THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY TO UPDATE ITS ENHANCED SERVICE RELIABILITY RIDER FOR 2016.	**CASE NO. 17-1914-EL-RDR**

OPINION AND ORDER

Entered in the Journal on December 4, 2019

I. SUMMARY

{¶ 1} The Commission approves the application of Ohio Power Company to adjust its enhanced service reliability rider, subject to the recommendations of the Staff as filed on May 29, 2018, and amended and supplemented on January 18, 2019, and March 29, 2019.

II. DISCUSSION

A. Applicable Law

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric distribution utility (EDU), as defined in R.C. 4928.01(A)(6), and a public utility, as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer, in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with R.C. 4928.143.

{¶ 4} In Case No. 08-917-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP, which included approval of the enhanced service reliability rider (ESRR) through which the Company recovers incremental costs associated with its enhanced vegetation management program. The ESRR is subject to Commission review and reconciliation on an annual basis. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al. (*ESP 1 Case*), Opinion and Order (Mar. 18, 2009) at 30-34, Entry on Rehearing (July 23, 2009) at 17-18. As a part of each of the Company's subsequent ESPs, the Commission has approved the continuation of the ESRR. *In re Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012); *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015); *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al. (*ESP 4 Case*), Opinion and Order (Apr. 25, 2018).

{¶ 5} In the Company's third ESP, effective June 1, 2015, through May 31, 2018, the Commission approved the continuation of the ESRR, including AEP Ohio's requests to increase ESRR forecasted operations and maintenance (O&M) expense and capital costs. Specifically, AEP Ohio forecasted ESRR capital costs of $1 million per year for 2015 through 2017, and $1.1 million for 2018, as well as O&M expenses of $25 million per year for 2015 through 2017, and $26.3 million for 2018. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 47, 49.

B. Procedural History

{¶ 6} On September 5, 2017, AEP Ohio filed an application to reconcile its ESRR rate for 2016.

{¶ 7} Staff filed its review and recommendations on May 29, 2018. AEP Ohio filed reply comments on June 25, 2018.

{¶ 8} By Entry dated December 5, 2018, the attorney examiner established a procedural schedule, in order to assist the Commission in its review of AEP Ohio's ESRR application for 2016.

{¶ 9} Ohio Consumers' Counsel (OCC) filed a motion to intervene on December 21, 2018.

{¶ 10} On January 4, 2019, OCC filed comments, and AEP Ohio filed reply comments on January 18, 2019. Also on January 18, 2019, Staff filed a response to AEP Ohio's June 25, 2018 reply comments.

{¶ 11} By Entry issued March 15, 2019, the attorney examiner determined that, based upon the comments and reply comments, testimony should be filed by the parties with AEP Ohio's testimony due by April 19, 2019, and Staff's and OCC's testimony due by May 3, 2019, and a hearing scheduled to commence on May 14, 2019. The March 15, 2019 Entry also granted OCC's motion to intervene.

{¶ 12} On March 29, 2019, Staff filed an updated review and recommendations.

{¶ 13} On April 18, 2019, AEP Ohio filed the testimony of Andrea E. Moore in support of its ESRR reconciliation application.

{¶ 14} On May 1, 2019, OCC filed a motion for a continuance of the evidentiary hearing, until May 23, 2019, and a request for expedited ruling. By Entry issued May 2, 2019, the motion for a continuance of the hearing was granted.

{¶ 15} The hearing was held, as rescheduled, on May 23, 2019. Admitted into the record of evidence at the hearing, among other exhibits, were AEP Ohio's application to update and reconcile the ESRR (Co. Ex. 2), the testimony of Andrea E. Moore (Co. Ex. 1), the testimony of James D. Williams (OCC Ex. 1), the testimony of Jeffrey P. Hecker (OCC Ex. 2), the testimony of Daryl Parks (Staff Ex. 1) and the Staff's reviews and recommendations filed on May 29, 2018, January 18, 2019 and March 29, 2019 (Staff Ex. 2, Staff Ex. 3, and Staff Ex. 4, respectively). The parties agreed to file initial briefs by June 27, 2019, and to file reply briefs by July 11, 2019.

{¶ 16} Initial and reply briefs were timely filed by AEP Ohio, Staff, and OCC.

