

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2011 MAY 20 PM 4:05

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PUCO

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 11-1337-EL-RDR
Ohio Power Company to Update Their)
Environmental Investment Carrying Cost)
Riders.)

COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On March 18, 2011, 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 to update the Companies' Environmental Investment Carrying Cost Rider ("EICCR") in order to collect from customers the incremental carrying charges associated with the alleged environmental investments for each company made in 2010. AEP proposes to charge CSP's customers an EICCR that is 8.78602% of Non-Fuel Adjustment Clause ("FAC") Generation charges, and to charge OPC's customers an EICCR that is 6.55762% of Non-FAC Generation charges.¹ AEP ties the Application to authority to collect the incremental carrying costs on environmental investments made during the Companies three-year electric security plan ("ESP") approved by the PUCO.²

¹ Application at [2].

² Id. at [1].

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The Application was filed, however, before the Supreme Court of Ohio reversed the PUCO's Order in the ESP case on three issues, one of which is particularly germane to the issues raised here. In its reversal of the PUCO's decision in the ESP case, the Court broadly ruled that if a given ESP provision does not fit into one of the nine categories listed in R.C. 4828.143(B)(2), it is not authorized by statute. The Court's ruling was in response to OCC's appeal of the PUCO's Order allowing AEP, in its ESP, to collect from customers carrying charges on environmental investments made from 2001 through 2008.³

The Companies seek authority to collect from customers the incremental capital carrying costs associated with 2010 environmental investments over a six-month period, from July 2011 through December 2011.⁴ AEP proposes to collect about \$10.12 million from CSP's customers and \$6.10 million from OPC's customers.⁵ For a typical residential customer of CSP with a monthly usage of 750 kWh, the monthly EICCR would increase from \$0.93 to \$1.80 (based on a Non-FAC Generation Charge of \$20.44), a 94% increase. For a typical residential customer of OPC, the monthly EICCR would increase from \$0.88 to \$1.28 (based on a Non-FAC Generation Charge of \$19.58), a 45% increase.

These proposed incremental carrying charges are in addition to those carrying charges (about \$8 million for CSP and \$9.86 million for OPC) that the PUCO approved in Case No. 10-155-EL-RDR and would be collected in the same six-month period

³ *In re: Application of Columbus Southern Power Co.*, Slip Op., No. 2011-Ohio-1788 at 12-13.

⁴ See also Application at [3].

⁵ See *id.* at CSP Schedule 1 and OPC Schedule 1.

associated with environmental investments made in 2009.⁶ If this Application is approved, customers of CSP would pay \$26.12 million and customers of OPC would pay \$25.81 million in carrying charges during 2011 for environmental investments the Companies made in 2009 and 2010. The revenue collected through the EICCR is a severe burden on AEP's residential distribution customers.

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of AEP's 1.2 million residential utility customers,⁷ submits these Comments on AEP's Application. The Commission must examine the Application in light of the Supreme Court of Ohio's decision regarding environmental carrying charges in the appeal of AEP's ESP case.⁸ In accordance with that decision, the Commission must, as a threshold matter, determine whether the environmental carrying charges at issue fall within one of the categories listed in R.C. 4928.143(B)(2).

If the carrying charges fall within one of the statutory categories, then the PUCO may consider whether to allow collection from customers. If they do not, these charges are not authorized by statute and the PUCO must reject AEP's application. In this regard, it is AEP, not OCC or other intervenors, who must affirmatively bear the burden of proving, pursuant to R.C. 4928.143(C)(1), that the charges are included in the items listed under R.C. 4928.143(B)(2). AEP has not met this burden, and thus the Commission

⁶ *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, Finding and Order (August 25, 2010)

⁷ OCC's intervention was granted in an Entry issued on April 8, 2010 (at 4).

⁸ The Commission has begun to address the issues remanded by the Supreme Court in the ESP appeal. On May 4, 2011, the PUCO issued an Entry in the ESP docket that directed AEP to file, by May 11, 2011, proposed revised tariffs that would remove provider of last resort charges and environmental carrying cost charges associated with investments made from 2001 through 2008 from the Companies' tariffs. *Columbus Southern Power Company and Ohio Power Company Electric Security Plans*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Entry (May 4, 2011) at 2. AEP filed tariffs on May 11, 2011, but several parties, including OCC, have objected to the tariffs as not complying with the PUCO's directive.

should deny the Application. In addition, OCC is concerned that the proposed EICCR will result in over-collection of carrying charges (including return on investment, depreciation expenses, property taxes and administrative and general expenses) on environmental investments from AEP's customers.

