

**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.)

**SECOND 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 30, 2014, Finding and Order ("Order"), to ensure that customers pay rates for electricity that are reasonable and lawful. In the Order, the Public Utilities Commission of Ohio ("Commission" or "PUCO") approved Ohio Power Company's ("AEP Ohio" or "the Utility") proposed revised charges to customers for energy efficiency and peak demand reduction ("EE/PDR") expenses. OCC seeks rehearing of the Commission's Order, pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35. The July 30, 2014 Order was unjust, unreasonable, and unlawful because:

- A. The PUCO Erred When it Failed to Confirm its Earlier (July 2, 2014) Order Requiring a Financial Audit of AEP Ohio's EE/PDR Rider. The PUCO Also Erred When it Failed to Specify that the Audit Should Include Verification of the Calculations Used to Derive Shared Savings.

- B. 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 a Financial Audit of Those Costs is Conducted.
- C. As an Alternative to Claim Of Error "B," the PUCO Erred When it Granted AEP's Ohio's Request to Increase its EE/PDR Rider Without Requiring that the Rider be Collected "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 Audit Finding that a Refund is Appropriate.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler.

Michael J. Schuler, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone [Schuler]: (614) 466-9547
Michael.schuler@occ.ohio.gov

**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.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC seeks a rehearing of the PUCO's July 30, 2014 Order because it does not confirm that the PUCO's prior order (July 2, 2014) requiring a financial audit remains in effect. To the extent the July 2, 2014 PUCO Order remains in effect, the July 30 Order also fails to adequately protect consumers from paying charges that may later be determined to be unjust, unreasonable, or unlawful. For these reasons, the PUCO should explicitly affirm its previously approved financial audit, and require an analysis of the cost components and calculation of the shared savings mechanism. Moreover, the PUCO should amend its order to hold the EE/PDR Rider update in abeyance until the audit is complete. Alternatively, the PUCO should at a minimum order that the EE/PDR Rider costs be collected "subject to refund," pending the outcome of a financial audit.

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 those rates 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

Because there was no ruling on AEP Ohio’s May 15, 2012 request to update its EE/PDR Rider rates, AEP Ohio filed this action, which was nearly identical to its 12-1557-EL-RDR request. Specifically, AEP Ohio requests “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 this case and the 12-1557-EL-RDR case, 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 PUCO by Order issued on July 2, 2014, approved the 2013 Application and closed the 2012 case, while accepting its Staff’s recommendation to audit AEP Ohio’s EE/PDR Rider.⁷ Less than two weeks later, however, AEP Ohio filed a revised Schedule 1 and amended its proposed tariffs due to a “formulaic error in the EE/PDR rider rate.”⁸ Without any further analysis, the PUCO summarily granted AEP Ohio’s revised EE/PDR Rider rates but did not confirm that its previously-ordered audit would still occur.

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.”⁹ Furthermore, if the PUCO 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 * * *.”¹⁰

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

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 (hereinafter referred to as “First Finding & Order”).

⁸ Correspondence including Revised Schedule 1 and Proposed Compliance Tariffs, Case No. 13-1201 (July 15, 2014).

⁹ *Id.*

¹⁰ *Id.*

for rehearing.¹¹ Accordingly, OCC respectfully requests that the PUCO grant rehearing on the matters specified below.

IV. LAW AND ARGUMENT

A. The PUCO Erred When It Failed To Confirm Its Earlier (July 2, 2014) Order Requiring A Financial Audit Of AEP Ohio's EE/PDR Rider. The PUCO Also Erred When It Failed To Specify That The Audit Should Include Verification Of The Calculations Used To Derive Shared Savings.

To the extent that the July 30, 2014 Finding and Order completely supersedes the July 2, 2014 Finding and Order in this case, the PUCO erred by failing to require the financial audit that was recommended by its Staff and accepted by this Commission in its prior Opinion and Order in this case. As the PUCO Staff aptly pointed out, during the relevant time-period “the design of the rider rates underwent significant modification due to the merger of the operating companies.”¹² In fact, the Staff refers to 38 relevant filings in over 20 different cases, which complicates the Utility’s proposed true-up of these costs that customers are required to pay.¹³ 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.”¹⁴ For good cause, in its July 2, 2014 Finding and Order, the PUCO required a financial audit of AEP Ohio’s EE/PDR Rider from January 2011 through December 2013.¹⁵

¹¹ See, Ohio Adm. Code 4901-1-35.

