OFFICE OF THE OHIO CONSUMERS' COUNSEL

ELECTRIC

Introduction and overview

A considerable amount of electric industry activity in 2009 focused on implementing Ohio's new electric energy law, Amended Substitute Senate Bill 221. The law was signed by Gov. Ted Strickland in May 2008 and led to three sets of rulemaking cases at the Public Utilities Commission of Ohio (PUCO).

These cases essentially set the ground rules for generation rates offered by Ohio's investor-owned electric utilities: American Electric Power (AEP), Dayton Power & Light (DP&L), Duke Energy Ohio and FirstEnergy. Generation rates recover costs related to producing electricity at a power plant. As a member of the Ohio Consumer and Environmental Advocates, the Office of the Ohio Consumers' Counsel (OCC) took the lead in advancing the interests of residential electric customers in each rule-making procedure.

In addition to the rule making, the OCC participated in PUCO cases involving each investor-owned utility's Electric Security Plan (ESP), which in most instances set the generation rates customers would pay over the next three years. Some of the new cases set out proposed smart grid investments and how the efficiency and renewable energy standards in the new law would be accomplished.

A smart grid is a series of upgrades to the distribution system that enable two-way communication between the electric utility and consumers. One feature of the smart grid is advanced metering. This type of meter will allow consumers, in the near future, to take advantage of a menu of voluntary pricing options. These options will allow consumers to make more informed decisions about when to use electricity, possibly saving money.

The OCC helped negotiate agreements with consumer benefits in the ESP cases filed by DP&L, Duke Energy and FirstEnergy. The ESP case for AEP was litigated and was appealed by the OCC to the Supreme Court of Ohio in 2009.

The electric energy law allows the PUCO to review and approve discounted rates, also known as reasonable, special, unique arrangements or economic development cases, for industrial customers for various purposes, such as energy efficiency. The OCC participated in two cases in AEP's service territory – involving Ormet and Eramet – and in one case in FirstEnergy's territory, V&M Star. Each of these industrial customers requested discounted rates that would be subsidized by all ratepayers, including residential customers. The OCC sought a balanced solution in these cases that would promote economic development through electricity rate discounts while assuring reasonable rates for residential customers.

OCC challenges FirstEnergy distribution rate increase

Experts from the Office of the Ohio Consumers' Counsel (OCC) testified that a request for higher distribution rates by FirstEnergy should be significantly reduced. The OCC argued the utility failed to justify any rate increases for Cleveland Electric Illuminating and Ohio Edison. The OCC recommended the company's proposed increase for Toledo Edison customers be cut from $71 million to $25 million.

FirstEnergy proposed its $338 million annual revenue increase in June 2007. In January 2009, the Public Utilities Commission of Ohio (PUCO) allowed FirstEnergy to raise residential customers' distribution rates, but not as much as the utility requested. The PUCO allowed FirstEnergy to collect approximately $137 million in annual revenue increases from customers for distribution services.

Electric

Distribution rates recover costs related to the equipment, such as wires and substations, used to deliver electricity.

The OCC testified that more money should be devoted to energy efficiency programs to meet Ohio's new energy efficiency standards. The OCC also suggested FirstEnergy should improve its service quality and recommended that the PUCO order an investigation and penalties for instances of noncompliance with rules and for failure to meet performance targets.

The PUCO denied the OCC's request for a reliability investigation, but adopted the OCC's call for a more significant investment in energy efficiency programs.

Case Nos. 07-551-EL-AIR, 07-552-EL-ALT, 07-553-EL-AAM, 07-554-EL-AAM

Rate increase reduced in Duke Energy Ohio electric distribution case

An agreement reached in an electric distribution rate case by the Office of the Ohio Consumers' Counsel (OCC), the Public Utilities Commission of Ohio (PUCO) staff, Duke Energy Ohio and other parties reduced the utility's proposed distribution rate increases. It also provided payment assistance programs for eligible low-income residents. The agreement, reached in March 2009, was approved by the PUCO in July.

During its analysis of Duke's proposal, the OCC determined Duke had overstated its need for an \$85.6 million per year increase and provided evidence that the proposed increase should have been cut to \$39 million. The OCC proposed protecting residential consumers from a disproportionately high share of the rate increase, which included storm cost recovery, the collection of financial bonuses, incentive compensation and a high fixed customer charge.

