Introduction and Overview

Excessive earnings, discounts and new rate plans were the focus of electric activity the Office of the Ohio Consumers' Counsel (OCC) faced in 2010. American Electric Power (AEP) and FirstEnergy were at the forefront of the OCC's advocacy efforts. One AEP operating company's earnings were significantly excessive while FirstEnergy tried to gain quick approval of its electric security plan and reduced discounts to all-electric customers who saw winter bills soar to unprecedented levels.

Each of these electric cases received considerable attention from customers who looked to the OCC for assistance to ensure their rates would stay reasonable.

OCC opposes FirstEnergy rate plan

The Office of the Ohio Consumers' Counsel (OCC) asked the Public Utilities Commission of Ohio (PUCO) to reject an agreement filed by FirstEnergy in March because it would harm residential customers. The agreement, approved in August, established the utility's overall rates through an electric security plan for June 2011 – May 2014.

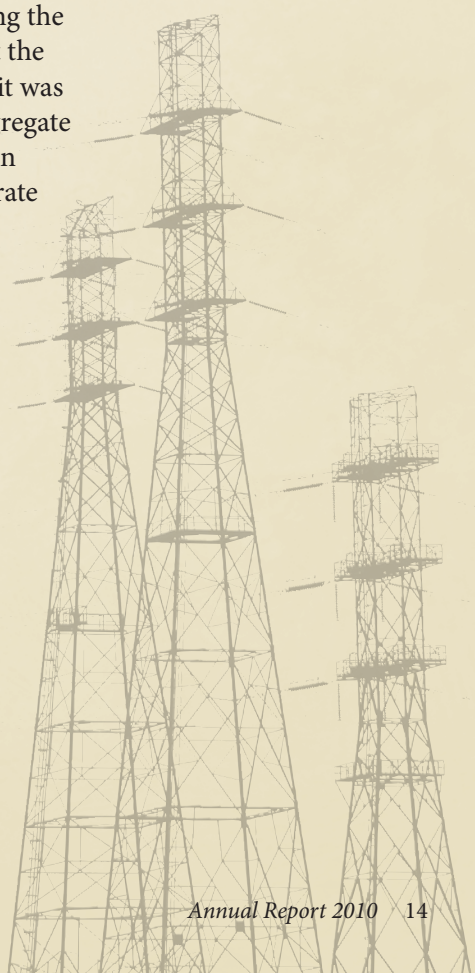
The plan included several elements the OCC opposed that would unnecessarily raise residential customers' rates. Among them were:

- A delivery capital recovery charge that replaced the current delivery system improvement charge. The new charge allows FirstEnergy to collect up to $390 million in quarterly increases over two and a half years without a process to evaluate all components of distribution rates for the reasonableness or prudence of the utility's decision-making. The current charge expires in December 2011;
- A FirstEnergy decision to switch regional transmission organizations. Under the proposed plan, the utility agreed to charge customers for certain costs related to this switch while absorbing other costs. The OCC contended FirstEnergy made a business decision to switch regional transmission organizations to benefit its competitive affiliate. Captive customers of its regulated distribution companies should not be responsible for any of the costs associated with the switch; and
- Economic development arrangements that could cost customers millions of dollars. The OCC argued the deals should have been fully reviewed and should have required provisions guaranteeing accountability for jobs creation. This would be the only way to ensure the money customers spent for economic development and jobs actually resulted in those jobs being created.

When FirstEnergy filed an agreement among many parties—not including the OCC—for a proposed electric security plan, it asked for an accelerated schedule. The PUCO initially accepted the accelerated schedule which gave the OCC only about six weeks to build a case to advocate on behalf of residential customers. In contrast, Ohio's electric energy law allows 275 days for the PUCO to rule on an electric security plan. The OCC argued more time should have been granted to prepare and litigate this case.

