

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**REPLY BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of Ohio Power Company's ("AEP") approximately 1.3 million residential customers, opposes Ohio AEP's request to collect an additional \$3.4 million dollars under its Electric Service Reliability Rider ("tree-trimming rider") for alleged incremental tree-trimming costs. AEP argues that the amount it could spend on tree-trimming under the tree-trimming rider was not capped (thus limiting the amount customers pay).<sup>1</sup> But the amount customers pay for tree trimming was limited by the PUCO – the tree-trimming rider was *capped* by the PUCO in AEP's third ESP case.<sup>2</sup> The money that AEP is attempting to collect exceeds the cap. AEP is not authorized to collect money exceeding the cap. The PUCO should not allow AEP to pass on costs it is unauthorized to collect to consumers.

---

<sup>1</sup> AEP's Initial Brief at 4.

<sup>2</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan*, Case No. 16-1852-EL-SSO et al, Opinion and Order (April 25, 2018) at 48.

Although the PUCO has permitted AEP to collect additional amounts in the past, they were much smaller than here.<sup>3</sup> In this Application, AEP is seeking to collect from customers *substantial* overspending for its tree-trimming, while consumers are at the same time experiencing less reliability.<sup>4</sup> AEP should not be permitted to charge consumers additional money in excess of the cap for its ineffective and excessive spending. Accordingly, the PUCO should deny AEP's Application as filed because its spending was above the cap set by the PUCO in its February 25, 2015 Opinion and Order.<sup>5</sup>

## II. RECOMMENDATIONS

**A. Consumer protection requires that the PUCO find that it *did* set a cap in its February 25, 2015 ESP III Order and that AEP *did* exceed this cap by over \$3.4 million.**

The PUCO placed an important consumer protection between AEP's tree-trimming costs and collecting those costs from customers – a cap on the amount of AEP's spending and, thus, a limit on the amount of money that it could collect from consumers.<sup>6</sup> Without the cap, the PUCO was concerned that AEP would be given a “blank check.”<sup>7</sup>

---

<sup>3</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.*, Case No. 08-918-EL-SSO, Opinion and Order (March 18, 2009); *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan*, Case No. 11-346-EL-SSO et al., Opinion and Order (August 8, 2012); *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan*, Case No. 13-2385-EL-SSO et al., Opinion and Order (February 25, 2015); *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan*, Case No. 16-1852-EL-SSO et al., Opinion and Order (April 25, 2018).

<sup>4</sup> See OCC's Initial Brief at 6.

<sup>5</sup> See ESP III Order.

<sup>6</sup> ESP III Order at 47.

<sup>7</sup> *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 at 32 (Mar. 18, 2009).

Because the PUCO did not intend for AEP to have a blank check, it capped the spending under the tree-trimming rider. The cap should be enforced here. The PUCO should not approve AEP's Application as filed because its spending was above the cap set by the PUCO.<sup>8</sup> The PUCO specifically said in ESP III that "recovery will be *limited* to \$27.6 million annually ...."<sup>9</sup> AEP's exceeding the cap by more than \$3.4 million is not appropriate.

AEP does not argue in its brief that it exceeded the spending cap. It argues that there is no cap.<sup>10</sup> AEP is wrong. When describing the elements of PUCO Staff's annual review in its testimony, AEP leaves out the most important part – consistency with the PUCO's ESP III Order.<sup>11</sup> AEP leaves out the spending cap established to protect consumers set by the PUCO.<sup>12</sup> It completely ignores the fact that the PUCO set a cap on its spending.<sup>13</sup> The PUCO approved AEP's tree-trimming rider at specified amounts for each year of the rider to protect consumers.<sup>14</sup> Further, and as PUCO Staff confirmed in its brief, throughout the history of AEP's ESP cases, the PUCO has made it clear that the approved tree-trimming rider amounts were a cap to protect consumers. AEP was

---

<sup>8</sup> *Id.*

<sup>9</sup> *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 at 111 (Apr. 25, 2018) (emphasis added).

<sup>10</sup> AEP Initial Brief at 3; Hearing Transcript at 17:21-24, 19:2-7, 24-25, 20:1-2.

