

Electric

Overview

Ohio consumers saw a year marked by the continuing transition of the electric utility industry to a competitive generation market. The Office of the Ohio Consumers' Counsel (OCC) advocated for consumers in electric cases before the Public Utilities Commission of Ohio (PUCO), the Federal Energy Regulatory Commission and the Supreme Court of Ohio.

Several public utilities filed electric security plans to set the price of electric generation service and other charges for their customers. Also, utilities applied to the PUCO to increase other types of charges on customers' bills. OCC advocated in these cases and others to protect consumers from paying unreasonable rates and from paying for significantly excessive utility profits.

Major storms resulted in extensive power outages for Ohioans during 2012. OCC advocated for consumers in cases regarding reliability standards for electric service and regarding service restoration costs from major storms.

Additionally, OCC and others recommended that customers should not have to pay the costs to close a power plant. Consumers saved money when the PUCO accepted the recommendations.

Finally, OCC advocated for consumers in the first cases filed under Ohio's new securitization law.

OCC works to protect customers from billions in rate increases for electric generation service

Electric utilities proposed electric security plans for the pricing of their generation service for customers. Some utilities also proposed new "capacity" charges which relate to the availability of power generation in periods of high electricity demand. During 2012, OCC participated in litigation of electric security plans involving AEP Ohio (AEP), FirstEnergy and Dayton Power & Light (DP&L).

OCC advocates for customer credits for AEP's unlawful 2009 charges

Hundreds of millions of customer dollars continued to be at stake as the Supreme Court of Ohio again reviewed AEP's 2009 electric security plan case.

In 2009, OCC contested AEP's charges to consumers for its claimed risk of providing electricity to customers that might return to the utility after choosing an energy marketer. These were called "provider-of-last resort" charges.

In 2011 the Supreme Court of Ohio, in a unanimous decision, agreed with the argument of OCC and the Industrial Energy Users that AEP had not justified the provider-of-last-resort charges and returned the case to the PUCO for reconsideration of these and other charges, amounting to about \$787 million.

Following the Court's 2011 decision, the PUCO ordered AEP to cease collecting future provider-of-last-resort charges (saving all customers about \$78 million). The PUCO did not, however, credit customers for their previous payments of these charges to AEP.

In 2012, OCC appealed this PUCO ruling, asking the Court to order the PUCO to reduce future AEP rate increases by \$368 million that consumers had previously paid. This case was pending at the Supreme Court of Ohio as of the close of 2012.

Case No. 08-0917-EL-SSO, OSC Docket No. 2012-0187

OCC advocates for AEP customers in cases determining 2012 – 2014 rates

In 2011, the PUCO approved an electric security plan to set the rates for AEP's electric generation service in 2012 – 2014. OCC had recommended that the PUCO reject the rate plan and set lower rates for consumers. When the new rates went into effect in 2012 and electric bills spiked, public concern grew.

After significant public outcry, the PUCO retracted its previous approval of the AEP rate plan and temporarily returned rates to their approximate 2011 levels. The case determining the 2012-2014 rates was reopened by the PUCO for further consideration when AEP filed a revised rate plan in March 2012.

There were several controversial issues impacting customer rates in this case. AEP requested the ability to charge customers a "retail stability rider" that would compensate it for revenues lost when customers choose to purchase electricity from an energy marketer.

The utility also proposed "capacity charges" for payment by energy marketers who sell electricity to customers in AEP's territory. These capacity charges were more than double the average market price of capacity. OCC recommended a much lower charge, based on the market price, out of concern that consumers were being asked to pay unreasonable charges. Customers should be benefiting from currently low market prices for generation and AEP's additional charges would reduce or eliminate this benefit.

OCC also opposed AEP's proposed "phase-in recovery rider." This fuel-related charge to customers originated from the 2009 rate plan, but had not been added to customers' bills because of rate caps that the PUCO put in place. In 2011, the Supreme Court of Ohio decided that some of the costs that triggered the rate cap were not justified (see previous story). OCC urged the PUCO to reduce the amount of the phase-in recovery rider, in order to credit customers for prior payments they made related to rates the Ohio Supreme Court, and later the PUCO, found unjustified.

