FILE

(14)

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Ohio Power Company's Distribution Investment Rider Work Plan Resulting from Case No. 11-346-EL-SSO et al.	))))	Case No. 12-3129-EL-UNC

RECEIVED-DOCKETING DIV
2013 JUN 28 PM 5:30
PUCO

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the approximate 1.3 million residential utility consumers of The Ohio Power Company ("AEP Ohio" or "the Company") respectfully applies for rehearing of the May 29, 2013, Finding and Order ("May 29 Order") issued by the Public Utilities Commission of Ohio ("PUCO" or "the Commission").[1] Pursuant to R.C. 4903.10 and Ohio Admin. Code 4901-1-35, OCC asserts that the May 29, 2013, Finding and Order was unjust, unreasonable, and unlawful in the following particulars:

A. The PUCO erred by failing to require AEP Ohio to re-file a 2013 DIR Work Plan that complies with the Commission directives from Case 11-346-EL-SSO et al. (After AEP Ohio filed a plan that does not comply with the PUCO's directives.)

B. The Commission erred by requiring customers to pay for reliability improvements that AEP Ohio is unwilling or unable to provide.

C. The Commission erred by failing to require AEP Ohio to separate the components in the DIR Work Plan for the CSP rate zone and the OP rate zone, respectively, because each service area has different reliability standards for customers.

[1] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.* Case No. 11-346-EL-SSO et al., Opinion and Order at 42 (August 8, 2012) ("11-346 Order").

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician _____ Date Processed JUN 28 2013

D. The PUCO Erred By Relying On Information Not In The Record In Making Its Decision

An explanation of the basis for each ground for rehearing is set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and the OCC claims of error, the PUCO should modify its May 29 Order.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Joseph P. Serio
Joseph P. Serio, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-9565
serio@occ.state.oh.us

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STANDARD OF REVIEW 2

III. ARGUMENT 3

A. The PUCO Erred By Failing To Require AEP Ohio To Re-File A 2013 DIR Work Plan That Complies With The Commission Directives From Case 11-346-EL-SSO Et Al. (After AEP Ohio Filed A Plan That Does Not Comply With The PUCO's Directives.) 3

B. The Commission erred by requiring customers to pay for reliability improvements that AEP Ohio is unwilling or unable to provide 5

C. The PUCO Erred By Failing To Require AEP Ohio To Separate The Components In The DIR Work Plan For The CSP Rate Zone And The OP Rate Zone, Because Each Service Area Has Different Reliability Standards 7

D. The PUCO Erred By Relying On Information Not In The Record In Making Its Decision 8

IV. CONCLUSION 10

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Ohio Power Company's Distribution Investment Rider Work Plan Resulting from Commission Case No. 11-346-EL-SSO et al.	))))	Case No. 12-3129-EL-UNC

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 3, 2012, AEP Ohio filed a Distribution Investment Rider ("DIR") Work Plan ("DIR Work Plan")[2] that was required pursuant to the Commission Order in AEP Ohio's Electric Security Plan, Case No. 11-346-EL-SSO.[3] The DIR is the mechanism authorized by the Commission for AEP Ohio to recover the costs from customers of capital funding and associated carrying costs for replacing or repairing aging distribution infrastructure that, according to AEP Ohio, is the primary cause of electric outages and reliability issues.[4]

According to the 11-346 Order, AEP Ohio was required "to work with Staff to develop a plan to emphasize proactive distribution maintenance that focuses spending on where it will have the greatest impact on maintaining and improving reliability for customers."[5] Furthermore, the Commission required that the DIR Work Plan provide the

---

[2] *In the Matter of the Commission's Review of the Ohio Power Company's Distribution Investment Rider Work Plan Resulting from Commission Case No. 11-346-EL-SSO,* Case No. 12-3129-EL-UNC Distribution Investment Rider Work Plan (December 3, 2012).

[3] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.* Case No. 11-346-EL-SSO et al., Opinion and Order at 42 (August 8, 2012).

[4] Id. at 47.

[5] Id.

quantifiable reliability improvements that were expected as a result of the additional investment in distribution infrastructure.[6]

The PUCO's decision in the May 29 Order does not comply with the requirements that the Commission established for the 2013 DIR Work Plan in the 11-346 Order and is not in the best interest of customers. Accordingly, OCC requests rehearing on the issues discussed in detail below.

II. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 which provides that within thirty days after an order is issued by the Commission "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." Furthermore, the 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 considering an Application for Rehearing, Ohio law provides that the Commission "may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear." If the Commission grants a rehearing and determines 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 * * *."

