

Electric

Overview

As 2013 came to an end, Ohioans paid electricity prices that were higher, on average, than residential electricity prices in 32 other states, according to data from the U.S. Energy Information Administration.

Fourteen years ago, the Ohio General Assembly enacted Senate Bill 3, which placed Ohio on a transition from regulated to market-based electric generation pricing. Unfortunately, many Ohioans in 2013 did not benefit from the historically low market prices for electricity, because several electric utilities continued to charge above-market prices for electricity.

In October, the Office of the Ohio Consumers' Counsel (OCC) testified before the House Policy and Legislative Oversight Committee, in response to the Committee's invitation. OCC addressed the Committee's topic of affordable electricity for Ohioans.

OCC participated in many electric cases in 2013, both at the Public Utilities Commission of Ohio (PUCO) and before the Ohio Supreme Court. One of OCC's core values is "justice" in the regulatory process for Ohio consumers, to advocate for what is fair for consumers. There were billions of dollars at stake for electric consumers in utility proposals for higher rates.

OCC appeals to the Ohio Supreme Court, regarding AEP's charges to customers

In May 2013, OCC (and others) asked the Ohio Supreme Court to protect consumers by disallowing American Electric Power's (AEP) rate increases that were approved in a 2012 PUCO decision. AEP proposed the rate increases as part of its electric security plan for 2012 through 2015. At issue in the appeal are approximately \$508 million in retail stability rider charges and \$647 million in capacity costs. The rate increases affect 1.2 million AEP residential customers.

AEP sought and was granted a retail stability charge for customers to compensate it for profits it could lose due to competition from retail suppliers. The utility also requested that these suppliers pay "capacity" charges based on AEP's claimed costs to maintain sufficient generating capacity within its territory. AEP's proposed capacity charges were much higher than the market price of capacity.

In its 2012 decision, the PUCO gave competitive suppliers the benefit of paying AEP the market price for capacity, which was much lower than AEP's claimed cost of capacity. This benefit for suppliers was at the

expense of AEP's customers who would pay AEP in the future for the costs that AEP claimed it was not recovering in the market price for capacity.

All of AEP's customers, including those not served by competitive generation suppliers, will pay to reimburse AEP for the discount in capacity prices it is giving to suppliers for their own payments to AEP. OCC's position is that many customers (those who buy electricity from AEP and not from an alternative supplier) will have to pay capacity costs twice and that is unlawful.

In its appeal, OCC asserted that the PUCO's decision violates Ohio law. OCC asked the Court to return the case to the PUCO for correction. A decision from the Court was pending at the end of the year.

AEP, Case Nos. 11-0346-EL-SSO et al., Sup. Ct. 2013-0521; 10-2929-EL-UNC, Sup. Ct. 2012-2098, Sup. Ct. 2013-228

OCC and others ask PUCO to dismiss Duke's request to charge customers \$729 million for electric capacity

In October 2012, OCC and other parties (including businesses, associations, and the City of Cincinnati)

asked the PUCO to reject Duke Energy's (Duke) request to collect \$729 million from its electric customers in capacity charges. Duke's proposal would cost residential customers an additional \$150 to \$200 per year for three years. Duke claimed it needed the money to protect its economic viability.

In 2013, OCC presented the testimony of experts, to provide the PUCO with evidence against the charges. Also, OCC recommended that the PUCO dismiss Duke's request because it violated a settlement agreement that OCC, the PUCO Staff, Duke and others signed in 2011. The settlement, which the PUCO approved, allowed Duke to charge customers \$330 million for a "rate stabilization charge," in exchange for Duke's agreement to set generation prices through competitive auctions. The auction, for 2012, reduced residential customers' electricity bills by about 17 percent.

Duke's new capacity charge request would change the bargain that it, OCC and others struck in 2011, and add \$729 million to the \$330 million it is already charging customers. Also, Duke's request, for customers to pay an additional \$729 million, was seeking a regulatory guarantee that was inconsistent with Ohio's policy of competitive electricity markets.

In a February 2014 decision, the PUCO agreed with OCC and others that Duke's request should be denied.

Duke, Case No. 12-2400-EL-UNC

OCC seeks to protect Dayton-area electric customers from DP&L's above-market rates

At a time when the market price of electricity remained at historic lows, Dayton Power and Light's (DP&L) 455,000 electric customers have been required to pay nearly \$375 million in higher rates following the PUCO's September 4 decision and September 6 correction in the utility's electric security plan case. DP&L's electric security plan will cost customers at least \$250 million more than market prices.