OCC recommended an electric security plan that would greatly reduce the impact on customers' bills compared to AEP's proposal. In this regard, OCC asked the PUCO to take into consideration the affordability of AEP's electric rates for customers as part of the decision-making process.

The PUCO approved a modified version of AEP's revised plan in August. OCC and others requested a rehearing of the decision. The Commission had not ruled on those requests, by the end of 2012.

Case No.: 11-0346-EL-SSO et al., 10-2929-EL-UNC

OCC seeks to protect consumers from FirstEnergy's rate proposals

A number of stakeholders, including OCC, opposed a settlement that FirstEnergy and others filed to set electric generation rates for FirstEnergy's customers from June 2014 through May 2016.

FirstEnergy requested additional charges to customers on top of the market price of generation. OCC raised numerous concerns about the FirstEnergy plan including:

- ▶ \$405 million in distribution charges to customers that OCC contended had no clearly defined reliability improvements or benefits to consumers;
- ▶ Unspecified increases to customers' bills to account for revenues FirstEnergy may lose as a result of energy efficiency programs; and
- ▶ Not counting all of the revenues that should be considered for determining if FirstEnergy is earning significantly excessive profits and if FirstEnergy should refund any profits to customers.

The settlement also created two three-year auctions to set electric generation rates. OCC recommended that electric generation rates be determined for no more than a two-year period to protect consumers from being locked into higher rates due to market uncertainties, some of which were created with power plant retirements by FirstEnergy's generation affiliate.

OCC and others also criticized FirstEnergy for not fully bidding its energy efficiency resources into the capacity market. This additional energy efficien-

cy could have reduced market capacity prices, and thus eventually reduced customers' electric rates.

Shortly after the PUCO's approval of the settlement in July, OCC and others applied for a rehearing, which the PUCO granted for the purpose of further review. A final decision was still pending at the end of the year.

Case No. 12-1230-EL-SSO

DP&L proposal would raise customers' rates

In March 2012, DP&L filed a proposal called a market rate offer for setting the rates it would charge Ohio customers for electric generation service. After many months of review by OCC and others, DP&L withdrew its application. In October, it re-filed the application as an electric security plan to set customers' rates for electric generation service. The utility's proposal would shift customers to market-based rates for electric generation, but would not accomplish the transition until the end of a three and a half year period. DP&L also requested that its customers pay, over five years, \$687.5 million through a "service stability rider."

DP&L would also have customers pay another new charge, a "switching tracker." This charge would increase as more customers choose energy marketers. DP&L maintained that such charges are necessary to protect the utility from potential financial losses associated with the utility's shift to market prices for electric generation.

Market prices for electricity were low in 2012. As the case continues into 2013, OCC will advocate for giving Ohio consumers the benefit of low market prices for electricity as soon as possible. And OCC will continue to advocate that consumers should not have to pay unreasonable additional charges related to generation.

Case Nos. 12-0426-EL-SSO et al.

Duke customers benefited from lower electric bills in 2012, but Duke is seeking additional charges

Customers of Duke Energy Ohio saw an overall decrease of more than 15 percent on their electric bills during 2012. The decrease was the result of a

settlement OCC signed with Duke, the PUCO staff and others in 2011. This settlement required Duke to conduct a series of competitive auctions to price its electric generation service from January 2012 to May 2015. The competitive auctions resulted in lower electric bills because the market price for energy is low. In exchange for giving customers this benefit of lower electric bills, the settlement allowed Duke to collect from customers about \$330 million for a "stabilization charge."

After the settlement that reduced electric bills, Duke requested an increase of an additional \$729 million for electric customers – about \$150 to \$200 per residential customer each year. Almost two dozen parties, including OCC, the PUCO Staff, and industrial customers, have asked the PUCO to reject Duke's request for more money, because the 2011 settlement does not allow for these additional charges.

