

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2016 Review of the)
Distribution Investment Rider Contained) Case No. 17-0038-EL-RDR
in the Tariff of Ohio Power Company.)

In the Matter of the 2017 Review of the)
Distribution Investment Rider Contained) Case No. 18-0230-EL-RDR
in the Tariff of Ohio Power Company.)

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

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I. INTRODUCTION

Ohioans pay enormous charges on their electric bills through riders implemented by single-issue ratemaking, where a utility's costs – but not its revenues – are examined. Ohio Power Company ("AEP Ohio") has 31 such riders that are used to charge customers for various endeavors by AEP Ohio. One such charge to customers is through the Distribution Investment Rider ("DIR" or "the Charge"). The Charge is supposed to help improve the reliability of AEP Ohio's distribution system. It hasn't. Despite collecting more than a billion dollars from consumers through the Charge since 2012, AEP Ohio's service reliability has gotten progressively worse.¹ The program funded by the Charge is ineffective.

¹ See Direct Testimony of James D. Williams in Opposition to the Joint Stipulation and Recommendation ("Williams Testimony") filed August 20, 2019 (OCC Ex. 2) at 11-24.

Nevertheless, the Staff of the Public Utilities Commission of Ohio (“PUCO”) has signed a Settlement that allows AEP Ohio continue this ineffective program.² The Settlement also allows practices that may harm consumers. Despite the auditor’s recommendation, the Settlement allows AEP Ohio to capitalize tree-trimming costs through the Charge until its next base rate case is complete.³ But money for this AEP Ohio reliability program is already included in AEP Ohio’s base rates and charges to customers for two other riders: the so-called Enhanced Service Stability Rider (“tree-trimming rider”) and the gridSMART Rider. Adding tree-trimming costs to a third rider opens the door for possible double, or even triple, collection of the same tree-trimming costs from customers. It would also circumvent the spending caps that the PUCO placed on the tree-trimming rider.⁴

The Settlement would also allow AEP Ohio to continue charging its customers for “incentives” for its employees until the issue is addressed in AEP Ohio’s next base rate case.⁵ AEP Ohio also will be allowed to charge consumers for its inefficient spare parts program until a future audit of the Charge, which is to occur at an unspecified time. These provisions of the Settlement are contrary to the public interest and regulatory principles and practice.

Because the Settlement is just a recommendation, it is not binding on the PUCO. The arguments in favor of the Settlement made by the PUCO Staff and AEP Ohio in their

² Joint Stipulation and Recommendation (July 2, 2019) (Joint Ex. 1) (“Settlement”).

³ *Id.* at 9.

⁴ *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 44.

⁵ Settlement at 8.

initial briefs do not support adoption of the Settlement. On the other hand, the Office of the Ohio Consumers' Counsel ("OCC") has shown that the Settlement does not meet the three-prong test for PUCO approval. The Settlement does not benefit customers or the public interest, and the Settlement violates important regulatory principles and practices.

To protect AEP Ohio's nearly 1.3 million residential consumers, the PUCO should reject the Settlement. Instead, the PUCO should adopt the recommendations set forth in OCC's Initial Brief in this case.

II. RECOMMENDATIONS

A. The Settlement does not benefit customers, is not in the public interest, and should be rejected.

1. To protect consumers the Settlement should be rejected because customers have been harmed by being charged more than a billion dollars for reliability "improvements" that haven't worked.

Both the PUCO Staff and AEP Ohio argue that the Settlement is supported by commitments regarding tree trimming outside the right-of-way.⁶ They contend that these commitments are in the public interest and benefit consumers.⁷ But they fail to recognize that these commitments will be delayed until the conclusion of AEP Ohio's next base rate case, which won't be filed until June 2020. It may be another year or more before that rate case is completed.

The proposed Settlement does not provide consumer protections regarding the potential that AEP Ohio is charging customers multiple times for certain tree-trimming

⁶ PUCO Staff Brief at 8-9; AEP Ohio Brief at 4-6.

