

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment)	
Clause of Columbus Southern Power)	Case No. 10-268-EL-FAC
Company and Ohio Power Company and)	Case No. 10-269-EL-FAC
Related Matters for 2010.)	

In the Matter of the Fuel Adjustment)	
Clauses for Columbus Southern Power)	Case No. 11-281-EL-FAC
Company and Ohio Power Company and)	
Related Matters.)	

**POST-HEARING REPLY BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

In these proceedings, the Public Utilities Commission of Ohio (“PUCO”) will decide how much customers of Ohio Power Company (“Ohio Power” or “AEP Ohio”)¹ should pay for electric service. The increase will come from fuel costs that were deferred through AEP Ohio’s first Electric Security Plan (“ESP”) cases,² and carrying charges associated with the deferred fuel costs. The Order in the *ESP I Cases* authorized AEP Ohio to collect prudently incurred fuel, purchased power and other miscellaneous expenses, and associated carrying charges, through a fuel adjustment clause (“FAC”).³

¹ At the time these proceedings began, Columbus Southern Power Company (“CSP”) and Ohio Power Company (“OPC”) were operating companies of AEP Ohio. Effective at the end of 2011, the two merged, with Ohio Power becoming the successor in interest to Columbus Southern. See *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Entry (March 7, 2012) at 11. Ohio Power Company is a d/b/a for AEP Ohio.

² 08-917-EL-SSO and 08-918-EL-SSO (“*ESP I Cases*”).

³ See *id.*, Order (March 18, 2009) at 15.

Initial briefs were filed in these proceedings on January 8, 2014 by the PUCO Staff, the Office of the Ohio Consumers' Counsel ("OCC"), Industrial Energy Users-Ohio ("IEU"), Ohio Partners for Affordable Energy ("OPAE")⁴ and Ohio Power. The briefs primarily addressed three recommendations by the auditors for these cases⁵: (1) that the return on the AEP River Transportation Division's ("RTD") Cash Working Capital component be removed unless Ohio Power can demonstrate through a lead-lag study analysis that RTD has indeed a significant Cash Working Capital requirement⁶; (2) that Ohio Power's accumulated deferred income tax ("ADIT") savings related to the carrying charges for under-collected fuel balances be addressed in this proceeding⁷; and that proceeds from the sale of the Conesville Coal Preparation Plant ("CCPP") should be credited against the 2011 under-collection of the FAC balance.⁸

In this Reply Brief, OCC focuses on these issues.⁹ As discussed herein, the PUCO should remove the return on the RTD Cash Working Capital component from AEP Ohio's 2010 and 2011 fuel costs. The PUCO should also reduce the amount of FAC costs to be collected from customers by the accumulated deferred income taxes related to the carrying charges associated with the deferred fuel expenses, or at least

⁴ OPAE is an intervenor only in Case Nos. 10-268 and 10-269. See OPAE Brief at 1.

⁵ Energy Ventures Analysis ("EVA") and its subcontractor, Larkin & Associates PLLC ("Larkin") (collectively, "Auditors").

⁶ 2010 Financial Recommendation No. 19; 2011 Financial Recommendation No. 4. See OCC Brief at 6-9; PUCO Staff Brief at 5-7; AEP Ohio Brief at 7-8; OPAE Brief at 2-3.

⁷ See 2010 Financial Recommendation No. 22. See OCC Brief at 9-13; AEP Ohio Brief at 10-13; OPAE Brief at 3-6; IEU Brief at 20-22.

⁸ 2011 Management Recommendation No. 5 and Financial Recommendation No. 12. See OCC Brief at 13-15; AEP Ohio Brief at 22-23.

⁹ The fact that OCC does not address in this Reply Brief every issue raised by other parties in their briefs should not be construed as OCC's acquiescence or opposition to any party's particular position on the issue.

make the amount subject to refund. In addition, the PUCO should apply all proceeds from the sale of the CCPP to the FAC under-collections for 2011.

II. LAW AND ARGUMENT

A. Ohio Power's Arguments Regarding the Cash Working Capital Requirement Associated with the AEP River Transportation Division Are Unsupported and Faulty.

