

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Ohio Power Company to Update its) Case No. 12-1046-EL-RDR
Transmission Cost Recovery Rider)
Rates.)

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Power Company (OP or the Company) is a public utility as defined in Section 4905.02, Revised Code, and an electric utility as defined in Section 4928.01(A)(11), Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On June 15, 2012, OP filed an application to update its transmission cost recovery rider (TCRR), pursuant to Section 4928.05(A)(2), Revised Code, and Chapter 4901:1-36, Ohio Administrative Code (O.A.C.). In its application, OP sought, *inter alia*, approval to collect an under-recovery balance of approximately \$36 million, which is attributable to the difference between the level of forecasted costs in the Company's most recent TCRR update and the actual costs incurred by the Company over the prior period. In order to mitigate the rate impact and promote rate stability for customers, OP proposed to collect the under-recovery balance, plus carrying charges, over a three-year period, rather than over the next year. OP also suggested that, if the Commission should find it necessary to further mitigate the rate impact, it could adopt a plan to phase in the under-recovery balance over the three-year period on a nonbypassable basis, pursuant to Section 4928.144, Revised Code.
- (3) On July 11, 2012, July 24, 2012, and August 16, 2012, OP filed corrected information in support of its application.
- (4) On July 25, 2012, Industrial Energy Users-Ohio (IEU-Ohio) filed comments in this proceeding. OP filed a reply on August 1, 2012.

- (5) On October 15, 2012, Staff filed a letter containing a summary of its review and recommendations for the Commission's consideration. On October 19, 2012, and October 22, 2012, IEU-Ohio and the Ohio Consumers' Counsel (OCC), respectively, filed comments in response to Staff's recommendations. OP filed a reply to IEU-Ohio's comments on October 22, 2012.
- (6) By finding and order issued on October 24, 2012, the Commission approved OP's application to update the TCRR, as corrected on July 11, 2012, July 24, 2012, and August 16, 2012 (TCRR Order). Specifically, the Commission found that OP should be authorized to establish a separate nonbypassable rate as part of the TCRR, in order to collect the under-recovery of approximately \$36 million, plus carrying charges at the Company's long-term cost of debt rate, evenly over a three-year period. The Commission agreed with Staff and OP that the three-year collection period is necessary in order to avoid the significant rate impact that would otherwise result from collecting the under-recovery over just one year, in combination with the other projected cost increases related to the TCRR.

Additionally, the Commission adopted Staff's proposal to transition to a kilowatt hour based methodology for allocating projected Net Marginal Loss (NML) costs, such that 50 percent of the projected NML costs will be based on the prior methodology with the remaining 50 percent to be allocated under the new methodology. Beginning with OP's TCRR filing in 2013, the Commission determined that all projected NML costs should be allocated using the new methodology.

- (7) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.
- (8) On November 21, 2012, applications for rehearing were filed by IEU-Ohio and OCC. A memorandum contra the

applications for rehearing was filed by OP on December 3, 2012.

- (9) In its first ground for rehearing, IEU-Ohio argues that the TCRR Order is unlawful and unreasonable, because it retroactively authorized the collection of OP's under-recovery balance on a nonbypassable basis. Specifically, IEU-Ohio asserts that, by shifting the revenue responsibility for a significant part of the under-recovery balance to shopping customers, the Commission has retroactively increased their rates. IEU-Ohio notes that the under-recovery balance is a function of the delay inherent in the annual TCRR review process, and that a rate increase granted to make up for revenue lost due to regulatory delay is contrary to the Ohio Supreme Court's prohibition on retroactive ratemaking. IEU-Ohio further notes that OP did not comply with Rule 4901:1-36-03(E), O.A.C., which provides that an electric utility should file an interim application to adjust the TCRR in order to avoid excessive carrying costs and to minimize the rate impact of the upcoming annual filing, if costs are or will be substantially different than the amounts authorized as the result of the previous application. IEU-Ohio believes that OP exacerbated the problem by seeking and obtaining a delay in the annual review of its TCRR.

IEU-Ohio adds that, consistent with Ohio Supreme Court precedent, the Commission's authority to reconcile a rate for a past under-recovery must be incorporated in the initial rate approved by the Commission. IEU-Ohio points out that the TCRR, as previously approved by the Commission, did not provide for a nonbypassable charge, which cannot now be established. IEU-Ohio also notes that shopping customers will pay for their own transmission service, as well as for a portion of the transmission service provided to OP's non-shopping customers. IEU-Ohio concludes that the Commission should grant rehearing and direct that the under-recovery be collected on a bypassable basis.