C. Summary of the Application

{¶ 17} In its application to update and reconcile the ESRR, AEP Ohio requests recovery of $9,187,763, after accounting for carrying charges and an over-collection of $13,349,772 in revenues for 2016. Accordingly, AEP Ohio proposes the ESRR rate of 1.44775 percent of base distribution revenues on the customer's monthly bill, a decrease of 5.89344 percent from the current rate, be adopted. (Co. Ex. 2.)

D. Summary of the Audit Report

{¶ 18} As part of its annual review of AEP Ohio's application to update its ESRR, Staff conducted a financial audit of ESRR incurred costs, including O&M expenses and capitalized vegetation management costs, for prudency and accuracy, performed a physical verification of the 2016 tree trimming activities, and reviewed the Company's compliance with the Commission-approved vegetation management program and recovery mechanism as part of the *ESP 3 Case*. In its review and recommendations filed on May 29, 2018, and amended and supplemented on January 18, 2019, and March 29, 2019, Staff made no recommendations as a result of the financial audit component of its review. Staff determined, based on the 56 circuits observed, that vegetation line clearance was performed as scheduled in 2016. Staff noted that each of the 56 circuits reflected no vegetation management concerns; however, three circuits, trimmed approximately 13 months to 25 months prior to the audit, showed moderate re-growth at the time Staff performed its physical verification. AEP Ohio was informed of the locations of the three circuits and Staff requested that the Company visit the sites to assess if additional trimming is needed prior to the next scheduled vegetation trimming cycle. Staff determined that AEP Ohio's 2016 spending exceeded the incremental $25 million O&M and $1.0 million capital expenditure amounts approved by the Commission in the *ESP 3 Case*. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 47. Therefore, Staff ultimately recommends that $3,076,878 of O&M expenses and $2,066,897 of capital costs be disallowed, and the revenue requirement be revised to $5,759,255. Based on Staff's recommended disallowance, Staff recommends that the ESRR be set at 0.90751 percent of a customer's monthly base distribution charges. (Staff Ex. 2 at 2-3; Staff Ex. 3; Staff Ex. 4 at 2, Att. 1.)

E. Summary of the Parties' Positions

1. AEP OHIO'S POSITION

{¶ 19} AEP Ohio advocates that its application to update and reconcile its ESRR for 2016 incremental O&M expenses and capital investment costs, including the over-collection, is reasonable and prudent as filed. As AEP Ohio interprets the Commission's Order in the *ESP 3 Case*, AEP Ohio is entitled to recover its ESRR spending based on AEP Ohio's prudently incurred costs, subject to the Commission's review and reconciliation on an annual basis. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 49. The Company argues that Staff performed a financial audit, including a prudency review of the Company's incurred O&M expenses and capitalized vegetation management costs, and determined that the work was competitively bid. In addition, the Staff reviewed invoices to confirm that expenses were correctly attributed to circuits trimmed in 2016, as well as evaluated the accuracy of the Company's revenue requirement calculation. As a part of the audit process, AEP Ohio notes that Staff also performed a physical verification of the Company's 2016 tree trimming activities and confirmed that vegetation clearance work had been performed on all the circuits audited. AEP Ohio emphasizes that, following its review, Staff does not contend that the 2016 expenditures were imprudent. (Staff Ex. 2 at 2-3; Tr. at 25, 92-93; Co. Br. at 2-3.)

{¶ 20} AEP Ohio contends, despite Staff's and OCC's claims to the contrary, the $26 million ESRR for 2016 ($25 million of O&M expenses and $1 million of capital costs) established in the Company's *ESP 3 Case* is not a spending cap. As AEP Ohio interprets the ESP 3 decision, the Commission recognized and approved the Company's ESP application based on cost forecasts, not a maximum spending level beyond which the Commission would disallow recovery of prudently-incurred costs. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 48-49. AEP Ohio asserts, based on the record evidence in the *ESP 3 Case*, specifically the testimony of Company witness Dias, that the ESRR forecast estimates presented by the Company are subject to change based on a number of factors, including evolution of the work plans, changing priorities, the availability of resources, or an unexpected major storm which would divert resources, as opposed to a fixed revenue requirement amount. (Co. Ex. 1 at 4; Co. Br. at 4-5.)

