company for 2009. AEP proposed to establish an EICCR as a percentage of the Companies' Non-Fuel Adjustment Clause ("FAC") Generation charges. AEP initially proposed 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.[2]

On April 30, 2010, OCC filed comments on the Application.[3] OCC's Comments addressed four issues. First, OCC noted that the Application provided insufficient details regarding the nature of the environmental capital investments made in 2009 and the

[1] Application at [2].

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

[3] The comment and reply comment dates in this proceeding were established in the April 8 Entry. The PUCO Staff also filed comments on April 30. The Industrial Energy Users-Ohio ("IEU") filed initial comments with its motion to intervene on March 26, 2010.

reasonableness of these investments in meeting environmental regulations.[4] Second, OCC pointed out that the Commission, in its Order in the Companies' electric security plan ("ESP") case,[5] 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.[6] The use of the high WACC-derived cost of financing is inappropriate for calculating carrying charges over a short period of time.

Third, OCC stated that 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 inflated the carrying charges on incremental environmental investments that customers will be required to pay.[7] 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.[8]

The PUCO Staff also filed comments and recommended that the EICCR rate be reduced to 3.83218% for CSP and 3.87650% for OPC.[9] The PUCO Staff's recommendation was based on the removal of erroneous work orders that were included in AEP's calculations, and the removal of personal property taxes from which AEP is exempt.[10]

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[4] OCC Comments at 3-4.

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

[6] OCC Comments at 6-7.

[7] Id. at 8.

[8] Id. at 9.

[9] PUCO Staff Comments at 3.

[10] Id. at 2-3.

In Reply Comments filed on May 10, 2010, OCC showed that, while the PUCO Staff's proposed reduction of the EICCR is laudable, it does not go far enough. OCC argued that AEP should not be allowed to recover the cost of compliance with a 2007 Consent Decree that AEP entered into to settle alleged violations of U.S. Environmental Protection Agency.[11] Removing these costs would reduce the EICCR rate to as low as 0.40094% for CSP and to as low as 1.04376% for OPC.[12] OCC proposed annual revenue requirements associated with the carrying charges of 2009 environmental investments of $1,360,339 for CSP and $5,000,941 for OPC.[13]

IEU also filed reply comments on May 10, 2010. IEU urged the Commission to adopt a single, end of year methodology instead of a monthly, compounding mechanism, and to limit the EICCR rate to a return on investment based on the Companies' average debt rate.[14] IEU stated that this would provide "a carrying cost rate that is both fair to AEP-Ohio as well as customers and also minimize the amounts that will be recovered from customers through the non-bypassable rider...."[15]

In reply comments filed on May 10, 2010, AEP asserted that it was appropriate to calculate carrying costs for incremental 2009 environmental investments on a monthly basis.[16] The Companies also argued that the Application contained sufficient detail regarding the investments,[17] and that it was appropriate to include the environmental

[11] OCC Reply Comments at 4-8.

[12] Id. at 8-11.

[13] See id., Attachment 3.

[14] IEU Reply Comments at 3-4.

[15] Id. at 4.

[16] AEP May 10 Reply Comments at 3-4.

[17] Id. at 5.

investments under the Consent Decree because, AEP alleged, the Companies would have made the investments anyway.[18]

On July 21, 2010, AEP docketed a letter in this proceeding to "update its position as originally reflected in the application...."[19] Among other things, AEP revised the as-filed carrying cost to use the same WACC, debt/equity ratio, depreciation factor and Federal Income Tax factor, property taxes and Administrative and General expense factor approved in the Company's ESP proceeding, with an adjustment reflecting that most of the environmental facilities are not exempt from personal property taxes.[20]

On August 9, 2010, OCC filed comments on AEP's July 21 letter. OCC noted that the Commission did not specify a carrying charge for environment investment for 2009 in the ESP case, and AEP had not shown that the proposed annual carrying charge rates are just and reasonable.[21] OCC objected to the methods for calculating annual carrying charge rates AEP proposed in the July 21 Letter, particularly the use of 2006-2007 property tax data rather than the 2009 tax rate.[22] OCC also objected to AEP's averaging of the 2006 and 2007 Gross Plant in calculating the property tax rate, which significantly underestimated Gross Plant and significantly overestimated the property tax rates.[23]

On August 13, 2010, CSP filed a response to OCC's August 9 Comments. The Company defended the carrying charge calculations.

