

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio )  
Power Company to Establish Initial Storm ) Case No. 12-3255-EL-RDR  
Damage Recovery Rider Rates. )

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is a public utility as defined in R.C. 4905.02 and an electric utility as defined in R.C. 4928.01(A)(11), and, as such, is subject to the jurisdiction of this Commission.
- (2) On August 8, 2012, the Commission modified and approved an application for an electric security plan (ESP) filed by AEP Ohio. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO, et al. (ESP Case), Opinion and Order (Aug. 8, 2012) at 68-69, Entry on Rehearing (Jan. 30, 2013) at 54-55. The ESP, as approved, established a storm damage recovery mechanism to enable AEP Ohio to recover incremental expenses incurred due to major storm events.
- (3) On December 21, 2012, in the above-captioned case, AEP Ohio filed an application to establish its initial storm damage recovery rider (SDRR) rates to allow for recovery of major storm restoration costs. In the application, AEP Ohio explained that the costs were associated with the June 29, 2012 derecho, as well as two other major storm events that occurred in July 2012. On March 1, 2013, AEP Ohio supplemented its application by filing a revised Exhibit D.
- (4) On December 6, 2013, a joint stipulation and recommendation (stipulation) was filed by AEP Ohio, Staff, Ohio Energy Group (OEG), The Kroger Company (Kroger), Industrial Energy Users-Ohio (IEU-Ohio), Ohio Manufacturers' Association Energy Group (OMAEG), and Ohio Hospital Association (OHA).

- (5) By Opinion and Order issued on April 2, 2014, the Commission found that the stipulation entered into by the signatory parties was reasonable and should be adopted. Accordingly, the Commission found that AEP Ohio's application to establish initial SDRR rates, as filed on December 21, 2012, and revised on March 1, 2013, should be approved and modified, consistent with the terms of the stipulation and the Opinion and Order.
- (6) R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.
- (7) On May 2, 2014, the Office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing. IEU-Ohio filed a memorandum contra OCC's application for rehearing on May 12, 2014.
- (8) On May 13, 2014, AEP Ohio filed a memorandum contra OCC's application for rehearing, along with a motion seeking leave to file the Company's memorandum out of time. In the motion, AEP Ohio explains that an incomplete version of the memorandum was timely submitted to the Commission's docketing division on May 12, 2014. AEP Ohio further explains that, shortly after discovering the clerical error at 5:40 p.m., the Company filed the complete version of the memorandum. Because the complete version was filed after 5:30 p.m. on the filing deadline of May 12, 2014, and, thus, deemed filed on May 13, 2014, AEP Ohio requests leave to file the memorandum out of time. AEP Ohio asserts that there is no harm in accepting the memorandum, which was filed within minutes of the deadline, given that OCC has no right to respond to the memorandum and that the complete version was served on the parties within minutes of discovery of the clerical error on May 12, 2014. No party opposed AEP Ohio's motion. Upon consideration of AEP Ohio's motion for leave to file its memorandum contra OCC's application for rehearing out of time, the Commission finds that the motion should be

granted, in light of the fact that the Company promptly discovered and remedied the clerical error, and no party will be prejudiced by the Commission's consideration of the Company's memorandum.

- (9) OCC raises two assignments of error in its application for rehearing. *First*, OCC argues that the Opinion and Order is unjust and unreasonable, because, in finding that the stipulation benefits ratepayers and the public interest, the Commission emphasized that the SDRR revenue requirement proposed in the stipulation is substantially lower than the amount quantified by any signatory party in the record. According to OCC, the Commission ignored the fact that Staff was the only signatory party to quantify any recommended reduction to the revenue requirement. OCC contends that the stipulation was intended to placate just one of the two parties that quantified recommended adjustments. OCC also asserts that the Commission disregarded the fact that OCC had recommended a larger SDRR revenue requirement reduction than the stipulation provided. OCC concludes that the Commission unreasonably relied on the irrelevant public positions of the signatory parties as a factor in determining whether the stipulation benefits ratepayers and, in any event, limited its consideration of the public positions to only some of the parties. Finally, OCC maintains that the Commission's decision will undermine the settlement negotiation process, by enabling utility companies to engage in de facto negotiations with only a few parties to a proceeding.
- (10) In its memorandum contra OCC's application for rehearing, AEP Ohio contends that the record supports the Commission's findings that the stipulation satisfies each part of the three-part test used to evaluate the reasonableness of the stipulation. AEP Ohio asserts that OCC misrepresents the Commission's analysis and weighing of evidence with respect to the public interest prong of the test. Specifically, AEP Ohio notes that OCC points solely to the Commission's finding that the stipulation is more beneficial than the public positions of the signatory parties, while ignoring the majority of the Commission's discussion of the record