The PUCO-approved plan allows DP&L to collect from customers, through a "service stability rider," \$330 million during the next three years (January 2014 through December 2016) to ensure DP&L's "economic

viability," plus an additional \$45.8 million in 2017. During the same period, DP&L will be allowed to gradually restructure its pricing for electric generation, blending its current generation rates with 10 percent of market prices for 2014, 40 percent of market prices for 2015 and 70 percent of market prices for 2016 through May 2017. After that, DP&L's generation prices will be fully based on the market. OCC had recommended a quicker transition to market-based pricing so that DP&L's customers could benefit now from the low electricity prices in the market.

The September 4 Order required DP&L's transition to market-based rates by the end of 2016. The original Order allowed DP&L to collect \$220 million in stability charges during 2014 and 2015 and an additional \$92 million for which the utility would have to reapply in 2016. However, the corrected Order allowed DP&L to collect \$110 million annually through 2016 with an additional \$45.8 million through May 2017. The original Order stated that the Electric Security Plan term would end December 31, 2016. The corrected Order extended the term through May 31, 2017.

In October, OCC asked the PUCO to reconsider its decision. OCC pointed out that the Ohio General Assembly gave electric utilities, in the 1999 law, only five years (2001 - 2005) to be at fully competitive pricing for the generation service provided to customers. The 2013 PUCO decision will extend that transition for DP&L by over a decade, at a time when customers should be benefiting from the low market price for electricity. OCC also stated that DP&L's "service stability rider" is contrary to Ohio law that prohibits subsidies for generation service.

A decision on OCC's request for rehearing was pending at the end of 2013.

DP&L, Case No. 12-0426-EL-SSO et al.

\$7 million in significantly excessive earnings are returned to AEP customers

In October, the PUCO issued an Order ruling that AEP customers are entitled to a refund of \$6.9 million due to the significantly excessive earnings its Columbus Southern Power subsidiary had reported for 2010.

In the case, Columbus Southern Power had a profit of \$234 million during 2010, or a 17.9 percent return on its shareholders' equity. The calculation was part of the significantly excessive earnings test mandated by the state's 2008 energy law. Utility customers pay for an electric utility's profits.

OCC asked the PUCO to reconsider its decision, requesting that an additional \$17.3 million in significantly excessive earnings be returned to customers. The PUCO denied OCC's request. OCC also recommended that customers should receive the benefit of \$20 million, through a reduction to AEP's claimed storm costs in another case. The PUCO determined that the request for customers to receive the benefit of the \$20 million will be considered in other cases.

During 2013, the Ohio Senate Public Utilities Committee considered changes to the 2008 law, focusing on revisions to the energy efficiency and renewable energy provisions. In testimony before the Senate Committee, OCC recommended a change in the law to require refunds to customers when an electric utility's charges result in "excessive" earnings. The 2008 law allows electric utilities to keep excessive profits and only give customers a refund of profits that are "significantly excessive."

AEP, Case No. 11-4571-EL-UNC et al.

OCC recommends reducing AEP's request to charge \$55 million to customers for 2012 storm costs

In December, 12 months after asking the PUCO for permission to charge its 1.5 million customers \$61.8 million to cover its repair costs for several large storms, AEP signed a settlement with the PUCO Staff and a number of non-residential parties.

The parties to the settlement asked the PUCO to allow AEP to charge customers most of its original request, or \$54.9 million, plus carrying charges. OCC opposed the settlement, and recommended that the PUCO greatly limit what AEP can charge to its customers.

OCC presented expert testimony proposing that the PUCO limit, to \$23.6 million, what AEP can charge customers. OCC's witness testified that the "economic loss to customers in all likelihood significantly exceeded the amount it cost Ohio Power (AEP) to restore service many times over."

Many AEP customers who had endured long outages already have incurred expenses such as the loss of refrigerated food due to spoilage and, for some, the need to find alternative lodging due to the extreme heat without air conditioning. OCC asked the PUCO to schedule local public hearings where customers in five of the most affected areas could conveniently give testimony to the PUCO. OCC's request was denied.

The PUCO held a hearing in January 2014, and later will reach a decision on how much money AEP can charge customers for its storm costs.

AEP, Case No. 12-3255-EL-RDR

Cincinnati-area electric customers spared responsibility for streetcar costs in Duke case

An April settlement agreement signed by OCC, the PUCO Staff, Duke Energy and other parties significantly reduced the potential impact of Duke's proposed rate increase for 610,000 residential customers of Duke's electric distribution service.

In 2012, Duke proposed an \$86 million increase to its distribution charges that all customers pay for delivery of electricity. Distribution charges also include infrastructure maintenance and other customer service functions.

OCC's advocacy, working with others, resulted in a 43 percent reduction to Duke's original proposal, from \$86 million to \$49 million, and also provided additional consumer benefits and protections.

