

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application Seeking |) | |
| Approval of Ohio Power Company's |) | Case No. 14-1693-EL-RDR |
| Proposal to Enter into an Affiliate Power |) | |
| Purchase Agreement for Inclusion in the |) | |
| Power Purchase Agreement Rider. |) | |

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| In the Matter of the Application of Ohio |) | |
| Power Company for Approval of Certain |) | Case No. 14-1694-EL-AAM |
| Accounting Authority. |) | |

**OBJECTION TO THE PUCO STAFF'S RECOMMENDATION REGARDING
AEP'S APPLICATION TO MODIFY THE TARIFF IT USES TO CHARGE
CUSTOMERS FOR THE PURCHASE POWER AGREEMENT RIDER
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The language proposed by Ohio Power Company ("AEP") to modify its Purchase Power Agreement Rider ("PPA Rider") should be rejected. It does not protect consumers from the prospect of paying unreasonable and unlawful charges. On behalf of AEP's 1.2 million residential consumers, the Office of the Ohio Consumers' Counsel ("OCC") recommends a more clear, concise, and understandable modification to AEP's PPA Rider tariff that will protect consumers from the prospect of paying unreasonable and unlawful charges. Specifically, the PPA Rider tariff should be modified to read: "Any charge collected from customers under this rider that are later determined to be unlawful, imprudent, or unreasonable by the PUCO or Ohio Supreme Court is refundable to customers."

II. RECOMMENDATIONS

A. **AEP's proposed modification to its PPA Rider threatens consumers with the prospect of paying unreasonable and unlawful charges.**

On January 24, 2018, the Supreme Court of Ohio (“Court”) issued a decision in an appeal of the Public Utilities Commission of Ohio’s (“PUCO”) Order in FirstEnergy’s alternative energy rider case.¹ The PUCO audited FirstEnergy’s rider and, based on the audit, ordered it to return more than \$43 million in imprudently incurred charges to customers.²

On appeal, the Court determined that the automatic approval of FirstEnergy’s quarterly filings constituted PUCO approval of new rates.³ The Court also emphasized that the alternative energy rider tariff did not require that the rates were subject to refund.⁴ Thus, even though the order approving FirstEnergy’s alternative energy rider stated that it could only collect prudently incurred costs,⁵ the Court held that the PUCO’s order that FirstEnergy refund the overcharges to customers involved unlawful retroactive ratemaking.⁶

In reaching this decision, the Court relied on the “filed rate doctrine” of R.C. 4905.32. The Court stated that because FirstEnergy had collected costs from customers under a “filed” rate schedule, the PUCO was prohibited from later ordering a

¹ *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 (“*FirstEnergy*”).

² *See id.*, ¶10.

³ *See id.*, ¶18.

⁴ *Id.*, ¶19.

⁵ *See id.*, ¶8.

⁶ *Id.*, ¶20.

disallowance or refund of those costs.⁷ The Court noted that although FirstEnergy was entitled to collect only prudently incurred costs from customers, “there can be no remedy in this case because the costs were already recovered.”⁸

The Court’s decision has far-reaching and harmful ramifications for consumers who pay utility charges that include riders that the PUCO periodically reviews. Unless the PUCO takes action to conform these riders to the Court’s decision, any subsequently conducted review of the riders could be rendered meaningless.⁹ Consumers could be overcharged for utility service without any way to be reimbursed, resulting in a needless and unfair windfall for utility companies.¹⁰

AEP’s proposed modification to its PPA Rider is woefully inadequate to deal with *FirstEnergy* and the prospect it raises of consumers paying unlawful and unreasonable charges.¹¹ The risk of harm to consumers would increase substantially were AEP’s proposed modification adopted by the PUCO. It does not address the situation where the PUCO approves a charge and the charge is later found unlawful or unreasonable by the Court. Its focus on the Rider being subject to “reconciliation” is vague and ambiguous at best. Further, “reconciliation” is most often used, if not exclusively used, in the context of financial reviews of utilities’ programs – reconciling projected versus actual expenditures, for example. “Reconciliation” does not necessarily signify or require a

⁷ *Id.*, ¶18.

⁸ *Id.*

⁹ *See id.*, ¶85 (dissent of Justice French).

¹⁰ *See id.*, ¶18.

¹¹ AEP filed its proposed modification on February 28, 2017. The proposed modification states: “This Rider is subject to reconciliation, including, but not limited to, refunds to customers, based upon the results of audits ordered by the Commission in accordance with the February 25, 2015 Opinion and Order in Case Nos. 13-2385-EL-SSO, *et al.* and the March 31, 2016 Opinion and Order in Case No. 14-1693-EL-RDR.” Staff recommended approving AEP’s proposed modification on March 12, 2018.

“refund.” Focusing on “reconciliation” thus does not accurately reflect the type of review to which the PPA Rider is subject (prudence, for example) and therefore limits the type of review that may give rise to a refund in the event a charge is later found to be unlawful, imprudent, or unreasonable. More clear, concise, understandable language that better protects consumers should be used to modify AEP’s PPA Rider.

B. To protect consumers, the PUCO should reject AEP’s proposed modification to its PPA Rider tariff in favor of the modification proposed by OCC.

To protect consumers against the prospect of paying unlawful and unreasonable charges, the PPA Rider tariff should state: “Any charge collected from customers under this rider later determined to be unlawful, imprudent, or unreasonable by the PUCO or Supreme Court of Ohio is refundable to customers.” This modification would make clearer that any charges paid by consumers later found to be unlawful, imprudent, or unreasonable will be refunded to them.

III. CONCLUSION

If consumers pay charges later found to be unlawful, imprudent, or unreasonable, they deserve their money back. To bring about that undisputable principle and protect consumers, the PUCO should require AEP to state it in clear, concise, understandable language in its PPA Rider tariff. The PUCO should reject AEP’s proposed modification and adopt OCC’s.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Objection to the PUCO Staff's Review was served on the persons stated below via electronic transmission, this 16th day of March 2018.

/s/ William J. Michael

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Summary: Objection Objection to the PUCO Staff's Recommendation Regarding AEP's Application to Modify the Tariff it Uses to Charge Customers for the Purchase Power Agreement Rider by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.