OCC also continues to object to the Commission's treatment of a number of issues OCC identified in Case No.10-155-EL-RDR. OCC intends to raise these issues regarding the Environmental Carrying Charges Rider being proposed in AEP's pending Electric Security Plan (PUCO Case No. 11-346-EL-SSO).

II. COMMENTS

A. In Light of the Decision of the Ohio Supreme Court in the ESP Appeal, the Commission Should Deny the Application.

In its recent decision in the appeal of the PUCO's Order approving AEP's first ESP, the Supreme Court of Ohio agreed with OCC that R.C. 4928.143(B)(2) does not permit AEP to collect from customers carrying costs associated with environmental investments made between 2001 and 2008.⁹ The Court stated:

By its terms, R.C. 4928.143(B)(2) allows plans to include only "any of the following" provisions. It does not allow plans to include "any provision." So if a given provision does not fit within one of the categories listed "following" (B)(2), it is not authorized by statute.¹⁰

The Court remanded the issue of environmental carrying charges to the Commission.

But in so doing, the Court apparently did not limit the Commission's determination on remand to just the collection of carrying costs associated with AEP's environmental investments made between 2001 and 2008. Instead, the Court's directive

⁹ *In re: Application of Columbus Southern Power Co.*, Slip Op., No. 2011-Ohio-1788 at 12.

¹⁰ *Id.* at 13.

to the Commission had no limitation regarding the timeframe that the remand proceeding could examine: "On remand, the commission may determine whether any of the listed categories of (B)(2) authorize recovery of environmental carrying charges." Thus, Commission should examine whether carrying costs on environmental investments incurred after January 1, 2009 should be collected from customers.

An examination of the statute does not support AEP's collection of the carrying charges that are the subject of the Application. R.C. 4928.143(B)(2)(b) allows an electric distribution company's ESP to include "[a] reasonable allowance ... for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009." This section, however, does not specify that an electric distribution company may collect carrying charges for environmental expenditures. And although carrying charges are mentioned in R.C. 4928.143(B)(2)(d), again carrying charges on environmental expenditures are not specifically mentioned.

AEP has not shown that it is allowed by statute to collect from customers carrying charges on environmental expenditures. The Commission should thus deny the Application.

B. If the Commission Determines that the Statute Allows AEP to Collect Environmental Carrying Charges from Customers (Contrary to OCC's Recommendation), the Commission Should Ensure that AEP Does Not Over-Collect Such Costs.

If the Commission allows AEP to collect from customers some carrying costs on environmental investments, then the Commission should ensure that AEP does not over-collect such costs. Under the EICCR, the incremental carrying charges associated with the 2009 environmental investments are the same for the years 2010 and 2011. This is

not a reasonable approach in calculating the annual incremental carrying charges. Under this approach, the annual carrying charges for the environmental investments made in 2009 will never decrease even though the book values of the 2009 environmental investments have decreased as a result of depreciation. The continued collection of the 2009 EICCR (for 2009 environmental investments) for the second six-month period of 2011 on top of the 2010 EICCR (for 2010 environmental investments) will thus cause AEP's customers to pay more than their fair share of environmental costs.

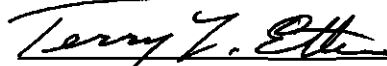
AEP should be directed, when it updates the EICRR, to revise the previously-approved EICCR to be carried over to the new collection period. The amount of environmental investments earning carrying charges should be reduced by the actual amount of depreciation recorded.

III. CONCLUSION

AEP has not shown that R.C. 4928.143(B)(2) allows the Companies to collect from customers carrying costs on environmental investments. Such a showing would be a prerequisite to the PUCO even considering whether to allow the Companies to collect carrying charges from customers, pursuant to the Supreme Court's recent decision. Thus, the Commission should deny the Application. If, despite the ruling of the Supreme Court, the Commission finds that it may consider such costs under the statute and rules that AEP may collect such costs from customers, the Commission should protect customers by ensuring that AEP does not over-collect from them the carrying costs on environmental investments.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Terry L. Etter", is written over a horizontal line.

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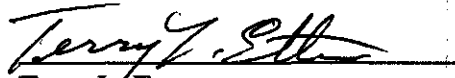
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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served by First Class United States Mail on the persons stated below this 20th day of May 2011.


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