In both Audit Reports, the Auditors examined the cost of coal transportation charged to Ohio Power by the RTD. In the 2010 Audit Report, the Auditors recommended that:

AEP should be required to analyze the receipt of revenue and the payment of cash expenses for RTD captive operations, similar to a lead-lag study, and to present such information to support its assumption that RTD has a significant Cash Working Capital requirement. If adequate supporting information is not provided to substantiate that RTD has a significant Cash Working Capital requirement and the amount of that requirement using lead-lag study analysis of cash receipts and cash payments, the RTD Capital component of the RTD investment base should be removed from the cost charged by RTD to OPCo from January 1, 2011 forward.¹⁰

AEP Ohio claims that a lead-lag study would violate its agreement with RTD.¹¹ But, as OCC noted in its brief, AEP Ohio failed to produce any legal document or other writing with RTD to support its claim.¹² Instead, AEP Ohio's witness merely offered a summary of the agreement.¹³ The PUCO should not give weight to AEP Ohio's unsupported claims.

¹⁰ Id. at 1-10.

¹¹ Ohio Power Brief at 7, citing Ohio Power Ex. 4 (Nelson Testimony) at 8.

¹² OCC Brief at 7-8.

¹³ Ohio Power Brief at 7.

AEP Ohio also asserts that the agreement with RTD is under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), and that the contract uses a FERC-approved methodology for calculating the Cash Working Capital requirement.¹⁴ Ohio Power contends that it would be “unreasonable and illegal” for the PUCO to ignore the FERC-approved methodology and to penalize AEP Ohio retroactively to January 1, 2011 for using the methodology.¹⁵ Ohio Power’s arguments are faulty, for several reasons.

First, the case cited by Ohio Power (FERC ER10-355-000) is not a coal transportation case. Instead, it involves the AEP operating companies’ transmission formula rates.¹⁶ Ohio Power’s argument is based on the false assumption that FERC approval of a methodology for calculating the Cash Working Capital requirement for electric transmission constitutes FERC approval of the same methodology for calculating the Cash Working Capital requirement for coal transportation.

Second, even though the RTD agreement may use the same methodology, nothing in the record supports the claim that FERC has approved the methodology for coal transportation. Apparently, the RTD contract has never been submitted to FERC for approval.¹⁷ Thus, if the PUCO were to remove the coal transportation costs from the costs Ohio Power collects from customers (even from January 1, 2010 forward, as OCC

¹⁴ Id.

¹⁵ Id. at 7-8.

¹⁶ See Ohio Power Ex. 4 (Nelson Testimony) at 8.

¹⁷ See PUCO Staff Brief at 7.

recommends), the PUCO would not be retroactively penalizing Ohio Power for using a FERC-approved methodology, as AEP Ohio claims.¹⁸

Third, as the PUCO Staff points out, even if the RTD agreement had been approved by FERC, federal law does not preempt the PUCO from examining the agreement to determine whether the costs incurred by Ohio Power under the agreement are reasonable and prudent.¹⁹ The PUCO Staff cited applicable federal statutes that explicitly state that the authority and jurisdiction of state commissions is to determine the rates of affiliate contracts,²⁰ to protect utility consumers²¹ or to generally enforce applicable law.²² The PUCO may (and should) examine whether the Cash Working Capital requirement is reasonable and prudent.

AEP Ohio has the burden to prove that any Cash Working Capital requirement is a prudent and reasonable cost that customers should have to pay.²³ It has failed to meet this burden. Customers should not have to pay costs that AEP Ohio has not shown to be reasonable and prudently incurred.²⁴ The PUCO should remove the return on the Cash Working Capital requirement included in the RTD charges, as OCC witness Dr. Duann recommends.²⁵

¹⁸ AEP Ohio Brief at 8.

¹⁹ See PUCO Staff Brief at 5-7.

²⁰ 42 USC 16455.

²¹ 42 USC 16457.

²² 42 USC 16462(c).

²³ See OCC Brief at 4-6.

²⁴ See PUCO Staff Brief at 7.

²⁵ See OCC Ex. 1A (Duann Testimony) at 9, 18.

B. The Amount of Fuel Adjustment Clause Costs to Be Collected from Customers Should Be Reduced by the Carrying Cost Savings from Accumulated Deferred Income Taxes Related to Deferred Fuel.