¹² AEP Ohio 2012 Update, Staff Review and Recommendation at p. 9; AEP Ohio 2013 Update, Staff Review and Recommendation at p. 9.

¹³ 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.

¹⁴ AEP Ohio 2012 Update, Staff Review and Recommendation at p. 9; AEP Ohio 2013 Update, Staff Review and Recommendation at p. 9.

¹⁵ First Finding and Order at 4.

The Finding and Order at issue (July 30, 2014), however, failed to confirm the required financial audit of the EE/PDR Rider. It is unreasonable for the PUCO to issue a subsequent Order that does not clearly demand a financial audit where its earlier Order required such and the facts of the case clearly necessitate such an audit.

Moreover, while the PUCO Staff's audit request and the PUCO's previous approval were good steps toward protecting consumers, other steps need to be taken as well. 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). 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."¹⁶ Thus, in order to appropriately audit whether the shared savings were properly accounted, it is necessary to calculate the value of the avoided costs associated with the amount of measurable savings produced by the EE/PDR programs.

Therefore, the PUCO should confirm its previous ruling and clarify that there will be a financial audit and that such an audit will specifically address the shared savings incentive mechanism.

¹⁶ *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).

B. 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 A Financial Audit Of Those Costs Is Conducted.

The PUCO acted unreasonably by allowing AEP Ohio to increase the EE/PDR rates charged to customers before a financial audit of the EE/PDR Rider is completed. As previously mentioned, the PUCO Staff recommended (and the PUCO previously approved) an audit of the entire EE/PDR period (January 2011 through December 2013). Specifically, the PUCO adopted the Staff's recommendation for an independent financial audit 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."¹⁷

The rates that the PUCO approved in the July 30, 2014 Order include the EE/PDR Rider costs through December 2012.¹⁸ The PUCO Staff-recommended audit, which was approved in the July 2, 2014 Order, will audit that same time period. Given the complex circumstances surrounding AEP Ohio's rates as outlined by the PUCO Staff, it is possible that a financial audit would result in a need to adjust the rates that customers pay. In fact, AEP already has miscalculated those rates by **\$97 million, which was the impetus for its revised rates that gave rise to the Order at issue.**¹⁹ A financial audit, as ordered by the PUCO, may turn up even more miscalculations.

¹⁷ First Finding and Order at p. 4.

¹⁸ See, Finding and Order at pp. 2-3 (July 30, 2014) (hereinafter referred to as "Second Finding and Order"); Application at p. 3.

¹⁹ Correspondence including Revised Schedule 1 and Proposed Compliance Tariffs, Case No. 13-1201.

AEP Ohio is seeking to charge customers a large amount of money (nearly \$300 million)²⁰ for costs that were allegedly incurred during AEP Ohio's complex corporate restructuring phase. Thus, it is unreasonable to allow AEP Ohio to collect those rates before they have been subject to a financial audit (if not already subject to such a financial audit). This concern is further compounded by the fact that the Utility has already committed a nearly nine-figure accounting error. For these reasons, the PUCO should hold AEP Ohio's rate increase in abeyance until an outside auditor has had the opportunity to complete a financial audit of the EE/PDR Rider.

C. As An Alternative To Claim Of Error "B," The PUCO Erred When It Granted AEP Ohio's Request To Increase Its EE/PDR Rider Without Requiring That The Rider Be Collected "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 Audit Finding That A Refund Is Appropriate.

As previously mentioned, the PUCO should confirm that the financial audit of AEP Ohio's EE/PDR Rider must be undertaken as ordered. If the financial audit is undertaken and it is determined that the rates implemented were too high, it is possible that AEP Ohio will assert (as it has elsewhere) that its customers are not entitled to a refund because of Ohio law prohibiting retroactive ratemaking.²¹ Recently, AEP Ohio kept \$368 million of customer money after it argued successfully in the Supreme Court

²⁰ Correspondence including Revised Schedule 1 and Proposed Compliance Tariffs, Case No. 13-1201, Revised Schedule 1 (July 15, 2014); *see also*, AEP Ohio 2012 Update, Staff Review and Recommendation at p. 9; AEP Ohio 2013 Update, Staff Review and Recommendation at p. 9.