<sup>11</sup> AEP Initial Brief at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *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 at 30-31 (Mar. 18, 2009).

expected to work with PUCO Staff to confirm the spending that will define the costs to be included in the tree-trimming rider.<sup>15</sup>

Instead of a spending cap, AEP argues that the PUCO merely agreed with AEP's cost *forecast*.<sup>16</sup> But no matter how AEP wants to engage in word play, the PUCO did set a consumer protection cap in ESP III, even if it referred to the cap as an "appropriate amount,"<sup>17</sup> as it has in ESP I,<sup>18</sup> II,<sup>19</sup> and III.<sup>20</sup> The PUCO specifically said in ESP III that "recovery will be *limited* to \$27.6 million annually..."<sup>21</sup>

AEP is also wrong to conclude that there cannot be a cap just because the PUCO referred to its spending as "projected" and "forecast."<sup>22</sup> These terms are not inconsistent with a cap. The PUCO has simply capped AEP's tree-trimming rider spending at AEP's own projected or forecasted spend in ESP I, II, and III. AEP also points to PUCO Staff's position in the ESP III order as justification that there is no cap: "Staff notes that, if AEP Ohio's O&M expense exceeds \$18 million, there is a mechanism to ensure the Company recovers the *appropriate* amount in the annual ESRR reconciliation filing."<sup>23</sup>

---

<sup>15</sup> PUCO Brief at 2-7.

<sup>16</sup> AEP Initial Brief at 4.

<sup>17</sup> ESP III Order at 48.

<sup>18</sup> *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 08-917-EL-SSO, Opinion and Order at 32 (March 18, 2009).

<sup>19</sup> *In the Matter of the Application of Columbus Southern Power Company (CSP) and Ohio Power Company to Update Their Enhanced Service Reliability Riders*, Case No. 11-1361-EL-RDR, Comments and Recommendations at 3 (May 20, 2011).

<sup>20</sup> *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 at 4 (Feb. 17, 2015).

<sup>21</sup> *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 at 111 (Apr. 25, 2018) (emphasis added).

<sup>22</sup> AEP Initial Brief at 5.

<sup>23</sup> AEP Initial Brief at 4 (emphasis added).

But the PUCO used the modifier *appropriate*.<sup>24</sup> AEP's exceeding the cap by more than \$3.4 million is not appropriate. Allowing AEP to collect that amount would harm consumers and flout the consumer protection that the PUCO has established – the spending cap. Further, any company would almost certainly need to project and forecast (i.e. budget) its spending for operations and resource management, regardless of a cap imposed by a regulator. Budgeting is a normal and imperative function of a business. It defies logic that AEP concludes there is no cap merely because the PUCO agreed with its budget, and referred to a mechanism to ensure recovery of the *appropriate* amount.<sup>25</sup> It also defies precedent that the PUCO set caps in ESP I and II, but not in III.

In this case, AEP was approved to collect annually through the tree-trimming rider only up to a certain amount in O&M expenses and capital investment, above the amount in base rates.<sup>26</sup> But this is not enough for AEP. It is now asking the PUCO to award it over \$3.4 million *more* than what was approved in its last rate case.<sup>27</sup> The PUCO should confirm that AEP's tree-trimming rider spending was capped to protect consumers and deny AEP's request for additional recovery from customers of over \$3 million.

---

<sup>24</sup> ESP III Order at 48 (emphasis added).

<sup>25</sup> AEP Initial Brief at 4.

<sup>26</sup> *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).

<sup>27</sup> *In the Matter of the Application of Ohio Power Company to Update its Enhanced Service Reliability Rider*, Case No. 17-1914-El-RDR (Filed September 5, 2017).

**B. To protect consumers, the PUCO should not approve AEP's Application as filed because its spending was imprudent, inappropriate, and above the cap set by the PUCO in its February 25, 2015 Opinion and Order in Case 13-2385-EL-SSO ("ESP III Order").**

The PUCO should not approve AEP's Application as filed because its spending was above the cap set by the PUCO.<sup>28</sup> The PUCO specifically said in ESP III that "recovery will be *limited* to \$27.6 million annually ...."<sup>29</sup> AEP's exceeding the cap by more than \$3.4 million is not appropriate. Besides claiming there is not a cap on its spending (and contrary to its testimony in this case),<sup>30</sup> AEP's argument that its spending was prudent can be broken into three parts.