The agreement reduced by 35 percent the annual distribution revenue increase Duke would have received. The agreement also provided benefits for residential consumers. It included a commitment by Duke to provide up to \$40,000 monthly for payment assistance until 10,000 households had been reached. The households had to have incomes at or below 200 percent of the federal poverty level and not be enrolled in the Percentage of Income Payment Plan. The parties also agreed Duke would not be entitled to increase rates as a part of this case for costs to restore power related to Hurricane Ike. Instead, Duke filed a separate application with the PUCO to request the recovery of costs associated with the September 2008 windstorm.

Case Nos. 08-0709-EL-AIR, 08-0710-EL-ATA, 08-0711-EL-AAM, 06-0718-EL-ATA, 09-1946-EL-ATA

American Electric Power electric security plan decision sought at Supreme Court

The Office of the Ohio Consumers' Counsel (OCC) asked the Supreme Court of Ohio to overturn a decision by the Public Utilities Commission of Ohio (PUCO) that approved the electric security plan of American Electric Power (AEP).

The OCC asked the Court to reject a PUCO order that made new, higher rates retroactive to the beginning of 2009. That order cost Columbus Southern Power customers \$30 million and Ohio Power customers \$33 million. A decision by the Court was expected in 2010.

Also at the OCC's urging, an AEP proposal for non-fuel generation increases was denied by the PUCO. That saved Columbus Southern Power (CSP) customers \$87 million and Ohio Power (OP) customers \$262 million. The PUCO, however, granted AEP a 567 percent increase of "provider of last resort" charges for CSP and a 38 percent increase for OP, costing customers \$153 million. This charge

OCC BENEFITS FOR LOW-INCOME CONSUMERS IN 2009: The OCC reached an agreement where Duke Energy Ohio committed up to \$40,000 a month for electric bill payment assistance to as many as 10,000 households. To be eligible for assistance, a household has to have combined incomes at or below 200 percent of the federal poverty level and not be enrolled in the Percentage of Income Payment Plan.

In two cases, the OCC fought for and received a low-income fuel fund totalling \$8.5 million for FirstEnergy customers at or below 200 percent of the federal poverty level. The OCC set up a diverse network of community agencies to quickly and effectively distribute the funds.

is for the alleged financial risk of AEP needing to provide electricity to customers who shop for alternative suppliers, but then return to the utility.

The OCC argued that AEP is only required to buy power at market rates when it is needed and does not need to have on-hand power for returning customers. Also, there were few, if any, customers switching for AEP to be concerned about.

The PUCO's decisions imposed a decade of rate increases on AEP customers over the objections of the OCC.

For example, based on the PUCO's modifications and approval of AEP's electric security plan in March, caps were placed on annual revenue increases. All generation fuel costs above the caps – estimated at approximately $900 million – will be deferred for collection from customers during the seven-year period 2012-2018. The interest rate on the deferral is approximately 11.15 percent.

The PUCO approved AEP's proposal for $178 million in energy efficiency programs. The OCC advocated to reduce the cost to customers of AEP's smart grid proposal from $109 million to $54.5 million over three years. The PUCO agreed and ordered AEP to apply for federal funding. The utility was awarded $75 million for its smart grid demonstration project in November.

The PUCO did not approve a majority of AEP's request for a $449 million Enhanced Service Reliability Plan, citing the need for further investigation in the context of a distribution rate case. The PUCO did approve the vegetation management portion of the plan at a cost of $104.5 million.

The OCC argued that the proposed rate increase would not have been needed if AEP had devoted sufficient resources to its distribution system in the past.

The OCC requested the PUCO rescind the retroactive portion of its order. The OCC was joined by The Kroger Co., the Ohio Hospital Association and the Ohio Manufacturers' Association. The OCC also requested the PUCO reconsider significant portions of its entire order, including the deferrals and very high interest charges, the excessive provider of last resort charge, unlawful retroactive rate collection, smart grid costs and vegetation management charges. All the OCC requests were denied.

Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, S.C. No. 2009-1620

FirstEnergy electric security plan and fuel rider decided; OCC sought better terms

In 2009, a proposed FirstEnergy electric security plan resulted in two agreements and new rates for residential customers. The Office of the Ohio Consumers' Counsel (OCC) litigated and argued for a lower rate than the Public Utilities Commission of Ohio (PUCO) approved.

The plan followed FirstEnergy's December 2008 withdrawal of its previous proposal after a decision by the PUCO to modify it. After two weeks of hearings and an extensive record, the PUCO issued an order setting the rates, which the OCC generally supported. However, a provision in the state's electric energy law allowed FirstEnergy to reject the commission's order. This resulted in the PUCO directing its staff to develop a new electric security plan and determine if an agreement could be reached among the parties.

To establish temporary rates until an electric security plan could be agreed upon, FirstEnergy held an unsupervised bidding process to supply customers with generation service at proposed prices. In January, the PUCO approved the temporary rates, which were ultimately extended through May.

In February, a settlement was signed by FirstEnergy and other parties, but not agreed to by the OCC and other members of the Ohio Consumer and Environmental Advocates.

> "My January (electric) bill was $316. I used 1455kw less in February vs. January and my bill was higher by $22. This should not be. We conserve and [Ohio Edison] is allowed to raise rates to pay excessive salaries to executives. They need to cut costs, not have guaranteed income by raising rates. So far for three months my bills are $155 higher than last year."
>
> *William S. Kirk*
> *North Ridgeville, Ohio*
> *March 12, 2009*

The OCC argued the settlement:

- Lacked sufficient consumer protections;
- Potentially stifled opportunity for aggregation that could lower rates;
- Did not provide enough money for fuel funds for low-income customers; and
- Did not include enough consumer representation in the energy efficiency collaborative.

Assistant Analytical Director Beth Hixon and Senior Regulatory Analyst Daniel Sawmiller meet to review a case.

The OCC and its allies fought for and received benefits for consumers as part of a supplemental agreement. It included:

- Better terms for governmental aggregation to help customers in the northeast and northwest areas of the state;
- A low-income fuel fund of $6 million for customers at or below 200 percent of the federal poverty level;
- A renewable energy credit program to help offset the costs of customer-sited renewable energy sources, such as solar panels; and
- The inclusion of residential customer interests in the development of energy efficiency programs.

The PUCO approved the original and supplemental agreements in March. Based on the original agreement, an auction was held in May to determine the price of generation charged to customers from June 2009 through May 2011.

The OCC supported the auction, correctly predicting rates would be reduced. A wholesale price of $61.50 per megawatt hour was obtained through the auction. The price was lower than customers' temporary rates, significantly lower than FirstEnergy had proposed through its original rate stabilization plan and lower than what the PUCO had approved. Rate decreases ranged from 13 percent annually for Ohio Edison customers to 16 percent for Toledo Edison customers based on 750 kilowatt-hour usage. Cleveland Electric Illuminating customers saw a slight net increase of 2.7 percent because of other rate increases. A total of 12 bidders participated in the auction, with nine obtaining winning bids.

Case Nos. 08-935-EL-SSO, 08-936-EL-SSO, 09-21-EL-ATA, 09-22-EL-AEM, 09-23-EL-AAM

Early payments to save $178 million; renewable energy credit program created

Residential customers of FirstEnergy will save $178 million in interest payments through the efforts of the Office of the Ohio Consumers' Counsel (OCC) and others. An agreement was reached between members of the Ohio Consumer and Environmental Advocates, which includes the OCC, and the company to pay some distribution costs early. In March 2009, the Public Utilities Commission of Ohio (PUCO) approved FirstEnergy's Electric Security Plan (ESP), which included a deferral of distribution costs for future recovery.

As part of the agreement, FirstEnergy also added $2.5 million into a fuel fund that will aid low-income electric consumers. A renewable energy credit program was enhanced to pay residents for the environmental benefits associated with the generation of electricity from renewable energy sources.

In FirstEnergy's ESP, the PUCO approved the utility collecting $352 million in deferred distribution costs over 25 years from residential customers. The early payments will result in full collection of the costs by the end of 2010 and eliminate $178 million in interest payments. The early payments only will be collected during non-summer months (September through May).