⁷ *See id.*

costs in violation of the order approving the DIR.⁸ The PUCO placed several conditions on AEP Ohio's DIR spending. One condition was that there would be an annual prudence review and the assurance of no double charges to customers of amounts included in base rates and amounts charged to customers through other riders.⁹

OCC Witness Hecker emphasized that the auditor was not able to confirm that AEP Ohio was properly separating tree-trimming costs between capital and expense.¹⁰ Therefore, as OCC Witness Hecker found, it is possible that AEP Ohio could collect the same tree-trimming costs from customers multiple times through different rider charges.¹¹ OCC Witness Hecker recommended that the PUCO prohibit AEP Ohio from all of the following which are presently allowed by the Settlement the PUCO is considering: 1) to earn a return on and of tree-trimming costs in the DIR; 2) to collect over \$50 million annually in tree-trimming costs in base rates and the tree-trimming rider; and 3) to collect tree trimming costs that exceed the cap through the ESRR rider.¹² As OCC Witness Hecker noted "AEP has the money it needs to fund its vegetation management program and to provide customers with safe and reliable service without reliance on the DIR. If it determines in a future base rate proceeding that it spends more

⁸ See Direct Testimony of Jeffrey P. Hecker in Opposition to the Joint Stipulation and Recommendation (OCC Ex. 1) filed August 20, 2019 ("Hecker Testimony") at 9.

⁹ *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 (August 8, 2012) at 47.

¹⁰ See Hecker Testimony at 11.

¹¹ See *id.*

¹² See *id.*

than it collects through base rates and the ESRR, then its base rates can be adjusted so it can collect the appropriate tree trimming costs.”¹³

The auditor recommended a change in AEP Ohio’s accounting of expenses for trimming trees outside the right-of-way. The auditor recommended that “any vegetation management activity on an existing right of way, other than what may come about because of storm restoration, should be considered expense.”¹⁴ But instead of addressing this consumer protection now, the Settlement allows AEP Ohio to continue using its flawed accounting methodology (capitalizing tree removal costs thereby earning a return on and of those costs) to calculate charges to customers. In the meantime, consumers could still be harmed by paying multiple times for the same costs associated with AEP Ohio’s tree-trimming program.

Further, as OCC discussed in its Initial Brief, the outages attributable to trees is largely due to AEP Ohio not following its current tree-trimming plan.¹⁵ As OCC Witness Williams testified, AEP Ohio’s tree-trimming plan requires the trees across the entire distribution system to be examined for potential hazards to power lines on a four-year cycle.¹⁶ The plan requires removal or pruning of trees inside and outside of the right-of-way if they pose a threat to power lines. Trees that are not an immediate threat to power lines, but that could be within the ensuing four years, are to be pruned.¹⁷ In addition, the

¹³ *See id.*

¹⁴ Case No. 18-820-EL-RDR, Compliance Audit of the 2017 Distribution Investment Rider (DIR) Ohio Power Company d/b/a AEP Ohio (August 23, 2018) (“2017 Audit Report”) at 15.

¹⁵ OCC Initial Brief at 14-16.

¹⁶ *See* Williams Testimony at 18.

¹⁷ *See id.*

tree-trimming plan requires monitoring the ash trees outside the cleared right-of-way and trimming or removing them to proactively reduce outages.¹⁸

AEP Ohio has not properly followed its tree-trimming plan. It has not removed trees inside and outside of the right-of-way during the four-year cycle-based tree trimming program. This has led to a large number of outages in 2018 caused by trees outside the cleared right-of-way. Although the Settlement includes a commitment by AEP Ohio to reduce outages caused by danger trees, the commitment is not quantified. Any “improvement” – even one less outage – satisfies the Settlement. Consumers will pay more through the Charge without any guarantee of significant improvement in AEP Ohio’s reliability.

Not surprisingly, the Settlement contains no penalty for AEP Ohio if it does not live up to its “commitment.” This does not provide an incentive for AEP Ohio to significantly improve its reliability.

