

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.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Steven T. Nourse, Matthew J. Satterwhite, and Yazen Alami, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Ohio Power Company.

Mike DeWine, Ohio Attorney General, by Thomas G. Lindgren and Ryan P. O'Rourke, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Edmund "Tad" Berger, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody Kyler Cohn, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

McNees, Wallace & Nurick LLC, by Samuel C. Randazzo, Frank P. Darr, Joseph E. Olikier, and Matthew R. Pritchard, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

OPINION:

I. History of the Proceeding

Ohio Power Company d/b/a AEP Ohio (AEP Ohio 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.

On June 17, 2013, AEP Ohio filed an application to update its transmission cost recovery rider (TCRR), pursuant to Chapter 4901:1-36, Ohio Administrative Code (O.A.C.). On July 29, 2013, the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio (IEU-Ohio) filed comments in this proceeding. AEP Ohio filed a reply on August 13, 2013. Also on that date, Staff filed a letter containing a summary of its review of AEP Ohio's TCRR filing and recommendations for the Commission's consideration. On August 20, 2013, AEP Ohio filed comments regarding Staff's review and recommendations.

By finding and order issued on August 28, 2013, the Commission granted motions to intervene in this proceeding filed by Ohio Energy Group (OEG), OCC, and IEU-Ohio. The Commission also found, upon review of AEP Ohio's application to update the TCRR, Staff's recommendations, and the comments filed by the parties, that the application may be unjust or unreasonable and, therefore, that a hearing on this matter should be held, consistent with Rule 4901:1-36-05, O.A.C. Finally, in light of the significant disagreement among the parties as to the transmission-related costs and associated carrying costs that should be recovered by AEP Ohio, the Commission directed the Company to file revised tariffs reflecting Staff's proposed TCRR rates, to be effective with the September 2013 billing cycle and until otherwise ordered by the Commission. The Commission noted that AEP Ohio's TCRR shall be subject to a reconciliation adjustment to account for any difference between the TCRR rates authorized in the finding and order and the TCRR rates approved upon conclusion of the hearing on this matter.

In accordance with the established procedural schedule, AEP Ohio filed the direct testimony of Andrea E. Moore (AEP Ohio Ex. 3) and Eric J. Gleckler (AEP Ohio Ex. 4) on October 8, 2013. OCC filed the testimony of Beth E. Hixon (OCC Ex. 2) on October 18, 2013, and Staff filed the testimony of Jeffrey Hecker (Staff Ex. 2) on October 22, 2013.

On November 1, 2013, AEP Ohio filed a motion for a continuance of the hearing date and request for expedited treatment, in order to provide the parties with additional time to finalize a joint stipulation and recommendation (stipulation) for the Commission's consideration. On November 4, 2013, the hearing was called as scheduled. During the hearing, the attorney examiner granted AEP Ohio's motion and continued the hearing to November 14, 2013. On November 8, 2013, AEP Ohio, OCC, OEG, and Staff (collectively, signatory parties) filed the stipulation (Joint Ex. 1).¹ On November 12, 2013, AEP Ohio filed the testimony of Andrea E. Moore in support of the stipulation (AEP Ohio Ex. 5), while Staff filed the testimony of David Lipthrott (Staff Ex.

¹ IEU-Ohio participated in the settlement process and authorized the signatory parties to represent that IEU-Ohio does not oppose the terms of the stipulation (Joint Ex. 1 at 2).

3). On November 13, 2013, OCC filed the testimony of Sari Fink in support of the stipulation (OCC Ex. 3). The hearing reconvened and concluded on November 14, 2013.

