

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Update the Energy)	Case No. 13-1201-EL-RDR
Efficiency and Peak Demand Reduction)	
Rider.)	
)	
In the Matter of the Application of Ohio)	
Power Company to Update the Energy)	Case No. 12-1557-EL-RDR
Efficiency and Peak Demand Reduction)	
Rider.)	

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") applies for rehearing of the July 2, 2014, Finding and Order ("Order"), to seek certain protections for consumers. In the Order, the Public Utilities Commission of Ohio ("Commission" or "PUCO") granted the request of the Ohio Power Company ("AEP Ohio" or "the Utility") to increase its energy efficiency and peak demand reduction ("EE/PRD") rider. The update addressed actual costs incurred through December 2012. OCC seeks rehearing of the Commission's Order, pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35. The July 2, 2014 Order was unjust, unreasonable, and unlawful because:

- A. The PUCO erred when it granted AEP Ohio's request to increase the EE/PDR Rider, thereby allowing new rates to be charged to customers before the PUCO-ordered audit.
- B. As a secondary alternative to claim of error "A," the PUCO Erred when it granted AEP's request to increase its EE/PDR Rider without requiring that

it be made “subject to refund.” Requiring that AEP Ohio’s charges be subject to refund protects consumers from a potential future AEP Ohio assertion that it cannot be ordered to refund such increased charges to consumers after any PUCO audit finding that a refund is appropriate.

- C. The PUCO erred when it ordered a financial audit of the AEP Ohio’s EE/PDR Rider without specifying that the audit should also include verification of the calculations used to derive the shared savings that AEP collects from customers related to energy efficiency.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC seeks a rehearing of the PUCO's July 2, 2014 Order because it fails to adequately protect consumers from AEP Ohio charges in the event the PUCO finds, after its audit, that AEP Ohio inaccurately accounted for the EE/PDR Rider costs. Already, just 14 days after the PUCO announced its intention to audit AEP Ohio's EE/PDR Rider, the Utility filed to inform the PUCO that it had over-calculated the Rider by \$ 97 million due to a mathematical error. OCC also seeks rehearing of the Order because the PUCO did not specify that the auditor would consider whether the Utility accurately calculated the shared savings mechanism.

II. STATEMENT OF FACTS

In accordance with the requirements of R.C. 4928.66, AEP Ohio developed an EE/PDR plan for reducing its customers' energy usage, which was approved by the

PUCO in March of 2009.¹ The rates that AEP Ohio would charge customers for that plan were set in a subsequent filing that included a three-year EE/PDR portfolio for the years 2009-2011, and became effective on January 1, 2010.² On May 15, 2012, AEP Ohio filed an Application in Case No. 12-1557-EL-RDR to update the EE/PDR Riders that its customers pay, “for the final true-up of the program costs from 2009-2011.”³ In the meantime, the PUCO granted AEP Ohio approval for a second three-year portfolio of EE/PDR programs to offer to customers for the years 2012-2014 in a March 21, 2012 Opinion and Order.⁴

Having not received PUCO authority to update its EE/PDR Rider rates, on May 15, 2013, AEP Ohio filed this action, which was nearly identical to its 12-1557-EL-RDR request. Specifically, AEP Ohio filed this action for “authority to implement and true-up the Company’s EE/PDR Riders granted in the 2012 Portfolio cases **along with the final true-up from the 2009 Portfolio cases as filed in Case No. 12-1557-EL-RDR.**”⁵ On June 5, 2014, the PUCO Staff filed a Review and Recommendation in Case Numbers 12-1557-EL-RDR and 13-1201-EL-RDR, requesting “financial audits of the Company’s

¹ *In the Matter of the Application of Columbus Southern Power Company for Approval of an electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, 08-917-EL-SSO, Opinion and Order at 41-47 (March 18, 2009).

² *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, 09-1089-EL-POR, Opinion and Order (May 13, 2010); *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, 09-1089-EL-POR Finding and Order at 2-3 (May 26, 2010).

³ *In the Matter of the Application of Ohio Power Company to Update the Energy Efficiency and Peak Demand Reduction Rider* (“AEP Ohio 2012 Update”), Case No. 12-1557-EL-RDR, Application at p. 2 (May 15, 2012).

⁴ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 11-5568-EL-POR, Opinion and Order at 18-19 (March 21, 2012).

⁵ *In the Matter of the Application of Ohio Power Company to Update The Energy Efficiency and Peak Demand Reduction Rider* (“AEP Ohio 2013 Update”), Case No. 13-1201-EL-RDR, Application at p. 3 (May 15, 2013) (emphasis added).