The Settlement does not benefit consumers and is not in the public interest. The PUCO should reject the Settlement.

2. Charging consumers through the Charge for incentive pay is not in the public interest and harms consumers.

There is no dispute that AEP Ohio is charging customers for incentive pay through the DIR. But instead of addressing this issue now, the PUCO Staff and AEP Ohio have deferred the matter to the next rate case.¹⁹ This does not protect consumers from paying unlawful charges *now*.

¹⁸ *See id.*

¹⁹ *See* AEP Ohio Brief at 7-8; PUCO Staff Brief at 6-7.

Incentive pay, especially associated with financial incentives, should not be charged to utility customers because these financial incentives are paid to the utility's employees when established profitability (or other) targets are met.²⁰ Perversely, the profitability targets can be met by charging customers *more* in rates or riders, such as the DIR.²¹ As OCC Witness Hecker explained "The primary beneficiary of meeting the targets is AEP's shareholders – *not* consumers."²² OCC disputes charges, and the PUCO Staff usually disallows charges, to utility consumers that include a utility incentive pay component, especially if the incentives are based on financial performance of the utility.²³ Allowing utilities to keep charges to customers based on incentive payments is not the PUCO's usual practice.

The auditor in this case concluded that \$353,207 in inappropriate incentive-related costs were included in the Charge and paid by consumers in 2016.²⁴ It calculated that \$1.7 million has been included and charged to consumers since the Charge was initiated through 2016.²⁵ But instead of removing the incentive pay from the Charge in

²⁰ See Hecker Testimony at 5.

²¹ See *id.*

²² See *id.*

²³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case Nos. 16-664-EL-RDR and 17-781-EL-RDR, Finding and Order (May 15, 2019) at 3 and 4; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR et al, Opinion and Order (January 21, 2009) at 17 ("to the extent that financial incentives are awarded for achieving financial goals, the primary benefit of such financial incentives accrues to shareholders and that portion of incentive compensation should not be recovered from ratepayers.").

²⁴ See Hecker Testimony at 4. See also Case No. 17-38-EL-RDR, Compliance Audit of the 2016 Distribution Investment Rider (DIR) Ohio Power Company d/b/a AEP Ohio (August 9, 2017) ("2016 Audit Report") at 8.

²⁵ See Hecker Testimony at 4, citing 2016 Audit Report at 23.

this case, the Settlement permits AEP Ohio to keep the \$1.7 million that it should not have charged to customers for incentive compensation until completion of the rate case to be filed in 2020.²⁶

In other words, AEP Ohio keeps money that should not have been charged to customers and might – or might not – return it to customers sometime in 2021 (depending on the outcome of the rate case). And probably without AEP Ohio paying interest to customers. This does not address the auditor’s recommendation. The Settlement does not benefit customers or the public interest.²⁷ The PUCO should reject the Settlement and order AEP Ohio to refund the \$1.7 million to customers immediately.

3. Unreasonably charging consumers through the DIR for spare equipment is not in the public interest and harms consumers.

The Auditor concluded that AEP Ohio could have procured almost \$1.9 million in spare equipment in a more cost-effective manner.²⁸ The auditor recommended further review of AEP Ohio’s inclusion of capital spares in the Charge.²⁹ The Settlement, however, stated only that the review would occur “in a future DIR audit.”³⁰ It did not specify when that review would occur. Both the PUCO Staff and AEP Ohio claim that the Settlement addresses this issue.³¹ It does not.

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ 2017 Audit Report at 15.

³⁰ Settlement at 5.

³¹ PUCO Staff Brief at 7-8; AEP Ohio Brief at 7-8.

Thus, the Settlement protects AEP Ohio, and harms consumers, by failing to resolve this issue in this proceeding or set a deadline for resolving the issue. It is uncertain if or when the matter will be resolved.