The improved residential renewable energy certificate program allows FirstEnergy's residential customers with renewable generation to be compensated at a fair market price over 15 years. If a fair market price is not available, FirstEnergy will pay 80 percent of the alternative compliance payment established in Ohio's electric energy law. The program will be available to customers through May 2011.

The addition of $2.5 million in shareholder dollars to the fuel fund grant program brings the total aid to low-income consumers to $8.5 million over three years. The fuel fund provides assistance to families at 200 percent of the federal poverty level or below. The additional fuel fund money was distributed evenly between the service territories of Cleveland Electric Illuminating, Ohio Edison and Toledo Edison.

Case Nos. 09-641-EL-UNC, 09-551-EL-REN

2008 windstorm costs deferred over the OCC's objections

Over the objections of the Office of the Ohio Consumers' Counsel (OCC), the Public Utilities Commission of Ohio (PUCO) approved requests to defer Hurricane Ike-related expenses for future collection from customers. American Electric Power (AEP), Dayton Power & Light (DP&L) and Duke Energy Ohio each filed requests in December 2008.

In the AEP case, decided at the end of 2008, the OCC asserted the utility's application lacked detail and should not be approved unless the utility could prove the expenses were lawful, reasonable and prudently incurred. The OCC also asserted that the method used to calculate interest on the deferrals should be altered to reduce the charges to consumers.

American Electric Power crews repair electric lines during outage from Hurricane Ike.

In the DP&L case, decided in January 2009, the OCC – similar to the assertion made in the AEP request – pointed to the lack of details about the expenses. The OCC also showed that DP&L sought the collection of all storm-related operations and maintenance expenses instead of only those above and beyond the amount of storm costs set in the utility's current distribution rates.

In the Duke case, also decided in January 2009, the OCC opposed the utility's request to collect the costs through its then-pending distribution rate case because those costs were extraordinary and unusual. Thus, the costs should not have been considered as expenses within the rate case's "test year." In addition, the OCC argued the utility failed to provide sufficient details about the claimed expenses.

In its decisions in these three cases, the PUCO modified and approved the utilities' requests to defer storm-related costs, but stated that the reasonableness and collection of deferrals from customers would be examined in future proceedings. In the AEP and Duke cases, the PUCO also changed the interest calculation, consistent with the OCC's recommendation in the AEP case.

Case Nos. 08-1301-EL-AAM (AEP), 08-1332-EL-AAM (DP&L), 08-709-EL-AIR, 08-711-EL-AAM (Duke)

AEP customers to subsidize Ormet

American Electric Power's (AEP) customers will subsidize the electricity used by Ormet Aluminum Corp., but potentially by much less per year than the manufacturer sought from the Public Utilities Commission of Ohio (PUCO). Under an approved "reasonable arrangement," a utility may request to charge other customers – including residential customers – for any discounts granted to a large customer.

Ohio's electric energy law permits reasonable rate arrangements based on unique circumstances granted to the company if the arrangements are filed and approved by the PUCO. Ormet bore the burden of proving its request was reasonable. The Office of the Ohio Consumers' Counsel (OCC) reviewed the proposal and found the discount request was excessive, potentially costing all Ohio customers of AEP as much as $2.8 billion over 10 years.

The OCC argued Ormet's proposal could result in residential and business customers of AEP paying the manufacturer's entire electric bill or even paying millions of dollars for Ormet to use electricity depending on variables such as the price of aluminum on the London Metal Exchange. The lower the market price of aluminum, Ormet proposed, the lower would be the company's electric rate because its product could not produce as much revenue. Under Ormet's proposal, the price of aluminum would have to increase by 65 percent before it would pay anything for the substantial amount of power it consumes.

The OCC sought a balanced solution that would promote economic development through electricity rate discounts while ensuring reasonable rates for all other customers, who must subsidize those discounts.

In its filing at the PUCO, the OCC was joined by the Ohio Energy Group, comprised of large energy users throughout the state, to recommend significant changes to Ormet's proposal.

Included in the OCC's recommendations was a cap on the subsidy to Ormet equal to $32.7 million per year, the approximate value of the company's Ohio payroll.