OCC participated in this case, and thus, meets the statutory conditions that apply to an Applicant for Rehearing under R.C. 4903.10. Accordingly, OCC respectfully requests that the Commission grant rehearing on the matters specified below.

---

[6] Id.

III. ARGUMENT

A. The PUCO Erred By Failing To Require AEP Ohio To Re-File A 2013 DIR Work Plan That Complies With The Commission Directives From Case 11-346-EL-SSO Et Al. (After AEP Ohio Filed A Plan That Does Not Comply With The PUCO's Directives.)

In approving the DIR, the Commission required AEP Ohio to work with the PUCO Staff to develop a DIR Work Plan that quantified reliability improvements that are expected as a result of the significant costs for the DIR that are being paid by customers.[7] Specifically, the Commission ordered AEP Ohio to develop a 2013 DIR Work Plan that demonstrated real tangible reliability benefits for consumers and a plan that provided regulatory oversight and protection for the large amount of money associated with the DIR. The Commission ordered:

> The proactive distribution infrastructure plan shall **quantify reliability improvements expected**, ensure no double recovery, and include a demonstration of DIR expenditures over projected expenditures and recent spending levels.[8] (Emphasis added.)

The May 29 Order identifies the significant deficiencies in the 2013 DIR Work Plan because there was no quantification of expected reliability improvements. The DIR Work Plan failed to address double-recovery, and there was no demonstration of how the DIR spending levels will exceed AEP Ohio's capital spending. The PUCO stated:

> The document that was filed by AEP Ohio as its 2013 DIR plan is comprised of a chart listing the plan components, with columns showing a description of each component, measures for reliability improvements, equipment affected, and projected expenditures. However, the document **does not quantify**, for many of the components, the **reliability improvements that are expected** to occur through the DIR investments, **nor does it address** the issue of **double recovery or demonstrate that DIR spending levels**

[7] Case 11-346-EL-SSO et al., Opinion and Order at 47 (August 8, 2012).

[8] Case 11-346-EL-SSO et al., Opinion and Order at 47 (August 8, 2012).

> **will exceed AEP Ohio's capital spending levels in recent years.**[9] (Emphasis added.)

After identifying these deficiencies, the Commission directed AEP Ohio to quantify the actual reliability improvements that are achieved as a result of the 2013 DIR Work Plan **after** customers have already paid for the DIR investments. That approach contradicts the PUCO's requirement that AEP Ohio file a 2013 DIR Work Plan that complies with the 11-346 Order. The May 29 Finding and Order specifically says:

> AEP Ohio is directed to quantify actual reliability improvements achieved for any program that is expected to reduce the frequency and/or duration of outages. For any program that is expected to maintain reliability, AEP Ohio is directed to **quantify the outages avoided** by implementation of the DIR plan in 2013. **AEP Ohio shall provide this information to Staff in writing by February 28, 2014.** (Emphasis added.)

In its Initial Comments, OCC objected to the 2013 DIR Work Plan. OCC's objections were based on several factors, related to AEP Ohio's noncompliance with the 11-346 Order. One, the plan was a hodgepodge of twenty-seven different programs. Two, the plan allowed AEP to collect $187 million from customers, on the mere basis that AEP's expenditures would be identifiable. Three, the plan allowed AEP to charge customers **without** any quantifiable reliability improvement being demonstrated and accepted by the PUCO.[10] Requiring customers to pay for distribution infrastructure investments in 2013 when there is no quantifiable reliability improvement defined before the investments are made is clearly unjust and unreasonable.

While the Commission required AEP to quantify the reliability benefits associated with the 2013 DIR Work Plan, the quantification of any expected reliability

---

[9] Case 12-3129-EL-UNC, Finding and Order at 10 (May 29, 2013).

[10] Case 12-3129-EL-UNC, OCC Initial Comments at 3 (January 18, 2013).

improvements does not occur until after the fact when customers would have already paid for the investments. Through its directive, the PUCO intended that such a result will be avoided.

> AEP Ohio is directed to quantify actual reliability improvements achieved for any program that is expected to reduce the frequency and/or duration of outages. For any program that is expected to maintain reliability, AEP Ohio is directed to quantify the outages avoided by implementation of the DIR plan in 2013. AEP Ohio shall provide this information to Staff in writing by February 28, 2014.[11]

B. The Commission erred by requiring customers to pay for reliability improvements that AEP Ohio is unwilling or unable to provide.