II. Summary of the Application and Testimony

In its application, AEP Ohio seeks approval to collect from customers a total of approximately \$230.9 million in transmission and transmission-related costs, which includes \$180.3 million in projected transmission costs, plus an under-collection of \$47.3 million. AEP Ohio also seeks to recover forecasted carrying costs of \$3.3 million on the under-collected balance. (AEP Ohio Ex. 1 at Sch. B-1.) AEP Ohio attributes the under-recovery balance of \$47.3 million to three factors. First, AEP Ohio states that a PJM Interconnection (PJM) tariff change in December 2012 caused the Company to incur approximately \$11 million in costs that were not forecasted for Black Start Service. Second, AEP Ohio explains that regulatory lag in implementation of the current TCRR rates resulted in approximately \$7 million of the under-recovery balance. Third, AEP Ohio notes that, for the period from July 2011 through March 2013, approximately \$23 million in PJM Reactive Supply charges, plus carrying costs, were inadvertently omitted from the Company's TCRR charges. (AEP Ohio Ex. 1 at 4.) AEP Ohio further notes that, after the Company discovered the omission during the review phase in advance of this filing, the Company reclassified the charges to the correct account for inclusion in the current TCRR calculations. Additionally, AEP Ohio states that Schedule B-1 of its TCRR filing includes a new line for Forecast Carrying Costs, which represents a projection of the carrying costs that the Company will incur due to the under-recovery balance. AEP Ohio adds that it intends to true up the forecast to the actual carrying costs in its next TCRR filing. (AEP Ohio Ex. 1 at 5.)

With respect to the PJM Reactive Supply charges, AEP Ohio witness Gleckler explained that, beginning in July 2011, AEP Ohio's Reactive Supply credits exceeded the Reactive Supply charges and the net of those credits and charges was booked to a revenue account. Because the Reactive Supply charges were embedded in the revenue account, Mr. Gleckler noted that the charges were not included in the TCRR. (AEP Ohio Ex. 4 at 5.) AEP Ohio witness Moore stated that, although the Company failed to include the charges in its previous annual filing, the charges are prudent charges that the Company paid to PJM through monthly invoices regardless of when they are included in the TCRR for recovery. Additionally, Ms. Moore testified that AEP Ohio seeks to recover the associated carrying costs due to the fact that the Reactive Supply charges in question were prudent charges paid to PJM. Noting that Chapter 4901:1-36, O.A.C., does not limit recovery to costs incurred within a specific timeframe, Ms. Moore contended that the Reactive Supply charges are eligible for recovery because they are transmission and transmission-related costs imposed on AEP Ohio by PJM (AEP Ohio Ex. 3 at 5, 8-9.) Mr. Gleckler and Ms. Moore noted that AEP Ohio intends to include an additional step in the settlement process to ensure that Reactive Supply charges are not inadvertently omitted in the future (AEP Ohio Ex. 3 at 8; AEP Ohio Ex. 4 at 8).

Ms. Moore added that AEP Ohio also intends to complete a monthly TCRR analysis of actual versus forecasted costs to identify any discrepancies or irregularities more quickly (AEP Ohio Ex. 3 at 8).

With respect to the charges related to Black Start Service, Ms. Moore explained that the PJM tariff change caused an increase in the charges billed to AEP Ohio by PJM, which the Company did not anticipate or include in its forecasted charges. Ms. Moore maintained that the Black Start Service charges are prudent for recovery in the TCRR. (AEP Ohio Ex. 3 at 7.)

OCC witness Hixon recommended that \$11.4 million in PJM Reactive Supply charges incurred by AEP Ohio from July 2011 through April 2012, as well as \$0.9 million in associated carrying costs, be excluded from the TCRR rates, as they were incurred during the prior audit period. Ms. Hixon further recommended that \$1 million in carrying costs related to the \$11.6 million in PJM Reactive Supply charges for the period of May 2012 through April 2013 be excluded. Ms. Hixon stated that AEP Ohio's omission of the Reactive Supply charges is attributable to the Company's failure to properly construct the rate calculations in its TCRR filing and is not the result of a simple clerical error. (OCC Ex. 2 at 4, 8.)

Staff witness Hecker recommended that AEP Ohio's TCRR revenue requirement be reduced by approximately \$21.8 million to account for a portion of the omitted Reactive Supply charges, as well as omitted Spinning Reserve charges and an over-collection attributable to an allocation error. Mr. Hecker contended that AEP Ohio's out-of-period costs should not be recovered and that the Company's significant errors indicate a lack of reasonable diligence and internal controls. According to Mr. Hecker, it is not appropriate for AEP Ohio to recover any of the associated carrying costs from customers because no carrying costs would have accumulated, if the Reactive Supply and other charges had been properly applied. (Staff Ex. 2 at 4-5, 6-7.)

