Issues for Electric Consumers

In 2015, Ohio was a focus of national attention for issues involving electricity markets and how consumers are served by markets.

The Ohio Consumers' Counsel advocated for several million Ohio consumers as electric utilities (AEP and FirstEnergy) proposed that customers guarantee profits for deregulated power plants. Duke proposed its own variation of a plan to guarantee profits, in 2014. (See the 2014 Annual Report.) The proposals were filed under a 2008 Ohio law that allows electric utilities to propose "electric security plans." The law, which contains favorable ratemaking terms for electric utilities, has been costly for Ohio consumers. And it has impeded the transition to a competitive market for electric generation. The Consumers' Counsel has recommended repeal of the statute that allows electric security plans, to protect markets and the consumers served by markets.

The 2008 law allows electric utilities to propose new charges related to a single issue. Before single-issue ratemaking was allowed, electric utilities wanting to increase consumers' rates had to file a traditional rate case where all utility costs and revenues were reviewed. In a rate case, there might be reductions of some costs that could offset some of the increasing costs. Single-issue ratemaking allows utilities to "cherry-pick" the costs they want to charge to consumers. The single-issue charges find their way to customers' monthly bills through "riders." For example, the Cleveland Electric Illuminating Company has 29 riders and Ohio Power Company has 23 riders. The traditional rate case process, not single-issue ratemaking and riders, is generally preferable for consumer protection.

Thirty-two states have lower rates for residential consumers, on average, than Ohio. Also, Ohio's electric prices have increased the most among the restructured states, since 2008. AEP's own statistics, for 2014, show Ohio consumers as paying the highest electric bills in AEP's multi-state territory and show AEP's Ohio operations as achieving the highest profit of any state where AEP operates.

The ratemaking terms in the 2008 law disfavor electric consumers in other ways. For example, the 2008 law also allows electric utilities to charge consumers for excessive profits. The law merely disallows utilities from charging consumers for "significantly" excessive profits. And the law allows electric utilities to, in essence, reject PUCO-ordered modifications to an electric security plan, by allowing utilities to withdraw a proposed electric security plan that the PUCO has modified. The electric security plans, which feature government regulation, are not needed for power plant generation pricing. Under a 1999 law, Ohio intends that the market will determine generation prices for consumers. The Consumers' Counsel, with others, worked to protect the benefits to consumers that competitive markets can enable.

In 2015, the Consumers' Counsel Governing Board performed a year-long assessment of electric utility issues affecting Ohio consumers. In January 2016, the Board issued a report calling for the legislative creation of a task force to make a review of electric utility issues affecting Ohioans.

What follows is a listing of some of the noteworthy cases affecting consumers, with a full listing of OCC's case activities on behalf of consumers at the back of this annual report.

State Electric Cases

Consumers' Counsel defends Ohio consumers and electricity markets from utility re-regulatory proposals

AEP Ohio ("AEP" or "Ohio Power") and FirstEnergy requested approval of agreements that would guarantee profits, at consumers' expense, for deregulated power plants owned by their affiliates.

But under Ohio law, charges for power plant generation should be determined by the competitive electricity market, not guaranteed by the government regulator.

The Consumers' Counsel and others recommended that the PUCO deny the proposed "Power Purchase Agreements." The electric utilities' proposals were the latest in a succession of industry proposals seeking government protection from competitive markets, at the expense of consumers. The Consumers' Counsel and other parties also raised concerns about the settlement process in these cases.

The Consumers' Counsel's expert calculated that each of FirstEnergy's 1.9 million residential customers could pay as much as $800 in higher bills, on average, over the next eight years. The total additional charges could reach $1,100 per customer, for a total of $5.15 billion (as OCC later updated in a federal case).

Similarly, the Consumers' Counsel's expert calculated that each of AEP's 1.3 million residential customers could pay as much as $700 in higher bills, on average, over the next eight years. The total additional charges could reach $1,000 per customer, for a total of $3.1 billion (as OCC later updated in a federal case).

Ohio electric customers have paid billions to transition utilities to competition since 1999. These new proposals sought by the utilities are a step backward from competition and could have customers paying billions of dollars more in unwarranted government-imposed charges. In recent years, the competitive energy markets have been at historically low prices. Ohioans should be benefiting from those market prices. These cases are awaiting decisions by the PUCO.

As for two related cases, OCC and others filed applications for rehearing regarding the PUCO's orders in Duke's proposal for profit guarantees and AEP's earlier proposal for a power purchase agreement. The applications for rehearing are awaiting a PUCO ruling.