In August, the PUCO approved the FirstEnergy agreement, with some modifications. The OCC filed an application for rehearing on many aspects of the decision, including the PUCO's failure to reject the proposed plan because it was less favorable in the aggregate than securing generation supply under a market rate option. The OCC supported the least cost market option over the regulated option. The rehearing request was still pending a PUCO decision at the end of 2010.

Case No. 10-388-EL-SSO



OCC advocates for refund of excessive AEP profits

An analysis of an American Electric Power (AEP) utility's 2009 profits by the Office of the Ohio Consumers' Counsel (OCC) concluded its earnings were "significantly excessive." The OCC recommended to the Public Utilities Commission of Ohio (PUCO) that the excessive profits of Columbus Southern Power, an AEP operating company, should be returned to customers as quickly as possible. Under Ohio law, a utility that has significantly excess earnings as a result of a rate increase granted under an electric security plan must refund the excessive earnings to customers.

Several other organizations joined the OCC in its call for a refund of $102 to the average Columbus Southern Power customer. The other groups included the Ohio Energy Group, the Appalachian Peace and Justice Network, Ohio Manufacturers' Association (OMA), Ohio Hospital Association (OHA), Industrial Energy Users and Ohio Partners for Affordable Energy.

The OCC's analysis determined Columbus Southern Power had achieved significantly excessive profits once it exceeded 11.58 – 13.58 percent. The utility had a 2009 earned return of 20.84 percent, making it the most profitable electric utility in the United States.

AEP filed a settlement in November that asked the PUCO to allow Columbus Southern Power to keep $156 million in excessive profits in exchange for providing customers what AEP called "value."

The PUCO staff, OMA, OHA, The Kroger Co. and Ormet Primary Aluminum Corp. joined AEP in filing the settlement. AEP offered $1 million each to OMA and OHA and $100,000 to Kroger for their support of the settlement. The PUCO Staff signed the settlement even though it provided testimony that Columbus Southern Power had up to $96 million in excessive earnings.

The OCC opposed the settlement and maintained that Columbus Southern Power's 667,000 residential customers were entitled to a refund of the money they overpaid the utility in 2009.

AEP also asked the PUCO to decide on the utility's significantly excessive earnings case by the end of 2010. The OCC and others, however, successfully argued for a revised hearing schedule that allowed the parties the necessary time to build a proper case to oppose the settlement. The case was scheduled to reconvene in January 2011.

Case No. 10-1261-EL-UNC, 10-656-EL-UNC, 10-1265-EL-UNC

Ohio Utility Companies' 2009 Return on Equity

Company	Adjusted Net Income	Return on Equity
Cleveland Electric Illuminating	$ 79,050,396	5.20%
Columbus Southern Power	$ 271,504,000	20.84%
Duke Energy Ohio	$ 319,585,612	9.46%
Ohio Edison	$ 73,053,457	6.20%
Ohio Power	$ 305,841,000	10.81%
Toledo Edison	$ 18,569,765	3.80%

NOTE: Return on equity and adjusted net income based on Significantly Excessive Earnings Test (SEET) filings at the Public Utilities Commission of Ohio (PUCO). The data in the SEET filings is different from financial reports made to the Federal Energy Regulatory Commission, PUCO and the Securities and Exchange Commission.

OCC advocates for long-term solution to all-electric issue

The Office of the Ohio Consumers' Counsel (OCC) advocated for the permanent reinstatement of discounted rates FirstEnergy allegedly promised would be never taken away from its all-electric customers.

The OCC heard from hundreds of FirstEnergy all-electric customers in 2010 concerned about the costs they were paying after the discounts were eliminated in 2009. Many customers fully realized the impact when their bills, during the 2009 – 2010 winter months, rose to unprecedented levels. Some customers reported bills higher than $1,000 for one month of service.