III. Summary of the Stipulation

As stated previously, a stipulation, signed by AEP Ohio, OCC, OEG, and Staff, was filed on November 8, 2013. The stipulation was intended by the signatory parties to resolve all of the outstanding issues in this proceeding (Joint Ex. 1 at 1). The stipulation includes, inter alia, the following provisions:

- (1) The Commission should approve AEP Ohio's application to update the TCRR, as filed on June 17, 2013, with the following modifications outlined in the stipulation.
- (2) AEP Ohio will reduce the overall revenue requirement from the \$230,942,668 sought in the application to the \$212,491,618

described in the stipulation, which is a benefit of \$18,451,051 for customers. For illustrative purposes, the stipulation will use the description of the issues on page 8 of Staff witness Hecker's testimony for ease in understanding the reductions in the revenue requirement.

- (a) The "Out-of-Period Reactive Supply Charges" (July 2011-April 2012) reflected in Mr. Hecker's testimony as \$11,399,735 will be modified to reflect 75 percent excluded and 25 percent included in the revenue requirement. This reduces the revenue requirement by \$8,549,801, leaving \$2,849,934 for recovery in the revenue requirement.
- (b) The "Carrying Charges From July 2011-April 2013 Due to Reactive Supply" reflected in Mr. Hecker's testimony as \$1,179,905 will be modified to reflect 75 percent excluded and 25 percent included in the revenue requirement. This reduces the revenue requirement by \$884,929, leaving \$294,976 for recovery in the revenue requirement.
- (c) The "Future Carrying Charges Due to Reactive Supply" reflected in Mr. Hecker's testimony as \$744,914 will be modified to reflect 75 percent excluded and 25 percent included in the revenue requirement. This reduces the revenue requirement by \$558,686.
- (d) The "Out-of-Period Spinning Reserve Charges Plus Carrying Charges" (July 2011-April 2012) reflected in Mr. Hecker's testimony as \$2,758 will remain at that level to reduce the revenue requirement.
- (e) The "Out-of-Period/In-Period Over-Collection Due to Allocation Error" (July 2011-June 2013) reflected in Mr. Hecker's testimony as \$7,930,072 will remain at that level to reduce the revenue requirement.

- (f) The "Carrying Charges on Allocation Error" reflected in Mr. Hecker's testimony as \$524,805 will remain at that level to reduce the revenue requirement.

- (3) AEP Ohio will update its rider rates to implement the stipulation within 15 days of the Commission's approval of the stipulation.

(Joint Ex. 1 at 3-5.) A comparison of Staff witness Hecker's recommended adjustments to the recommendations in the stipulation follows:

	<u>Stipulation Proposed Adjustments</u>	<u>Staff Proposed Adjustments²</u>
Out-of-Period Reactive Supply Charges	\$8,549,801	\$11,399,735
Carrying Charges From July 2011-2013 Due to Reactive Supply	\$884,929	\$1,179,905
Future Carrying Charges Due to Reactive Supply	\$558,686	\$744,914
Out-of-Period Spinning Reserve Charges Plus Carrying Charges	\$2,758	\$2,758
Out-of-Period/In-Period Over-Collection Due to Allocation Error	\$7,930,072	\$7,930,072
Carrying Charges on Allocation Error	\$524,805	\$524,805
Total Revenue Requirement Reduction	\$18,451,051	\$21,782,189

(Joint Ex. 1 at 4; Staff Ex. 2 at 8.)

² In Staff's initial review and recommendations, Staff recommended a total revenue requirement reduction of \$13,324,554, which was implemented in AEP Ohio's current interim TCRR rates.

CONCLUSION:

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St. 2d 155, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel, supra*. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

The signatory parties agree that the stipulation in this case is a just and reasonable resolution of the issues raised in this proceeding and is the product of lengthy, serious bargaining among knowledgeable and capable parties, representing a wide range of interests, in a cooperative process (Joint Ex. 1 at 1, 5; AEP Ohio Ex. 5 at 7; Staff Ex. 3 at 3). AEP Ohio witness Moore testified that the signatory parties regularly participate in rate proceedings before the Commission, are knowledgeable in regulatory