FirstEnergy, Case No. 14-1297-EL-SSO; AEP, Case Nos. 13-2385-EL-SSO, 14-1693-EL-RDR; Duke, Case No. 14-0841-EL-SSO

Consumers' Counsel seeks to ensure that smart grid investment is not charged to consumers unless proven to be prudent and "used and useful"

AEP, Duke Energy Ohio ("Duke"), and FirstEnergy all have sought approval from the PUCO to charge consumers for investments made in smart grid deployment programs. These investments were fueled initially by federal grants as part of the American Recovery and Reinvestment Act of 2009. "Smart grid" refers to an electric system that has the potential to, among other things, increase reliability and provide consumers with more information about their energy usage. However, the smart grid, which is funded by customers, is expensive. And there are concerns about whether the investments are cost-effective and provide adequate benefits to consumers. OCC seeks to limit what consumers pay for the smart grid to costs that, among other things, are "used and useful" to current utility consumers.

FirstEnergy, Case No. 09-1820-EL-ATA, et al.; Duke Energy Ohio, Case Nos. 14-1051-GE-RDR, 15-0883-GE-RDR; AEP, Case No. 15-1513-EL-RDR

Consumers' Counsel recommends limits on charges to consumers for AEP's smart grid expansion

After AEP's smart grid phase 1 demonstration project was completed in 2013, AEP filed an application to deploy the second phase of the project. AEP has proposed deployment of approximately 900,000 additional smart meters, more circuits equipped with distribution automation circuit reconfiguration (DACR) capabilities, and additional volt/var optimization technology. DACR provides the opportunity to help reduce the number of customers who experience outages by automatically

rerouting electricity to customers through other adjoining circuits. While not a smart grid technology, volt/var optimization is intended to improve energy efficiency and demand reduction on circuits and reduce customer energy consumption. AEP is seeking expedited collection of its costs through a rider on consumers' utility bills, rather than filing a traditional rate case to propose the charges. OCC has recommended that the PUCO require cost/benefit studies from AEP for review prior to deciding whether AEP can spend hundreds of millions of customers' dollars on a smart grid phase II project. The case remains pending.

AEP, Case No. 13-1939-EL-RDR

Consumers' Counsel seeks consumer protections regarding charges for AEP Ohio's distribution investment

Since 2012, AEP Ohio has been able to charge customers on an expedited basis for certain investments that it makes in modernizing its distribution infrastructure. In 2014, AEP Ohio spent $223 million on distribution infrastructure investments. It then sought to charge consumers a return on and a return of its investment through its distribution investment rider (DIR). OCC filed comments noting ways that AEP Ohio could have saved millions of dollars for customers if the utility had made certain tax accounting modifications in prior years. In addition, OCC asserted that AEP Ohio appeared to be already collecting some of the costs from customers in base distribution rates. OCC sought protection for consumers from such double recovery. OCC also noted that the actual number and duration of customer outages increased between 2013 and 2014, despite the fact that the goal of the investment that consumers fund is to improve service reliability for customers. The case is awaiting a decision by the PUCO.

AEP, Case No. 15-0066-EL-RDR

Consumers' Counsel and Ohio Poverty Law Center seek consumer protection from excessive charges for submetered utility service

Submetering is a way to provide utility service to consumers in apartments, condominiums and manufactured housing developments, where non-utility meters are installed for billing consumers. Submetering companies operate outside the scope of PUCO regulation. Typically, the submetering company or a related entity buys utility service (water and electric) and then resells it to the consumer at a higher price. The bill for submetered service is often higher (or much higher) than the bill for traditionally metered charges by a public utility.

In April 2015, a resident owner of a downtown Columbus condominium, who has been affected by high submetering bills, filed a complaint at the PUCO against Nationwide Energy Partners, the submetering company.

Also, in December 2015, the PUCO opened an investigation into various consumer issues related to submetering. In 2016, OCC filed comments, jointly with the Ohio Poverty Law Center, urging the PUCO to protect Ohioans from excessive charges associated with submetering.

Case No. 15-1594-AU-COI; Whitt v. Nationwide Energy Partners, Case No. 15-0697-EL-CSS

Consumer complaint against Duke for service disconnection

In February 2015, a complaint was filed at the PUCO alleging that Duke had unlawfully disconnected utility service to a single-family home in Cincinnati during November 2011. Two Ohioans died in the home as a result of hypothermia, after the disconnection. The complaint was filed by family members of the deceased. Earlier, family members filed a complaint against Duke in the Hamilton County Court of Common Pleas. That court granted Duke's motion to dismiss the complaint, determining that the PUCO has exclusive jurisdiction over Duke's disconnection practices.