For the past 30 – 40 years, FirstEnergy offered a variety of discounts to customers who used electricity to heat their homes or water. Additionally, for some customers, FirstEnergy installed "demand meters" that allowed customers to save money by lowering their peak use of electricity. FirstEnergy also gave incentives to builders to construct all-electric homes and offered all-electric customers discounted electricity rates. In 2009, the all-electric discounted rates were replaced with smaller credits. These credits did not provide the same rate relief as the previous discounts.

Ryan Lippe

Residential utility customers attend a public hearing in Strongsville, requesting the PUCO restore the all-electric discounts FirstEnergy had allegedly promised them.

In February 2010, the OCC requested the Public Utilities Commission of Ohio (PUCO) provide immediate relief to customers by restoring discounts for all-electric customers. The OCC also asked the PUCO to investigate allegations from customers regarding promises made about the discounts.

> *"I want to emphasize the need for a permanent, all-electric discount rate that stays with the home and that is guaranteed in writing."*
>
> *Sue Steigerwald*
> *Kirtland*

In subsequent decisions in March and April, the PUCO required FirstEnergy to restore discounted rates to customers who had either previously received them, or purchased an all-electric home from an owner who did. At a minimum, the new discount is effective through May 2011. The PUCO also directed its Staff to investigate the development of a long-term resolution of FirstEnergy's rate structure for all-electric customers. However, the PUCO did not support the OCC's request for a PUCO Staff investigation regarding alleged promises and inducements made by FirstEnergy to all-electric residential customers.

Throughout the year, the OCC continued to hear allegations from customers about promises FirstEnergy made for permanently discounted rates. Representatives from the OCC attended 15 public meetings, forums and legislative hearings where similar testimony was provided. The OCC also shared its position on the all-electric issue with customers.

The OCC's position on the restoration of all-electric discounts was:

- Discounts should be restored for every customer regardless of when they moved into their home;
- Discounts should be transferable to future homeowners; and
- The on-going level of the discount should be carefully reviewed to ensure all FirstEnergy customers receive fair and reasonable rates.

In June, the OCC asked the PUCO to order FirstEnergy to respond to the OCC's discovery questions related to the utility's all-electric marketing practices. FirstEnergy had refused to respond to the OCC claiming the PUCO had decided allegations about marketing activities were not at issue. In November, the PUCO ordered FirstEnergy to respond to the OCC's discovery questions.

The PUCO Staff issued a report in September with a range of proposed rates and discounts for FirstEnergy all-electric residential customers, but did not include recommendations. During October and November, the PUCO held six local public hearings that gave customers the opportunity to present

Bill Ferriot

A FirstEnergy customer wears a sign expressing her concerns about all-electric rates during a meeting at the Office of the Ohio Consumers' Counsel, Columbus.

testimony. The FirstEnergy all-electric issue remained unresolved at the end of 2010.

Case No. 10-176-EL-ATA

"It was me who told these people their rates would be permanent. We assured them that if the rate(s) were ever eliminated, they could continue on that rate as long as they wished."

Terrell Bishop,
Retired FirstEnergy employee
Medina

OCC argues for reduced AEP costs

The Office of the Ohio Consumers' Counsel (OCC) argued in 2010 to protect residential customers from overpaying American Electric Power (AEP) by $87 million for costs associated with several distribution charges.

AEP sought approval from the Public Utilities Commission of Ohio (PUCO) to collect carrying costs for environmental, reliability and smart grid investments. Carrying charges include costs for a return on investments, depreciation, administrative expenses and property taxes.

The OCC argued the utility's electric security plan which initially allowed the charges did not include, or consider, the collection of carrying charges associated with certain investments made by AEP. The OCC also argued if carrying charges were going to be permitted, they should have been recalculated using updated short-term interest rates and low-cost financing rather than outdated carrying charges approved more than two years ago in AEP's rate plan.

