FILE

14

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Costs in Relation to the Department of Development's Update to the Percentage of Income Payment Plan Plus and Deferral of Costs.	:	Case No. 11-148-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Costs in Relation to the Department of Development's Update to the Percentage of Income Payment Plan Plus and Deferral of Costs.	:	Case No. 11-149-EL-RDR
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively AEP Ohio) for an Increase in Electric Distribution Rates.	:	Case No. 11-351-EL-AIR Case No. 11-352-EL-AIR

REPLY
OF
THE OHIO DEPARTMENT OF DEVELOPMENT
TO
COLUMBUS SOUTHERN POWER COMPANY
AND
OHIO POWER COMPANY
MEMORANDUM CONTRA MOTION TO CONSOLIDATE

I. INTRODUCTION

On July 20, 2011, the Ohio Department of Development ("ODOD") filed a motion seeking an order from the Commission consolidating the above-styled applications of Columbus

Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, the "Companies" or "AEP Ohio") for purposes of hearing and decision. In a companion motion filed the same date, ODOD, having previously sought leave to intervene in Case Nos. 11-148-EL-RDR and 11-149-EL-RDR (the "RDR cases"),[1] requested leave to intervene in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR (the "distribution rate case") as well. The Companies filed a memorandum contra ODOD's motions on August 4, 2011.[2] ODOD hereby files its reply pursuant to Rule 4901-1-12(B)(2), Ohio Administrative Code ("OAC").

II. BACKGROUND

By their January 11, 2011 application in the RDR cases, the Companies requested Commission approval of distribution riders to recover the incremental increase in uncollectible expense the Companies allege would be created as a result of the new rules governing the operation of the electric percentage of income payment plan ("PIPP") implemented by ODOD effective November 1, 2010.[3] Although not specifically cited in the application, the new rule the proposed riders are intended to address is Rule 122:5-3-04(B)(2), OAC, which provides that jurisdictional electric distribution utilities ("EDUs") will no longer by reimbursed from the Universal Service Fund ("USF") for any revenue deficiency resulting from a defaulting PIPP customer's failure to pay his/her monthly PIPP installment payment. Prior to this rule change, the EDUs remitted the installment payments collected from PIPP customers to ODOD along with the USF rider collections, and ODOD reimbursed the EDU for both the installment payments and the difference between the PIPP installment payments received and the cost of the

[1] *See* ODOD Motion to Intervene dated February 25, 2011.

[2] Although titled "Memorandum Contra Ohio Consumers' Counsel *[sic]* Motion to Consolidate and to Intervene," the memorandum contra actually addresses the ODOD motion to consolidate Case Nos. 11-148-EL-RDR, 11-149-EL-AIR, 11-351-EL-AIR, and 11-352-EL-AIR and the ODOD motion for leave to intervene in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR

[3] The application also sought approval of accounting modifications to permit the Companies to defer this incremental uncollectible expense until such time as it is recovered through the proposed riders.

electricity delivered to the PIPP customers. Because the EDU was guaranteed 100 percent recovery of the cost of electricity delivered to the PIPP customer under this process regardless whether the PIPP customer made the required monthly installment payment, the EDU had no incentive to disconnect a defaulting PIPP customer promptly or to pursue collection aggressively once the customer was disconnected. ODOD believed that absence of any such incentive may have resulted in the cost of PIPP collected from ratepayers through the USF riders being greater than it would have been if the EDU were at risk for the PIPP installment amount due – just as the EDU is at risk for the arrearages generated by non-PIPP customers that default on their bills. Thus, the purpose of Rule 122:5-3-04(B)(2), OAC, was to place defaulting PIPP customer installment payment balances on the same footing as the outstanding balances of defaulting customers, generally, thereby equalizing the incentive for the EDU to mitigate its bad-debt risk by promptly disconnecting defaulting customers, be they PIPP or non-PIPP customers.

As explained in ODOD's previous filing in these dockets, approval of the Companies' proposal to establish a PIPP-specific uncollectible expense rider would simply transfer the ratepayers' obligation to reimburse the Companies for PIPP customer defaults from the USF rider to the proposed PIPP-specific uncollectible expense rider, thereby defeating the purpose of the new rule. However, as ODOD was quick to acknowledge, uncollectible expense is an ordinary business expense that the Companies are entitled to recover from ratepayers, and the Companies' current base distribution rates contain no allowance for the incremental increase in PIPP-related uncollectible expense that will be generated by the new electric PIPP rule. Thus, the question is not whether the Companies are entitled to recover these costs. Rather, the question is whether these costs can be recovered in a manner that does not undermine the intent to the new rule. The answer to that question is yes.