The PUCO has specific rules limiting disconnection of residential gas and electric service(s) during the winter heating season, between November 1 and April 15 of each year. In addition to this important consumer protection, the PUCO has for more than 25 years ordered special disconnection and reconnection procedures to protect the health and safety of Ohioans during the winter.

The Consumers' Counsel intervened in the complaint case at the PUCO. OCC filed testimony expressing concerns about Duke's disconnection practices. This case is awaiting a decision by the PUCO.

Pitzer v. Duke Energy Ohio, Inc., Case No. 15-0298-GE-ESS

Consumers' Counsel's complaint regarding Duke Energy's disconnections of consumers

In September 2015, OCC and Communities United for Action ("CUFA") filed a complaint at the PUCO regarding the disconnection practices of Duke. OCC and CUFA alleged that Duke's disconnection practices were unlawful and unreasonable. OCC is concerned, among other things, that Duke's rate of disconnecting consumers is high relative to other electric utilities. OCC earlier raised some of the disconnection issues in a Duke smart grid case (14-1051-GE-RDR). The PUCO ruled that the disconnection issue would not be considered in the smart grid case and that OCC would need to address the issue in a different case, which led to the filing of the complaint. The case is awaiting the PUCO's scheduling of a hearing.

OCC et al. v. Duke, Case No. 15-1588-GE-CSS; Duke, Case No. 14-1051-GE-RDR

Consumers' Counsel seeks refunds to customers of AEP

The PUCO conducts annual audits of the fuel costs that AEP wants to charge to customers. Audits have been conducted for fuel costs charged to customers during 2012, 2013 and 2014. The PUCO Auditor estimated that AEP overcharged customers by approximately $120 million. AEP, OCC and others will have the opportunity to present evidence and recommendations to the PUCO on whether the utility will have to refund charges to customers. In this regard, OCC requested and obtained public records from the PUCO containing information about AEP's communications with the PUCO Auditor. The PUCO will likely hold a hearing in 2016, before deciding the issue of refunds to consumers.

AEP, Case No. 11-5906-EL-FAC

Electric Energy Efficiency for Utilities and Consumers

Ohio law currently requires that electric utilities implement energy efficiency programs to achieve energy savings for consumers. The Consumers' Counsel participates for residential consumers in periodic "collaborative" meetings regarding these programs. Meetings are held with each of the utilities (AEP, DP&L, Duke and FirstEnergy) and other stakeholders to provide input on the programs offered to consumers and to analyze program costs to consumers.

Consumers entering agreements with marketers for energy supply at a fixed price should be protected from additional charges

Following the "polar vortex" of 2014, some electricity marketers imposed a "pass-through charge" on customers by increasing the fixed electric rate to cover the marketers' costs to obtain electricity during the extreme weather. This practice raised questions about whether it is permissible for marketers to add charges to consumers' bills when the energy contract is for a fixed rate. The PUCO initiated an investigation to determine if pass-through clauses should be permitted in fixed-rate contracts.

OCC recommended that the PUCO protect consumers from pass-through clauses (and resulting charges to consumers) in fixed-rate contracts. OCC also expressed concern with fixed-rate contracts that automatically renew as a variable rate contract (instead of as the original fixed rate contract).

The PUCO ruled that any contract using the term "fixed rate" cannot include pass-through charges after Jan. 1, 2016. The PUCO's ruling likely will affect the way electricity contracts are advertised, with greater disclosure of extra charges that may be billed.

Case No. 14-0568-EL-COI

Consumers are refunded $13 million after years of litigation

In 2005, Columbus Southern Power and Ohio Power (AEP) filed an application seeking to charge customers for planning costs associated with a generation facility in Meigs County. The PUCO allowed AEP to charge customers for pre-construction and research costs for the project. During 2006, AEP collected $23.7 million from customers.

The Consumers' Counsel, the Industrial Energy Users of Ohio, the Ohio Energy Group, and FirstEnergy Solutions appealed the charges to the Supreme Court of Ohio. The Court ruled in customers' favor, and required the PUCO to re-evaluate (within 5 years) its 2006 order that allowed AEP to charge customers pre-construction costs for a plant that had not been built.