Any agreement should be shortened in length from 10 to five years. The OCC also opposed subsidizing "provider of last resort" charges for Ormet. This charge is supposed to compensate AEP for the risk of serving customers who switch back to the utility from an alternative supplier. Under the Ormet proposal, the aluminum company could not switch to an alternative supplier, eliminating any supposed risk.

In addition, the OCC argued that a credit proposed by Ormet to other customers when the price of aluminum rises should be enhanced to provide a maximum credit of $16.35 million per year.

The PUCO modified and approved the Ormet electric discount in July 2009, adding some consumer

OCC Attorney Maureen Grady and OCC Senior Regulatory Analyst Amr Ibrahim at a hearing.

protections. While a $60 million cap established in the PUCO's order was higher than recommended by the OCC, it was more favorable to customers than Ormet's proposal, which had no cap. In addition, the PUCO ordered the subsidy to Ormet be reduced each year beginning in 2012 and eliminated any provider of last resort subsidies that AEP requested beginning in 2010. Consistent with the OCC and Ohio Energy Group's arguments, the PUCO ordered more aggressive crediting to other customers to offset Ormet's subsidy if the price of aluminum rises and business is better for the company.

Reasonable arrangements that provided discounted rates to industrial customers also included Eramet in AEP's service area and V&M Star in FirstEnergy's service area. The Eramet decision continued the principle from the Ormet case that the discount should be reduced each year. The PUCO agreed with the OCC that AEP should not collect provider of last resort charges. Also, Eramet must make at least $20 million in capital investments to its Ohio manufacturing operations before Dec. 31, 2011 and another $20 million before Dec. 31, 2014.

In the V&M Star case, the OCC objected to the lack of information filed to support the company's proposed capital investment project. The OCC also objected to the lack of oversight by the PUCO. The OCC established that the amount of money residential customers will pay as a result of the special arrangement is unknown. The PUCO agreed with the OCC about the lack of transparency, but it did not modify the arrangement.

Case Nos. 09-119-EL-AEC (Ormet), 09-516-EL-AEC (Eramet), 09-80-EL-AEC (V&M Star)

Approval of Dayton Power & Light rate plan will benefit residential customers

The Office of the Ohio Consumers' Counsel (OCC) and other advocates secured benefits for customers of Dayton Power & Light (DP&L) with an agreement resolving outstanding issues in the utility's electric security plan.

The agreement was reached by the OCC, members of Ohio Consumer and Environmental Advocates, the Public Utilities Commission of Ohio (PUCO) staff, DP&L and other parties. The agreement, approved by the PUCO in June 2009, included limits on electric rate increases through 2012, and energy efficiency and renewable energy measures.

DP&L will continue its existing rate plan until 2012 and will add energy efficiency and renewable energy to its electric portfolio as required by Ohio's electric energy law. The development and implementation of these programs will provide residential customers with tools to lower their electricity usage.

Also, DP&L's base distribution rates for residential customers will be frozen through 2012. DP&L's original smart grid proposal, filed in 2008, more than doubled the typical costs of these improvements and failed to incorporate hundreds of millions of dollars in customer benefits to help offset those costs. After testimony and comments by the OCC, DP&L agreed to file a revised smart grid proposal, which it did later in 2009.

If approved, smart grid improvements will provide better electric service reliability and allow utilities to offer programs that give customers the ability to manage their usage based on the price of electricity at different times of the day.

Other elements of the agreement include:

- A collaborative energy efficiency work group to develop and implement energy efficiency programs, such as rebates for purchasing Energy Star appliances and discounts for weatherizing homes;
- An economic development rider assessed to customers' bills – initially set at zero. Rates could increase if and when DP&L requests to charge customers for discounts provided to large users of energy. Those rates must comply with PUCO rules and be approved by the PUCO before they are charged to customers;
- A fuel rider, effective Jan. 1, 2010, to recover actual cost increases DP&L incurs for fuel or purchased power; and
- Development of a renewable energy certificate (REC) program that will pay residential consumers a fee for RECs produced by customer-sited renewable energy, such as solar panels or wind turbines. The program will help offset the cost of adding renewable energy by a customer while helping DP&L meet the benchmarks under Ohio's electric energy law.

Case Nos. 08-1094-EL-SSO, 08-0195-EL-ATA, 08-1096-EL-AAM, 08-1097-EL-UNC