Part of the agreement removed Duke's proposal to use customers' utility bills as a way to charge residents for costs associated with Cincinnati's streetcar project.

Duke also agreed to not charge customers for major storm costs incurred during 2012. And Duke withdrew its request for a "storm tracker" mechanism to charge customers for future storm repairs as part of future electric distribution rates. In regard to funds available to some customers, Duke's shareholders will annually provide \$350,000 to assist low-income customers with utility bill payments. Additionally, Duke agreed to work

with customers who own property that Duke uses (not located along roadways) and potentially compensate some customers for a use that benefits other customers.

Duke, Case No. 12-1682-EL-AIR et al.

Protections achieved for Northern Ohioans in FirstEnergy energy efficiency case

The work of OCC and other parties yielded significant benefits for electric consumers in March when the PUCO approved FirstEnergy's energy efficiency plan, for 2013 through 2015.

OCC and others asked the PUCO to limit the amount FirstEnergy could collect from customers when it exceeded its legal obligation to provide a percentage of its generation through energy efficiency. These charges are called "shared savings." The PUCO limited to \$10 million the amount the utility could annually charge customers (for a total of \$30 million during the three-year period).

In addition, the PUCO required FirstEnergy to bid 75 percent of its projected energy efficiency resources into the PJM Interconnection capacity auction. OCC and others had recommended that the PUCO require FirstEnergy to bid its entire projected energy efficiency savings into the auction, but the PUCO's Order was still a positive result for consumers.

The PJM auction is held to ensure a sufficient supply of electricity is available during peak periods. The utility's bidding of projected energy efficiency into the capacity auction can lead to an auction result of lower capacity prices. Also, the result of bidding energy efficiency into the auction includes payments to utilities that could be used to defray the cost to consumers of the energy efficiency programs. Eventually, these cost savings will benefit residential customers in the form of lower electric bills.

In its request for the PUCO to reconsider the decision, FirstEnergy was successful in seeking permission to keep (and not give to customers) approximately \$1.6 million (20 percent) of the payments it receives from PJM for energy efficiency program savings that were bid into the

capacity auction. These savings could have been used to benefit customers by decreasing the costs of energy efficiency programs.

OCC asked the PUCO to reconsider its July decision. A decision is expected in 2014.

FirstEnergy, Case No. 12-2190-EL-POR et al.

OCC and others agree on DP&L's energy efficiency plans for 2013-2015

In December, the PUCO approved a settlement among OCC, the PUCO Staff, DP&L and a number of environmental and industrial organizations, for DP&L's energy efficiency programs for 2013 through 2015. The settlement provided benefits to customers and limited some of the costs that DP&L had proposed in its application for customers to pay.

OCC filed testimony in October, recommending that the PUCO approve the agreement because it limits what customers will pay for shared savings and lost revenues and ensures the benefit of bidding energy efficiency into the PJM auction.

The settlement allows DP&L to charge its customers for its "shared savings" (see summary of FirstEnergy Case No. 12-2190-EL-POR), but with a \$4.5 million annual cap on what customers could be charged. In addition, the parties agreed to limit the amount DP&L could collect from customers for "lost revenues" (money the utility does not collect because of electricity savings resulting from energy efficiency).

DP&L agreed to extend through 2015 a \$72 million cap on lost revenues that was originally established in a 2008 electric security plan case. Also, these revenues cannot be collected without PUCO approval after December 31, 2015.

DP&L also agreed to bid 75 percent of its energy efficiency resources into each PJM capacity auction held throughout the duration of the portfolio plan. The settlement also provides assistance for low-income customers.

DP&L, Case No. 13-833-EL-POR

FirstEnergy ordered to credit \$43.4 million in renewable energy overcharges to customers

The Ohio energy law signed in 2008 requires that electric utilities purchase a portion of their generation supply from renewable energy sources. By law, utilities are able to recover the costs of these purchases from their customers if the purchases were prudent.

OCC presented testimony in March recommending a substantial disallowance of FirstEnergy's imprudently purchased renewable energy, that customers should not have to pay. OCC's expert testified that the amounts FirstEnergy paid for non-solar renewable energy credits were "unprecedented anywhere or any time in the country."

In its August Order, the PUCO found that FirstEnergy had overcharged its 2.1 million customers for certain renewable energy credits purchased in 2010 to be supplied in 2011. The PUCO ordered FirstEnergy to credit its customers \$43.4 million (plus interest).

OCC agreed that the PUCO appropriately disallowed FirstEnergy's imprudent renewable energy credit purchases in one transaction. But OCC requested that the PUCO reconsider its decisions allowing other high-priced purchases to be charged to customers. OCC recommended that customers be given significantly higher credits on their electric bills than the \$43.4 million that the PUCO disallowed.