EE/PDR riders,” where “the first such audit [will] cover the EE/PDR rates and updates for the time period of January 2011 through December 2013.”⁶ The Commission then issued the July 2, 2014 Order, which approved the 2013 Application and closed the 2012 case, while accepting the Staff’s recommendation to audit AEP Ohio’s EE/PDR Rider.⁷

III. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.”⁸ Furthermore, if the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same * * *.”⁹

OCC meets both the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10 and the requirements of the Commission’s rule on applications for rehearing.¹⁰ Accordingly, OCC respectfully requests that the Commission grant rehearing on the matters specified below.

⁶ AEP Ohio 2012 Update, Staff Review and Recommendation at p. 9; AEP Ohio 2013 Update, Staff Review and Recommendation at p. 9

⁷ Finding & Order at pp. 4-5 (July 2, 2014).

⁸ *Id.*

⁹ *Id.*

¹⁰ *See*, Ohio Adm. Code 4901-1-35.

IV. LAW AND ARGUMENT

A. The PUCO Erred When It Granted AEP Ohio's Request To Increase The EE/PDR Rider, Thereby Allowing New Rates To Be Charged To Customers Before The PUCO-Ordered Audit.

The PUCO acted unreasonably by allowing AEP Ohio to increase the EE/PDR rates charged to customers in advance of the completion of the financial audit of the EE/PDR Rider. As previously mentioned, the PUCO Staff recommended that there be an audit of the entire EE/PDR period from January 2011 through December 2013. The Staff explained that during that time “the design of the rider rates underwent significant modification due to the merger of the operating companies.”¹¹ In fact, the Staff refers to 38 relevant filings in over 20 different cases, which complicates the ability to understand the Utility’s proposed true-up of these costs that customers pay.¹² In addition, the Staff explains that the audit is necessary due to “the significance of the EE/PDR riders as part of the Company’s rates.”¹³ While the PUCO granted AEP Ohio’s request to increase rates, it simultaneously granted Staff’s request for an independent financial audit by stating that it “will issue by subsequent entry a request for proposal in order to acquire audit services with respect to AEP Ohio’s EE/PDR Rider.”¹⁴

¹¹ AEP Ohio 2012 Update, Staff Review and Recommendation at p. 9; AEP Ohio 2013 Update, Staff Review and Recommendation at p. 9.

¹² *See*, AEP Ohio 2012 Update, Staff Review and Recommendation at pp. 4-8; AEP Ohio 2013 Update, Staff Review and Recommendation at pp. 4-8.

¹³ AEP Ohio 2012 Update, Staff Review and Recommendation at p. 9; AEP Ohio 2013 Update, Staff Review and Recommendation at p. 9.

¹⁴ Finding and Order at p. 4.

The rates that the PUCO approved in the July 2, 2014 Order, however, include the EE/PDR Rider costs through December 2012.¹⁵ Given the complex circumstances surrounding AEP Ohio's rates as outlined by the PUCO Staff, it is possible that the financial audit would result in a need to adjust the rates that AEP Ohio requested in its Application. In fact, AEP Ohio already discovered a **\$97 million** miscalculation in the rates that were proposed as part of the 2013 revenue request.¹⁶

Due to the large amount of money that AEP Ohio is seeking to charge customers and the complexity of AEP Ohio's corporate structure and rate changes during the relevant years in this case, it is unreasonable to allow AEP Ohio to collect rates that are still subject to a much-needed financial audit. This concern is further compounded by the fact that the Utility has already admitted to a nearly nine-figure accounting error. For these reasons, the PUCO should hold AEP Ohio's rate increase in abeyance until the Commission-ordered financial audit is complete.

B. As A Secondary Alternative To Claim Of Error "A," The PUCO Erred When It Granted AEP's Request To Increase Its EE/PDR Rider Without Requiring That It Be Made "Subject To Refund." Requiring That AEP Ohio's Charges Be Subject To Refund Protects Consumers From A Potential Future AEP Ohio Assertion That It Cannot Be Ordered To Refund Such Increased Charges To Consumers After Any PUCO Audit Finding That A Refund Is Appropriate.

It is more appropriate to hold the EE/PDR Rider rate increases in abeyance until the conclusion of the financial audit. Alternatively, the PUCO erred by failing to grant AEP Ohio's request subject to refund. If the financial auditor determines that the rates

¹⁵ See, Finding and Order at p. 5; Application at p. 3.

¹⁶ Correspondence including Revised Schedule 1 and Proposed Compliance Tariffs, Case No. 13-1201 (July 15, 2014). The PUCO issued a subsequent Finding and Order on July 30, 2014 granting AEP Ohio's corrected proposed increase, to which OCC intends to file an Application for Rehearing, but the statutory time for filing does not run until August 29, 2014.

approved in the July 2, 2014 Order result in an over-collection, it is possible that AEP Ohio will assert (as it has elsewhere) that there is no mechanism under Ohio law that permits the retroactive refund of over-collections from customers.¹⁷ Recently, AEP Ohio kept \$368 million of customer money after it argued successfully in the Supreme Court that the money was not subject to refund.¹⁸ To prevent this inequity, the PUCO should order that the Utility's rate increase be subject to refund.

