

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| <b>In the Matter of the Application</b>    | ) |                                |
| <b>of Ohio Power Company to Update its</b> | ) | <b>Case No. 13-1406-EL-RDR</b> |
| <b>Transmission Cost Recovery Rider</b>    | ) |                                |

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**REPLY COMMENTS OF OHIO POWER COMPANY**

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**I. INTRODUCTION**

On June 17, 2013, Ohio Power Company (“AEP Ohio” or the “Company”) filed its annual application to update its Transmission Cost Recovery Rider (“TCRR”) pursuant to Rule 4901:1-36-03(B), Ohio Administrative Code (“Application”). On July 29, 2013, Industrial Energy Users-Ohio (“IEU”) and The Office of the Ohio Consumers’ Counsel (“OCC”) filed comments on the Company’s Application. AEP Ohio hereby responds to the comments filed by IEU and OCC.

**II. AEP OHIO’S RESPONSE TO IEU’S AND OCC’S COMMENTS**

Reactive supply charges are transmission-related costs incurred by the Company that are appropriate for recovery through the TCRR. Both Ohio law and the Public Utilities Commission of Ohio’s (“Commission”) rules authorize AEP Ohio to recover all transmission-related costs incurred by the Company. Revised Code section 4928.05(A)(2) provides:

“[C]ommission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of **all** transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar

organization approved by the federal energy regulatory commission.”

(Emphasis added). Similarly, Rule 4901:1-36-02(A), Ohio Admin. Code, states:

“This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, **all** transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.”

(Emphasis added). Reactive supply charges are charged to the Company by PJM Interconnection L.L.C. (“PJM”), a FERC-approved regional transmission organization. Neither IEU nor OCC dispute that the reactive supply charges actually incurred by the Company are true transmission-related costs appropriate for recovery through the TCRR.

#### **A. IEU’s Comments**

For its comments, IEU asserts that AEP Ohio is precluded from recovering the \$23 million in reactive supply charges based on the doctrines of *res judicata* and collateral estoppel. (IEU comments at 3). Alternatively, IEU states that if recovery is to be permitted, the Commission, following its precedent, should not authorize the Company to recover the full amount of the charges. (IEU comments at 4-6). IEU next argues that the AEP Ohio should not be permitted to recover carrying charges on the reactive supply charges and Black Start Service charges incurred by the Company. (IEU comments at 6-8). Finally, IEU recommends a proposal to mitigate rate impacts that would deny the Company recovery of the transmission-related costs it incurred in providing service to customers. IEU’s comments represent an incomplete analysis of

precedent, a disregard for the Commission's rules, and an unreasonable proposal that would unfairly prejudice the Company. They should be rejected.

**1. The doctrines of *res judicata* and collateral estoppel do not apply here because the issue of the \$23 million reactive supply charges was never actually litigated and decided by the Commission.**

The doctrines of *res judicata* and collateral estoppel operate to preclude the re-litigation of a fact or law that was at issue in a former action between the same parties and upon which the court issued a final ruling. Moreover, for consideration of the issue or claim to be precluded, it must have been “actually and necessarily litigated and determined in a prior action,” and such determination must have been “essential to the judgment” in the prior action.<sup>1</sup> IEU argues that the Company is now precluded from recovering the \$23 million in reactive supply charges because the Company did not request recovery of the charges in its previous TCRR rates approved by the Commission. (IEU comments at 3).

IEU's own statements are fatal to its preclusion argument; because recovery of the \$23 million reactive supply charges was not requested in prior applications, the Commission never ruled on the issue. As discussed in the Application at paragraph 13, beginning in July 2011 the reactive supply charges billed to the Company by PJM were inadvertently not recorded in an account associated with the TCRR due to a clerical error. Thus, the Company's prior TCRR applications did not seek recovery of these charges. The instant Application is the Commission's first opportunity to consider the \$23 million reactive supply charges. Therefore, the doctrines of *res judicata* and collateral estoppel do not preclude consideration of the Company's claim because the issue was never

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<sup>1</sup> *In the Matter of the Complaint of Warren J. Yerian v. Buckeye Rural Elec. Coop., Inc.*, Case No. 05-886-EL-CSS, Entry at 3 (Aug. 24, 2005).