2. STAFF'S POSITION

{¶ 21} Staff proclaims that the issue in this case is simple, whether the projected spending levels approved by the Commission in the *ESP 3 Case* for the ESRR rate are intended as a limit or cap on AEP Ohio ESRR spending, or merely reflect the Company's estimated forecast. As Staff interprets the Order in the *ESP 3 Case*, Staff contends the answer is clear that the Commission adopted the forecast as a cap on the authorized spending. Staff relies not only on the *ESP 3 Case* but the evolution of the vegetation management rider and rate mechanism since the ESRR was approved in AEP Ohio's first ESP. Staff notes that the Commission approved the rider as the appropriate mechanism for the Company to recover prudently incurred incremental costs associated with vegetation management that exceeded the amount recovered in distribution rates, pursuant to R.C. 4928.143(B)(2)(h), subject to annual review and reconciliation. *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 30-31, 33, 34. Staff reasons that the forecasted costs on which the Commission based its decision were set forth in the testimony of AEP Ohio witness Karl G. Boyd, which establishes incremental spending of $31.5 million in year one, $34.8 million in year two, and $38.1 million in year three of ESP 1. Staff argues that it is apparent that the stated amounts are spending caps in the Entry on Rehearing in the *ESP 1 Case* where AEP Ohio filed a request for clarification. In response to the Company's request for clarification, Staff notes that 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."[1] *ESP 1 Case*, Entry on Rehearing (July 23, 2009) at 18. Staff asserts that its interpretation is consistent with the Commission's ESP Orders authorizing the recovery of

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[1] In the *ESP 1 Case,* AEP Ohio proposed a group of enhanced service reliability programs (ESRP) of which only the vegetation management program was approved.

prudently incurred ESRR costs within the stated spending caps and is apparent in its initial audit report following the adoption of the ESRR. Staff argues that its interpretation of the Order in the *ESP 1 Case* has been reiterated in subsequent audit reports and recommendations, as well asthe Commission's ESP Orders. (Staff Br. at 2-4.)

{¶ 22} Staff offers that, as part of the Company's *ESP 2 Case*, the Commission approved the continuation of the ESRR through May 31, 2015, primarily as approved in the *ESP 1 Case*, with increases in the O&M expense, to continue the transition from a performance-based program to a four-year, cycle-based trimming program as a result of the delayed decision in the *ESP 2 Case* and storm activity. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 64-65. The Staff submits that the language used by Staff in its audit investigation reports to update the ESRR during the ESP 2 term ("exceeded authorized levels by $248,348") and the Commission's orders reinforces Staff's interpretation of the expenditures as a cap not to be exceeded. *In re Ohio Power Co.*, Case No. 12-3285-EL-RDR et al., Finding and Order (Feb. 26, 2014) at 5; *In re Ohio Power Co.*, Case No. 14-1578-EL-RDR, Finding and Order (June 3, 2015) at 5. (Staff Br. at 5-6.)

{¶ 23} Key to the Staff's argument seeking to disallow spending above what Staff interprets as a Commission-approved cap, is Staff's assertion that, when Staff has endorsed AEP Ohio's spending above the stated forecasted amount in other ESRR proceedings, Staff found the spending to be prudent and reasonable based on the circumstances as justified by the Company. In this case, Staff asserts the Company failed to offer any justification for the ESRR spending in excess of the spending limit. Further, Staff notes that AEP Ohio's actual expenditures exceed the forecasted spending level by a total of more than $5 million, or 20 times the amount of the excess Staff previously recommended to be reasonable and approved by the Commission. *In re Ohio Power Co.*, Case No. 12-3285-EL-RDR, et al., Finding and Order (Feb. 26, 2014) at 5. Staff warns that, if the Commission does not control such excess spending in this case, the Commission can most certainly expect future excesses to be even greater. (Staff Br. at 7-10; Tr. at 92; Staff Ex. 2 at 3; Staff Ex. 4.)

3. OCC's Position

{¶ 24} OCC endorses Staff's recommendation to disallow O&M and capital expenses which exceed the incremental forecasted $25 million in O&M expense and $1.0 million in capital expenditures for 2016, as inconsistent with the amounts established and approved in AEP Ohio's *ESP 3 Case*. OCC, like Staff, reasons that the caps established in the Company's ESP proceedings serve as a control on the Company's spending. Otherwise, OCC asserts the ESP provisions could serve as a "blank check" for the electric utility. (OCC Ex. 2 at 4-5, 8; OCC Br. at 3, 4.)