In the 2010 Audit Report, the Auditors raised the issue of the impact of ADIT on carrying costs that customers pay through the FAC. The Auditors contended that the ADIT balance related to deferred fuel costs is a source of non-investor supplied cost-free capital that has been used to finance part of the FAC deferral balance (or Under-Recovered Fuel Balances).²⁶ The Auditors suggested that this issue be reexamined.²⁷

Ohio Power witness Nelson argued that the PUCO already decided that AEP Ohio should be allowed to collect the fuel deferrals on a gross-of-tax basis, and the ADIT amount is not being deducted from deferred fuel expenses in calculating the carrying charges.²⁸ On brief, AEP Ohio reiterated these arguments on brief.²⁹ But as OCC noted on brief, both Dr. Duann and IEU witness Bowser pointed out that the PUCO's decision regarding the ADIT in the PIRR case (not in any FAC case) was contrary to the PUCO's own precedent and sound regulatory principles regarding the calculation and the collection of carrying charges.³⁰ And Mr. Bowser noted³¹ that, in addressing the Distribution Investment Rider ("DIR") in Ohio Power's second ESP case, the PUCO found that "it is not appropriate to establish the DIR rate mechanism in a manner which

²⁶ See 2010 Audit Report at 7-83.

²⁷ See 2010 Audit Report at 1-10.

²⁸ See Ohio Power Ex. 4 (Nelson Testimony) at 11.

²⁹ AEP Ohio Brief at 9-13.

³⁰ OCC Ex. 1A (Duann Testimony) at 13-17; IEU Ex. 15 (Bowser Testimony) at 5-6.

³¹ IEU Ex. 15 (Bowser Testimony) at 9.

provides the Company with the benefit of ratepayer supplied funds.”³² The PUCO “direct[ed] AEP-Ohio to adjust its DIR to reflect the ADIT offset.”³³

As part of its arguments against removing the ADIT from FAC costs, Ohio Power cites to the PUCO’s approval of a stipulated agreement in the *ESP 2 Cases* in which the PUCO stated that it “agrees with the Signatory Parties that the carrying charge on the deferred fuel expenses accrued was established in the ESP 1 proceeding.”³⁴ But Ohio Power fails to mention that the Order it relies on was vacated by the PUCO.³⁵ Thus, the December 2011 Order in the *ESP 2 Cases* has no precedential value.

To be consistent with long-standing regulatory principles and practices for setting cost-based rates in Ohio,³⁶ the PUCO should follow OCC’s and IEU’s recommendation and remove the ADIT from the deferred fuel expenses in calculating the carrying charges for the deferred amount to be collected through the FAC. AEP Ohio does not provide funding for this part of deferral and they should not be allowed to collect a carrying charge on the ADIT through the FAC.

If, however, the PUCO does not reflect the ADIT offset for carrying costs and thus reduce Ohio Power’s FAC costs in this proceeding, it should make collection of the higher carrying costs (due to no ADIT offset) through the FAC subject to refund, as

³² *In re: AEP Ohio ESP Cases*, Case No. 11-346-EL-SSO, et al. (“*ESP 2 Cases*”), Opinion and Order (August 8, 2012) at 47.

³³ *Id.*

³⁴ Ohio Power Brief at 10, citing *ESP 2 Cases*, Opinion and Order (December 14, 2011) at 58.

³⁵ *ESP 2 Cases*, Entry on Rehearing (February 23, 2012).

³⁶ See OCC Ex. 1A (Duann Testimony) at 11-12; IEU Ex. 15 (Bowser Testimony) at 7.

discussed in OCC's Initial Brief.³⁷ This will help provide needed relief for AEP Ohio's many customers who are now paying the highest electric rates in Ohio.³⁸

C. The PUCO Should Adopt the Auditors' Recommendation to Apply All Proceeds from the Sale of the Conesville Coal Preparation Plant to the Fuel Adjustment Clause Under-Collections for 2011.

In the 2011 Audit Report, EVA recommended that any proceeds received from the sale of CCPP assets be applied to the FAC under-recovery for 2011.³⁹ In disagreeing with the recommendation, and with OCC's support of the Auditor's recommendation, AEP Ohio argues that (1) customers do not have a property interest in its assets through the rates that they pay, and (2) the issue is premature because the sale occurred during a later audit period.⁴⁰ AEP Ohio's arguments, however, are flawed.

First, for support of its flawed position that customers do not have a property interest in its assets through the rates that they pay, AEP Ohio cites an FAC case that reached the opposite conclusion. It is true that in Case No. 09-872-EL-FAC the PUCO did agree with AEP Ohio that "customers do not earn or acquire an ownership interest in the utility's assets as a result of paying for utility services."⁴¹ But the PUCO noted that AEP Ohio "takes the opportunity to mischaracterize the FAC order."⁴² The PUCO went on to state that, rather than giving customers an ownership interest in the asset, "[a]n

³⁷ OCC Brief at 12-13.

³⁸ OCC Ex. 1A (Duann Testimony) at 17, citing Ohio Utility Rates Survey (October 15, 2013) (which showed that the monthly bill of a typical residential customer in the CSP rate zone is 13.45% higher than the state average, and the monthly bill for a typical residential customer in the OP rate zone is 4.23% higher than the state average).