“actually litigated and determined” in a prior case. IEU’s preclusion argument must be rejected.

**2. The inadvertent omission of the reactive supply charges was a simple clerical error that may be corrected in this proceeding.**

The Commission has previously permitted subsequent recovery of costs that were previously unrecovered as a result of clerical or reporting errors. In *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Columbus Southern Power Company and Related Matters*,<sup>2</sup> the utility company discovered that an error had been made during the preceding audit period. The error resulted from a verbal miscommunication which caused an under-recovery of costs that were properly recoverable. The Commission concluded that the problem arose because of a simple clerical error and allowed the utility to correct the error in the subsequent case.<sup>3</sup>

A clerical error is defined as a “mistake made in a letter, paper, or document that changes its meaning, such as a typographical error or the unintentional addition or omissions of a word, phrase, or figure.”<sup>4</sup> Contrary to IEU’s assertion (IEU comments at 5), the inadvertent omission of the \$23 million reactive supply charges here fits squarely

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<sup>2</sup> *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Columbus Southern Power Company and Related Matters*, Case No. 87-102-EL-EFC, Opinion and Order (November 10, 1987) and Entry on Rehearing (December 29, 1987) (“*Columbus Southern*”); *See also*, *In the Matter of the Regulation of the Electric Fuel Component Contained with the Rate Schedules of the Cleveland Elec. Illuminating Co. & Related Matters*, 83-38-EL-EFC, Opinion and Order (February 28, 1984) 1984 WL 991295 \*14 (WL Feb. 28, 1984)(“[T]his Commission normally limits the scope of an EFC proceeding to those matters occurring during the base period with the exception of...clerical or reporting errors and those matters reserved or deferred by the Commission.”).

<sup>3</sup> *Id.*

<sup>4</sup> West's Encyclopedia of American Law, 2d Edition.

within the definition of a clerical error that may be corrected in this proceeding. PJM reactive supply charges and credits are billed to the Company as separate line items, line item 1330 for the charge and line item 2330 for the credit. Reactive supply charges are ancillary transmission-related costs properly recovered from customers through the TCRR. Historically, the net of the two PJM line items was a charge, with the charge line item recorded in FERC account 5550074 and the credit line item recorded in FERC account 5550075. Beginning in July 2011, the net of the two PJM line items was a credit, leading to the total amount being recorded in FERC account 4470098; inadvertently, the separate charge line item was not recorded in FERC account 5550074 and the separate credit line item was not recorded in account 5550075. This simple clerical omission resulted in an under-recovery of the actual reactive supply charges incurred by the Company.

AEP Ohio has taken steps to help ensure proper recording of reactive supply charges and credits going forward. The Company now manually reclassifies the PJM line items on a monthly basis to ensure that the charges are recorded in the appropriate account. Moreover, with AEP Ohio becoming essentially a wires-only utility in the future, reactive supply credits, which are associated with owned generation, will be eliminated. The Commission can and should correct the error in this proceeding by authorizing full recovery of the un-recovered reactive supply charges.

**3. The Company should be permitted to recover carrying charges on both the under-recovered reactive supply charges and the costs associated with the Black Start Service tariff change.**

By arguing that the Commission should deny AEP Ohio's request for carrying charges associated with the reactive supply charges and Black Start Service tariff change,

IEU disregards the unequivocal language in the Commission's rules allowing for carrying charges on under-recovered TCRR costs. (IEU comments at 6-8). Rule 4901:1-36-04(A), Ohio Admin. Code, provides that the TCRR is to be reconciled on an annual basis, "with carrying charges to be applied to both over- and under-recovery of costs." The Commission should refuse to disregard its own rules as IEU has and should instead authorize the Company to recover carrying charges on its under-recovered costs. The Company should not be penalized for its inadvertent clerical error, as IEU suggests. (IEU comments at 7). If the Company's clerical error resulted in an over-recovery of costs, IEU would likely be arguing for carrying charges on the over-recovery as provided for in the rule.