Fortuitously, the Companies now have a distribution rate case pending before the Commission. As ODOD pointed out in its motion to consolidate, building an allowance for the newly-created PIPP-specific uncollectible expense into the annual allowance for uncollectible expense included in the distribution base rate revenue requirement would achieve the objective of putting PIPP-specific uncollectible expense on the same footing as other uncollectible expense. However, for reasons that are far from clear, the Companies oppose ODOD's motion to consolidate the RDR cases with the distribution rate case so as to accomplish this result. Indeed, the Companies' memorandum contra ODOD's motion totally miscasts ODOD's position and is based on a rationale that will not stand up to even cursory scrutiny.

III. ARGUMENT

A. ODOD'S MOTION TO CONSOLIDATE THE RDR CASES WITH THE DISTRIBUTION RATE CASE IS NOT BARRED BY RULE 4901-1-12, OAC.

AEP Ohio opens its argument with the proposition that, because the Office of the Ohio Consumers' Counsel ("OCC") filed a motion to consolidate these same cases on May 24, 2011, ODOD's motion to consolidate should be construed as an untimely reply to AEP Ohio's June 8, 2011 memorandum contra the OCC motion.[4] The flaw in this argument is, of course, that there is nothing in the Commission's rule governing motion practice that prevents a party[5] from filing its own motion simply because another party has previously filed a motion seeking a similar result. To conclude otherwise would create a race-to-the-courthouse scenario that would deprive the loser of its rights under Rule 4901-1-12(A), OAC.

---

[4] Rule 4901-1-12(B)(2), OAC, provides that reply memoranda are due within seven days after service of the memorandum contra. If, contrary to fact, ODOD's motion to consolidate were a reply to AEP Ohio's memorandum contra the OCC motion, it would have been due prior to the June 20, 2011. Again, AEP Ohio appears to have difficulty keeping the parties straight, stating that "OCC *[sic]*filed, passed the proper filing date." AEP Ohio Memorandum Contra, 3.

[5] Under Rule 4901-1-12(E), OAC, the term "party" includes all persons that have motions to intervene pending at the time a motion or memorandum is to be filed or served.

In this instance, ODOD's motion presents grounds for consolidating these cases that are far more detailed than those presented by OCC. Plainly, ODOD is entitled to present these arguments to the Commission for its consideration through a Rule 4901-1-12(A), OAC, motion. Further, if ODOD had presented these arguments under the guise of a reply to the AEP Ohio memorandum contra the OCC motion, AEP Ohio would have been precluded from addressing these arguments because Rule 4901-1-12(B), OAC, does not authorize responses beyond memoranda contra and replies thereto. Thus, not only was AEP Ohio in no way prejudiced by ODOD filing its own motion, but filing a separate motion provided AEP with a vehicle to address ODOD's arguments that would otherwise not have been available. Finally, the Commission has not yet ruled on OCC's motion, so estoppel principles are not in play. In short, AEP Ohio's argument that ODOD's motion is untimely is a makeweight that should be rejected out of hand. [6]

B. ODOD DOES NOT DISPUTE THAT THE INCREMENTAL BAD DEBT EXPENSE THAT WILL BE GENERATED BY THE NEW ELECTRIC PIPP RULES SHOULD BE RECOGNIZED BY THE COMMISSION IN ESTABLISHING THE COMPANIES' RATES.

AEP Ohio devotes the next several paragraphs of its memorandum to an explanation of the relative responsibilities of ODOD and the Commission with respect to the electric PIPP program and the regulation of utility rates.[7] Although conceding that ODOD may premise its PIPP rules on policy considerations, AEP Ohio emphasizes that the Commission is charged with regulating utility rates and, as such, determines whether the utility is entitled to recover the

[6] If AEP Ohio wants to play these games, then ODOD would argue that its motion – which does not respond to AEP-Ohio's memorandum contra the OCC motion – should be construed as a memorandum in support of OCC's motion rather than a reply to AEP-Ohio's memorandum contra. Rule 4901-1-12, OAC, does not impose any time limit on the filing of memoranda in support of motions submitted by other parties.