³⁹ 2011 Audit Report at 1-6.

⁴⁰ AEP Ohio Brief at 22-23.

⁴¹ Case No. 09-872-EL-FAC, Entry on Rehearing (April 11, 2012) at 11.

⁴² Id.

ownership interest is not necessary for the Commission to order, as it did in the FAC order, the alignment of fuel costs with the benefits of AEP-Ohio's fuel contracts."⁴³

That is what applying the proceeds of the CCPP sale to the 2011 under-collections would do. In determining the actual cost of an electric utility's fuel, Ohio Adm. Code 4901:1-35-03(C)(9)(a)(ii) provides that an application by an electric utility seeking to collect its fuel costs from customers must include "any benefits available to the electric utility as a result of or in connection with such costs **including but not limited to** profits from emission allowance sales and profits from resold coal contracts."⁴⁴ As OCC noted on brief, this practice was common before S.B. 3 in the context of Electric Fuel Component cases and generation rate cases.⁴⁵ Thus, in authorizing an electric utility's collection of its fuel costs from customers, the PUCO must balance for customers any benefits available to the electric utility as a result of, or in connection with, such cost, and thereby determine the actual fuel cost incurred by the utility. The proceeds from the CCPP sale is one such benefit.

AEP Ohio's customers have paid (through the FAC) the operating costs as well as closure-related costs of the CCPP.⁴⁶ Accordingly, any proceeds received from the sale of

⁴³ Id.

⁴⁴ Ohio Adm. Code 4901:1-35-03(C)(9)(a)(ii) (emphasis added).

⁴⁵ See *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Cincinnati Gas & Electric Company and Related Matters*, PUCO Case No. 98-103-EL-EFC, Entry (December 22, 1998) at 3. See also *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Columbus Southern Power Company and Related Matters*, PUCO Case No. 98-102-EL-EFC, Order (November 24, 1998) at 3. In these EFC cases, customers were credited benefits obtained as a result of assets paid for by customers.

⁴⁶ See OCC Ex. 1A (Duann Testimony) at 21.

CCPP assets should be applied to the FAC under-collection.⁴⁷ This treatment is consistent with the PUCO decision regarding AEP Ohio's 2009 FAC Audit.⁴⁸

In that proceeding, the PUCO decided that only the actual costs of any coal procurement contract should be collected from customers,⁴⁹ and that the benefits (such as a payment by a coal producer to AEP Ohio) of a coal contract should be used to offset the costs of a coal contract for calculating the FAC costs.⁵⁰ The PUCO agreed with its Staff that "in order to determine the real economic cost of coal used during the audit period, more of the value realized by AEP for entering into the Settlement Agreement should flow through to OP ratepayers through a credit to OP's under-recovery and deferrals."⁵¹

Second, even though the sale occurred in a later audit period, the PUCO may order that proceeds be offset against the 2011 under-collections. In the 2009 FAC case, the PUCO directed that the yet-determined value of a coal reserve (received by AEP Ohio as a result of a settlement agreement), above the value already required to be credited against FAC deferral, should accrue to AEP Ohio's customers.⁵²

This regulatory principle of matching benefits with costs of a specific contract should also be applicable to AEP Service Corporation's decision to close the CCPP.⁵³ The many costs associated with the closing of the CCPP are collected through the FAC

⁴⁷ See *id.*

⁴⁸ Case Nos. 09-872-EL-FAC, et al., Opinion and Order (January 23, 2012).

⁴⁹ See *id.* at 13.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 12.

⁵³ See OCC Ex. 1A (Duann Testimony) at 21-22.

from customers.⁵⁴ Then customers are entitled to all the proceeds from any sale of the CCPP assets. In addition, the process and terms of the sale or disposition of the CCPP should be reviewed in the next audit to ensure that AEP Ohio's customers receive the full and fair value of the CCPP and that the proceeds are properly credited to customers through the FAC.

III. CONCLUSION

Ohio Power's arguments against the Auditors' recommendations discussed above are without merit. The PUCO should adopt the Auditors' recommendations, with the modifications discussed in Dr. Duann's testimony.

Respectfully submitted,

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⁵⁴ See 2011 Audit Report at 7-100 to 7-105.

CERTIFICATE OF SERVICE

I hereby certify that a copy of OCC's Post-Hearing Reply Brief was served on the persons stated below via electronic mail this 21st day of January 2014.

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