

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO ENLARGE THE TIME PERIOD FOR DISCOVERY,
MOTION TO REQUIRE EXPEDITED RESPONSES TO DISCOVERY,
MOTION TO EXTEND THE DUE DATE FOR FILING INTERVENOR
TESTIMONY, MOTION TO CONTINUE THE HEARING DATE,
AND REQUEST FOR EXPEDITED RULINGS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to extend the procedural schedule, given developments this week in the case, to better provide the Public Utilities Commission of Ohio ("PUCO" or "Commission") with evidence for its decision-making on issues involving millions of dollars in customers' rates. As background, Ohio Power Company ("OPC," "AEP Ohio," or "Utility") is claiming that it should charge customers \$23 million in PJM Reactive Supply charges from July 2011 through March 2013 that, because of an "inadvertent" omission, it didn't charge customers in its Transmission Cost Recovery Rider ("TCRR").

But it also came to light in depositions held on October 16, 2013, that AEP Ohio has not, since 2006, flowed back millions of dollars of off-setting revenues for transmission-related charges to customers. There is a PUCO regulation (O.A.C. 4901:1-36-04(C)) that requires crediting such revenues to the TCRR.

Given the discovery this week of OPC's approach to accounting and ratemaking on this transmission issue, the case due dates, including those for testimony (October 18,

2013), for discovery (October 18, 2013) and for the scheduled hearing (October 29, 2013) should be extended and continued. The extension of these due dates will not affect the substantial rights of any party. Therefore, OCC asks the PUCO to make the following changes in due dates:¹

Intervenor Testimony Due Date: November 18, 2013

Hearing Date: December 3, 2013²

Discovery Period End: November 18, 2013

Discovery Response Time: Seven Days

OCC also requests expedited approval of this Motion.³ OCC has advised other parties that it will be filing this Motion. PUCO Staff, Industrial Energy Users of Ohio (“IEU-Ohio”), and Ohio Energy Group (“OEG”) have indicated that they do not oppose OCC’s Motion to Extend the Procedural Schedule or OCC’s Request for an Expedited Ruling. However, OPC has indicated that it objects to this Motion and OCC’s Request for an Expedited Ruling.⁴

The grounds for OCC’s Motion are more fully set forth in the accompanying Memorandum in Support.

¹ Ohio Adm. Code 4901-1-12.

² Please note that OCC’s witness is not available from November 5, 2013 through November 15, 2013. Additionally, hearings in AEP’s FAC case begin on November 18, 2013, creating conflicts for other counsel in the period prior to Thanksgiving. Thus, OCC is proposing a hearing to commence after Thanksgiving.

³ Ohio Adm. Code 4901-1-12 (C).

⁴ Although O.A.C. 4901-1-12(C) provides an objecting party with seven days to file a Memorandum Contra, O.A.C. 4901-1-12(F) provides that the “the commission, the legal director, the deputy legal director, or the attorney examiner may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.”

Respectfully submitted,

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In the Matter of the Application of Ohio)
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**MEMORANDUM IN SUPPORT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On June 17, 2013, Ohio Power Company (“OPC,” “AEP Ohio,” or “Utility”) filed its annual TCRR update for charging transmission costs to its customers. As part of its annual TCRR update, OPC claimed that it incurred \$23 million in PJM Reactive Supply charges from July 2011 through March 2013 but, because of an “inadvertent” omission, didn’t include them in its Transmission Cost Recovery Rider (“TCRR”).

But AEP’s \$23 million “inadvertent omission” in fact resulted from an accounting procedure that had offset \$25,765,390.55 in PJM Reactive Supply Credits against \$23,852,413.06 in PJM Reactive Supply charges. This produced a net credit and when there was a net credit, AEP’s accounting system canceled out the charges (Account 5550074) and credits (Account 5550075) and recorded the net amount as a revenue (Account 4470098). The result was that neither charges, credits, or net credit was reflected in the TCRR. AEP’s claim in this case is that its accounting procedure should not have canceled out the charges where there was a net credit.