[7] *See* AEP Ohio Memorandum Contra, 4,

expense it incurs as a result of government-mandated programs.[8] ODOD has never suggested otherwise.

The purpose of the rule change that made the EDUs responsible for PIPP customer defaults was to create the same incentive for the EDU to terminate service promptly and to pursue collections aggressively that the EDU has with respect to all other defaulting customers. However, AEP Ohio's attempt to miscast ODOD's position notwithstanding,[9] ODOD has never disputed that the Companies are entitled to recognize this new PIPP-specific uncollectible expense in their rates. Rather, ODOD argued that the Companies' exposure to PIPP customer default should be addressed in the same manner as the Companies' exposure to non-PIPP customer default. In other words, the Commission should not approve a PIPP-specific bad debt tracker to guarantee dollar-for-dollar recovery of PIPP installment payments when the Companies do not have – and have never proposed – uncollectible expense riders to provide for the dollar-for-dollar recovery of bad debt expense generated by defaulting non-PIPP customers. The Companies have been content to recover the uncollectible expense generated by non-PIPP customers through an allowance in the base distribution rate revenue requirement, presumably because their uncollectible expense experience has remained relatively stable over time.[10] Contrary to AEP Ohio's assertion, ODOD is not attempting to deny AEP Ohio cost recovery. ODOD's point is simply that the Commission should accord PIPP-specific uncollectible expense the same treatment as other uncollectible expense and provide for the recovery of this expense through base rates.

---

[8] *Id.*

[9] *See* AEP Ohio Memorandum Contra, 4-5.

[10] It should be remembered that uncollectible expense riders were originally approved for natural gas utilities because the fixed allowance for uncollectible expense built into their base rates did not adequately address their exposure to escalating bad debt due to skyrocketing commodity prices. *See* Case No. 03-1127-GA-UEX (Finding and Order dated December 17, 2003).

AEP Ohio has yet to show why it is theoretically appropriate to recover PIPP-related uncollectible expense through a rider when other bad debt expense is recovered through base rates. There is no reason to believe that PIPP-related uncollectible expense will be more volatile from year to year than ordinary uncollectible expense. In fact, the case for establishing a PIPP-specific bad debt tracker is far less compelling than the case for establishing a general uncollectible expense rider because the financial exposure associated with PIPP-customer defaults, which represent only unpaid PIPP installment payments, is far less than the financial exposure to non-PIPP customer defaults, which represent the entire delinquent balance for service rendered.[11] Further, as indicated above, the ultimate objective of this rule change was to reduce the cost of PIPP that must be recovered from ratepayers through the USF riders from what it otherwise would have been. Not only does the Companies' proposal to establish a PIPP-specific uncollectible expense rider undercut this objective, but transferring the ratepayers' obligation to reimburse the Companies for PIPP customer defaults from the USF rider to the proposed PIPP-specific uncollectible expense rider actually increases the overall cost to ratepayers due to the carrying costs associated with the deferred amount. Indeed, later in its memorandum contra, AEP Ohio specifically states that it is "willing to apply the amount to base rates in its next distribution rate case filing."[12] Plainly, AEP Ohio would not commit to this methodology if it believed recovering PIPP-related uncollectible expense in the same manner as other uncollectible expense would not provide the Companies with adequate protection against the financial risk of PIPP customer defaults.

[11] In this connection, ODOD would again point out that, as demonstrated in its comments in the RDR cases, the Companies' estimate that the new electric PIPP rule in question would cause an incremental increase in their annual uncollectible expense of some $3.65 million per year is grossly overstated. *See* ODOD Comments, 5-8.
[12] AEP Ohio Memorandum Contra, 6.

C. THE FACT THAT THE BASE RATES PROPOSED BY AEP OHIO IN ITS PENDING DISTRIBUTION RATE INCREASE APPLICATION WERE NOT DESIGNED TO RECOVER PIPP-RELATED UNCOLLECTIBLE EXPENSE DOES NOT PRECLUDE THE COMMISSION FROM INCLUDING AN ALLOWANCE FOR THESE COSTS IN THE BASE RATE REVENUE REQUIREMENT IF THE RECORD IN THE RATE CASE SUPPORTS SUCH A MEASURE.