- (10) In its memorandum contra, OP responds that the TCRR Order does not constitute retroactive ratemaking. OP notes that the under-recovery is not attributable to regulatory

delay and that IEU-Ohio's interpretation of Ohio Supreme Court precedent would render void every reconcilable rider established by the Commission. OP adds that an electric utility may charge to recover previously deferred revenues without violating the prohibition against retroactive ratemaking, when the recovery is pursuant to an initial Commission order. According to OP, the TCRR has always been subject to an annual true-up process and the Company authorized to implement over- and under-recovery accounting for any differences between the revenue collected and the actual costs recorded. OP contends that there has been no retroactive change to the TCRR rate, because the TCRR has been subject to reconciliation since its inception. OP also notes that no new rate mechanism was created in this case, because the nonbypassable charge is part of the TCRR.

Finally, OP asserts that IEU-Ohio's argument that shopping customers will pay twice for transmission service is flawed, because it fails to acknowledge that there are two different time periods involved. OP points out that the current period in which a shopping customer pays its competitive retail electric service (CRES) provider for transmission service is not the same as the period in which the under-recovery was incurred. OP notes that the under-recovery was caused in large part by former customers of the Company that subsequently switched to CRES providers.

- (11) The Commission finds no merit in IEU-Ohio's argument that the TCRR Order constitutes retroactive ratemaking. As discussed further below, the TCRR Order is consistent with the Commission's authority under Section 4928.144, Revised Code. In the TCRR Order, the Commission authorized OP to establish a separate nonbypassable charge, as part of the TCRR, to collect the under-recovery over three years, in order to avoid the substantial rate impact that would result from a one-year collection period, along with other projected cost increases.¹ The TCRR Order is also consistent with the Ohio Supreme Court precedent relied upon by IEU-Ohio, which provides that a

¹ TCRR Order at 6-7.

utility's recovery of deferred revenues, having been authorized by an initial order of the Commission, does not violate the proscription against retroactive ratemaking.² This precedent does not restrict or even address the Commission's authority to create or subsequently modify a proper reconciliation mechanism, as IEU-Ohio contends.

The TCRR is subject to an annual true-up process, which ensures that OP recovers its actual transmission costs. As IEU-Ohio recognizes, the Commission has authority under Section 4928.05(A)(2), Revised Code, to provide for the recovery of transmission and transmission-related costs through a reconcilable rider. The adjustment to the TCRR in the present case, including the nonbypassable charge authorized to collect the under-recovery, occurred consistent with the Commission's customary reconciliation process. We do not agree that the under-recovery is the result of inherent regulatory lag in the Commission's process, or that our authorization of the nonbypassable charge results in a rate increase intended to compensate OP for revenue lost due to regulatory delay. OP has explained that the under-recovery is attributable to the difference between the level of forecasted costs in the Company's most recent TCRR update and the actual costs incurred by the Company over the prior period. Neither do we agree that OP was required under Rule 4901:1-36-03(E), O.A.C., to file an interim application to adjust the TCRR, although we certainly encourage the Company to do so in the future, if it determines that its costs are or will be substantially different than the amounts authorized as the result of its previous TCRR update filing.

Finally, the Commission does not agree that shopping customers will pay twice for transmission service as a result of the TCRR Order. As already discussed, the under-recovery represents the difference between the level of forecasted costs in OP's most recent TCRR update and the actual costs incurred by the Company over the prior period. The Commission noted in the TCRR Order that a

² *Lucas County Comm'rs v. Pub. Util. Comm.*, 80 Ohio St. 3d 344, 348, 686 N.E.2d 501 (1997); *Columbus S. Power Co. v. Public Util. Comm.*, 67 Ohio St. 3d 535, 541, 620 N.E.2d 835 (1993).

portion of the costs associated with the under-recovery was incurred for customers that were receiving service from OP during the period in which the costs were incurred but that had since elected to switch to a CRES provider.³ These costs are distinct from the transmission costs that shopping customers will pay to their CRES providers on a going-forward basis. For these reasons, we find that IEU-Ohio's request for rehearing should be denied.

- (12) In its second ground for rehearing, IEU-Ohio asserts that the TCRR Order is unlawful and unreasonable, because it violates Commission precedent without a lawful and reasonable justification for the departure from precedent. According to IEU-Ohio, Commission precedent requires that OP's TCRR remain bypassable. IEU-Ohio argues that the Commission has determined that a true-up of a bypassable rider cannot be collected on a nonbypassable basis under any circumstances, because it would create an anticompetitive subsidy flowing from shopping customers to non-shopping customers, in violation of Section 4928.02(H), Revised Code.
- (13) OP responds that the Commission has already rejected IEU-Ohio's argument and notes that the precedent cited by IEU-Ohio is not applicable in this case. OP contends that the Commission has made no general legal conclusion that it is unlawful to collect an under-recovery that would have originally been avoidable through a nonbypassable charge. OP believes that the TCRR Order is consistent with Commission precedent.
- (14) The Commission finds that IEU-Ohio has raised no new arguments on rehearing. In the TCRR Order, we rejected IEU-Ohio's assertion that our authorization of a separate nonbypassable rate is inconsistent with Commission precedent.⁴ In the case cited by IEU-Ohio, the Commission did not conclude, as a general matter, that an under-recovery of costs that were originally avoidable may not be

³ TCRR Order at 7-8.