The clerical error was discovered while the Company prepared its Application in April of this year, less than two months before the June filing date. If the Company were to have filed an interim application pursuant to Rule 4901:1-36-03(E), Ohio Admin. Code, as IEU suggests, there would likely have been two TCRR applications pending before the Commission at the same time, potentially leading to incompatible orders and rate fluctuations within a short period of time. Surely such an outcome was not intended by the Commission in promulgating the rule.

With respect to the Black Start Service tariff change, IEU also seeks to penalize the Company for not filing an interim application pursuant to Rule 4901:1-36-03(E), Ohio Admin. Code. But, at the time of the tariff change in December 2012, the Company's current TCRR rates had been in place barely a month. It was possible that even with the increased costs associated with the Black Start Service tariff change the Company's costs would not be substantially different than the amounts recently

authorized. IEU's suggestion that the Company should have immediately filed an interim application is myopic and merely a pretext for denying the Company carrying charges on the under-recovered costs. The Company should be permitted to recover carrying charges on the under-recovered reactive supply charges and the costs associated with the Black Start Service tariff change, as authorized by Rule 4901:1-36-04(A), Ohio Admin. Code.

Finally, for the reasons discussed above, IEU's proposal to minimize rate impacts by completely denying AEP Ohio cost recovery should be rejected. Such a proposal is unreasonable, contrary to law and the Commission's rules, and unfairly prejudices the Company. While AEP Ohio is open to working collaboratively with stakeholders to determine alternative recovery options and to mitigate rate impacts, one-sided proposals that leave no room for compromise and fail to recognize the impact on the Company cannot be the starting point for discussions.

#### **B. OCC's Comments**

Despite recognizing that the TCRR provides reconciliation "for differences between forecasted transmission costs included in the TCRR and the actual amount of costs incurred," OCC asserts in its comments that AEP Ohio should be denied recovery of the \$23 million reactive supply charges because "they were not previously claimed to be costs for the TCRR," and because the "audit period relating to these costs have passed." (OCC comments at 1). OCC further asserts that the Company's Application is deficient (OCC comments at 3-4), and argues that carrying costs on the reactive supply charges should be denied (OCC comments at 5-6). OCC improperly seeks to penalize AEP Ohio for an isolated clerical error and place limitations on the TCRR reconciliation

mechanism that do not exist under the statute or in the Commission's rules. OCC's comments should be rejected accordingly.

**1. Reactive supply charges are actual transmission-related costs incurred by the Company that are appropriate for recovery through the TCRR in this proceeding.**

Forecasts are rarely perfect. A forecast may underestimate (or overestimate) actual costs, leading to an under-recovery (or over-recovery) of costs which are, pursuant to the reconciliation mechanism of the TCRR, carried forward and recovered during future periods to ensure customers pay no less (and no more) than the actual costs incurred by the Company. The possibility that costs incurred during prior periods are recovered during future recovery periods is inherent in the TCRR's reconciliation mechanism. Thus, OCC's argument that the \$23 million under-recovered reactive supply charges are "out-of-period costs" that should not now be recovered must fail. (OCC comments at 2). OCC's argument overlooks the *sine qua non* of the TCRR – reconciliation – and, more importantly, places limits on the Company's recovery of transmission-related costs that are unsupported by Ohio law and the Commission's rules.

Further, OCC's suggestion that AEP Ohio should only be permitted to recover charges that it "claimed in the first place would be incurred" (OCC comments at 5) suggests a standard of forecasting perfection that is not contemplated in the law or Commission rules and which is, as a practical matter, unachievable. As discussed above, both Ohio law and the Commission's rules permit AEP Ohio to recover **all** transmission-related costs charged to the Company by PJM. Both provide for reconciliation during future periods of under-recovered costs and neither imposes a standard of forecasting perfection as suggested by OCC.