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[18] Id. at 6. See also AEP's Additional Reply Comments (May 15, 2010) at 4.

[19] July 21 Letter at 1.

[20] Id.

[21] OCC Comments on CSP's Letter of July 21, 2010 (August 9, 2010) ("OCC August 9 Comments") at 4.

[22] Id.

[23] Id. at 5.

On August 25, 2010, the Commission issued the Order in this proceeding. Among other things, the Order established a carrying charge rate of 13.59% for CSP and 13.34% for OPC.[24] This will allow AEP to collect $26.57 million in environmental carrying charges from CSP customers and $34.46 million in environmental carrying charges from OPC's customers.[25]

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding on February 23, 2010, which was granted in the Entry issued on April 8, 2010 (at 4). OCC also filed comments and reply comments regarding the original application, and comments regarding CSP's July 21 Letter.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such

[24] Order at 10.

[25] Compliance tariffs of Columbus Southern Power Company and Ohio Power Company (August 27, 2010), Attachment B.

application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed." As shown herein, the statutory standard for abrogating and modifying the Order is met here.

III. ARGUMENT

A. The Commission allowed AEP to calculate the environmental carrying charges using the carrying charge rate approved in AEP's ESP case instead of the rates for short-term debt and low-cost financing for pollution control facilities, thus permitting AEP to collect unreasonable carrying charges from customers in violation of R.C. 4905.22 and R.C. 4928.02(A).

R.C. 4905.22 states, in part, "[a]ll 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...." In addition, R.C. 4928.02(A) makes it state policy to ensure the availability of reasonably priced retail electric service to consumers.

In its July 21 Letter, AEP agreed with the PUCO Staff's recommendation to use the same WACC, debt/equity ratio, depreciation factor and FIT factor, property taxes and A&G factor approved in its ESP cases.[26] But as OCC noted in its comments to the letter, AEP had not shown that its proposal would result in a just and reasonable rate.[27] Indeed, as OCC noted in its initial Comments, WACC-based rates are significantly higher than

[26] July 21 Letter at 1.

[27] OCC August 9 Comments at 3.

the cost of short-term debt.[28] The carrying charge rates should be based on the cost of short-term debt actually incurred by the Companies, if there are no low-cost special financing sources available to the Companies for the 2009 environmental investments.

Nevertheless, in the Order, the Commission concurred with AEP. The Commission noted that "in the ESP cases, the Commission concluded that using the WACC was appropriate for the environmental investments and consistent with the Commission's decision in the Companies' previous cases" and that "it is the Commission's practice in subsequent proceedings to use the most recently approved carrying cost rate."[29] The Commission's routine use of the most recently approved carrying charge rate is inappropriate and can lead to unjust and unlawful rates.

The carrying charge rate in the ESP case was based on data the Companies' provided in July 2008 – more than two years ago. The Commission's practice of using the most recently approved carrying charge rate fails to take into consideration changes in capital structures and economic conditions. Indeed, under the Commission's practice, the carrying charge rate might never change for a utility even though the cost of capital, tax rate or depreciation factor may change significantly with the passage of time.

Further, nothing in the record justifies the need for AEP to collect carrying charges from customers at the higher WACC-based rate. As IEU noted, CSP's Form 1 filed at the Federal Energy Regulatory Commission shows that CSP reported a **20.82%** return on equity for 2009 and **19.63%** for 2008.[30] This high return on equity should

[28] OCC Comments at 7-8.

[29] Order at 10.

[30] IEU Reply Comments at 3.

cause the Commission to reexamine the justification for the higher WACC-based carrying charge rate.

Nearly all – 94.70% – of AEP's 2009 environmental investments was for certified pollution control facilities.[31] AEP failed to establish, as it was AEP's burden to demonstrate, that low-cost financing options were not available for pollution control investments in 2009. The WACC-based carrying charge rates approved by the Commission are unreasonable, in violation of R.C. 4905.22 and R.C. 4928.02(A). The Commission should abrogate the Order and should recalculate the carrying charges based on short-term the rate for short-term debt.