As OCC Witness Hecker explained, charging customers the full \$1.9 million for equipment currently in stock and already capitalized is unreasonable and against the public interest.³² Transformers and other capital equipment have been capitalized by AEP Ohio upon purchase. That has created an incentive for AEP Ohio to purchase large quantities of spare transformers, meters, and other potentially expensive capital equipment on which it can earn a return of and on investment – and as a result, charge customers through the DIR.³³

But the statutory purpose of the Charge is to support distribution infrastructure modernization.³⁴ Allowing AEP Ohio to charge consumers in this case through the DIR for large quantities of expensive spare equipment is fundamentally unfair to them and unlawful because the equipment is not used and useful for providing customers service, and it is not necessarily for infrastructure modernization.³⁵ These types of charges should be ineligible for collection from Ohio customers through the DIR.³⁶

Because the Settlement allows the charges to be collected from customers for an undefined period, with no guarantee that any of the charges will be returned to customers,

³² Hecker Testimony at 7-8.

³³ *See id.* at 8.

³⁴ R.C. 4928.143(B)(2)(h).

³⁵ *See* Hecker Testimony at 8.

³⁶ *See id.*

the Settlement does not benefit customers and the public interest. The PUCO should reject the Settlement.

B. The proposed Settlement violates important regulatory principles and practices because it would allow AEP Ohio to charge consumers unjust and unreasonable rates through the DIR. To protect consumers, the Settlement should be rejected.

The PUCO Staff and AEP Ohio argue that the Settlement does not violate important regulatory principles and practices.³⁷ They are wrong.

The Settlement is not consistent with PUCO precedent because it allows AEP Ohio to charge consumers for incentive pay. The Settlement violates several regulatory principles and practices. It allows AEP Ohio to capitalize over \$113 million between 2018 and 2021³⁸ in tree-trimming costs after initial clearing, in violation of the capitalization guidelines in the FERC Uniform System of Accounts.³⁹ Account 365, Overhead Conductors and Devices, includes “tree trimming, initial cost including the cost of permits.” Account 360, Land and Land Rights, says “do not include cost ... to trim trees.” The determination of what are “danger trees” would typically not be in the initial cost of clearing.⁴⁰

OCC Witness Hecker explained that state regulatory policy says that customers should not pay any more than is just and reasonable for utilities to cover expenses and provide an opportunity to earn a reasonable profit.⁴¹ But if the PUCO allows AEP Ohio to include all of the charges it proposes in the DIR, in spite of the recommendations by the

³⁷ PUCO Staff Brief at 6; AEP Ohio Brief at 8.

³⁸ See Hecker Testimony at 14.

³⁹ See *id.*

⁴⁰ See *id.* at 13.

⁴¹ See *id.* at 15; see also R.C. 4928.02(A); R.C. 4905.22.

auditor selected by the PUCO, customers would be paying more than just and reasonable rates for electric services.⁴² This is because (as discussed in more detail above) the charges would include financial incentives, the costs of procuring large amounts of capital spares, and the capitalization of certain tree-trimming costs.⁴³ The Settlement violates important regulatory principles and practices. It should be rejected.

III. CONCLUSION

AEP Ohio has charged consumers more than a billion dollars through the DIR for the purpose of increasing system reliability. It hasn't worked. The reliability of AEP Ohio's system has been in decline since the DIR has been in place. The Settlement does not include a specific commitment for AEP Ohio to improve reliability or a penalty if its reliability does not improve – or worsens. This is not a consumer benefit.

The DIR provides a means for AEP Ohio to collect the same costs from customers multiple times, as the auditor concluded. The Settlement in this case would continue the unreasonable charges to customers through the DIR, including charges to consumers that include financial incentives paid to AEP Ohio's employees and an inefficient spare parts policy. The Settlement does not benefit consumers, is not in the public interest, and violates several important regulatory policies and practice. The PUCO should protect consumers and reject the Settlement.

⁴² *See id.*

⁴³ *See id.*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief of the Office of the Ohio Consumers' Counsel was served via electronic transmission to the persons listed below on this 24th day of October 2019.

/s/ Terry L. Etter

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