As discovered in depositions on October 16, 2013, except for the period of its “inadvertent omission,” AEP has not netted PJM Reactive Supply credits against PJM Reactive Supply charges since 2006. But the PUCO’s regulations require “off-setting

revenues, including ancillary . . . revenues . . . credited to the utility” to be included in the transmission cost recovery rider.⁵

OCC learned the real meaning of the “inadvertent omission” at depositions held on October 16, 2013 – a week after OPC filed its testimony. And OCC learned that OPC had not offset certain ancillary service revenues against ancillary service charges since 2006 even though the PUCO’s regulations have required such netting since at least April 2009. Because of the late discovery of this information—which was timed to follow the very recent filing of AEP Ohio’s testimony, OCC is moving for additional time to perform discovery, file prepared testimony, and for a continuance of the hearing in this matter. OCC requests the PUCO act on this request in an expedited manner given that the deadline for intervenor testimony is today, October 18, 2013 and the hearing is scheduled for October 29, 2013.

II. ARGUMENT

A. Standard Of Review

O.A.C. 4901-1-13 provides that continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown. O.A.C 4901-1-17(G) allows the PUCO to enlarge the time period for discovery, for good cause shown. O.A.C. 4901-1-19(A) and 20(C) allow the PUCO to shorten the response time for interrogatories and requests for documents. O.A.C. 4901-1-12(C) allows a party to request an expedited ruling and O.A.C. 4901-1-12(F) allows the PUCO or its representatives to issue an expedited ruling even where a party objects,

⁵ O.A.C. 4901:1-36-04(C).

“where the issuance of such a ruling will not adversely affect a substantial right of any party.”

B. Good Cause Exists For Granting OCC’s Motions Because Of The Need To Continue Case Preparation Based On The Discovery This Week, During Depositions, That OPC Has Been Denying Its Customers A Credit For Off-Setting Revenues In Transmission-Related Rates, Even Though Such Crediting Is Required By O.A.C. 4901:1-36-04(C).

The PUCO’s regulations require that “off-setting revenues” to charges included in the TCRR be credited to customers through the TCRR.⁶ That provision provides as follows:

- (C) The transmission cost recovery rider *shall include* transmission and transmission-related costs and *off-setting revenues, including ancillary and congestion-related costs and revenues, charged or credited 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 to the extent such costs and revenues are not included in any other schedule or rider in the electric utility's tariff on file with the commission.⁷

Despite the clear requirement of this rule, OPC has not been crediting millions of dollars of off-setting revenues to customers since 2006 based on a single sentence of testimony it filed in a 2006 case.⁸ Apparently, OPC believes that the PUCO’s approval of its filing in that 2006 case authorized it to depart from the requirements of the above-regulation which was subsequently adopted by the PUCO and became effective on April

⁶ O.A.C. 4901:1-36-04(C).

⁷ *Id.* (emphasis added).

⁸ *In the matter of the application of Columbus Southern Power Company and Ohio Power Company to adjust the transmission component of each company's standard service tariff and to combine that component with its transmission cost recovery rider*, Case No. 06-273-EL-UNC, Direct Testimony of David Roush at 6 (Filed February 3, 2006).

2, 2009. Notably, in its Finding and Order of September 17, 2008 approving the above-noted regulation, the PUCO stated the following:

With respect to Rule 04, IEU recommended that the Commission include a requirement in this rule that electric utilities must include offsetting benefits in the calculation of the rider. The Commission agrees with this recommendation and revised the rule.⁹

In the current case, OPC's Application indicated that the \$23 million in PJM Reactive Supply "charges" had been "inadvertently omitted" from July 2011 through March 2013.¹⁰ But neither the Application or OPC's responses to discovery of Staff, OCC or IEU explained that OPC's proposed \$23 million correction was primarily the result of an accounting procedure that adjusted PJM Reactive Supply charges for "offsetting revenues" (PJM's Account 2330 credits) that OPC receives from PJM for providing PJM Reactive Supply.

Until OPC filed its testimony in this matter, the cause of OPC's adjustment of PJM Reactive Supply charges appeared to be simply that the charges had been omitted. It was not apparent to OCC that AEP omitted PJM Reactive Supply credits from TCRR rates. Further, until depositions were held, it did not become apparent to OCC that, in

⁹ *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Opinion and Order at 12, 2008 Ohio PUC LEXIS 630 (PUC Ohio September 17, 2008).