{¶ 25} Beyond the endorsement to disallow the ESRR spending above the forecasted spending level, OCC declares that, as a public utility, AEP Ohio is required to furnish necessary and adequate service and facilities and that all charges for any service must be just and reasonable. R.C. 4905.22; R.C. 4909.15(A). Therefore, OCC asserts the 2016 ESRR expenditures in excess of the forecasted amounts in ESP 3 should be disallowed to protect customers. Further, OCC advocates that the ESRR should be discontinued immediately, or at the latest, discontinued in AEP Ohio's next base rate case to be filed by June 1, 2020. OCC offers several reasons that the ESRR should be discontinued. OCC reiterates, as argued in the *ESP 3 Case*, that AEP Ohio's ESRR was initially approved to facilitate AEP Ohio's transition from a reactive tree-trimming program to a proactive four-year, cycle-based vegetation management program and has been extended in each of AEP Ohio's subsequent ESP cases, thereby morphing into a permanent source of revenue for AEP Ohio. OCC reiterates that the Company's vegetation management plan should be addressed as a part of base rate proceedings where all distribution and related revenues and expenses can be examined. OCC reasons that AEP Ohio's vegetation management is funded through base rates as well as multiple riders, the ESRR and the distribution investment rider, impeding the ability to determine the effectiveness of the Company's overall vegetation management plan. According to OCC, AEP Ohio's most recent maintenance, repair, and inspection program, filed in Case No. 15-2071-EL-ESS pursuant to Ohio Adm.Code 4901:1-10-27, includes vegetation control and requires AEP Ohio to proactively reduce outages caused by infested ash trees, which are generally located beyond the right-of-way. Nonetheless, OCC emphasizes that AEP Ohio has been ineffective in reducing the Company's tree-caused outages, as OCC asserts that, for the year 2018, there were 7,503 outage events across the AEP Ohio service territory resulting in 416,672 customers being interrupted for 98.4 million minutes. (Co. Ex. 1 at 10-11; OCC Ex. 1 at 5, 11-14; OCC Ex. 1-A; OCC Ex. 1-B; OCC Ex. 1, Att. JDW-2 at 25.)

{¶ 26} OCC avers that AEP Ohio has not met the minimum reliability performance standards, the System Average Interruption Frequency Index (SAIFI) and the Customer Average Interruption Duration Index (CAIDI), for 2018 under Ohio Adm.Code 4901:1-10-10. OCC notes that, according to the annual system reliability report filed in Case No. 19-992-EL-ESS on March 29, 2019, AEP Ohio's performance standards for 2018 were a SAIFI of 1.19 and a CAIDI of 149.00 minutes, with lower numbers indicating better performance. OCC states that AEP Ohio's actual reliability performance for 2018 resulted in a SAIFI of 1.3 and a CAIDI of 150.32 minutes. Accordingly, OCC requests that the Commission enforce the reliability performance standards pursuant to Ohio Adm.Code 4901:1-10-30. (OCC Ex. 1 at 4-5, 10-12, Att. JDW-2 at 2; OCC Ex. 1-A; OCC Ex. 1-B.)

III. COMMISSION CONCLUSION

{¶ 27} The Commission notes that the ESRR was initially adopted as an element of AEP Ohio's first ESP. In each of AEP Ohio's subsequent ESP proceedings, AEP Ohio has requested the continuance of the ESRR and the Commission has approved the rider without any significant changes in the operation of the mechanism. In the ESP effective during the 2016 ESRR audit period, AEP Ohio requested, and the Commission approved, the continuation of the ESRR, subject to forecasted cost increases of $1.0 million in capital costs and $25 million in O&M expenses. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 47-49.