⁴ TCRR Order at 7.

collected through a nonbypassable charge.⁵ In the TCRR Order, the Commission explained that a separate nonbypassable rate is appropriate under the particular circumstances of this case. Because the under-recovery occurred during a period of limited customer shopping, and was followed by a significant increase in customer shopping, it would not be reasonable to expect non-shopping customers to carry the entire burden of the under-recovery.⁶ IEU-Ohio's argument lacks merit and its request for rehearing should be denied.

- (15) In its third ground for rehearing, IEU-Ohio contends that the TCRR Order is unlawful and unreasonable, because the Commission cannot rely on the phase-in authority contained in Section 4928.144, Revised Code, to approve the collection of OP's under-recovery balance on a nonbypassable basis. IEU-Ohio believes that the phase-in authority of Section 4928.144, Revised Code, may only be applied in the context of a proceeding pursuant to Sections 4928.141 to 4928.143, Revised Code, for the purpose of phasing in a rate established under those sections. IEU-Ohio adds that Section 4928.144, Revised Code, may only be invoked on a prospective basis, and that the incurred costs that are being deferred for future collection must first be identified. IEU-Ohio argues that the conditions of the statute have not, and cannot, be satisfied under the circumstances of this case.
- (16) In response, OP notes that the Commission has already rejected IEU-Ohio's argument and found that a phase-in of the under-recovery balance is appropriate through a nonbypassable charge, pursuant to Section 4928.144, Revised Code. OP argues that, because the TCRR was approved as part of its electric security plan (ESP) proceedings under Section 4928.143, Revised Code, and because the Company sufficiently identified its incurred costs in Schedules D-1 and D-3 of its TCRR update filing, it

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order, at 56-57 (February 23, 2011).

⁶ TCRR Order at 7-8.

was proper for the Commission to rely upon Section 4928.144, Revised Code.

- (17) The Commission finds that IEU-Ohio has raised no new arguments for our consideration. In the TCRR Order, we expressly disagreed with IEU-Ohio's contention that Section 4928.144, Revised Code, is inapplicable.⁷ We also noted that the TCRR was approved as part of OP's prior ESP, and again as part of its current ESP, which is consistent with the Commission's authority under Section 4928.143(B)(2)(g), Revised Code, as well as Section 4928.05(A)(2), Revised Code.⁸ Finally, we rejected IEU-Ohio's argument that OP had not sufficiently identified its costs, which, as the Company notes, are identified in the schedules supporting its application.⁹ IEU-Ohio has not explained how the information contained in OP's schedules is insufficient for purposes of Section 4928.144, Revised Code. The Commission finds that the statute is applicable under the circumstances, its conditions have been met, and, accordingly, IEU-Ohio's third ground for rehearing should be denied.
- (18) In its first ground for rehearing, OCC argues that the TCRR Order, in authorizing collection of the under-recovery over three years, violates Section 4905.22, Revised Code, which requires that rates be just and reasonable, and Section 4928.02(A), Revised Code, which provides that reasonably priced retail electric service must be available to consumers. OCC notes that customers will unreasonably be required to pay an additional \$6 million in carrying charges over the three-year period.
- (19) OP responds that it was appropriate for the Commission to rely on its authority under Section 4928.144, Revised Code,

⁷ TCRR Order at 7.

⁸ TCRR Order at 7, citing *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order, at 49-50 (March 18, 2009); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at 63-64 (August 8, 2012) (ESP 2 Order).

⁹ TCRR Order at 7.

to authorize the phase-in of the under-recovery balance as a means to ensure rate stability for customers. OP notes that the decision to implement a phase-in is a matter of judgment and that the Commission clearly considered the increase in shopping and the potential rate impact of a shorter recovery period in determining that a phase-in is appropriate under the circumstances.

