BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Ohio Power Company to Update Its	)	Case No. 17-1914-EL-RDR
Enhanced Service Reliability Rider	)	

POST-HEARING BRIEF SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Were the spending projections accepted by the Commission to establish AEP-Ohio's Enhanced Service Reliability Rider ("ESRR") rate intended as a limit, or cap, on Company spending? From Staff's perspective, that is the issue in this case. Staff understood the Commission's order to have set spending limitations on vegetation management expenses recoverable through the ESRR. While the Commission indicated that reasonable prudent variations from those limits were discretionary, Staff does not believe that the Commission intended to give the Company authority to seek recovery of unfettered expenditures, even if prudently incurred. Staff submits that the expenses sought to be recovered in this case, albeit prudent, are unreasonable to the extent that they exceed the spending limits approved by the Commission.

In its application to update its ESRR rate, AEP Ohio sets for the history of the rider. A more thorough review of that history is useful for justifying Staff's position in this case.

In its first Electric Security Plan ("ESP") case, the Company proposed a program of initiatives designed, it said, to modernize and improve its distribution infrastructure. *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*, Case No 08-917-EL-SSO (Opinion and Order) (Mar. 18, 2009) ("*ESP I*") at 30-31. The Commission found that the Company was facing increased incremental costs for vegetation management that exceeded costs embedded in distribution rates. Id. at 33. Finding that that initiative would better align customer and the Company's expectations relating to outages, the Commission approved "the establishment of an ESRP rider as the appropriate mechanism pursuant to Section 4928.143(B)(2)(h), Revised Code, to recover such costs. *Id*. at 34. While concluding that the rider "should be based upon the electric utility's prudently incurred costs," and ordering that it be subject to annual review and reconciliation, the Commission directed that the rider include only the incremental costs associated with the initiatives as set forth in schedules provided by the Company. *Id*. Those forecasted costs were set forth in a table included in the testimony of AEP-Ohio witness Karl G. Boyd. *ESP I*, Company Ex. 11 at 31, Chart 7. The Commission approved the incremental spending plan as being $31.5 million in year one of the program, $34.8 million in year two and $38.1 million in year three.

The Commission intended these amounts to be a limit on Company spending. Its Entry on Rehearing in that case makes this apparent. In response to an AEP-Ohio request for clarification, the Commission:

> emphasized the importance of a balanced approach that not only reacts to problems that occur, but that also maintains the overall system. To achieve this goal, the Commission fully expects the Companies to *work with Staff* to strike the correct balance ***within*** *the cost level established* by our Order, which is based on the Companies' proposed ESRP program.

ESP I (Entry on Rehearing) (Jul. 23, 2009) at ¶54 (emphasis added).

Staff has never viewed the Commission's order approving the rider as authorizing recovery of all prudently incurred costs, but rather only those prudently incurred costs within what it has considered to be caps established by the Commission. This was made clear in Staff's Review and Recommendation of the Company's first filing to update the rider, where it noted that "[t]he Commission approved the Enhanced Service Reliability (ESR) incremental spending plan presented in the ESP cases at a level of $31.5 million in year one of the program, $34.8 million in year two, and $38.1 million in year three." *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Update Their Enhanced Service Reliability Riders*, Case No, 10-163-EL-RDR (Comments and Recommendations) (Apr. 30, 2010) ("*ESR Update I*") at 4.

While neither explicitly finding these levels to be caps, nor that prudently incurred costs in excess of those levels would be recoverable, the Commission order in that case implicitly rejected the notion that ESP I merely approved "goals." The Commission noted that "AEP-Ohio states that it interpreted the end-to-end clearing of 250 circuits to be a goal or estimate, not a minimum requirement." *ESR Update I* (Finding and Order) (Aug. 25, 2010) at 4. It approved additional funding for 12 uncompleted circuits "to catch up" "to keep the enhanced vegetation management plan on target." *Id*. at 5.

More critically, though, it is evident that the Commission expected the Company to work collaboratively with Staff to agree upon what was to be done, and at what cost. The Commission noted that AEP-Ohio worked with Staff to develop its enhanced vegetation management initiative plan. *ESR Update I* (Finding and Order) (Aug. 25, 2010) at 1. As part of its application to update the rider, the Company noted that "the Companies have worked with the Staff . . . confirming the baseline level of spending that will define the incremental costs to be included in the ESR Rider." *ESR Update I* (Application) (Feb. 11, 2010) at 4.