{¶ 28} The Commission recognizes that the projected costs for a component of an ESP, as proposed by the EDU, are a projection based on the information known to the utility at the time the application is filed. Further, a component of the proposed ESP, like the ESRR, may be amended and supplemented, and requirements may be imposed by the Commission. The components of an ESP must be appropriately flexible to adapt to circumstances over the course of the term of the ESP. Therefore, the Commission does not view the projected or forecasted costs approved in the ESP as a hard cap or limitation on the Company's spending. In the *ESP 3 Case*, the Commission noted that the ESRR supports a proactive vegetation program that reduces the impact of weather events and maintains the overall electric system, in preventing and reducing tree-related outages and service interruptions. Although the Commission found that AEP Ohio's forecast was reasonable, the Commission did not establish a fixed revenue requirement. Rather, the Commission emphasized that the ESRR is based on AEP Ohio's prudently incurred costs and is subject to annual review and reconciliation. *ESP 3 Case* at 49.

{¶ 29} For these reasons, the Commission does not view the projected or forecasted costs approved in the *ESP 3 Case* as a hard cap or limitation on the Company's spending. In this case, we recognize that, according to AEP Ohio, the ESRR reflects the Company's increased cost to address the spread of the destructive emerald ash borer throughout the Company's service territory, which includes largely forested areas. Significantly, Staff did not determine that any of the incurred O&M or capital expenses were imprudent. The Commission also notes that, in the Company's most recent ESP proceeding, pursuant to a stipulation and recommendation executed by AEP Ohio, Staff, and numerous other intervening parties, AEP Ohio agreed to limit recovery under the ESRR to $27.6 million annually until the next AIR case order. *ESP 4 Case*, Opinion and Order (Apr. 25, 2018) at ¶ 111. Notably, no such cap or limit was established for the ESRR as effective for 2016. The Commission, therefore, finds that AEP Ohio's application to update its ESRR rate to 1.44775 percent of base distribution revenues on a customer's monthly bill should be approved consistent with the application. (Co. Ex. 1 at 3, 10-11; Co. Ex. 2; Staff Ex. 2 at 2; Tr. at 91-92.)

{¶ 30} The Commission reminds AEP Ohio that the Company has an obligation to continually monitor and analyze its spending on ESP programs. In light of this obligation, the Company must inform Staff if the Company is likely to exceed the projected O&M

and/or capital expense level and provide an explanation for exceeding the spending level. As was noted in the first ESP, the goal is "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 [Company] to work with Staff to strike the correct balance." *ESP 1 Case*, Entry on Rehearing (July 23, 2009) at 18. As the Commission also warned AEP Ohio in its first ESP, while single-issue ratemaking for distribution infrastructure and modernization incentives is authorized under the ESP statute, the intent is not to provide the electric utilities a "blank check." *ESP 1 Case*, Opinion and Order (Mar. 18, 2009) at 32.

{¶ 31} Regarding OCC's request that the ESRR be immediately terminated or, in the alternative, terminated in AEP Ohio's next filed base rate case, the Commission finds the request to be beyond the scope of this ESRR audit proceeding. As OCC recognizes, the Commission considered and approved the continuation of the ESRR as a part of the Company's *ESP 3 Case*. OCC's claims regarding AEP Ohio's compliance with the reliability performance standards and the Company's maintenance, repair, and inspection program report are more appropriately raised in other proceedings.

IV. Findings of Fact and Conclusions of Law

{¶ 32} AEP Ohio is a public utility, as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 33} On September 5, 2017, AEP Ohio filed an application to update its ESRR for 2016 expenditures.

{¶ 34} Staff filed its recommendations on May 29, 2018, as amended and supplemented on January 18, 2019, and March 29, 2019.

{¶ 35} OCC's motion for intervention was granted on March 15, 2019.

{¶ 36} The evidentiary hearing was held in this matter on May 23, 2019.

{¶ 37} AEP Ohio should be authorized to update its ESRR rate, consistent with this Opinion and Order.

V. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That AEP Ohio's application be approved and the ESRR rate updated to 1.44775 percent of base distribution revenues on a customer's monthly bill. It is, further,

{¶ 40} ORDERED, That AEP Ohio be authorized to file tariffs, in final form, consistent with this Opinion and Order. AEP Ohio shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 41} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 42} ORDERED, That AEP Ohio notify all customers of the changes to the tariffs via a bill message or bill insert within 45 days of the effective date of the tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 43} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 44} ORDERED, That a copy of this Opinion and Order be served upon all interested persons and parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GNS/SJP/hac