At the end of the five-year period, AEP did not build the plant. In 2011, the Consumers' Counsel and other consumer advocates requested a full refund of $23.7 million, plus interest, that had been collected from customers. The request was based on a PUCO ruling that refunds to customers would occur if AEP did not begin to construct the plant by June 2011.

In 2015, the Consumers' Counsel and others agreed to a settlement that included direct payments to intervenors and a refund of $13 million to Ohio consumers, with an average residential customer receiving approximately $6.50. In the ruling that followed, the PUCO cautioned parties that direct payments to intervenors for future settlements would be "strongly disfavored." The case was earlier reported in OCC's 2011 Annual Report, on page 13.

AEP, Case No. 05-376-EL-UNC

Funds for Economic Development

During 2015, OCC participated in two cases where large business customers sought discounted electricity from AEP, with the discount to be paid by customers. OCC submitted testimony recommending that the PUCO order protections for residential consumers, who subsidize these economic development programs. The consumer protections OCC recommended include: limiting the number of repeat applications for customer-funded discounts; caps that limit the total and annual charges to customers for economic development; reasonable cost sharing between customers and the utility; and requiring a public, annual report on the status of the economic development project.

Case No. 15-1857-EL-AEC (Timken Steel Corp.);
Case No. 09-0516-EL-AEC (Eramet Marietta Inc.)

Consumers' Counsel recommends consumer protections from remote disconnections by utilities' use of new smart meters

The increased installation of smart meters in Ohioans' homes has created concern that utilities will use the technology to remotely disconnect consumers' service for non-payment. There are long-standing protections in the PUCO's rules giving consumers the right to be notified in-person of the utility's impending disconnection, on the day of the disconnection. This important right provides customers one last opportunity to make a payment or arrangements to avoid disconnection.

AEP requested a waiver of PUCO rules so that it could use its smart meters to remotely disconnect its customers without providing personal notice to customers. The Consumers' Counsel recommended protecting consumers by denying the waiver request, so that AEP would continue to be required to provide personal notice, prior to disconnecting customers. The PUCO approved AEP's waiver request.

AEP, Case Nos. 13-1938-EL-WVR, 15-0240-EL-RDR

Consumers' Counsel seeks to protect consumers from smart meter opt-out charges

Duke has deployed smart meters throughout its Ohio service territory, at consumer expense. Smart meters are different than traditional meters because smart meters can remotely communicate with utility systems. AEP installed 132,000 smart meters in its service territory, also at consumer expense. Given concerns by some

customers against having smart meters in their homes, the PUCO issued rules that allow customers to retain their traditional meters. AEP and Duke have proposed charges for consumers who retain a traditional meter in their homes.

Duke proposed that consumers pay a one-time charge of $1,037, for retaining their traditional meter. Duke also proposed a recurring monthly charge of $40.63 that would continue for as long as a customer retains a traditional meter. AEP and the PUCO Staff have proposed a settlement to the PUCO, with a $43 one-time charge for customers and an additional recurring monthly charge of $24 for customers who retain a traditional meter.

The Consumers' Counsel recommended that the PUCO protect Duke's customers from paying both the one-time charge and the recurring monthly charges. Specifically, OCC recommended that the PUCO not consider such charges until Duke has filed a rate case, where all revenues and expenses can be thoroughly evaluated.

The Consumers' Counsel recommended rejecting the charges proposed in AEP's settlement. The utility's proposed charges are not just and reasonable for consumers. OCC recommended that the issue should be determined in a rate case where all of the utility's revenues and expenses can be evaluated concurrently.

AEP, Case No. 14-1158-EL-ATA; Duke Energy Ohio, Case No. 14-1160-EL-UNC et al.

Dayton Power & Light seeking up to 30% increase in revenues

Dayton Power & Light ("DP&L") proposed a revenue increase for its distribution business, meaning the part of electric service that delivers the electricity to homes and businesses using wires and poles. DP&L has requested that customers pay an overall revenue increase of 30.24% or $65,750,232, for distribution service. Also, DP&L has requested a new approach for consumers' electric bills, known as a "straight fixed variable" rate design. This approach, which is of considerable concern to consumers, would increase the fixed component on customers' electric bills from $4.25 monthly up to $13.73 monthly, with a slightly lower kwh charge applied to actual usage. This new structure for customers' bills for distribution service would mean that consumers could not save as much money by reducing their usage.

OCC is participating in the case on behalf of consumers.