supporting the second part of the test. In response to OCC's claim that the Commission's decision will encourage de facto negotiations involving only a few of the parties to a proceeding, AEP Ohio points out that the Commission established, in the *ESP Case*, a cooperative process, whereby the Company and other interested parties must attempt to reach agreement on an application to recover incremental major storm expenses. Noting that the process was followed in this case, AEP Ohio argues that the Commission should reject OCC's effort to dismiss the cooperative process in favor of litigation. AEP Ohio also emphasizes that OCC's argument is belied by the fact that OCC participated throughout the settlement negotiations in this case.

- (11) IEU-Ohio argues that OCC's first assignment of error should be rejected, as it does not reflect the scope of the evidence supporting the Commission's determination that the stipulation benefits ratepayers and the public interest. IEU-Ohio points out that, although the Commission noted that the stipulation provides for a greater revenue requirement reduction than Staff had recommended, the Commission's decision was also based on other factors that were set forth in the Opinion and Order. IEU-Ohio adds that OCC fails to provide any legal support to demonstrate that the Commission erred in its reliance on the fact that the stipulation's revenue requirement reduction exceeded Staff's recommendation. Further, IEU-Ohio notes that OCC raises no new argument for the Commission's consideration. According to IEU-Ohio, the Commission already addressed OCC's concerns and found that the stipulation satisfies the second part of the three-part test based on several factors other than the signatory parties' pre-settlement positions.
- (12) The Commission finds no merit in OCC's first assignment of error. In reaching our conclusion that the stipulation, as a package, benefits ratepayers and the public interest, we thoroughly reviewed and relied upon the evidence of record. The Commission also cited several reasons for our finding that the stipulation meets the second part of the three-part test, including the stipulation's recommended \$6 million revenue requirement reduction, AEP Ohio's

commitment to flow through to customers any additional refunds received from vendors for storm-related expenses, the Company's commitment to discuss its storm restoration practices with the other parties, and the considerable benefit to customers of having had their power restored as quickly as possible in exchange for payment of a reasonable fixed charge over a 12-month period. Opinion and Order at 14 (citing Co. Ex. 2 at 6-9, 11-12; Co. Ex. 3 at Ex. SJD-2; OCC Ex. 3 at 2, 5).

- (13) In its application for rehearing, OCC focuses solely on the Commission's finding that the \$6 million revenue requirement reduction is a benefit to ratepayers, particularly in light of the fact that Staff had recommended, in its non-binding issues list, only a \$4.9 million reduction following its extensive audit of AEP Ohio's invoices and other storm expense records. We do not agree with OCC's contention that it was unjust and unreasonable to utilize Staff's recommended \$4.9 million revenue requirement reduction as a means to substantiate the reasonableness of the \$6 million reduction proposed in the stipulation. Staff's pre-settlement recommendation was offered to the Commission after a lengthy and detailed audit of AEP Ohio's expenses, and we routinely rely on Staff's expertise in rate proceedings. Further, OCC makes no mention of the other benefits of the stipulation, which were clearly enumerated in the Opinion and Order, and factored into our determination that the stipulation, as a package, benefits ratepayers and the public interest, in addition to the fact that the stipulation was supported by parties representing commercial and industrial consumers. As the Commission noted in the Opinion and Order, there is broad support for the stipulation, which was signed not only by AEP Ohio and Staff, but also by OEG, Kroger, IEU-Ohio, OMAEG, and OHA. Opinion and Order at 14-15.
- (14) OCC also questions the value of the factual statement in the Opinion and Order that the \$54.8 million in incremental storm damage expenses recommended for recovery in the stipulation is substantially lower than the amount quantified by any signatory party. Although AEP Ohio and Staff may

be the only signatory parties to quantify publicly a specific SDRR revenue requirement, numerous other parties representing consumers elected to sign the stipulation and recommended that the Commission adopt it as a reasonable resolution of this proceeding. OCC appears to discount Staff's pre-settlement position, although it was based on a comprehensive review of every invoice reflecting an amount greater than \$100,000, as well as an additional audit sample of transactions involving amounts greater than \$500. Instead, OCC argues that the Commission ignored the fact that OCC recommended a revenue requirement reduction of more than \$17 million. However, as noted in the Opinion and Order, we expressly determined, in our consideration of the third part of the three-part test, that OCC failed to demonstrate that an adjustment greater than \$6 million is justified. Opinion and Order at 15. The Commission again rejects OCC's attempt to exercise a unilateral veto right over the stipulation, and affirms our finding that the \$6 million revenue requirement reduction proposed in the stipulation, in concert with its several other benefits, is a reasonable compromise that benefits ratepayers and the public interest.