Ironically, after attempting to discredit ODOD by muddling its position, AEP Ohio ultimately comes out at the very same place ODOD started. As AEP Ohio correctly states, the question is not whether the Companies are entitled to recover the PIPP-related uncollectible expense that will be generated by the ODOD's rule change, "(t)he only question is what is the best method to achieve that end."[13] AEP Ohio explains that it faced this question when developing its distribution rate case application, and ultimately decided that, because it lacked actual data, the better course was to seek authority to defer these costs and recover them through the PIPP-specific uncollectible expense rider proposed in the RDR cases once the actual cost became known. AEP Ohio does acknowledge ODOD's contention that there is now sufficient actual data available to support an adjustment to test-year uncollectible expense to reflect this known cost change,[14] but apparently believes that the Commission cannot authorize such an adjustment because it was not included in the case as filed.[15] ODOD disagrees.

First, the fact that AEP Ohio elected to pursue the recovery of the PIPP-related uncollectible expense that will be generated by the new ODOD rule through an application for approval of a PIPP-specific uncollectible rider rather through its base rate increase application does not preclude the Commission from determining which of the two available routes (*i.e.*, rider

---

[13] AEP Ohio Memorandum Contra, 5.

[14] The Commission-approved test year for the rate case consists of the twelve months ending May 31, 2011. Because this is a partially projected test year, AEP-Ohio did not have post-November 1, 2010 data available when it prepared the application. However, actual data is now available for the final seven months of the test year during which the new electric PIPP rules were in place, and additional months of actual data will be available by the time the case goes to hearing. The rule change in question occurred during the test year, and the impact of the change is known and measurable. Thus, the criteria for an annualization adjustment have been met.

[15] *See* AEP Ohio Memorandum Contra, 5.

or base rates) represents the more appropriate avenue for recognizing this expense. In addition to considering ODOD's argument that recovering this expense through a rider would undermine the purpose of its new rule, the Commission should also take into account the impact on the Companies' ratepayers of the carrying costs associated with the deferral and the additional burden policing yet another AEP Ohio rider would place on its staff and other interested parties. In other words, just because AEP Ohio proposed one way to skin the cat does not mean that Commission cannot find another cost-recovery mechanism to be more appropriate if the case for the alternative is more compelling. Consolidating the RDR cases with the rate case will provide the evidentiary record the Commission needs to make an informed decision with respect to this issue.

Second, ODOD understands that the base rates proposed in the distribution rate increase application do not provide for recovery of this new PIPP-related uncollectible expense. However, that does not limit the Commission's authority to adjust the test-year analysis presented in the application to assure that the test-year expenses are representative for ratemaking purposes. Although it is obviously unusual for an intervenor to propose an adjustment that would increase the base rate revenue requirement, ODOD does not anticipate that this proposal will draw fire from other parties to the case because, in the long run, this is clearly the less expensive option from the customers' standpoint.[16] Moreover, because this adjustment will represent such a minute component of the total test-year expenses, except in the extraordinarily unlikely scenario in which the Companies get everything they ask for, the impact of this adjustment will not result in base rates higher than those proposed in the application. In

[16] Indeed, the Commission already knows from OCC's earlier motion that OCC supports this approach. Further, in addition to avoiding the carrying costs, if the new ODOD rule has the intended effect, customers will benefit because the cost of PIPP recovered from ratepayers through the USF riders will be less than it otherwise would have been.

any event, ODOD should be permitted to propose the adjustment, and the Commission should decide the issue based on the merits.

Finally, ODOD would emphasize that an order consolidating the RDR cases with the rate case will not decide the issue of which form of recovery is more appropriate. Rather, taking up the issue in a consolidated proceeding will merely leave both cost-recovery options open. Although ODOD has difficulty envisioning why AEP Ohio would oppose base-rate recovery once the numbers are presented in the rate case, AEP Ohio can still make its case for its proposed PIPP-specific uncollectible expense rider if it chooses to do so. Thus, there is no downside to granting ODOD's motion, whereas denying ODOD's motion takes the base-rate recovery option off the table.

D. ODOD'S MOTION TO INTERVENE SHOULD BE GRANTED.

AEP Ohio's opposition to ODOD's motion to intervene in the pending rate case is a function of its opposition to the consolidation of the RDR cases with the rate case.[17] As indicated in its motion to intervene, ODOD, as contemplated by Rule 4901-1-11(D)(1), OAC, seeks intervention for the limited purpose of addressing a single issue – the appropriate allowance for uncollectible expense. ODOD agrees that, if the cases are not consolidated, there is no reason to grant its motion to intervene in the rate case. However, in that event, ODOD will continue to oppose the application in the RDR cases for those reasons set forth in its earlier filings in those dockets.