First, AEP argues that because PUCO Staff did not contend that any activities AEP took in 2016 were not beneficial, its spending was prudent.<sup>31</sup> Second, AEP argues that because PUCO Staff supports actions taken by AEP that would reduce future tree growth and future O&M costs for tree trimming, its spending was prudent.<sup>32</sup> Finally, AEP argues that since PUCO Staff did not contend that any of AEP's 2016 expenditures would not reduce future tree growth, its spending was prudent.<sup>33</sup>

But the PUCO's prudence review is not based *solely* on whether spending was beneficial, would reduce future spending, or would reduce future tree growth, as AEP has

---

<sup>28</sup> *Id.*

<sup>29</sup> *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 at 111 (Apr. 25, 2018) (emphasis added).

<sup>30</sup> AEP Witness Moore acknowledged that there may be a cap, but that it's irrelevant. *See* Hearing Transcript at 16:9-11.

<sup>31</sup> AEP Initial Brief at 3.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

argued.<sup>34</sup> As PUCO Staff testified, these factors may be considered *in addition to* expenses being “prudently incurred.”<sup>35</sup> AEP did not prudently incur its excessive expenses. It spent significantly above the cap set by the PUCO.<sup>36</sup> The PUCO should reject AEP’s arguments that there was no spending cap and deny its Application as filed.

In its brief, AEP alleges that OCC has not questioned whether AEP’s vegetation management was prudent.<sup>37</sup> But this is not true. In its consumer protection efforts, OCC has questioned the prudence of AEP’s vegetation management several times: on cross at the hearing for this case on May 23, 2019,<sup>38</sup> in its comments filed January 4, 2019,<sup>39</sup> and in its initial brief in this case.<sup>40</sup>

AEP argues that because the PUCO Staff did not contend that any activities AEP took in 2016 were not beneficial, would reduce future spending, or would reduce future tree growth, that its spending was prudent.<sup>41</sup> This argument is a red herring. The PUCO’s prudence review is not based *solely* on these factors.<sup>42</sup> As protecting consumers requires, these factors are *in addition to* expenses being “prudently incurred.”<sup>43</sup>

---

<sup>34</sup> Direct Testimony of Andrea M. Moore filed April 18, 2019 at 6:8-11 (“Moore Direct”).

<sup>35</sup> Direct Testimony of Daryl Parks filed May 3, 2019 (“Parks Direct”).

<sup>36</sup> ESP III Order at 47.

<sup>37</sup> AEP Initial Brief at 1.

<sup>38</sup> Transcript at 15:3-25; 16:16-19; 17:15-20; 18:1-4; 19:11-25; 34:12-18.

<sup>39</sup> *In the Matter of the Application of Ohio Power Company to Update its Enhanced Service Reliability Rider*, Case No. 17-1914-El-RDR, Comments by the Ohio Consumers’ Counsel at 4-5 (September 5, 2017) (“OCC Comments”).

<sup>40</sup> Initial Brief of the Ohio Consumers’ Counsel at 7-8.

<sup>41</sup> AEP Initial Brief at 3.

<sup>42</sup> Parks Direct at 5.

<sup>43</sup> Parks Direct at 5.

Further, AEP admitted that PUCO Staff has the discretion to use a cap as a tool to evaluate the prudence of vegetation management spending.<sup>44</sup> That is exactly what PUCO Staff did in this case when it found that AEP's vegetation management spending was imprudent because it *materially exceeded* the caps. Consumer protection requires that AEP not be entitled to recover such an overspend.<sup>45</sup>

AEP also alleges that PUCO Staff did not "identify any imprudent spend by the Company in connection with the financial audit."<sup>46</sup> But AEP is mischaracterizing PUCO Staff's testimony. PUCO Staff did not say that there was *no* imprudent spending. PUCO Staff said it did not find any non-prudent *individual* expenses.<sup>47</sup>

AEP is attempting to cherry-pick components of the prudence review that it believes are favorable, while ignoring those components that are not favorable.<sup>48</sup> PUCO Staff Witness Parks testified that the purpose of his "testimony was to address Staff's approach in its prudence review given the spending levels established by the Commission."<sup>49</sup> Despite AEP's attempts to mischaracterize the prudence review methodology and PUCO Staff's testimony, Mr. Parks did not equate purported "beneficial" activities with prudence.<sup>50</sup> But Mr. Parks *did* say that he recommended disallowances of approximately \$5.1 as a result of his review.<sup>51</sup> Contrary to what AEP

---

<sup>44</sup> Hearing Transcript at 20:13, 26:11-13.