Specifically, the OCC opposed:

- Nearly $60 million in Columbus Southern Power investments and $74 million in Ohio Power investments that should not have been subjected to carrying charges. AEP made a 2007 agreement with the U.S. Environmental Protection Agency to settle alleged violations of the law. AEP should have installed pollution control facilities decades ago by law and should not be allowed to collect carrying charges to comply with the EPA agreement;
- Collection of additional money for tree trimming and other vegetation management beyond what was approved in AEP's electric security plan; and
- Allowing AEP to continue to collect a $30 fee to reconnect or disconnect service at a customer's request after smart meters were installed. The meters allow remote connection or disconnection, and no longer require a utility worker to visit the customer's premises to manually disconnect service. This eliminates costs AEP still charges.

In August, the PUCO said AEP could charge its Columbus Southern Power and Ohio Power distribution customers for the three investments. For the environmental investment charge, the PUCO approved carrying charges that were about 32 percent more than the reasonable costs advocated by the OCC. AEP was allowed to collect an additional $1.64 million for tree trimming beyond what was approved in the utility's electric security plan. The utility also had its smart grid rider approved with carrying charges. Only Columbus Southern Power customers were charged for the smart grid program.

The OCC asked the PUCO to reconsider its decision in September, but most of its request was denied a month later. The PUCO did require the utility to conduct a cost analysis to determine the appropriate fee to reconnect or disconnect service for customers who have smart meters and request the service.

Case Nos. 10-155-EL-RDR, 10-163-EL-RDR, 10-164-EL-RDR

OCC argues storm costs should not be recovered from Duke customers

The Office of the Ohio Consumers' Counsel (OCC) fought in 2010 to protect Duke Energy Ohio customers from having to pay more than $28 million in damages caused by 2008's Hurricane Ike. The wind storm swept through Ohio and caused about 83 percent of Duke's electric customers to experience power outages. Some customers lost power for as long as nine days. Duke sought to recover its storm costs through a rider on customer bills.

In February, the OCC raised numerous issues in Duke's storm cost application, which claimed the windstorm repairs were operating and maintenance expenses. The OCC said some repairs seemed to be capital costs, which Duke was not allowed to recover through the storm cost rider. Only expenses and not capital costs are recoverable through a rider. The OCC also challenged Duke's level of employee benefits and non-overtime labor expense.

A12 MONDAY, SEPTEMBER 15, 2008 FROM PAGE A1/NATION THE ENQUIRER

Remnants of Ike blamed for deaths from wind, floods

Damaging storms across Midwest

The Associated Press

MUNSTER, Ind. A tornado and storm drowned in northwest Indiana on Monday, killing two people and injuring children from flooded ditches and swept ruins from the remnants of Hurricane Ike formed nine separate tornadoes across the Midwest, officials said.

Two men were killed while helping kids escape a ditch in Chesterton, about 35 miles southeast of Chicago, Fire Chief Warren Highwood said.

None of the children were injured. One death was also reported in Arkansas, where a 28-year-old man was killed when a travel-ill on a mobile home as he was preparing to leave, sheriff Lee said.

The remnants of Ike dumped as much as three inches of rain in parts of Indiana, Illinois and Missouri, spawned a tornado in Arkansas that damaged several buildings and delivered hurricane-force winds to Ohio, sending the Cincinnati/Northern Kentucky International Airport to temporarily shut down.

Dozens of residents were rescued by boat during storms with high water in Chicago and flooding in Illinois and closed the street in front of St. Louis' famous Gateway Arch.

In the northwest Indiana town of Munster, 200 homes were evacuated because of flooding. Munster Town Manager Tom Deffinbaugh said it would likely be several days before they can do an assessment.

Across the state line, Saturday's rainfall of 6.68 inches at O'Hare International Airport was a record for a single day. The previous record was 3.48 inches, recorded on Aug. 14, 1892. Climate records for Chicago date from 1871.

Several Chicago area rivers, including the Des Plaines, Fox, Kankakee and Little Calumet, were at or above flood stage Sunday, threatening homes, businesses and schools, the National Weather Service said.