IV. CONCLUSION

ODOD's motion to consolidate the RDR cases with the pending AEP Ohio rate case provides the Commission with the opportunity to choose the appropriate mechanism for recovery

[17] AEP Ohio Memorandum Contra, 2.

of PIPP-related uncollectible expense created by ODOD's implementation of Rule 122:5-3-04(B)(2), OAC. In opposing the motion to consolidate, AEP-Ohio, in effect, tells the Commission that, because the Companies have elected to pursue recovery of this expense through a PIPP-specific uncollectible expense rider, the Commission has no choice, and that ODOD's arguments supporting base-rate recovery as the better option are simply irrelevant and must be ignored.

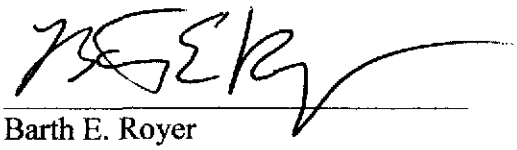
First, AEP Ohio would have the Commission ignore that the proposed PIPP-specific uncollectible rider undermines the intent of the new rule, whereas recovery through the uncollectible expense allowance in the rate case is consistent with intent of the new rule. Second, AEP Ohio would have the Commission ignore that the base-rate recovery is the least-cost option for ratepayers due to the carrying charges on the deferral associated with recovery through a PIPP-specific uncollectible rider. Third, AEP Ohio would have the Commission ignore that the creation of yet another AEP Ohio rider will impose the burden of policing the related deferrals on staff and other interested parties, whereas authorizing recovery through base rates will end the matter. Fourth, AEP Ohio would have the Commission ignore that, by AEP-Ohio's own admission, recovery of the PIPP-related uncollectible expense through base rates is theoretically appropriate. Fifth, AEP Ohio would have the Commission ignore that, although its sole stated basis for seeking recovery of PIPP-related uncollectible expense through a PIPP-specific bad debt rider is that actual data was not available at the time it prepared its distribution rate increase application, sufficient actual data is now available to support an adjustment to test-year uncollectible expense to annualize the impact of the new rule. Finally, AEP Ohio would have the Commission ignore that, by consolidating these cases, the Commission will not be deciding which recovery mechanism should be approved, but, rather, will merely assure that it

will have the evidence before it necessary to make an informed choice as to the appropriate recovery mechanism. Because the application in the RDR cases will still be before the Commission, AEP Ohio will in no way be prejudiced by an order consolidating the cases, and can still make the case for rider-recovery if it wishes to do so.

To put it bluntly, ODOD believes that choice between recovering the newly-created PIPP uncollectible expense through the riders proposed in the RDR cases or through the base rates ultimately approved in the distribution rate case is a no-brainer. However, AEP-Ohio's argument that the Commission has no choice at all is untenable.

WHEREFORE, ODOD respectfully requests that its motion to consolidate and motion for leave to intervene be granted.

Respectfully submitted,

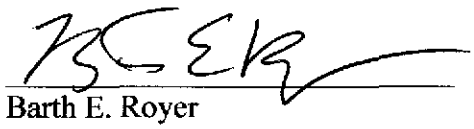


Barth E. Royer
BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Special Counsel for
The Ohio Department of Development

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 12th day of August 2011.



Barth E. Royer

Matthew J. Satterwhite
Steven T. Nourse
Anne M. Vogel
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Janine Migden-Ostrander
Maureen R. Grady
Larry Sauer
Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
PO Box 1793
231 West Lima Street
Findlay, Ohio 45839-1793

William L. Wright, Section Chief
Thomas McNamee
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Mark S. Yurick
John W. Bentine
Zachary D. Kravitz
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

Samuel C. Randazzo
Frank Darr
Joseph C. Oliker
Gretchen Hummel
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212

Henry W. Eckhart
1200 Chambers Road, #106
Columbus, Ohio 43212

Benita Kahn
Lija Kaleps-Clark
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215

Clinton A. Vince
Douglas G. Bonner
Daniel D. Barnowski
Emma F. Hand
Keith C. Nusbaum
SNR Denton US LLP
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, Ohio 44114