In 1983, the Commission determined that, with regard to an AEP Ohio Company, a portion of the allowance related to Columbus & Southern Ohio Electric Company's construction work in progress for the Zimmer plant would be collected subject to refund to customers.¹⁹ After the Commission's action was upheld on appeal,²⁰ the Commission ordered the Company to refund approximately \$4.5 million to its customers.²¹ In fact, the PUCO in the July 2, 2014 Order even acknowledged that the 2009 Portfolio rates were ordered to continue in existence "subject to refund."²²

If AEP Ohio's request is not made "subject to refund," AEP Ohio's customers could be denied an opportunity to recoup EE/PDR Rider charges if the auditor finds that

¹⁷ See, e.g., *Lucas County Commissioners v. Pub. Util. Comm.* (1997), 80 Ohio St. 3d 344; *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, ¶ 2 of the syllabus (The rule against retroactive ratemaking would preclude subsequent recovery of previously collected revenues under a PUCO approved tariff).

¹⁸ See, *In re Columbus Southern Power Co.*, 138 Ohio St. 3d 448, 2014-Ohio-462, 8 N.E.2d 863, at ¶56.

¹⁹ *In the Matter of the Application of Columbus & Southern Ohio Electric Company for Authority to Amend and Increase Certain of its Rates and Charges for Electric Service, Amend Certain Terms and Conditions of Service and Revise Its Depreciation Accrual Rates and Reserves*, Case No. 81-1058-EL-AIR, Entry (November 17, 1982).

²⁰ *Columbus & Southern Ohio Electric Co. v. Public Util. Comm.* (1984), 10 Ohio St.3d 12.

²¹ Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

²² Finding & Order at pp. 2-3; see also, *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration, et al.*, Case No. 09-1089-EL-POR, Entry at p. 2 (December 14, 2011).

they were miscalculated or subject to improper accounting. It is an injustice for a utility to retain revenues collected from customers that are subsequently found to be unreasonable or unlawful.

C. The PUCO Erred When it Ordered a Financial Audit of the AEP Ohio's EE/PDR Rider Without Specifying that the Audit Should Also Include Verification of the Calculations Used to Derive Shared Savings.

As previously mentioned, the PUCO granted the Staff's request for a financial audit of AEP Ohio's EE/PDR Rider from January 2011 through December 2013.²³ The PUCO Staff's audit request and the PUCO's approval were good steps. However, the PUCO should specifically require that the auditor review the accuracy of avoided cost values and the calculation methodology for deriving shared savings amounts (as well as a review of the resulting shared savings to be collected from customers based upon the calculation methodology).

In Case No. 09-1089-EL-POR, AEP Ohio was granted the ability to charge customers additional costs for what is referred to as a "shared savings mechanism." The "shared savings incentive" mechanism "provides an after-tax net benefit of 15 percent to the Companies and 85 percent to Customers for measurable EE/PDR programs."²⁴ Thus, in order to appropriately audit whether the shared savings were subject to proper accounting treatment, it is necessary to calculate the value of the avoided costs associated with the amount of measurable savings produced by the EE/PDR programs. And, as previously mentioned, this need for review is further underscored by AEP Ohio's recent

²³ Finding and Order at 4.

²⁴ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration, et al.*, Case No. 09-1089-EL-POR, Opinion and Order at pp. 11, 28 (May 13, 2010).

admission that it miscalculated certain other costs associated with the EE/PDR Rider. Therefore, the PUCO should revisit its ruling on this rehearing to order a financial audit that specifically addresses shared savings where AEP Ohio seeks \$23,274,700 million in shared savings for 2009 through 2011,²⁵ and \$34,333,063 in shared savings for 2012.²⁶

V. CONCLUSION

The PUCO erred by allowing AEP Ohio to charge customers for the increased rates while those rates are subject to a financial audit. At a minimum, the PUCO erred by not granting the increased rates “subject to refund.” Finally, the PUCO erred by not specifying that the financial audit would also include an analysis of the cost components and calculations for purposes of auditing the “shared savings mechanism” that AEP Ohio uses to collect shared savings from customers. For these reasons, the PUCO should grant OCC’s request for rehearing and modify its Order accordingly.

Respectfully submitted,

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²⁵ Application, Schedule 1a.

²⁶ Application, Schedule 3, at pp. 1-2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Application for Rehearing* was served on the persons stated below *via* electronic transmission, this 1st day of August, 2014.

/s/ Michael J. Schuler

Michael J. Schuler

Assistant Consumers' Counsel

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Schuler, Michael J.