B. By allowing AEP to calculate environmental carrying charges on a monthly accrual basis rather than on a single-year basis, the Commission permitted AEP to collect unreasonable carrying charges from customers in violation of R.C. 4905.22 and R.C. 4928.02(A).

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[32]) carrying cost calculation, as well as the carrying charge calculation in the enhanced service reliability riders the Commission recently approved.[33]

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[31] See OCC Reply Comments at 9.

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

[33] 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. The Commission approved the application in an Order issued in 10-163 on August 25, 2010.

The annual carrying cost rates in AEP's ESP case were calculated assuming the environmental capital additions are spread evenly over each year.[34] The Companies' monthly-compounding methodology adopted in this case cannot be justified. Thus, AEP did not show that the carrying charges are reasonable, and the Commission's approval of the carrying charges violates R.C. 4905.22 and R.C. 4928.02(A). The Commission should abrogate the Order.

C. The Commission refused to conduct a hearing on the application to determine whether the carrying charges AEP proposed to collect from customers were reasonable, even though there were material questions of fact and law regarding the application.

OCC asked the Commission to hold a hearing in this proceeding because AEP had provided insufficient detail regarding the environmental investments for the Commission to determine whether the environmental investments are justified and may lawfully be collected from consumers.[35] In addition, a hearing was needed for the Commission to determine the appropriate rate for the collection of carrying charges, if any, from customers.[36]

The Commission, however, refused to conduct a hearing.[37] The Commission erred in declining to hold a hearing.

There are numerous issues still outstanding concerning the nature of the environmental investments and whether they are just and reasonable, as required by R.C. 4905.22 and R.C. 4928.02(A). For example, OCC identified as much as $59.9 million in CSP's carrying costs and $73.9 million in OPC's carrying costs related to compliance

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

[35] See OCC Comments at 10.

[36] See id.

[37] Order at 10.

with the Consent Decree that should be excluded from the EICCR calculation.[38] In the Order the Commission ruled that no costs for compliance with the Consent Decree could be denied because none were part of the civil penalties in the Consent Decree.[39]

But the penalties in the Consent Decree go beyond the monetary penalties AEP was required to pay. Included in the penalties were requirements to install pollution control devices that the EPA alleged that AEP should have installed decades ago. Had AEP installed those devices when the New Source Review ("NSR") rules required them to be installed, AEP would not had been able to install controls on the equipment that it did and also satisfy CAIR.

The Consent Decree allowed AEP to get credit for complying with NSR and with CAIR by installing the same control equipment, at ratepayer expense. The PUCO compounded the problem by making ratepayers contribute to installing equipment that should have been installed before the ESP cases even began. Instead, the Commission should have held a hearing to determine whether it would be unreasonable, under R.C. 4905.22 and R.C. 4928.02(A), to include the cost of installing the controls ordered by the Consent Decree in the environmental carrying charges under consideration in this proceeding.

Another area that should be examined at hearing concerns 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

[38] OCC Reply Comments at 4-8.

[39] Id. at 5.

"Property Taxes, General & Admin Expenses" to be included in the annual carrying charges. The Companies did not show that these types of general and administrative expenses are associated with environmental investments and are not already being recovered through the annual adjustment of fuel-related costs. The cost rates for "Property Taxes, General & Admin Expenses" approved by the Order are 2.95% for CSP and 2.00% for OPC, and both are significant portions of the total carrying charges.

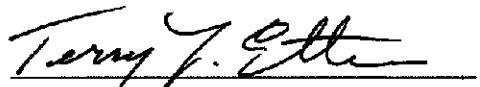
The Commission erred in refusing to hold a hearing to determine the reasonableness of including these costs in the carrying charge rate. The Commission should abrogate the Order and conduct a hearing to determine the reasonableness of the carrying charges.

IV. CONCLUSION

For the reasons stated herein, the Commission should grant OCC rehearing, abrogate the Order and hold a hearing on the Application.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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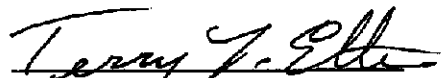
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons listed below, on this 24th day of September 2010.



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