In 2012, Duke also filed an application to increase its electric and natural gas distribution rates. (Rates for "distribution" service include, for example, the cost of wires and poles for electric service and pipelines for natural gas service.) Duke's proposal would increase a typical customer's electric bill by about \$6.50 per month and natural gas bill by about \$10.25 per month. OCC's consumer advocacy in these three cases will continue into 2013, as the cases were pending at the end of 2012.

Case Nos. 11-3549-EL-SSO, 11-3550-EL-ATA, 11-3551-EL-UNC; 12-1682-EL-AIR, 12-1683-EL-ATA, 12-1684-EL-AAM; 12-2400-EL-UNC

OCC seeks refunds to AEP customers from significantly excessive utility profits

Ohio law gives electric utilities flexibility about how to propose rate increases, the power to veto an electric security plan even if the PUCO approves it, and the ability to earn excessive profits. As a protection for consumers, the law requires utilities to refund to customers any profits that are determined to be "significantly" excessive.

In 2009, Columbus Southern Power, an AEP subsidiary, reported profits of more than 20 percent. OCC and the Ohio Energy Group (OEG), an association

of energy-intensive businesses, asked the PUCO to refund up to \$156 million to customers, arguing that any profits exceeding 11.58 percent are significantly excessive. The PUCO did not approve the full refund, but did authorize a \$43 million refund to Columbus Southern Power customers.

OCC and OEG appealed the PUCO's decision to the Supreme Court of Ohio, asking for an additional refund of \$22 million to customers. OCC argued that the PUCO should have considered profits made from off-system sales (sales a utility makes outside its traditional market) as part of the utility's earnings that could be considered significantly excessive. Columbus Southern Power also appealed the PUCO's decision, arguing the law was unclear and thus, the \$43 million refund was unconstitutional.

In its December 2012 decision, the Supreme Court of Ohio upheld the constitutionality of the law that protects customers from paying utilities' significantly excessive profits. Unfortunately, OCC and OEG's request for additional customer refunds was denied. In a dissenting opinion, Justice Pfeifer said the majority erred in affirming the PUCO's decision to not count a utility's off-system sales in the calculation of significantly excessive earnings.

In a subsequent case involving Columbus Southern Power's 2010 earnings, OCC has again asked the PUCO to refund significantly excessive profits to the utility's customers. OCC's calculation showed Columbus Southern Power earned a profit of nearly 20 percent. A PUCO decision in the 2010 case was pending at the end of 2012.

Case Nos. 10-1261-EL-UNC, OSC Docket No. 11-751, 11-4571-EL-UNC, 11-4572-EL-UNC

OCC helps save customers millions in fuel expenses

In Ohio, electric utilities are allowed to charge customers for the cost of fuel used to generate electricity. Utilities, after approval from the PUCO, can add this charge to customers' bills. In 2012, OCC advocated for lower fuel charges for customers of AEP and DP&L.

OCC was successful in helping to save AEP customers about \$7.9 million in the review of AEP's 2009 fuel expenses. An additional portion of the refund is yet to be determined. OCC and other parties recommended that the PUCO find AEP was charging customers more for the fuel it purchased in 2009 than it was allowed under the law. The PUCO concurred and ordered AEP to credit some of its proceeds from the purchase of a West Virginia coal reserve against previously under-collected fuel costs. AEP and others have appealed the PUCO's decision to the Supreme Court of Ohio.

In a separate case, OCC reached a settlement with DP&L and the PUCO staff regarding the utility's 2011 fuel expenses. The settlement was approved by the PUCO in 2013. Residential consumers will benefit from the settlement by receiving a \$2 million credit against future DP&L fuel charges.

