

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                    )  
Ohio Power Company to Adopt a Final        )     Case No. 14-1186-EL-RDR  
Implementation Plan for the Retail            )  
Stability Rider.                                        )

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**MOTION FOR PROCEDURAL SCHEDULE THAT PROVIDES ADEQUATE  
TIME FOR DISCOVERY AND HEARING PREPARATION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Public Utilities Commission of Ohio (“PUCO”) has before it a motion to dismiss this case where Ohio Power Company (“AEP Ohio”) has proposed to collect from customers \$418.4 million in capacity costs (plus carrying charges) resulting from AEP Ohio providing discounted capacity to competitive retail electric service (“CRES”) providers.<sup>1</sup> The Office of the Ohio Consumers’ Counsel (“OCC”) supports the motion to dismiss.

But if the PUCO does not dismiss the case, OCC moves the PUCO to set a procedural schedule that, in part, provides adequate time for discovery (including the taking of depositions) and hearing preparation.<sup>2</sup> OCC requests a procedural schedule with the following timeframes:

- AEP Ohio’s testimony in support of the Application to be filed by November 12, 2014;
- PUCO Staff and Intervenor Testimony to be filed by December 12, 2014; and

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<sup>1</sup> Industrial Energy Users-Ohio’s Motion to Dismiss (August 19, 2014).

<sup>2</sup> Ohio Adm. Code 4901-1-12. The legal director, the deputy legal director or the attorney examiner may rule, in writing, upon any procedural motion or other procedural matter. Ohio Adm. Code 4901-1-14.

- Hearing to commence on January 12, 2015.

The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

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**MEMORANDUM IN SUPPORT**

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AEP Ohio has proposed to collect from customers capacity costs (plus carrying charges) resulting from AEP Ohio providing discounted capacity (market-based capacity) to CRES providers during the term of AEP Ohio's second electric security plan.<sup>3</sup> The PUCO authorized that discount in AEP Ohio's Capacity Charge Case.<sup>4</sup> In that case, the PUCO permitted AEP Ohio to defer the difference between the market-based rate it would charge the CRES providers and AEP Ohio's fully embedded cost.<sup>5</sup>

AEP Ohio now proposes to collect the deferred cost from customers in this case by continuing its current Retail Stability Rider Charge.<sup>6</sup> Those costs (that AEP Ohio proposes to collect from customers) amount to an estimated \$418.4 million.<sup>7</sup> AEP Ohio has proposed that customers will start paying these costs June 1, 2015 and will continue

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<sup>3</sup> See Application (July 8, 2014).

<sup>4</sup> *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012) ("Capacity Charge Order").

<sup>5</sup> The PUCO subsequently ordered that AEP Ohio could collect the deferred capacity costs from all customers, though a non-bypassable charge. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) ("ESP 2 Order") at 37.

<sup>6</sup> The Retail Stability Rider Charge is due to expire at the end of AEP Ohio's current electric security plan on May 31, 2015. See *id.* at 36.

<sup>7</sup> See Application, Exhibit A.

to pay through January 2018.<sup>8</sup> This proceeding will establish how the costs are to be collected, and what portion of those costs will be charged to the residential customer class.

Industrial Energy Users-Ohio has filed a motion to dismiss this case, which OCC supports. But if the PUCO does not dismiss this case, it should establish a procedural schedule that incorporates the timeframes proposed in OCC's Motion. Given the enormous amount of money that AEP Ohio seeks to collect from customers in this case (\$418.4 million), a hearing and the submission of testimony would be necessary if this case is not dismissed. .

The PUCO has not addressed how the deferred capacity charges will be collected from customers. In the Capacity Charge Case, the PUCO established AEP Ohio's capacity pricing, and stated that it would establish an appropriate collection mechanism for any deferred costs and address any additional financial considerations in the ESP 2 proceeding.<sup>9</sup>

But at the time the Capacity Charge Order was issued, the ESP 2 case was in its final stages. Briefs had already been filed, and reply briefs were due just one week after the Capacity Charge Order came out. Thus, there was no evidence in the record of the ESP 2 case that specifically addressed the rates for capacity established in the Capacity Charge Order. Indeed, OCC and the Appalachian Peace and Justice Network moved for the PUCO to take administrative notice of certain portions of the record in the Capacity

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<sup>8</sup> See id.

<sup>9</sup> Capacity Charge Order at 23.

Charge Case, but the PUCO denied that motion.<sup>10</sup> The appropriate mechanism for collecting any deferrals established in the Capacity Charge Case also was never discussed or analyzed in the ESP 2 proceeding.

The primary capacity-related issue in the ESP 2 proceeding was AEP Ohio's discounts for capacity, i.e., the two-tiered pricing scheme for capacity and the alternative \$10/MWh shopping credit from AEP Ohio's proposed \$355/MW-day capacity price. There was no evidence presented in ESP 2 case for the appropriate mechanism for collecting deferrals established in the Capacity Charge Case. Further, both the capacity charge and the Retail Stability Rider Charge are under appeal to the Ohio Supreme Court.<sup>11</sup> Thus, the PUCO should not allow AEP Ohio to continue collecting the Retail Stability Rider Charge from customers beyond May 31, 2015, unless it is collected subject to refund.

In the ESP 2 Order, the PUCO stated that “[a]t the conclusion of the Modified ESP, the Commission will determine the deferral amount and make appropriate adjustments based on AEP-Ohio's actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary.”<sup>12</sup> AEP Ohio would have an audit determine the Retail Stability Rider Charge, with a hearing only if AEP Ohio does not agree to accept any differences between the auditor's report and AEP Ohio's

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<sup>10</sup> See ESP 2 Order at 12-13.

<sup>11</sup> *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Supreme Court Case Nos. 2012-2098 and 2013-0228; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Supreme Court Case No. 2013-0521.

<sup>12</sup> ESP 2 Order at 36.

accounting.<sup>13</sup> But the amount that customers pay through the Retail Stability Rider Charge should not be left to the whim of AEP Ohio. If this case is not dismissed, the PUCO should *now* hold the hearing that should have been held two years ago on the appropriate mechanism for collecting the capacity deferrals.

For the reasons stated above, OCC respectfully requests that, if this case is not dismissed, the PUCO grant OCC's Motion by establishing a procedural schedule that incorporates the timeframes indicated in its Motion.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

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<sup>13</sup> Application at 4.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served on the persons stated below via electronic service this 2<sup>nd</sup> day of September 2014.

/s/ Maureen R. Grady

Maureen R. Grady

Assistant Consumers' Counsel

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Summary: Motion Motion for Procedural Schedule That Provides Adequate Time for Discovery and Hearing Preparation by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.