AEP Ohio customers should not be required to pay for reliability improvements identified in the 2013 DIR Work Plan when the Utility has no obligation to provide reliability improvement. The underlying premise supporting implementation of the DIR was that customers would receive improved reliability in exchange for the costs associated with the DIR.[12] The May 29 Order shows the Commission recognizes that the AEP Ohio 2013 DIR Work Plan fails to comply with the 11-346 Order, thus customers are upholding their end of the bargain by paying for the DIR, but customers are not getting any benefit because of the shortcomings in the 2013 DIR Work Plan that the Commission identified. By just ordering AEP Ohio to include content in the 2014 DIR Work Plan that was already required to be provided (but AEP Ohio chose not to provide) in the 2013 DIR Work Plan, the Commission is taking no meaningful action to address the shortcomings that the Commission identified. Thus the Commission is only ordering

[11] Case 12-3129-EL-UNC, Finding and Order at 11-12 (May 29, 2013).

[12] Case 11-346-EL-SSO et.al., Opinion and Order at 46 (August 8, 2012).

AEP Ohio to have the 2014 DIR Work Plan do what the 2013 Work Plan should have done.

Considering that AEP Ohio disregarded the Commission's 11-346 Order concerning the content of the 2013 DIR Work Plan, there is little reason to now believe that AEP Ohio will comply with the May 29 Order concerning the content of the 2014 DIR Work Plan. Therefore, the OCC respectfully requests that the Commission grant rehearing and enforce the requirements of the 11-346 Order.

AEP Ohio should be directed to publicly re-file the 2013 DIR Work Plan reflecting the expected quantifiable reliability improvements, within 60 days of the issuance of an Entry on Rehearing. Without expected quantifiable reliability improvements, it will be very difficult to evaluate the effectiveness of the plan and whether customers received the benefits for which they are being charged. Rather than a second time directing AEP Ohio to comply with the May 29 Order, the PUCO should at least indicate that a failure to comply with the requirements of the May 29 Order will result in a finding that the Utility is in violation of a Commission order that could result in appropriate enforcement actions.[13] As stated in a prior claim of error, AEP Ohio should be directed to re-file its 2013 DIR Work Plan.

---

[13] *In the Matter of the Commission's Investigation Into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162, Case No. 10-2387-TP-COI,* Entry (May 19, 2011) which noted that failure to make the appropriate filing before May 31, 2011, would result in the Commission pursuing the appropriate enforcement actions against the delinquent entities; *In the Matter of the Commission's Promulgation of Amendments to the Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code,* Case No. 99-1613-EL-ORD, Entry on Rehearing at 7, (June 8, 2000) which noted that "we must emphasize that if the EDC's fail to file the interconnection tariffs within 30 days of the issue of this Entry on Rehearing, those EDC's shall be found in violation of a Commission order;" *In the Matter of the Review of Chapter 4901:1-6, Ohio Administrative Code, Case No. 06-1345-TP-ORD,* Entry (January 9, 2009) which Each company listed in the attached appendix must immediately file an application to amend its tariff consistent with the Commission's September 19, 2007 Entry * * * to avoid full suspension of the company's tariff and cancellation of the company's operating authority."

C. The PUCO Erred By Failing To Require AEP Ohio To Separate The Components In The DIR Work Plan For The CSP Rate Zone And The OP Rate Zone, Because Each Service Area Has Different Reliability Standards.

In Initial Comments, OCC commented that CSP and OPC have different distribution rates. Those different rates can be attributed to a number of factors including different reliability standards that were established in 2010 and that will remain in effect until new reliability standards are approved by the Commission.[14] OCC expressed concern because the 2013 DIR Work Plan did not identify which DIR efforts were related to CSP and which were attributable to OP.[15] Without this information, there is no ability to determine the effect that the DIR is having on maintaining or improving the reliability standards for customers of CSP and OP.[16] OCC commented that the Commission supported its decision to approve the DIR based, in part, on an understanding that it would be detrimental to the state's economy to allow the performance standards to take a negative turn.[17]

The Commission rejected OCC's argument, claiming that the issue was previously considered in the ESP.[18] However, in the ESP the Commission merely claimed that the focus of the DIR will be on replacing infrastructure, irrespective of rate zone, that will have the greatest impact on improving reliability for customers.[19] As has been established, the 2013 DIR Work Plan is totally inadequate in quantifying any reliability improvement. Yet the Commission claims that it expects AEP Ohio to propose

---

[14] Id., OCC Initial Comments at 16 (January 18, 2013).

[15] Id.

[16] Id.

[17] Id at 17.

[18] Case 12-3129-EL-UNC, Finding and Order at 12 (May 29, 2013).