In an unusual development, OCC was prevented from publicly stating its recommendation for the total amount of charges that FirstEnergy should credit to consumers. FirstEnergy succeeded in its efforts for the PUCO to keep this purchasing information from the public domain, claiming the information is a confidential trade secret.

In December, FirstEnergy appealed the PUCO's \$43.4 million disallowance to the Ohio Supreme Court, and asked the Court to stop (stay) the PUCO order for immediate credits to customers. In early January 2014, OCC and the PUCO filed in opposition to FirstEnergy's request for a stay.

In February 2014, the Ohio Supreme Court granted FirstEnergy's request to stop the bill credits that the

PUCO had ordered for returning the \$43.4 million to customers, while the Court considers FirstEnergy's appeal. The Supreme Court appeal will continue in 2014.

FirstEnergy, Case No. 11-5201-EL-RDR

OCC recommends allowing Ohioans to opt-out of smart meters

In 2013, many of Ohio's electric utilities continued to deploy "smart" meters in the homes of their residential customers. A smart meter is an advanced device that allows automated two-way communication between a customer's meter and the local utility. This type of meter provides the utility with access to detailed information about a customer's usage. Detailed usage information can enable more pricing alternatives, such as prices varying by time of day, to be made available for customers.

Consumers have raised issues with regard to smart meters. For example, privacy concerns exist because of the detailed data that exist about the time and amount of the customer's usage. The PUCO Staff, in its consideration of the Electric Service and Safety Standards, recommended that customers have the choice to opt-out of having advanced meters installed in their homes and to instead be able to retain a traditional meter.

OCC filed comments in August recommending that customers be given the choice of whether to allow the utility to install a smart meter in their homes, after having options and costs explained.

The electric utilities generally opposed allowing customers to opt-out of a smart meter. In its October decision, the PUCO required that utilities give customers the choice of whether to opt-out of the installation of an advanced meter.

The PUCO's decision reflected OCC's recommendation to require electric utilities to explain the facts about advanced meters and address customers' concerns prior to the customer making a decision on whether to opt-out of having a smart meter. OCC's recommendation included the offering of multiple options to customers, with each choice and its associated cost explained, leaving the final choice to the customer.

The PUCO also ruled that utilities can charge customers a fee for declining a smart meter, to reflect that meter-reading for a traditional meter may cost more than with an automated smart meter.

Case No. 12-2050-EL-ORD

Electric Utilities Seek Legislation to Increase Profits at Consumers' Expense

Ohio's major investor-owned electric utilities sought higher profits from consumers' energy efficiency savings last September in a complex bill that drew opposition from a number of customer groups, including OCC, AARP and the Ohio Manufacturers' Association.

Senate Bill 58 and its counterpart in the House (House Bill 302) were introduced in an effort to revise the 2008 law on the state's energy efficiency and renewable energy standards. When the 2008 law was passed, electric utilities established energy efficiency programs.

OCC was part of a coalition that opposed the legislation. OCC and others provided public testimony, explaining that the legislation's impact would include higher electric bills and weakened consumer protections, turning customers' savings into higher profits for the utilities.

Under current law, each electric utility must file a three-year energy efficiency plan with the PUCO. Utilities can be rewarded with an incentive if they achieve more energy efficiency than is required under the law. But the proposed bills, if passed, would have allowed utilities a 33 percent profit on energy efficiency savings. And consumers would also be required to pay the taxes on those profits.

OCC estimated that, as a result of the provisions in the proposed bills, a compact fluorescent light bulb or a newer LED bulb could actually cost customers many times more than the initial sales price, when additional utility charges on electric bills are considered over the life of the bulb. For these reasons, OCC and others urged legislators to reject the proposed legislation.

During hearings last fall, OCC and others in the coalition offered a compromise amendment. That amendment would allow Ohio's biggest electric users an exemption from participating in and paying for the energy efficiency programs under the 2008 law, while protecting other consumers from paying for higher utility charges.

The legislation received a number of hearings last fall. A vote in the Senate Public Utilities Committee was canceled last December.

OCC advocates in industry-wide discussion of the retail electric market

During 2013, OCC and other stakeholders participated in the PUCO's review of Ohio's retail electric service market. The Standard Service Offer has a price for electric generation service that is arranged by utilities and offered to customers who do not choose generation service from a retail supplier. Preserving the standard offer was a major focus of OCC's concern. Several marketers had indicated support for eventually eliminating the standard offer option for consumers.

OCC also supported developing a standardized bill format with the goal of providing consumers with easy-to-understand information for their benefit. OCC recommended a cost-effective approach for implementing newly standardized bill formats, which would clearly display the utility's name, contact information, as well as a definition and explanation of the utility's charges.