DP&L, Case No. 15-1830-EL-AIR

Federal Electric Cases

In 2015, OCC advocated to protect the interests of Ohio consumers in a number of proceedings at the Federal Energy Regulatory Commission ("FERC"). FERC has responsibility, among other things, for regulating wholesale energy transactions – transactions that determine in large part what customers in Ohio pay for retail electric service.

During 2015, FERC considered changes to the capacity, energy, and ancillary services markets of PJM Interconnection, LLC ("PJM"). PJM is the regional transmission organization for Ohio and twelve other states. OCC advocated against proposed changes that could result in Ohioans paying more for electricity. In many instances, OCC was able to advocate for Ohioans' interests by working with a coalition of consumer advocates. In one proceeding, PJM proposed changes to its capacity market called "Capacity Performance." The changes propose rewards and penalties to power plant owners (paid for by customers) for power plant performance. OCC and advocates from other states opposed the proposal because it would significantly increase the rates customers pay for electricity. (FERC Docket Nos. ER15-623-000 and EL15-29-000.) In another proceeding, PJM proposed to increase the value of demand response (interruptible) resources. OCC and other advocates opposed PJM's proposed change because it could significantly increase the cost of electricity to customers and negatively affect reliability. (FERC Docket No. ER15-852.) In another FERC proceeding, the OCC, and others, filed to protect consumers in the PJM region from being overcharged hundreds of millions of dollars for generation capacity that is not needed. The consumer concern was that PJM relied on an inaccurate and outdated forecast of the future need for electricity. (FERC Docket No. EL15-83.)

Electric cases appealed to the Supreme Court of Ohio

Consumers' Counsel and others ask the Court to overturn state approval of AEP charges to consumers

OCC and others (Industrial Energy Users, Kroger, FirstEnergy Solutions) appealed the PUCO's 2012 decision on AEP's electric security plan. The PUCO set standard offer rates that AEP could charge customers over a three-year period ending May 31, 2015. AEP was permitted to collect a "retail stability rider" and a capacity charge. OCC asserted that the retail stability rider ($508 million) unlawfully allows the utility to charge customers for revenues lost due to competition. (Generation is a deregulated service in Ohio, which should not include government-imposed charges on consumers.) The capacity charge ($647 million) requires retail customers to subsidize a discount on the wholesale capacity that AEP sells to marketers. The charge is unlawful and causes customers to pay twice for generation capacity. The Court heard oral arguments in May. The appeal is awaiting a decision.

S. Ct. 2013-0521: Appeal from AEP ESP II case (PUCO Case No. 11-346-EL-SSO)

The Consumers' Counsel and others (Industrial Energy Users, FirstEnergy Solutions) appealed a 2012 PUCO ruling. The ruling was the PUCO's first step toward authorizing AEP to bill consumers for the capacity charges under appeal in S. Ct. 2013-521. The Court heard oral arguments in December 2015. Following oral argument, the Court announced that the decisions in this case and S. Ct. 2013-521 would be released simultaneously. The appeal is awaiting a decision.

S.Ct. 2012-2098: Appeal from AEP Capacity Charge case (PUCO Case No. 10-2929-EL-UNC)

Electric issues before the Ohio General Assembly

Energy Efficiency and Renewable Energy Benchmarks (Senate Bill 310)

In 2008, the General Assembly enacted benchmarks for energy efficiency and renewable energy through 2025.

In June 2014, the General Assembly passed Senate Bill 310 ("SB 310"). SB 310 imposed a two-year freeze on Ohio's renewable and energy-efficiency standards through 2016. SB 310 also established the Energy Mandates Study Committee ("Committee") to evaluate Ohio's energy-efficiency and renewable-energy benchmarks. The Consumers' Counsel appreciated the invitation to testify before the Committee in June 2015. In that testimony, the Consumers' Counsel supported energy efficiency as a way to reduce Ohioans' electric bills, and recommended resuming the energy-efficiency benchmarks.

Tangible Personal Property Tax (House Bill 64)

In 2015, the General Assembly passed Amended Substitute House Bill 64 (the budget bill). The bill included a provision to end the tangible personal property tax on electricity generators (that are deregulated). In its place, the bill would have created a new tax on electric distribution utilities, which the utilities would then have charged to their Ohio consumers.

The Consumers' Counsel recommended that the Governor consider a veto of the line item in the bill for the personal property tax that utilities would charge to Ohioans. Other stakeholders apparently also had concerns. The Governor did veto the tax, which protected Ohio consumers.