Like IEU, OCC simply seeks to penalize the Company because the under-recovery of reactive supply charges occurred as a result of a clerical error. A forecast that underestimates actual costs because of a clerical error should not be treated any differently than a forecast that underestimates actual costs for reasons beyond the Company's control, as the Commission's precedent recognizes. As discussed in section (A)(2) above, in *Columbus Southern*, the Commission allowed a correction for a clerical error that occurred during a prior period, directly addressing and distinguishing the case law cited by OCC in its comments. (OCC comments at fn. 7). Here, the inadvertent omission of the \$23 million reactive supply charges from the Company's prior forecast fits squarely within the definition of a clerical error that can and should be corrected by the Commission in this proceeding. Full reconciliation of the under-recovered reactive supply charges is necessary to ensure AEP Ohio recovers no less than all transmission-related costs incurred by the Company.

## **2. The Company's Application is not deficient.**

OCC incorrectly asserts that the Company's Application is "deficient in a number of respects." (OCC comments at 3). Notwithstanding OCC's assertion, all information required to be included in a TCRR update application pursuant to Rule 4901:1-36-03(B), Ohio Admin. Code, and the appendix to the rule was included with the Company's Application in this case. In addition to the information contained in the Application, additional information has been provided to the parties in discovery. Notably, OCC's comments were filed before receiving the Company's responses to their discovery requests. Finally, some information related to the Application is confidential. This confidential information has been shared with the Staff of the Commission and those

parties who have executed a confidentiality agreement. The information provided in the Application and through discovery fully supports the Company's request in this case.

With respect to OCC's assertion that the Company fails to explain the relative reduction in future reactive supply charges (OCC comments at 4), the Company explained in the Application (at paragraph 16) how it is currently forecasting significant reductions in certain costs – including ancillary services costs such as reactive supply charges – due to the termination of the AEP East Power Pool and the advent of the slice-of-system energy auctions authorized in Case No. 11-346-EL-SSO. Further, with respect to OCC's assertion that “no information in the filing indicated where the inadvertently omitted charges were recorded” (OCC comments at 4), the net of the reactive supply charges and credits were recorded in FERC account 4470098, an account un-affiliated with the TCRR. The \$23 million under-recovered reactive supply charges were not included for recovery in any other schedule or rider or otherwise previously recovered from customers. OCC's characterization of the Application as deficient is misleading, considering that much of the information OCC claims is lacking has been provided either in the Application itself, its schedules, or through discovery.

**3. The Company should be permitted to recover both past and future carrying charges on the under-recovered reactive supply charges.**

Finally, like IEU, OCC disregards the unequivocal language in the Commission's rules allowing for carrying charges on under-recovered TCRR costs. Rule 4901:1-36-04(A), Ohio Admin. Code, provides that the TCRR is to be reconciled on an annual basis, “with carrying charges to be applied to both over- and under-recovery of costs.” While OCC cites Commission precedent (as well as precedent from other jurisdictions that is not controlling here) for the proposition that any carrying charges on *over*-recovered

amounts should be returned to customers (OCC comments at 5-6), OCC fails to recognize that the Commission's rules also provide for the utility to recover carrying charges on costs under-collected. As discussed above, the Company's clerical error was an isolated omission; it does not rise to the level of "repeated accounting errors over five years" like in the *Northern Utilities* case cited by OCC. (OCC comments at fn. 10). If the Company's clerical error resulted in an over-recovery of costs, OCC surely would be arguing for any carrying charges to be returned to customers as provided for in the rule. OCC should not be able to pick and choose the circumstances under which the Commission's rules should apply. AEP Ohio should be permitted to recover carrying charges on the under-recovered reactive supply charges as provided for in the rule.

### **III. CONCLUSION**

For the reasons set out in the Application and in the comments above, AEP Ohio's Application should be approved.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the below-named counsel via electronic mail, this 13<sup>th</sup> day of August, 2013.

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