Staff's view that the costs approved for recovery represented a cap has been reiterated in subsequent audits. In its report the following year, Staff observed:

> In its Opinion and Order in the ESP Cases, the Commission approved the Companies' proposed ESR spending plan at a level of $34.8 million for year 2010. Subsequently in its Finding and Order in Case No. 10-163-EL-RDR, the Commission approved an additional $1.64 million to complete trimming in 2010 on 12 circuits carried over from 2009. These approved amounts total $36.44 million . . .

In the Matter of the Application of Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) to Update Their Enhanced Service Reliability Riders, Case No. 11-1361-EL-RDR (Comments and Recommendations) (May 20, 2011) ("*ESR Update II*") at 3. The Commission's order reflects this view, as well:

> In the ESP cases, the Commission approved the Companies' request for incremental spending for 2010 of $34.8 million, subject to annual reconciliation based on the Companies' prudently incurred costs. Pursuant to the Commission's decision in 10-163, AEP-Ohio's ESRP rider was increased by $1.64 million to facilitate compliance with the four-year vegetation management cycle. Thus, AEP-Ohio's total 2010

> ESRP rider amounted to $36.44 million ($34.8 million + $1.64 million).

ESR Update II (Finding and Order) (Jun. 15, 2011) at 3.

AEP-Ohio filed its second ESP case on January 27, 2011. In it, the Company requested that it be permitted to extend the implementation period for its vegetation management program. The Commission approved the continuation of the vegetation management program for the term of the modified ESP, through May 31, 2015. *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case No. 11-346-EL-SSO et al. (Opinion and Order) (Aug. 8, 2012) at 65.

In the 2012 ESR audit, Staff noted that AEP-Ohio's capital expenditures "exceeded authorized levels by $248,348." *In the Matter of the Application of Ohio Power Company to Update its Enhanced Service Reliability Rider*, Case No. 12-3285-EL-RDR et al. (Comments and Recommendation) (Sep. 6, 2013) ("*ESR Update III*") at 6. The Commission approved the variance on the basis of Staff's recommendation that the additional expenditures would decrease future O&M costs associated with tree trimming. *ESR Update III* (Finding and Order) (Feb. 26, 2014) at 5. The Commission also approved the Company's request to increase its authorized recovery by $3.5 million in O&M expense for the sole purpose of completing clearing delayed by storm activity. *Id*.

The 2014 Staff review once again involved a "comparison of the Company's spending to authorized amounts." *In the Matter of the Application of Ohio Power Company to Update its Enhanced Service Reliability Rider*, Case No. 14-1578-EL-RDR (Comments and Recommendations) (Feb. 17, 2015) ("*ESR Update IV*") at 4. Staff found that the Company was "under the authorized spending level" in both O&M and capital categories, recommending minor adjustments for expenses deemed not appropriate for recovery through the rider. Id. at 8. The Commission adopted Staff's recommendation. *ESR Update IV* (Finding and Order) (Jun. 3, 2015) at 5.

AEP-Ohio filed its third ESP case on January 20, 2013. In it, the Company requested that it continue the ESRR, and sought approval to increase operations and maintenance (O&M) and capital costs for the program. Over Staff's objection, the Commission approved the Company's request, emphasizing "that the ESRR is based on AEP Ohio's prudently incurred costs and is subject to the Commission's review and reconciliation on an annual basis." *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO et al. (Opinion and Order) (Feb. 25, 2015) at 49.

In both the 2014 and 2015 audits, Staff found that the Company's expenditures were within previously authorized levels. In the latter, Staff characterized those levels in this manner:

> In the Opinion and Order of Case No. 13-2385-EL-SSO, the Commission authorized the Company to spend up to $1 million in O&M expenses along with $25 million in recoverable

> expenses for capital costs totaling to $26 million. Additionally, the Company has $24.2 million embedded in its base rates for vegetation management. Therefore, the total amount authorized for the Company to recover for the ESRR is $50.2 million. The total expenses that the company charged to the ESRR during the audit period was $49.9 million.

In the Matter of the Application of Ohio Power Company to Update Its Enhanced Service Reliability Rider, Case No. 16-2154-EL-RDR (Review and Recommendations) (Aug. 10, 2017) at 3.

On April 25, 2018, the Commission issued its decision in AEP-Ohio's fourth ESP case. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant TO R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 16-1852-EL-SSO et al. (Opinion and Order) (Apr. 25, 2018) ("*ESP IV*"). In Staff's opinion, the Commission decision in that case reinforced its view that the various spending levels authorized over time were all intended to be caps on the Company's recovery. The Commission found that:

> The Enhanced Service Reliability Rider (ESRR) will sunset December 31, 2020, and be set to zero if no rate case is filed by June 1, 2020. The continuation of the ESRR after the next AIR case will be an issue for determination as part of the next AIR case. If an extension of the ESRR is granted in the next AIR case, the rider shall be reset effective with the implementation of the decision in that case. The proposed 2 ½ percent annual increase proposal shall be withdrawn by AEP Ohio and recovery will be *limited* to $27.6 million annually until the next AIR case order.