In Missouri, winds as high as 60 mph and torrential rains of up to 7 inches raised new concerns about swelling rivers. Major flooding was expected along the Mississippi from Ste. Genevieve to Cape Girardeau by late this week, the National Weather Service said.

In Arkansas, storms knocked out power to more than 200,000 customers and brought a tornado in the central region of the state. It also caused damage to an apartment building, two apartment buildings and knocked down signs and utility poles.

The Associated Press/Jeffrey Phelps

A volunteer firefighter checks on a crash after the storm Monday.

The Cincinnati Enquirer/Tim Bullard

Greenhills firefighters and a worker from Hamilton County engineers clear a tree from a car on Springdale Road at Denton. Thousands of trees around the region fell, many bringing power lines down with them. Duke Energy crews from the Carolinas are coming to help with restoration of power.

Outage: 'We have never seen anything like this'

From Page A1

A total of 93,187 Duke Energy customers were out of power in Boone, Kenton and Campbell counties at one point.

The toppling of good trees from their roots, pushing heavy timber over power lines that fell to the ground.

"We have no idea how many trees are down right now. Thousands, maybe tens of thousands," Kenke said. "It hurts really when the roller is right now. The force-use making a widespread, complicated problem even worse."

Lisa Thomas leaned on her sill in the window of her Westwood home, telling heroes. Just her neighbor's tree was using in one minute. Within seconds, the school bus in her yard, and you was gone.

"It happened so fast. The tree came straight out of the ground, taking all everything," she said. "Power is out everywhere. The power lines are going to be next. We're just waiting for them to fall."

Power will be restored to areas that have the most outages first, along with critical areas, such as hospitals. Crews from the Carolinas are expected to arrive today to help with restoration.

"We know we've got a lot of work cut out for us," Meltzer said. "This is not going to happen overnight."

The Cincinnati Enquirer/Kevin Fleming

Neighbor Michael Beltrabalds (center) of Westwood helps cut up a tree that fell in the front yard of Joe Parkison of Westwood in the background in the 3200 block of Epworth Avenue in Westwood.

Tips for the aftermath

ELECTRICAL TIPS

- Stay away from downed power lines.
- If a power line falls on a car, stay inside the vehicle. Tell people not to touch the car, call the local utility company and emergency services.
- To protect appliances, turn off lights and unplug appliances and electronics, especially those including air conditioning systems. This helps prevent damage when power is restored and will reduce the potential for damage to sensitive equipment such as computers, microwave ovens, televisions and recording devices.
- Protect your food during a power outage by keeping your refrigerator and freezer doors closed as much as possible to maintain the cold temperature. Your refrigerator will keep food safely cool for about four hours if unopened. A full freezer should hold the temperature for approximately 48 hours if the door stays closed. (Also 24-hours if it is half full. For more information on food safety, http://www.fsis.usda.gov/Food_Safety/Keeping_Food_Safe_During_an_Emergency/index.asp.)

SAFETY TIPS

- Never use a generator indoors or in a garage, but in a dry, ventilated area away from windows and doors and at least 20 feet away from other buildings.
- Never use charcoal briquettes, burning charcoal gives off carbon monoxide.
- If you use candles, do not put them on or near anything that can burn. Never leave burning candles unattended.

INSURANCE TIPS

- Survey your property. Check roof, inside and outside. Look for damaged and broken tree branches that can cause fall.
- Report damage to your insurance carrier immediately to start the claims process – some companies require an adjuster's approval before work can be started. Take pictures of your damage and make inventory of your personal's and property.

Source: Duke Energy, U.S. Consumer Product Safety Commission, Center for Disease Control, Angie's List

Utility outages for Duke customers, The Cincinnati Enquirer. Reprinted with permission.

The OCC also questioned whether the utility should collect any of its storm costs from customers. Many customers said Duke should have been better prepared to deal with the storm, and storm costs, as a cost of doing business and should be paid by shareholders.