- (15) Finally, the Commission does not agree with OCC's assertion that the Opinion and Order will encourage de facto settlement negotiations between the utility and select other parties to a proceeding. In the *ESP Case*, the Commission established a process to enable interested parties to file comments following AEP Ohio's filing of an application seeking recovery of incremental major storm damage expenses, and the Company was directed to work with the parties to resolve their objections. *ESP Case*, Opinion and Order (Aug. 8, 2012) at 69. The established process was respected in this case, with comments and objections filed in the public docket, followed by a stipulation reached among all of the parties except OCC. The record reflects that all parties, including both OCC and other parties representing commercial and industrial consumers, attended multiple meetings to discuss settlement proposals, and OCC was offered an opportunity to discuss further the terms agreed upon by the signatory parties. Opinion and Order at 10

(citing Co. Ex. 2 at 9-10; Tr. V at 894-897). OCC instead elected to contest the stipulation during an evidentiary hearing lasting approximately four days with testimony from six witnesses. Following the hearing, the Commission reviewed the voluminous record and thoroughly considered OCC's position regarding the stipulation, which was addressed at great length in the Opinion and Order, with respect to each part of the three-part test. Therefore, to the extent that OCC disputes the established process for SDRR applications, we find that OCC's argument constitutes a collateral attack on the Commission's orders in the *ESP Case*. We also disagree that OCC's position in this case was ignored, and reject OCC's contention that the Opinion and Order will undermine the settlement negotiation process. OCC was afforded a full and fair opportunity to participate in the parties' settlement discussions and, subsequently, to present its case to the Commission at the hearing.

- (16) In its second assignment of error, OCC asserts that the Commission unreasonably found that the expenses associated with AEP Ohio's use of Storm Services, LLC (Storm Services) were reasonable and prudent. Specifically, OCC contends that the Commission exaggerated the importance of AEP Ohio's decision to use Storm Services in the procurement of out-of-state workers. Further, OCC argues that customers should not be required to pay for bunk trailers provided by Storm Services that were not used by AEP Ohio. Next, OCC claims that the Commission placed too much emphasis on the competitive bidding process used to select Storm Services as a preferred vendor and improperly delegated authority to American Electric Power Service Corporation (AEPSC) for determining the reasonableness and prudence of costs associated with major storm restoration. Finally, OCC maintains that the Commission unreasonably questioned OCC's assumption that sufficient hotel rooms were available to meet all of AEP Ohio's lodging needs. OCC believes that the Commission ignored OCC witness Yankel's exhaustive review of AEP Ohio's decision to use Storm Services and the associated costs, as well as Mr. Yankel's conclusions

regarding the availability of lodging during the storm restoration period. OCC concludes that the Commission should reduce the amount that AEP Ohio is authorized to collect from customers through the SDRR by \$14 million in costs associated with Storm Services, consistent with Mr. Yankel's testimony.

- (17) AEP Ohio responds that OCC ignores the evidence of record. Specifically, AEP Ohio points out that the stipulation, as a whole, represents the signatory parties' agreement as to the level of costs that is reasonable and prudent as a compromise of the positions asserted during the cooperative process established in the *ESP Case*. AEP Ohio contends that the record supports the level of incremental expenses recommended by the stipulation, while OCC ignores the Company's testimony as well as the evidence explaining Staff's extensive audit and analysis of the Company's financial records. Finally, AEP Ohio maintains that OCC witness Yankel's limited analysis of the availability of hotel rooms was not focused on the dynamics of major storm restoration. According to AEP Ohio, the Commission appropriately relied upon the Company's expert witnesses in determining that the derecho warranted the Company's use of Storm Services to provide the necessary food and lodging accommodations.
- (18) The Commission finds that OCC has raised no new argument with respect to AEP Ohio's selection and use of Storm Services. In the Opinion and Order, the Commission found, in light of the extreme circumstances presented by the derecho, that AEP Ohio had supported its decision to use Storm Services to coordinate and provide the housing, food, and other services that were needed during the storm restoration efforts. The Commission determined that, overall, the record reflects that electric service was restored more efficiently and expeditiously as a result of AEP Ohio's decision to rely on Storm Services. Opinion and Order at 22-24. In its application for rehearing, OCC questions the Commission's reliance on AEP Ohio witness Kirkpatrick's testimony, which reflects that the Company obtained 2,500 responders on the first day as a result of its decision to