<sup>45</sup> Parks Direct at 6.

<sup>46</sup> AEP Initial Brief at 2.

<sup>47</sup> Hearing Transcript at 100:25-101:1.

<sup>48</sup> AEP Initial Brief at 2-3.

<sup>49</sup> Parks at 3:5-9.

<sup>50</sup> AEP Initial Brief at 2-3; Moore Direct at 3:2-13.

<sup>51</sup> Parks Direct at 3-4.



argues, PUCO Staff did in fact perform a prudency review of AEP's tree-trimming rider and found imprudent spending of over \$5 million.<sup>52</sup>

Even with the excessive amounts it spent above the cap, AEP is not performing vegetation management on the four-year cycle, as required.<sup>53</sup> Nor is service reliability improving as a result of AEP's spending.<sup>54</sup> Despite the additional money that AEP has charged consumers for vegetation management under the tree-trimming rider, tree-caused outages are continuing to have a significant negative impact on customer reliability.<sup>55</sup> This result demonstrates that AEP's tree-trimming spend above the PUCO-set cap is both imprudent and inappropriate. Such spending harms consumers and should not be permitted.

The PUCO has already concluded that while the electric security plan statutes might permit single issue ratemaking in an ESP, there was no intent to provide electric utilities with a "blank check."<sup>56</sup> Here, AEP is asking the PUCO to give it a blank check for unwarranted spending. The PUCO should protect consumers and deny AEP's request.

### **III. CONCLUSION**

The PUCO should not approve AEP's Application as filed given the amount of money that AEP spent above the consumer protection cap established by the PUCO.

---

<sup>52</sup> Parks Direct at 5-6.

<sup>53</sup> Hearing Transcript at 27:7-17; OCC Comments at 5; OCC Initial Brief at 11-14.

<sup>54</sup> Hearing Transcript at 57:21-2.

<sup>55</sup> OCC Comments at 6; Direct Testimony of James D. Williams at 4-6 ("Williams Direct").

<sup>56</sup> *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 08-917-EL-SSO (March 18, 2009) at 32.

AEP has failed to comply with Ohio law and PUCO orders by spending above its approved cap by more than \$3.4 million. To protect consumers, the PUCO should disallow recovery of this amount as recommended by OCC and PUCO Staff.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ Ambrosia E. Logsdon*  
William J. Michael, (0070921)  
Counsel of Record  
Ambrosia E. Logsdon, (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7<sup>th</sup> Fl.  
Columbus, Ohio 43215  
Telephone: [Michael] (614) 466-1291  
Telephone: [Logsdon] (614) 466-1292  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[Ambrosia.Logsdon@occ.ohio.gov](mailto:Ambrosia.Logsdon@occ.ohio.gov)  
(Will accept service via email)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic service, this 11th day of July 2019.

*/s/ Ambrosia E. Logsdon*  
Ambrosia E. Logsdon  
Assistant Consumers' Counsel

### **SERVICE LIST**

[Werner.margard@ohioattorneygeneral.gov](mailto:Werner.margard@ohioattorneygeneral.gov)

[stnourse@aep.com](mailto:stnourse@aep.com)  
[cblend@aep.com](mailto:cblend@aep.com)

Attorney Examiners:

[Sarah.parrot@puco.ohio.gov](mailto:Sarah.parrot@puco.ohio.gov)  
[Greta.see@puco.ohio.gov](mailto:Greta.see@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/11/2019 1:35:59 PM**

**in**

**Case No(s). 17-1914-EL-RDR**

Summary: Brief Reply Brief by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Logsdon, Ambrosia E.