AEP Ohio: Case No. 09-0872-EL-FAC et al.;
OSC Case No. 12-1484
DP&L: Case No. 11-5730-EL-FAC

OCC monitors storm restoration efforts; seeks to limit customer costs

The problems of extended power outages and the costs of repairing storm-related damage to electric infrastructure were twice underscored in Ohio by two major weather events in 2012. On June 29, a series of violent winds and fast-moving thunderstorms, called a "derecho," led to more than 1 million Ohioans losing power during an extended heat wave. Many Ohioans lost power for seven to 10 days. In late October, Super Storm Sandy led to loss of power for about 245,000 FirstEnergy customers in Northern Ohio while several thousand AEP customers, mostly in the Canton area, were also in the dark.

These events focused attention on electric reliability issues as well as whether and how much money the utilities may charge customers for repairing damage from major storms.

In August, DP&L sought PUCO approval to defer, for future collection from customers, the service restoration expenses related to the June storms. OCC advocated, and the PUCO agreed, that DP&L should only defer the June storm costs that exceed

the three-year average of major storm costs incurred by the utility.

In 2012, OCC also advocated for residential consumers in cases addressing reliability performance standards for AEP Ohio and DP&L. These standards are designed to ensure that consumers have access to reliable electric service by establishing benchmarks for the length and frequency of outages. Both cases are ongoing and will continue into 2013.

AEP Ohio: Case No. 12-1945-EL-ESS
DP&L: Case No. 12-1832-EL-ESS, 12-2281-EL-AAM

OCC helps protect consumers from paying for power plant closure

Consumers saved nearly \$70 million when the PUCO agreed with OCC and others that customers should not bear the cost of closing a power plant owned by the Ohio Power utility, an AEP subsidiary. Ohio Power made a business decision to shut down the power plant because economic forecasts made it unprofitable to continue its operation.

AEP Ohio: Case No 10-1454-EL-RDR

OCC advocates for customer savings from utility refinancing

Legislation signed into law by Gov. Kasich in late 2011 created a new financing tool for utilities, called "securitization," that should save money for Ohio utility consumers. The legislation enabled utilities to apply to the PUCO to refinance certain debt using customer-backed bonds to achieve a lower interest rate. Utilities may collect the cost of the bonds from their customers.

OCC was a key participant during the legislative process in 2011, and sought amendments to benefit customers. An outcome of that process is that, when utilities file securitization cases at the PUCO, they must demonstrate "both measurably enhancing cost savings to customers and mitigating rate impacts to customers."

Shortly after the new law went into effect in 2012, FirstEnergy and AEP filed requests to securitize certain debt and collect bond costs from their customers. In both instances, OCC recommended the PUCO

hire an independent financial advisor to analyze the utilities' requests and promote cost savings for consumers throughout the refinancing process.

In the FirstEnergy case, the securitization transaction is projected to save consumers approximately \$104 million over the life of the securitization bonds. In addition to cost savings, the PUCO agreed with some of OCC's proposals for other consumer protections. The PUCO directed FirstEnergy to hire an independent financial advisor to help enhance customer savings, consistent with OCC's recommendations in the case.

The PUCO also accepted OCC's recommendation to protect consumers by limiting the bond financing costs so that the actual costs of financing could not exceed the utility's estimates by more than 5 percent. This limitation will protect consumers from paying FirstEnergy more money than what is necessary for the financing of the bonds. FirstEnergy requested reconsideration of the PUCO's decision. Upon rehearing the case, the PUCO agreed with OCC's recommendation to establish a cap on FirstEnergy's estimated refinancing costs to protect customers from cost overruns.

In the AEP case, the securitization transaction is projected to save consumers approximately \$20.4 million. OCC advocated for improvements to AEP's proposal to better protect consumers from potential cost overruns. OCC encouraged the PUCO to require bonds be financed at a fixed interest rate to help ensure cost savings for customers. OCC also asked the PUCO to verify that consumers would benefit, as required by law, before approving the request. In late December, the PUCO suspended AEP's securitization application and will review this case further in 2013.

Ohio Power (AEP Ohio): Case No. 12-1969-EL-ATS
FirstEnergy: Case No: 12-1465-EL-ATS