In May and June, the OCC, through testimony at a hearing and in briefs, asked the Public Utilities Commission of Ohio (PUCO) not to permit Duke to collect storm restoration costs from customers. The OCC said evidence produced at the hearing showed the costs were neither reasonable, nor prudently incurred.

Among the OCC's arguments:

- The windstorm restoration costs were not reasonable based on the fact that customers suffered even higher windstorm losses than Duke;
- Duke's Ohio customers were asked to pay for windstorm costs when Duke's Indiana affiliate did not ask its customers to pay any portion of the Indiana utility's storm restoration costs;
- The windstorm restoration costs were not reasonable because of the nonrecurring and extraordinary character of the costs;
- Some of Duke's claimed costs were not prudently incurred, not necessary for storm restoration and/or excessive; and
- Some of the claimed costs were improperly expensed rather than capitalized.

A PUCO decision was pending at the end of 2010.

Case No. 09-1946-EL-RDR

Electric utilities agree to stricter reliability standards

The Office of the Ohio Consumers' Counsel (OCC) successfully advocated in 2010 for standards to improve reliability for the customers of Ohio's four electric utilities.

The OCC reached agreements with American Electric Power (AEP), Dayton Power and Light (DP&L), Duke Energy Ohio and FirstEnergy to upgrade standards for their respective electric distribution systems. The Staff of the Public Utilities Commission of Ohio (PUCO) also was a party to the agreements. The utilities are now required to use more stringent guidelines than what they proposed to measure how well their distribution systems are expected to operate. The guidelines are based on the number and duration of power outages customers can anticipate per year.

As a result of the OCC's advocacy:

- AEP agreed to more stringent standards than it had originally proposed for the average duration of customer outages and average number of system outages through 2012;
- DP&L will use more improved reliability standards than the utility originally proposed for the average number of system outages, as well as average customer outage times through 2012. DP&L also will be required to develop a customer perception survey by July 2011. The survey will gauge the expectations of customers concerning reliability.

The results of the survey will be incorporated into the final reliability standards;

- Duke Energy now has tighter reliability standards for the average duration of customer outages than it had proposed through 2016. Duke also will be required to file an updated customer perception survey with its next reliability standards application; and
- FirstEnergy agreed to stronger reliability standards for the number and duration of customer outages than it proposed. FirstEnergy will file updated reliability standards if reliability falls 10 percent lower than its historical averages in any of its distribution service territories.

The PUCO accepted the increased standards for DP&L and Duke in July and AEP in September. Higher reliability standards for FirstEnergy were approved in December.

AEP, DP&L and Duke will each have another review of their electric reliability standards to assess the impact the agreed-upon changes have on their respective distribution systems. AEP and DP&L will be reviewed again in 2012 and Duke will have its review in 2013.

Case Nos. 09-754-EL-ESS, 09-756-EL-ESS, 09-757-EL-ESS, 09-759-EL-ESS

Federal Cases

OCC helps save AEP customers more than $26 million in transmission costs

American Electric Power (AEP) customers will avoid paying $26.6 million in additional transmission-related costs as a result of an agreement reached among the Office of the Ohio Consumers' Counsel (OCC), the utility and others.

Electric power transmission is the bulk transfer of electricity from generating power plants to substations located near customers.

AEP agreed to phase in transmission costs shared by Columbus Southern Power, Ohio Power and five other non-Ohio AEP distribution utilities. Increased transmission costs of $3.8 million for Columbus Southern Power and $14.5 million for Ohio Power will be phased in over three years. The OCC and others advocated, and AEP agreed, the utilities cannot collect revenue shortfalls from Ohio customers as a result of the phase-in. Over the three-year phase-in, this agreement will save Columbus Southern Power customers $4.8 million and Ohio Power customers will avoid paying $21.8 million.

OCC Staff members (left to right: Greg Poulos, Mike Idzkowski, Greg Slone and Daniel Duann) work on electric cases.