[19] Case 11-346-EL-SSO, Entry on Rehearing at 47 (January 30, 2013).

more stringent reliability performance standards in its next application to establish standards pursuant to Ohio Adm. Code 4901:1-10-10.[20] While the Commission seems to be addressing some future reliability standards case, AEP Ohio has a pending reliability standards case open at the Commission now.[21] The Company has proposed no improvement in the reliability standards even though the DIR has been providing accelerated recovery of investment costs for the last three years.[22] Without separate reporting of quantifiable reliability improvements through the DIR for CSP and OP, there is no mechanism to evaluate if the DIR is leading to better reliability performance in each service area.

OCC respectfully requests that the Commission grant rehearing and require AEP Ohio to re-file its 2013 DIR Work Plan, as requested above, and to comply with the Commission's directives in the August 12 Opinion and Order, to separate the investments being made in the CSP and OP service areas.

D. The PUCO Erred By Relying On Information Not In The Record In Making Its Decision

The May 29 Order relies on Staff Comments that are based on discussions with AEP Ohio.[23] The information from the Staff discussions with AEP Ohio are not on the record, thus OCC and other interested parties were unable to review and consider that information as part of the proceedings. The May 29 Order notes that AEP Ohio explained to the PUCO Staff how certain investments are intended to improve or

---

[20] Case 12-3129-EL-UNC, Finding and Order at 13 (May 29, 2013).

[21] *In the Matter of the Establishment of 4901: 1-10-10(B) Minimum Reliability Performance Standards for Ohio Power Company,* Case No. 12-1945-EL-ESS, Application, (June 29, 2012).

[22] Case 12-1945-EL-ESS, OCC Initial Comments at 24 -27 (January 4, 2013).

[23] Case 12-3129-EL-UNC, Finding and Order at 13 (May 29, 2013).

maintain reliability.[24] AEP Ohio chose not to include this information in the 2013 DIR Work Plan. The PUCO Staff apparently performed an analysis of outage-by-cause data and attempted to evaluate expenditures based on historical outage data.[25]

To the extent that the Commission relied on the PUCO Staff's analysis -- that included discussions with the Company that are not included in the record -- then the May 29 Order violates the requirement that the Commission's decision must be based on information contained in the record of the case.[26] In *Tongren*, the Commission made numerous references to input and findings from the PUCO Staff that were not a part of the record.[27] As a result the Court concluded that it was impossible to determine what record evidence the PUCO Staff considered in making its findings.[28] Similarly, in this case, the Commission is relying on the PUCO Staff's Comments that are based on discussions with the Company that are not part of the record, and thus impossible to review.

Furthermore, the PUCO should have required the Company to publicly file its report. The PUCO ordered the Company to provide this information only to the PUCO Staff in February 2014. Statutes such as R.C. 4905.07 -- Information and records to be public -- imposed the General Assembly's expectation that the PUCO's regulation is a public matter. Customers should be able to see documentation of what AEP Ohio is accomplishing for them with their (customers') money.

---

[24] Id.

[25] Id.

[26] R.C. 4903.09; See also *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 760 N.E.2d 1255, 1999 Ohio LEXIS 691.

[27] Id. at 90.

[28] Id. at 91.

IV. CONCLUSION

For all the reasons discussed above, the Commission should grant OCC's Application for Rehearing and require AEP Ohio to comply with the requirements of the August 8, 11-346 Order. OCC requests that the Commission require AEP Ohio, when it re-files its 2013 DIR Work Plan to comply with the Commission directives in the 11-346 Order, to separate the investments being made in the CSP and OP service areas. Finally, OCC requests that AEP Ohio be directed to publicly file the 2014 DIR work Plan.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Joseph P. Serio
Joseph P. Serio, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-9565
serio@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 28th day of June 2013.

/s/ Joseph P. Serio
Joseph P. Serio
Assistant Consumers' Counsel

SERVICE LIST

Werner L. Margard
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215
Werner.margard@puc.state.oh.us

Matthew J. Satterwhite
Yazen Alami
Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza, 29th Fl.
Columbus, OH 43215
mjsatterwhite@aep.com
yalami@aep.com
stnourse@aep.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

J. Thomas Siwo
Matthew W. Warnock
Bricker &Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tsiwo@bricker.com
mwarnock@bricker.com

Mark S. Yurick
Zachary D. Kravitz
Taft, Stettinius & Hollister, LLP
65 E. State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

AEs: Sarah.parrot@puc.state.oh.us
Jonathan.tauber@puc.state.oh.us