Id. at ¶111 (emphasis added).

In this case, Staff found that the Company had exceeded the limit imposed by the Commission. It filed its initial Review and Recommendation on May 29, 2018. Staff

Exhibit 2. Consistent with its previous audits, Staff made this finding with respect to the spending level authorized by the Commission:

> Staff found that the Company had exceeded the amounts for O&M and capital expenditures that were approved by the Commission in Case No. 13-2385-EL-SSO. In that case, the Commission authorized the Company to spend up to $25 million in O&M expenses along with $1 million in recoverable capital costs, totaling to $26 million. Additionally, the Company has $24.2 million embedded in its base rates for vegetation management. Therefore, the total amount authorized for the Company to recover for the ESRR is $50.2 million. The Company spent $48,647,290 for O&M expenses and $6,862,516 in capital expenditures in the test year. These expenses exceeded the amount authorized by the Commission by $5,309,806. Staff recommends removal of this amount from the revenue requirement.

Staff Exhibit 2 at 3. Staff's recommendation to remove this amount from the revenue requirement was not based on any finding of imprudence, but rather solely on the grounds that the expenses exceeded those authorized for recovery. Staff witness Parks clarified that all of the Company's costs were adequately substantiated, and that Staff recommended no disallowance or adjustment based on the financial audit. Tr. at 92. Nor did Staff make any finding of imprudence in this case. *Id*.

On January 18, 2019, Staff filed a Response to Comments offered by the Company in this case. Staff Exhibit 3. In it, Staff addressed the Company's argument that the $26 million spending level authorized by the Commission did not constitute a cap since it was based on forecasted expenses. Staff reiterated its understanding of the Commission's spending levels as a cap, noting that the Company would otherwise have no incentive to "keep costs in check." *Id*. at 2. Staff's understanding is based on the Commission's own words, issued in authorizing the ESRR as part of the ESP I case:

> The Commission recognizes that Section 4928.143(B)(2)(h), Revised Code, authorizes the Companies to include in its ESP provisions regarding single-issue ratemaking for distribution infrastructure and modernization incentives. However, while SB 221 may have allowed Companies to include such provisions in its ESP, the intent could not have been to provide a "blank check" to electric utilities.

ESP I (Opinion and Order) (Mar. 18, 2009) at 32.

While the Commission's "blank check" comment was not made specifically in reference to the vegetation management issue, it stands as a valid regulatory principle for single-issue ratemaking such as this. AEP-Ohio is effectively asking this Commission to grant it a blank check for this rider until its next distribution rate case. The Commission should decline to do so.

Nor is the Company's current request comparable to past instances in which the Commission has authorized recovery in excess of the authorized amount. It is true, as Company witness Moore noted in her testimony, that Staff previously recommended recovery of costs above the authorized level. This case differs in two significant respects.

First, Staff's review of AEP-Ohio's 2011 expenditures showed that capital expenditures exceeded authorized levels by $248,348. *ESR Update III* (Comments and Recommendation) (Sep. 6, 2013) at 6. The magnitude of that excess was less than ½% of the total authorized spending limit. By contrast, the excess in this case is more than 10% of the total authorized amount, including base rate recovery, and more than 20% of the spending limit for the rider. Staff witness Parks testified that the magnitude of the difference was a factor in Staff's recommendation:

> The last time they went over the cap was about $250,000 and this time – which is approximately .4 percent of the amount that we had authorized for recovery or this amount of over 5 million is just over 10 percent of the amount that we were allowing for recovery through base rates and ESRR.

Tr. at 102.

Second, Staff expressed concern during the hearing about the lack of communication that it had had with the Company about the variance. In previous cases the Company reached out to the Staff and explained the situation and why they thought they would need more money, and in this case they didn't." *Id*.

The Company's requests for rate adjustment had all been based on projections and forecasts. Staff understands this. But Staff has consistently audited the rider in terms of authorized spending levels. The Commission has consistently approved adjustments of the rates based on requests for increases from the Company. Indeed, the Commission itself characterized recovery as "*limited* to $27.6 million annually" in the Company's most recent ESP case. *ESP IV* (Opinion and Order) (Apr. 25, 2018) at ¶111. Staff respectfully submits that this confirms its understanding of the Commission's intent that AEP-Ohio not be granted a "blank check," even for prudently incurred vegetation management expenses. Staff urges the Commission to adopt its recommendation in this case.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the below parties on the 27th of June, 2019.

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