use Storm Services. OCC points out that the bunk trailers provided by Storm Services were not used until two days after the storm and that the estimated number of workers using the facilities offered by Storm Services was below capacity for the first five days of the derecho. Mr. Kirkpatrick's testimony, however, indicates that, because of AEP Ohio's decision to use Storm Services, the Company was able to secure 2,500 responders on the first day, given that the necessary lodging and other support services were already in place. Therefore, regardless of where the 2,500 responders ultimately stayed each night during the derecho, the record reflects that AEP Ohio was able to secure these responders because of the Company's decision to use Storm Services for food and lodging accommodations. In light of Mr. Kirkpatrick's considerable experience with respect to distribution operations and storm restoration, we do not agree with OCC's assertion that OCC witness Yankel's testimony should have been given more weight. The Commission reasonably determined, based on the evidence of record, that the stipulation, including its proposed level of cost recovery, is reasonable and should be adopted.

- (19) Additionally, OCC reiterates its belief that AEP Ohio should have relied entirely upon local housing and food accommodations rather than Storm Services. As the Commission stated in the Opinion and Order, however, OCC witness Yankel's testimony does not confirm that sufficient hotel rooms were available to provide lodging for all of the storm responders. Opinion and Order at 24. Further, Mr. Kirkpatrick testified that, if AEP Ohio had taken the time to assess the availability of accommodations like hotels and restaurants, the Company would not have been able to secure as many responders. Opinion and Order at 23. The Commission also addressed and rejected OCC's claim, raised again in its application for rehearing, that AEP Ohio failed to adequately supervise Storm Services, given that the Company paid for, but did not use, items provided by Storm Services. The record reflects that AEP Ohio ordered bunk trailers and other resources from

Storm Services, based on an initial activation plan triggered at the onset of the derecho, as well as the Company's expectation, at the time, that the resources would be needed and used. *Opinion and Order at 23-24.*

- (20) Moreover, the Commission finds no merit in OCC's contention that the Opinion and Order placed too much emphasis on the competitive bidding process used by AEPSC to select Storm Services, or that the Commission *improperly delegated authority to AEPSC for determining the reasonableness and prudence of AEP Ohio's storm restoration costs.* The record reflects that, following a competitive process used to solicit pricing of major storm restoration logistical services, Storm Services was selected as a preferred vendor based on the pricing and services that it could provide. Further, as we noted in the Opinion and Order, Staff's audit included a review of the expenses related to Storm Services. Staff recommended, in its non-binding issues list, a reduction of approximately \$1.6 million for such expenses. In light of Staff's recommendation, the Commission determined that the stipulation's proposed \$6 million revenue requirement reduction would more than offset any inappropriate costs with respect to Storm Services. *Opinion and Order at 24.* The Commission, therefore, does not agree with OCC's position that the stipulation would enable AEP Ohio to recover major storm expenses that are unreasonable or imprudent. For these reasons, we reiterate our finding that AEP Ohio's use of Storm Services, under the extreme circumstances brought on by the derecho, provided the considerable benefit of enabling the Company to restore electric service five days sooner, at an estimated cost savings of \$50 million, as supported by Mr. Kirkpatrick's expert testimony. *Opinion and Order at 22-23.* Rehearing on OCC's second assignment of error is, therefore, denied.

It is, therefore,

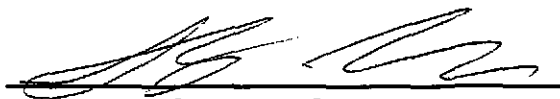
ORDERED, That AEP Ohio's motion for leave to file its memorandum contra OCC's application for rehearing out of time be granted. It is, further,

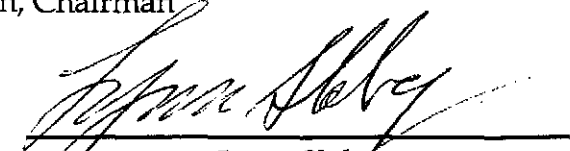
ORDERED, That OCC's application for rehearing be denied. It is, further,

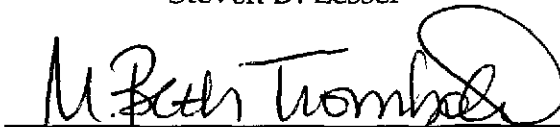
ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

  
Steven D. Lesser

  
Lynn Slaby

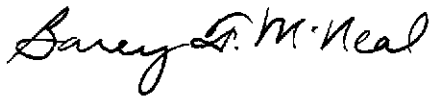
  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal

**MAY 28 2014**



Barcy F. McNeal  
Secretary