matters, and were represented by experienced, competent counsel. Additionally, Ms. Moore testified that all of the parties were invited to participate in settlement discussions and participated in multiple meetings to discuss resolution of the case. (AEP Ohio Ex. 5 at 7.) Staff witness Lipthrott testified that the stipulation is the product of an open process in which parties with diverse interests were represented by able counsel and technical experts and the decisions made were based upon thorough analysis of complex issues (Staff Ex. 3 at 3). Therefore, upon review of the terms of the stipulation, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, the signatory parties submit that, as a package, the stipulation benefits ratepayers and is in the public interest (Joint Ex. 1 at 1, 5; AEP Ohio Ex. 5 at 8; OCC Ex. 3 at 3-4; Staff Ex. 3 at 3-4). Ms. Moore testified that AEP Ohio has agreed to reduce the revenue requirement sought in the Company's application by \$18,451,051, which includes foregoing recovery of actual costs incurred by the Company. Further, Ms. Moore testified that customers will benefit from realizing 100 percent of the out-of-period over-collection in this proceeding. (AEP Ohio Ex. 5 at 8.) OCC witness Fink testified that the stipulation, as a package, benefits customers and the public interest, given that the stipulated revenue requirement reduction will result in a smaller bill increase than AEP Ohio had initially proposed (OCC Ex. 3 at 3-4). Mr. Lipthrott testified that, in addition to the direct customer benefit afforded by the revenue requirement reduction, the stipulation represents a just and reasonable resolution of all of the issues in this proceeding, while avoiding the added cost of litigation and the potential for additional carrying charges (Staff Ex. 3 at 3-4). Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or practice (Joint Ex. 1 at 1-2, 5; AEP Ohio Ex. 5 at 8; Staff Ex. 3 at 4). Ms. Moore testified that, based on her experience with the regulatory process, the stipulation does not violate any regulatory principle or practice in Ohio. Ms. Moore further testified that the stipulation promotes important regulatory principles and practices by advancing several of the state policies set forth in Section 4928.02, Revised Code. (AEP Ohio Ex. 5 at 8.) Accordingly, upon consideration, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

Upon consideration of the record in this proceeding, the Commission finds that the stipulation entered into by the signatory parties is reasonable and should be adopted. Accordingly, we further find that AEP Ohio's application to update the TCRR, as filed on June 17, 2013, should be approved and modified, consistent with the terms of the stipulation and this opinion and order. AEP Ohio should file, in final form, complete copies of its tariffs. The complete copies of the tariffs should be timely filed

such that the new TCRR rates take effect within 15 days of the date of this opinion and order, consistent with the stipulation and this opinion and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AEP Ohio 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 17, 2013, AEP Ohio filed an application to update the TCRR.
- (3) On July 29, 2013, OCC and IEU-Ohio filed comments in this proceeding. AEP Ohio filed a reply on August 13, 2013.
- (4) On August 13, 2013, Staff filed a letter containing a summary of its review of AEP Ohio's TCRR filing and recommendations for the Commission's consideration. On August 20, 2013, AEP Ohio filed comments regarding Staff's review and recommendations.
- (5) By finding and order issued on August 28, 2013, the Commission granted motions to intervene in this proceeding filed by OEG, OCC, and IEU-Ohio. The Commission also found that a hearing on this matter should be held, consistent with Rule 4901:1-36-05, O.A.C.
- (6) The hearing on this matter was called on November 4, 2013, and continued to November 14, 2013.
- (7) At the hearing, a stipulation was submitted, intending to resolve all of the issues in this case. No party opposed the stipulation.
- (8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (9) AEP Ohio's application, as filed on June 17, 2013, should be approved and modified, in accordance with the terms of the stipulation and this opinion and order.
- (10) AEP Ohio should be authorized to implement new TCRR rates consistent with the stipulation and this opinion and order.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the signatory parties be adopted and approved. It is, further,

ORDERED, That AEP Ohio's application, as filed on June 17, 2013, be approved and modified, in accordance with the terms of the stipulation and this opinion and order. It is, further,

ORDERED, That AEP Ohio take all necessary steps to carry out the terms of the stipulation and this opinion and order. It is, further,

ORDERED, That AEP Ohio be authorized to file, in final form, complete copies of its tariffs, consistent with the stipulation and this opinion and order. AEP Ohio shall file one copy in its TRF docket and one copy in this case docket. It is, further,

ORDERED, That the complete copies of the tariffs be timely filed such that the new TCRR rates take effect within 15 days of the date of this opinion and order, consistent with the stipulation and this opinion and order. It is, further,


ORDERED, That AEP Ohio shall notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date of the revised tariff. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


M. Beth Trombold

Lynn Slaby


Asim Z. Haque

SJP/sc

Entered in the Journal

DEC 04 2013



Barcy F. McNeal
Secretary

Barcy F. McNeal
Secretary