²¹ 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).

that the money was not subject to refund.²² To prevent this inequity, while it is more appropriate to hold the EE/PDR Rider rate increases in abeyance until the conclusion of a financial audit,²³ the PUCO should, at a minimum, order that the Utility's rate increase be subject to refund.

Collecting rates subject to refund is not foreign to the PUCO. In 1983, the Commission determined that, a portion of Columbus & Southern Ohio Electric Company's construction work in progress allowance for the Zimmer plant would be collected subject to refund to customers.²⁴ After the Commission's action was upheld on appeal,²⁵ the Commission ordered the Utility to refund approximately \$4.5 million to its customers.²⁶ More recently, in response to a remand from the Ohio Supreme Court, the PUCO ordered rates be collected subject to refund, pending the outcome of the PUCO remand hearing.²⁷ And, collecting subject to refund is consistent with the PUCO's acknowledgement in in this case that the 2009 Portfolio rates were ordered to continue in existence "subject to refund."²⁸

If AEP Ohio's request is not made "subject to refund," AEP Ohio's customers could be denied a refund of rates that are later determined to have been unlawful,

²² See, *In re Columbus Southern Power Co.*, 138 Ohio St. 3d 448, 2014-Ohio-462, 8 N.E.2d 863, at ¶56.

²³ See *Supra*, Section IV (B).

²⁴ *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).

²⁵ *Columbus & Southern Ohio Electric Co. v. Public Util. Comm.* (1984), 10 Ohio St.3d 12.

²⁶ Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

²⁷ *In the Matter of the Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, Entry (May 25, 2011).

²⁸ First 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).

imprudent, unjust or unreasonable as a result of a financial audit. This would be a replay of the injustice noted by the Supreme Court in the recent AEP Ohio appeal.²⁹ There, the court noted that the no refund rule of *Keco* caused an unfair outcome for customers and created an unwarranted windfall for the utility. It would also be unfair to customers (and a windfall to the Utility) to allow AEP Ohio to retain EE/PDR revenues collected from customers that are subsequently found to be unjust, unreasonable, or unlawful. To prevent this outcome, the PUCO should order rates collected subject to refund, or as discussed earlier, hold the EE/PDR rates in abeyance until the audit is complete.

V. CONCLUSION

The PUCO erred by not confirming that its earlier ordered audit was still required and erred in not specifying that the financial audit should include an analysis of the cost components and calculations of the “shared savings mechanism.” The PUCO also erred by allowing AEP Ohio to charge customers for the increased rates before the rates have been audited. At a minimum, the PUCO erred by not granting the increased rates “subject to refund.” Such an approach would prevent the potential irreparable harm to customers that could occur if there is no refund for rates collected that are later determined to be unjust, unreasonable, or unlawful. Rehearing should be granted in order to protect the rights of customers.

²⁹*In re Columbus Southern Power Co.*, 138 Ohio St. 3d 448, 2014-Ohio-462, 8 N.E.2d 863, at ¶56.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler

Michael J. Schuler, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone [Schuler]: (614) 466-9547

Michael.schuler@occ.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Second Application for Rehearing* was served on the persons stated below *via* electronic transmission, this 29th day of August, 2014.

/s/ Michael J. Schuler

Michael J. Schuler

Assistant Consumers' Counsel

SERVICE LIST

William Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215
William.wright@puc.state.oh.us

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for the Ohio Energy Group

Attorney Examiners:

Sarah.parrot@puc.state.oh.us
Jonathan.tauber@puc.state.oh.us
Greta.see@puc.state.oh.us

Steven T. Nourse
Yazen Alami
Matthew Satterwhite
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215-2373
stnourse@aep.com
yalami@aep.com
mjsatterwhite@aep.com

Counsel for Ohio Power Company

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney@ohiopartners.org

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/29/2014 4:16:57 PM

in

Case No(s). 13-1201-EL-RDR, 12-1557-EL-RDR

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