The Federal Energy Regulatory Commission approved the agreement in October 2010.

Docket No. ER09-1279

Costs at issue in FirstEnergy transmission switch

The Office of the Ohio Consumers' Counsel (OCC) asked the Federal Energy Regulatory Commission (FERC) to reconsider or clarify portions of its conditional approval of a FirstEnergy transmission affiliate's business decision to switch regional transmission organizations. Residential customers should be protected from the costs that could arise from the switch, the OCC said.

The FERC, in February 2010, said it would take more time to reconsider its December 2009 decision. The December decision was the first step to allow FirstEnergy's affiliate, American Transmission Systems, Inc., to transfer control of its transmission operations from Midwest ISO to PJM Interconnection. The OCC urged the FERC to revisit its decision because the record was inadequate to determine if the costs from the switch were prudent, or if the Public Utilities Commission of Ohio could decide the prudence of those costs at the state level. At stake are hundreds of millions of dollars customers may have to pay over the next 30 years.

A decision on those portions of OCC's requests was not made in 2010.

Docket No. ER09-1589

OCC: Duke customers should be protected in transmission switch

The Office of the Ohio Consumers' Counsel (OCC) recommended that Duke Energy Ohio's shareholders, not customers, should bear the sole responsibility for costs resulting from the utility's business decision to switch regional transmission organizations. Duke proposed to switch the control of its transmission system from Midwest ISO to PJM Interconnection. The OCC contended this move would result in residential customers paying unreasonable rates.

The OCC filed a protest at the Federal Energy Regulatory Commission (FERC) in July arguing the federal commission should protect residential customers from paying any or all costs associated with the switch. The OCC pointed to precedent from the FERC that transmission owners "should be prepared to assume the costs attributable to their decisions," including those that result in changing regional transmission organizations. Included in the costs the OCC said shareholders should pay are: Midwest ISO exit fees, PJM entrance fees and costs allocated to Duke for transmission projects that may be constructed in both transmission organizations.

Additionally, the OCC argued Duke has not provided sufficient evidence the switch would benefit its customers. Instead, the switch may require Duke's customers to pay more to potentially cover charges from two regional transmission organizations.

Aspects of Duke's regional transmission organization switch were still pending consideration by the FERC at the end of 2010.

Docket No. ER10-1562

OCC contributes to new FERC policy

Several recommendations from the Office of the Ohio Consumers' Counsel (OCC) were incorporated into the October 2010 Federal Energy Regulatory Commission's (FERC) Staff Report regarding ways to measure the performance of regional transmission organizations. Regional transmission organizations control the transmission systems of electric utilities in Ohio and other states.

The FERC Staff agreed with the OCC recommendations that regional transmission organizations should provide information about the status of advanced meter infrastructure programs and their impact on the availability of dynamic pricing programs (programs that tie the price of electricity at particular times to the actual cost). The FERC Staff also agreed regional transmission organizations should provide information about the status of renewable energy resources in their territories. This information would be a part of performance updates provided by regional transmission organizations to the FERC.

The performance policy initiative was undertaken by the FERC after the federal Government Accountability Office published a 2008 report that noted a lack of publicly available and standardized performance evaluation measures for regional transmission organizations. The report said measures should be developed to determine the actual benefits customers receive from regional transmission organizations.

The FERC did not issue an official ruling on its Staff Report recommendations in 2010.

Docket No. AD10-5

Highlights of OCC achievements in electric during 2010

- The OCC successfully advocated for more stringent electric reliability standards than what Ohio's electric utilities proposed. The revised standards should lead to more reliable electricity for customers.
- The OCC helped save AEP's Ohio customers more than $26 million after an agreement was reached to gradually phase in a re-allocation of transmission costs among seven AEP distribution utilities.
- Several recommendations from the OCC were accepted as part of new Federal Energy Regulatory Commission policy that will measure the annual performance of regional transmission organizations.