¹⁰ OPC's application stated the following:

Reactive Supply charges are a true cost to the Company and included in the line items for recovery as shown on the Company's Schedule B-1. Reactive Supply charges (and credits) are billed by PJM to the Company as line items 1330 (charge) and 2330 (credit) on the PJM bill. The charge line item relates to FERC account 5550074 and the credit line item relates to FERC account 5550075. During the review phase for this filing, the Company discovered that from July 2011 through March 2013, the net of the two line items has been a credit but the separate charge line item was not recorded in account 5550074 and thus was inadvertently not included in the TCRR rate calculations. The Company reclassified the charges to the correct account (5550074) for inclusion in the current TCRR calculations.

fact, “offsetting revenues” from other services, including “Regulation,” “Synchronous Reserve,” and “Blackstart Service” have not been credited to customers since 2006.

With regard to OCC’s good cause, it should be noted that AEP Ohio only recently filed its testimony, on October 8, 2013. And OCC promptly thereafter (two days ago) deposed AEP Ohio personnel. The above issue is obscure, was not described in AEP Ohio’s application and did not become apparent to OCC until the depositions on Wednesday, October 16, 2013.

OCC is now conducting further discovery (sent yesterday) and otherwise continuing its case preparation in light of the new information that affects consumers. That gives rise to OCC’s motions to shorten the discovery response time and enlarge the discovery period until November 18, 2013, pursuant to O.A.C. 4901-1-17(G), 19(A) and 20(C). And OCC is considering its approach to evidence through testimony for the PUCO to consider for purposes of the record under R.C. 4903.09, in light of the developments this week. That gives rise to OCC’s request to extend the due date for testimony. And all of the above give rise to continuing the hearing date. There is good cause for OCC’s motions. And extension of the due dates will not affect the substantial rights of any party.

OCC requests the PUCO act on this request in an expedited manner given that the current deadline for intervenor testimony is October 18, 2013 and the hearing is scheduled for October 29, 2013. OCC has advised other parties that it will be filing this Motion. PUCO Staff, Industrial Energy Users of Ohio (“IEU-Ohio”), and Ohio Energy Group (“OEG”) have indicated that they do not oppose OCC’s Motion to Extend the

Procedural Schedule or OCC's Request for an Expedited Ruling. However, OPC has indicated that it objects to this Motion and OCC's Request for an Expedited Ruling.¹¹

III. CONCLUSION

Good cause exists to grant OCC's Motion to extend the procedural deadlines in this matter, to provide for expedited responses to discovery, extend the due dates for filing intervenor discovery and testimony, and to continue the hearing. Intervenor Testimony should be due on November 18, 2013 and the hearing should be held on December 3, 2013.¹² Discovery should also be concluded by November 18, 2013. In light of the fact that, until depositions were held two days ago, it did not become apparent that OPC has not been crediting transmission-related revenues to customers as required by O.A.C. 4901:1-36-04(C), the PUCO should grant OCC's Motion on an expedited basis and extend the procedural schedule in this matter. This will allow the PUCO to consider this evidence for its decision-making on issues involving millions of dollars in customers' rates.

¹¹ Although O.A.C. 4901-1-12(C) provides an objecting party with seven days to file a Memorandum Contra, O.A.C. 4901-1-12(F) provides that the "the commission, the legal director, the deputy legal director, or the attorney examiner may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party."

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *foregoing Motion To Enlarge The Time Period For Discovery, Motion To Require Expedited Responses To Discovery, Motion To Extend The Due Date For Filing Intervenor Testimony, Motion To Continue The Hearing Date, And Request For Expedited Rulings By The Office Of The Ohio Consumers' Counsel* was served on the persons stated below via electronic service, this 18th day of October 2013.

/s/ Edmund "Tad" Berger

Edmund "Tad" Berger
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Summary: Motion Motion to Enlarge the Time Period for Discovery, Motion to Require Expedited Responses to Discovery, Motion to Extend the Due Date for Filing Intervenor Testimony, Motion to Continue the Hearing Date, and Request for Expedited Rulings by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Berger, Tad Mr.