- (20) The TCRR Order authorized OP to establish a separate nonbypassable rate as part of the TCRR, in order to collect the under-recovery of approximately \$36 million, plus carrying charges at the Company's long-term cost of debt rate, evenly over a three-year period.¹⁰ The Commission recognizes that, as a result, greater carrying charges will be paid over the three-year period than if the under-recovery were collected over just one year. However, as we explained in the TCRR Order, a three-year collection period will avoid the significant rate impact that would result from collection of the under-recovery over a single year, and which would be exacerbated by the other projected cost increases.¹¹ The Commission continues to find that extending collection of the under-recovery over a three-year period will prevent the considerable rate impact that would otherwise occur. We also find that the TCRR Order is consistent with our discretion to determine the timing and other details of a just and reasonable phase-in authorized under Section 4928.144, Revised Code, as recognized by the Ohio Supreme Court.¹² OCC has not demonstrated that the phase-in of collection of OP's under-recovery is unjust or unreasonable, and OCC's request for rehearing should, therefore, be denied.
- (21) In its second ground for rehearing, OCC contends that the TCRR Order violates Sections 4905.22 and 4928.02(A), Revised Code, because it authorized the collection of carrying charges over the three-year period, in addition to the carrying charges that have already been included by

¹⁰ TCRR Order at 6-7.

¹¹ TCRR Order at 7.

¹² *In re Columbus Southern Power Co.*, 129 Ohio St. 3d 568, 570, 954 N.E.2d 1183 (2011).

OP in the under-recovery balance. OCC believes that customers should not have to pay interest on interest.

- (22) In response to OCC's second ground for rehearing, OP contends that, in authorizing carrying charges on the under-recovery balance, the Commission recognized the distinct risks inherent in fully collecting the under-recovery, as well as the opportunity costs associated with a significant amount of unrecovered revenue. OP further argues that there are two different time periods involved and, therefore, it is appropriate to collect carrying charges on the under-recovery in addition to those already collected as part of the TCRR. OP also points out that, when there is an over-recovery under the TCRR, ratepayers receive carrying charges on the amount of the over-recovery.
- (23) The TCRR Order authorized OP to collect the under-recovery, plus carrying charges at the Company's long-term cost of debt rate, over a three-year period.¹³ As OP notes, there are two different time periods involved, specifically, the period in which the under-recovery occurred and the period in which the under-recovery balance will be collected over three years. Additionally, we note that the Ohio Supreme Court has determined that, pursuant to Section 4928.144, Revised Code, carrying charges are required to be added to deferred rates.¹⁴ Therefore, the Commission finds that it was appropriate to authorize OP to collect carrying charges on the under-recovery balance. OCC's second ground for rehearing should be denied.
- (24) OCC's third ground for rehearing is that the Commission unlawfully and unreasonably determined that the TCRR rate should not be factored in the 12-percent cap on rate increases imposed by the Commission in OP's recent ESP proceedings. OCC argues that the TCRR rate approved in this proceeding arose from the ESP 2 Order and should, therefore, be subject to the cap, pursuant to the terms of the order. OCC adds that the Commission should have

¹³ TCRR Order at 6-7.

¹⁴ *In re Columbus Southern Power Co.*, 129 Ohio St. 3d 568, 570, 954 N.E.2d 1183 (2011).

determined the impact of the new methodology for allocating NML costs in relation to the cap. As a result, OCC believes that the Commission failed to determine whether the TCRR rate is just and reasonable, and, thus, violated Sections 4905.22 and 4928.02(A), Revised Code.

- (25) In reply, OP asserts that the TCRR Order is the result of a proceeding subsequent to the ESP proceedings, and, as such, the TCRR rate is not factored into the 12-percent cap. OP notes that the Commission has already rejected OCC's position. OP concludes that OCC's disagreement with the Commission's judgment and discretion does not constitute a valid basis for rehearing.
- (26) In the TCRR Order, the Commission noted that rate changes that occur in proceedings subsequent to the ESP proceedings are not factored into the 12-percent cap.¹⁵ Although we agree that the TCRR was approved in the ESP proceedings, the Commission authorized a new TCRR rate in the present case. Because this rate change occurred in a proceeding subsequent to the ESP proceedings, the new TCRR rate should not be factored in the cap. Accordingly, we find that OCC's request for rehearing on this issue should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio and OCC be denied in their entirety. It is, further,

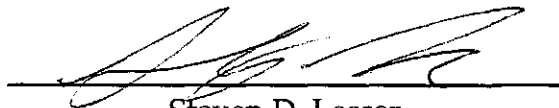
¹⁵ TCRR Order at 8, citing ESP 2 Order at 70.

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Todd A. Spitchler, Chairman



Steven D. Lesser



Andre T. Porter



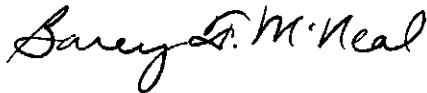
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Secretary